

MOZAMBIQUE

COMMERCIAL CODE

Decree 2/2005

of 27 December

BOOK ONE

PURSUIT OF COMMERCIAL ENTERPRISE

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The Commercial Code in use in Mozambique dates back to 1888, and has not kept up with the developments that have taken place in the commercial arena in the last one hundred years.

After Mozambique's independence, efforts directed at bringing commercial legislation into line with economic reality resulted in an excessive number of scattered enactments, which were both difficult to consult and to apply, making a general reform the Commercial Code necessary.

On the other hand, the private sector development and socio-economic dynamism seen in recent years have made it necessary to adapt the Commercial Code to the modern trends of international trade, and respond to the demands of integration in the regional market.

Therefore, under article 204 (1) (d) of the Constitution and article 1 of Law 10/2005 of 23 December, the Council of Ministers now decrees as follows:

Article 1

(Approval of the Commercial Code)

The Commercial Code, which is attached to this Decree-Law and forms an integral part hereof, is hereby approved.

Article 2

(Repeals)

1. The Commercial Code enacted by *Carta de Lei* of 28 June 1888 is hereby repealed, with the exception of the provisions of Chapter V of Title II of Book Two pertaining to cooperative societies, and the provisions of Book Three on maritime trade.
2. The following legal diplomas are repealed:
 - a) Law of 11 April 1901, the Law on Private Limited Companies;
 - b) Decree-Law 598 of 8 November 1973, on the merger and division of commercial companies;
 - c) Decree 13/76 of 3 April, on reduction of the number of directors in companies;

- d) Decree 12/78 of 9 May, on the appointment of directors in public limited companies;
- e) Law 11/91 of 30 July, on the minimum share capital of private limited companies;
- f) Law 14/91 of 3 August, on the reinstatement of bearer shares;
- g) Law 49.381 of 15 November 1969, on the supervision of public limited companies.

Article 3

(Reference to provisions repealed or incorporated)

If legal or contractual provisions refer to provisions repealed by this law, such references shall be treated as references to the corresponding provisions of the Commercial Code, unless their interpretation requires a different solution.

Article 4

(Amendments to Commercial Code)

1. All future amendments to be made to matters contained in the Commercial Code shall become part of it, and shall be inserted in the appropriate place, by replacing the amended articles, deleting the provisions that are to be removed or adding such provisions as may be needed.
2. Any amendment to the provisions on bills of exchange, promissory notes or cheques will only have effect in Mozambique strictly within the limits allowed by the international conventions on these matters.

Article 5

(Civil companies under commercial form)

1. Companies whose purposes consist exclusively of carrying out non-commercial acts may take one of the forms provided for in article 82 (1) of the Commercial Code.
2. Civil companies under commercial form that do not wish to be subject to the new rules of the Commercial Code, must cancel their registration in the commercial register within 90 days from the entry into force of this decree-law, and remove from their firm name the words that indicate their chosen commercial form.
3. If, on expiry of the time limit established in the preceding paragraph, any of the steps mentioned therein have not been fulfilled, the company shall be considered as a commercial entrepreneur in the terms of article 2 of the Commercial Code, with all the ensuing consequences.

Article 6

(Monitoring committee)

The Government shall appoint a committee made of jurists and entrepreneurs to monitor the application of the Commercial Code during the first five years after its enactment. This committee shall receive submissions on the improvement of the Code and shall propose to the Government such measures as it considers appropriate to this end.

Article 7
(Entry into force)

This Decree-Law shall come into force 180 days after its publication. Approved by the Council of Ministers on 27 December 2005.

Let it be published.

The President of the Republic
ARMANDO EMÍLIO GUEBUZA

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BOOK ONE
PURSUIT OF COMMERCIAL ENTERPRISE

TITLE I
GENERAL PROVISIONS

Article 1
(Object of commercial law)

Commercial law regulates the activity of commercial entrepreneurs, as well as acts that are considered as commercial acts.

Article 2
(Commercial entrepreneurs)

Commercial entrepreneurs are:

- a) individuals and corporate persons who, in their own name, directly or through third parties, carry on a commercial enterprise;
- b) commercial companies.

Article 3
(Commercial enterprise)

1. A commercial enterprise is any organisation of factors of production for the pursuit of an economic activity aimed at production for systematic and lucrative exchange, namely:
 - a) industrial activity for the production of goods or services;
 - b) intermediation in the movement of goods;
 - c) agricultural and fishing activity;
 - d) banking and insurance activity;
 - e) activities ancillary to the foregoing ones.
2. The organisation of factors of production for the pursuit of an economic activity that is not separable from the person pursuing it is excluded from the provisions of the preceding paragraph.

Article 4
(Acts of commerce)

1. The following are considered acts of commerce:

- a) acts especially regulated in the law as a result of the specific requirements of commercial enterprises, namely those provided for in this Code, and analogous acts;
 - b) acts carried out in the pursuit of a commercial enterprise.
2. Acts carried out by a commercial entrepreneur are considered as being carried out in the pursuit of the entrepreneur's enterprise if such acts or the circumstances surrounding them do not suggest otherwise.

Article 5
(Rules governing unilateral acts of commerce)

Notwithstanding that an act is commercial only with respect to one of the parties, it shall be governed by the provisions of commercial law as regards all the contracting parties, with the exception of those provisions that apply only to the party or parties with respect to whom the act is commercial. However, all the parties shall be subject to commercial jurisdiction.

Article 6
(Applicable law)

1. Acts of commerce shall be governed:
- a) as regards the substance and effects of obligations, by the law of the place where these are entered into, unless there is an agreement to the contrary;
 - b) as regards the mode of performance of such obligations, by the law of the place where performance takes place;
 - c) as regards the external form, by the law of the place where they are entered into, except insofar as the law expressly provides otherwise.
2. The provisions of subparagraph (a) of the preceding paragraph shall not be applicable where their implementation would offend against Mozambican public law or the principles of public order.

Article 7
(Subsidiary law)

Cases not provided for in this Code shall be governed by the rules herein that apply to analogous cases and, in their absence, by those rules of the civil law which do not contradict the principles of commercial law.

Article 8
(Law governing commercial relations with foreigners)

All the provisions of this Code are applicable to commercial relations with foreigners, except insofar as the law expressly provides otherwise, or if there is a special treaty or convention which otherwise rules and governs them.

TITLE II
COMMERCIAL CAPACITY, ENTREPRENEURS AND THEIR OBLIGATIONS

CHAPTER I
COMMERCIAL CAPACITY

Article 9
(Capacity to carry on a commercial enterprise)

Without prejudice to special provisions, a commercial entrepreneur can be any individual, whether resident or non-resident, or any corporate person, with or without their registered office in Mozambique, endowed with civil capacity.

Article 10
(Authorisation to carry on commercial activity)

1. Minors who have reached eighteen years of age may carry on commercial activity provided they have been duly authorised.
2. Authorisation to carry on commercial activity may be granted:
 - a) by parents, provided they have custody of the minor;
 - b) by a guardian;
 - c) by a judge, in the absence of the parents or guardian or where the judge deems it opportune and appropriate for the interests of the minor.
3. The authorisation to carry on commercial activity shall be executed in writing, and the authorisation instrument may limit or impose conditions on the exercise of powers, specify the branch of activity to be pursued by the minor and set a time limit on the authorisation. The person granting the authorisation may revoke it at any time, even when it has been granted for a specified time, without prejudice to the vested rights of third parties.
4. If there is no specified time limit and no limitation of powers, it shall be presumed that the authorisation has been granted for an indefinite time, in which case the minor shall be able to carry out all acts proper to a commercial enterprise.
5. In order for the authorisation instrument and the revocation thereof to be effective in relation to third parties, it must be registered with the competent commercial registration office.

Article 11
(Pursuit of commercial activity by a spouse)

1. Either spouse may carry on commercial activity, irrespective of whether they have authorisation from the other spouse.
2. Neither spouse may stand surety for debt instruments or furnish any other guarantee without the express consent of the other, under pain of nullity of the act in question, except with regard to personal assets.

3. A spouse who considers him or herself prejudiced by an act that may compromise the matrimonial property may assert his or her opposition according to law.

Article 12
(Liability for commercial obligations of a separated spouse)

All non-matrimonial property of a spouse who is judicially separated from bed and board, or separated only as to property, shall be liable for the commercial obligations contracted by that spouse and may be pledged, sold, mortgaged or otherwise disposed of for the purposes of commercial acts, without authorisation from the other spouse.

Article 13
(International rules on commercial capacity)

The commercial capacity of Mozambicans who contract commercial obligations in a foreign country, and that of foreigners who so contract in Mozambican territory, shall be governed by the law of the country of each such person, save insofar as, with regard to the latter, it would be contrary to Mozambican public law.

Article 14
(Impediments)

The following persons cannot carry on a commercial enterprise:

- a) corporate persons that do not have material interests as their object;
- b) those who are forbidden by a specific law.

Article 15
(Capacity of the State and municipalities)

1. The State and municipalities shall not acquire the status of commercial entrepreneur when they carry on a commercial enterprise; however, with respect to such enterprise, they shall be subject to the provisions of this Code.
2. The previous paragraph applies to corporate persons that do not have material interests as their object.

CHAPTER II
OBLIGATIONS OF COMMERCIAL ENTREPRENEURS

Section I
Special obligations of commercial entrepreneurs

Article 16
(Special obligations of commercial entrepreneurs)

Commercial entrepreneurs are especially obliged to:

- a) assume a firm name;
- b) keep uniform, ordered records of operations connected with the carrying on of the enterprise;
- c) cause to be registered with the relevant offices all acts subject to commercial registration;
- d) render accounts.

Article 17
(Small entrepreneurs)

1. The obligations referred to in the preceding article may be waived in whole or in part in relation to small entrepreneurs.
2. The status of small entrepreneur shall be determined on the basis of criteria established by decree.

Section II
Firm name

Article 18
(Obligation to have a firm name)

A commercial entrepreneur shall carry on his enterprise under a trade name, which will constitute his firm name and under which he must sign all documents related to the enterprise.

Article 19
(Principle of truth)

1. The elements used in the composition of the firm name shall be truthful and shall not be misleading as to the identity, nature, size or activities of its owner.
 2. The following shall not be used in the composition of firm names:
 - a) characteristic elements, even if made up of fancy names, acronyms or compositions, which suggest activities different from those that the owner carries on or proposes to carry on;
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- b) expressions that may be misleading as to the legal nature of the entrepreneur, in particular, the use by individuals of designations that suggest the existence of a corporate person, or the use by profit-making corporate persons of expressions normally used to designate public bodies or non-profit associations.

Article 20
(Principle of novelty)

1. The firm name shall be distinctive and not likely to be confused or mistaken with any other name already registered.
2. In assessing the distinctiveness and the likelihood of confusion or mistake, regard shall be had to the type of entrepreneur, his domicile or head office, and the similarity or proximity of the activities carried out or to be carried out.
3. Expressions in normal use and place names, as well as any indication of geographical origin, shall not be considered as names of exclusive use.
4. The incorporation in a firm name of registered distinguishing signs is subject to evidence of the legitimate use thereof.
5. In the assessment referred to in paragraph 2, regard shall also be had to the existence of names of establishments, signs or trademarks whose similarity is such that they may be misleading as to the proprietor of such distinguishing signs.

Article 21
(Obligation to use the official language)

1. The firm name shall compulsorily be in the official language.
 2. The use of words that are not part of the official language is excepted from the preceding paragraph where such words:
 - a) are part of the composition of firm names already registered;
 - b) are common expressions that have no adequate translation in the official language or are in general use;
 - c) correspond, wholly or partly, to names or firm names of shareholders;
 - d) are trademarks whose use is legitimate in accordance with the applicable legal provisions;
 - e) result from the merging of words or parts of words that belong to the official language in the terms of this article, which are directly related with the activities carried out or to be carried out, or have been taken from the other elements of the firm name or from the names of the shareholders;
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f) are aimed at facilitating penetration of the market at which the activities carried out or to be carried out are directed.

3. Except as provided in the preceding paragraph, the use of firm names in other languages shall only be allowed when accompanied by an official translation.

Article 22
(Other requirements)

1. Firm names shall not offend public morality or *bonos mores*.
2. Firm names shall not disrespect national symbols, personalities, epochs or institutions whose name or meaning ought to be safeguarded for historical, scientific, institutional, cultural or other relevant reasons.
3. Firm names shall not incorporate expressions that refer to qualities or excellence to the detriment of others.

Article 23
(Firm names registered outside the country)

The admissibility of firm names registered outside Mozambique shall be subject to evidence of such registration in the place of origin and to the unlikelihood of confusion with firm names already registered in Mozambique.

Article 24
(Exclusive use of firm name)

1. The right to the exclusive use of a firm name only arises after the respective proprietor has registered it with the relevant office.
2. The preceding paragraph shall not affect the possibility of a firm name being declared null, being annulled or lapsing, in the terms of this Code.

Article 25
(Unlawful use of firm name)

The unlawful use of a firm name shall entitle the interested parties to demand a prohibition against such use and to claim compensation for resulting damages, without prejudice to criminal proceedings where applicable.

Article 26
(Composition of firm name of commercial entrepreneurs)

1. The firm name of commercial entrepreneurs may be composed of:
 - a) The entrepreneur's civil name, which may be in full or abbreviated, as necessary to identify the person correctly, and to which a nickname may be added;
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- b) the name or firm name of one, some or all of the shareholders or partners;
 - c) fancy designations;
 - d) expressions alluding to the commercial activity pursued or to be pursued;
 - e) a combination of the elements referred to in the preceding subparagraphs.
2. If the firm name of an individual commercial entrepreneur is composed exclusively according to the terms of subparagraph a) of the preceding paragraph, and the firm name to be registered is identical to another one already registered, the entrepreneur wishing to register the new firm name shall, either alternatively or in addition:
- a) if the firm corresponds to his full name, use his abbreviated name;
 - b) if the firm corresponds to his abbreviated name, add or remove one of his names or surnames;
 - c) add fancy designations or an expression alluding to the commercial activity pursued or to be pursued.

Article 27
(Firm name of small entrepreneurs)

In addition to the rules on the composition of firm names listed in this Code, it shall be compulsory for the firm name of small entrepreneurs to have the addition of the words "*Pequeno Empresário*" or the abbreviation "P.E."

Article 28
(Firm name of individual commercial entrepreneur)

The firm name of an individual commercial entrepreneur may have the addition of the words "*Empresário Individual*" or the abbreviation "E.I."

Article 29
(Firm name of general partnerships)

1. The firm name of general partnerships shall have the addition of the words "*Sociedade em Nome Colectivo*" or the abbreviation "S.N.C."
2. Anyone who, not being a partner, allows his name or firm name to appear in the firm name of a general partnership shall be jointly and severally liable with the partners for the obligations of the partnership.

Article 30
(Firm name of limited partnerships)

1. The firm name of simple limited partnerships shall have the addition of the words "*Sociedade em Comandita*" or the abbreviation "S.C."; and the firm name of

limited partnerships by shares shall have the addition “*Sociedade em Comandita por Acções*” or the abbreviation “S.C.A.”.

2. Anyone who, not being a partner with unlimited liability, allows his name or firm name to be used in the firm name of a limited partnership shall be jointly and severally liable with the unlimited liability partners for the obligations of the partnership.

Article 31

(Firm name of capital and industry partnerships)

The firm name of a capital and industry partnership shall have the addition of the words “*Sociedade de Capital e Indústria*”, or the abbreviation “S.C.I.”.

Article 32

(Firm name of private limited companies)

The firm name of private limited companies shall have the addition of the word “*Limitada*” or the abbreviation “Lda.”

Article 33

(Firm name of single shareholder private companies)

The firm name of single shareholder private companies shall have the addition of the words “*Sociedade Unipessoal Limitada*” or the abbreviation “*Sociedade Unipessoal Lda.*”

Article 34

(Firm name of public limited companies)

1. The firm name of public limited companies shall have the addition of the words “*Sociedade Anónima*” or the abbreviation “S.A.”
2. The name of the founder, controlling shareholder or other person that has contributed to the success of the company may be included in the business name.

Article 35

(Firm name of other commercial entrepreneurs that are corporate persons)

The firm name of commercial entrepreneurs that are corporate persons, other than companies or partnerships or economic interest groups, shall have an addition identifying the type of corporate person in question.

Article 36

(Transfer of firm name)

1. The transferee of a commercial enterprise, either *inter vivos* or *in mortis causa*, may continue to run the enterprise under the same firm name, if authorised to do so, with or without the addition of a statement that he is a successor thereto.
2. In the case of a transfer on death, the power to grant the authorisation mentioned in the preceding paragraph lies with the transferor, and if the deceased has not made any provision in writing on the matter, the authorisation shall be granted by the majority of the heirs, irrespective of whether the transfer is to a third party or to an heir.
3. If the firm name of a commercial entrepreneur that is a corporate person includes the name or firm name of a shareholder or partner, it shall not be necessary to have his consent to transfer the firm name, unless the deed of incorporation provides otherwise.
4. In the case referred to in the preceding paragraph, the shareholder or partner shall cease to be liable for obligations contracted in carrying on the transferred enterprise, as of the registration and publication of the act of transfer.
5. A person who acquires the right temporarily to operate the commercial enterprise of another person may use the firm name of the proprietor, irrespective of whether authorisation is given.
6. A firm name may only be transferred together with the commercial enterprise to which it is connected, and the transfer is subject to registration.

Article 37
(Withdrawal or decease of shareholder or partner)

1. The firm name of a commercial entrepreneur that is a corporate person shall not need to be altered by reason of the withdrawal or decease of a shareholder or partner whose name or firm name appears in the firm name of the said entrepreneur, unless the deed of incorporation provides otherwise.
2. Paragraph 4 of the preceding article shall apply to the situation provided for in the preceding paragraph.

Article 38
(Annulment of firm name)

1. A firm name shall be subject to annulment if its composition breaches the rights of third parties.
2. A firm name is annulled through legal proceedings instituted by an interested party within four years from the date of its publication.
3. The right to request the annulment of a firm name registered in bad faith shall not expire by prescription.
4. The declaration of nullity of a firm name must be registered and published.

Article 39
(Lapse of firm name)

1. The right to a firm name shall lapse:
 - a) on expiry of the contractual term;
 - b) on dissolution of the corporate person;
 - c) if the enterprise is discontinued for more than four years.
2. In the first quarter of each year, commercial entrepreneurs must provide proof to the office responsible for registration of firm names that the enterprise is ongoing.

Article 40
(Declaration of lapse of firm name)

1. The competent registration office shall declare the lapse of a firm name, at the request of interested parties.
2. The registered proprietor of a firm name shall be notified of the request for a declaration of lapse, and shall have one month within which to reply.
3. After this time limit has expired, the competent registration office shall make a ruling within fifteen days.
4. The declaration of lapse can be appealed in court.
5. The declaration of lapse of the right to a firm name shall be registered *ex officio* and shall be published.

Article 41
(Surrender of firm name)

1. A proprietor may surrender a firm name, provided that he expressly declares this to the competent registration office.
2. The declaration of surrender shall be in writing, and the signature of the proprietor shall be certified by a notary in the presence of the signatory.
3. The surrender of the firm name shall be registered in the competent commercial registration office and published in one of the most widely circulated newspapers in the area where the head office is located or, in the absence of such newspaper, by some other public means.

Section III
Commercial bookkeeping

Subsection I
General provisions

Article 42
(Obligation of commercial bookkeeping)

Every commercial entrepreneur shall be obliged to keep organised record books that are adequate for the enterprise, in order to provide chronological information on all the entrepreneur's operations and to enable periodic balance sheets and inventories to be prepared.

Article 43
(Compulsory books)

1. Every commercial entrepreneur shall be obliged to keep a journal, a book of inventories and balance sheets, as well as other books specified by law.
2. In addition to the books mentioned in the preceding paragraph, commercial entrepreneurs that are corporate persons shall keep books for recording minutes.
3. Compulsory books may be substituted by loose records, accounting procedures or other mechanisms permitting the use of new bookkeeping techniques, according to legally established rules.
4. Commercial entrepreneurs may use other optional books, records and accounting procedures in order to assist with their bookkeeping.
5. Some of the books referred to in this article may be dispensed with for small entrepreneurs.

Article 44
(Legalisation of books)

1. Compulsory books, records and instruments used for bookkeeping must be submitted to the competent commercial registration office for legalisation.
2. Legalisation shall consist of the signature of memoranda of opening and closing, as well as an indication, on the first page of each book, of the number of pages in the book and, on all pages of each book, the respective page number and initials.
3. Pages may be initialled using a rubber stamp.
4. The signatures and initials referred to in the preceding paragraphs may be done by the officers competent to sign certificates.
5. The competent registration office shall keep a record of legalisations.

Article 45
(Function and arrangement of the journal)

1. Every act related to the activity of the enterprise shall be recorded in the journal on a daily basis, with an individual entry for each act.
2. Joint entries for the aggregate of operations for periods of no longer than one month shall be valid, provided that the operations are described in other books or supporting records, in

accordance with the nature of the activity concerned.

Article 46
(Function and arrangement of inventories and balance sheets)

The inventory and balance sheet book shall start with the detailed opening balance sheet of the enterprise, and in it the balance sheets that the commercial entrepreneur is obliged by law to keep shall be entered.

Article 47
(Minutes books of corporate commercial entrepreneurs)

The minutes books or sheets of commercial entrepreneurs that are corporate persons shall be used for recording the minutes of meetings between shareholders or partners, directors and the supervisory body, and each of the minutes shall, without prejudice to special provisions, specify:

- a) the date on which they were drawn up;
- b) the names of participants or a reference to an attendance list certified by the chairing committee;
- c) the votes cast;
- d) the resolutions taken and all other matters that provide information about and reasons for them;
- e) the signature by the chairing committee, if there is one, or by the participants, if there is not.

Subsection II
Form of bookkeeping

Article 48
(Who can perform bookkeeping)

1. Commercial bookkeeping shall be performed by the entrepreneur or by any other person duly authorised by him.
2. If the commercial entrepreneur does not carry out his bookkeeping himself, it shall be presumed that he has granted the authorisation referred to in the preceding paragraph to the third party who does it.

Article 49
(Formal requirements)

1. Commercial bookkeeping shall be done in the official language and in official currency, in the prescribed form, with individualised entries and clarity, in chronological order, and with no blank spaces, entries between the lines, scoring out, amendments or notes carried into the margins.

2. The use of special codes in the form of numbers or other abbreviation techniques shall be permitted, provided that they have been specified beforehand in a prescribed document certified by the competent registration office.
3. If an error is made in any book entry, it shall be corrected by means of a reverse entry in the accounts.
4. The books, correspondence and other documentation mentioned in paragraph 1 of article 52 may be kept on electronic media, provided this form of commercial bookkeeping, including the procedures used, complies with the principles of an organised accounting system.
5. For books and other documentation stored on electronic media to be admissible, it shall be necessary to ensure that the information stored is accessible during the compulsory retention period referred to in article 52(1), and that it can at all times be read or reproduced using means made available by the entrepreneur.

Article 50
(Microfilming of commercial records)

1. Commercial entrepreneurs may microfilm documents in which their commercial bookkeeping is recorded.
2. Such microfilms shall replace the originals for all intents and purposes.
3. Microfilming operations shall be executed with the technical care necessary to guarantee the faithful reproduction of microfilmed documents.
4. Regulations governing the abovementioned microfilming operations shall be issued by decree.

Article 51
(Evidentiary value of microfilm)

Photocopies and enlargements obtained from microfilm shall have the same probative force as the originals, both in court and out, provided they bear the duly certified signature of the person responsible for the microfilming.

Article 52
(Obligation to retain correspondence, books and documents)

1. Subject to any special provisions, commercial entrepreneurs shall keep, in their custody and under their responsibility, properly ordered accounting records and other documentation relating to their business, for a period of ten years from the last entry made in the books.

2. An entrepreneur shall not be relieved of the duty established in the preceding paragraph by virtue of the cessation of the enterprise and, in the event of his death, the duty shall fall upon his heirs. In the case of dissolution of a company or other corporate commercial entrepreneur, the liquidators shall be responsible for fulfilling the duty referred to in the preceding paragraph.

Article 53
(Evidentiary value of record books)

1. Entries made in commercial record books shall be evidence between commercial entrepreneurs of acts and events related to their enterprises, in the following terms:
 - a) entries made in commercial record books, even if these are not organised properly, are evidence against the commercial entrepreneur whose books they are; but anyone who seeks to rely on such entries must likewise accept entries that are unfavourable to them;
 - b) entries made in properly organised commercial record books are evidence in favour of the entrepreneur to whom they belong, if the other party does not submit opposing entries in books organised in a like manner or adduce rebutting evidence;
 - c) if there is a discrepancy between the entries of one entrepreneur's books and another's, where the books of one are properly organised and the books of the other are not, the books that are properly organised shall serve as evidence, without prejudice to rebutting evidence.
2. If a commercial entrepreneur has no record books despite being under an obligation to keep them, or if he refuses to produce them for examination, then the properly organised books of the other entrepreneur shall be evidence against the former, except where the failure is due to *force majeure*, and subject always to the possibility of legally admissible evidence being adduced to rebut the exhibited records.

Article 54
(Confidentiality of commercial bookkeeping)

1. Entrepreneurs' commercial bookkeeping is confidential, without prejudice to the following paragraphs and to special provisions.
2. An order for a general examination of an entrepreneur's books, correspondence and other documents or compelling the entrepreneur to produce them for examination may only be made, *ex officio* or at the request of a party, in cases of universal succession, suspension of payments, bankruptcy, liquidation of a company or other corporate commercial entrepreneurs, and if shareholders have a right of direct examination.
3. Apart from the cases mentioned in the previous paragraph, an order requiring commercial records to be produced for examination may be made if the

entrepreneur whose records they are has an interest or responsibility in the matter that justifies the examination; the examination shall be confined exclusively to those aspects that directly relate to the matter at issue.

Article 55
(Carrying out the examination of records)

1. The examination mentioned in the previous article, whether it is general or specific, shall be carried out at the premises of the entrepreneur, in his presence or in the presence of his nominee; adequate measures shall be adopted for the proper conservation and safekeeping of the books and documents.
2. In any case, the person at whose request the examination has been ordered may make use of technical assistants, in such manner and number as the court may consider necessary.

Article 56
(Other cases where records must be produced)

Independently from the provisions in the preceding articles, a court may, *ex officio* or in non-litigious proceedings, order the production of books and other records when requested to do so by an inspection body or other competent authority, provided that there are grounds to suspect the commission of a fraudulent act.

Article 57
(Consequences of refusal to produce records)

In the event of a total or partial refusal to produce books and other records, where a court-ordered search and seizure is not possible, it shall be presumed that the facts intended to be proven are true.

Section IV
Commercial registration

Article 58
(Purposes of registration)

The purpose of the commercial register is to give public notice of the legal situation of entrepreneurs and commercial enterprises, with a view to ensuring the security of legal commerce.

Article 59
(Acts subject to registration)

Acts relating to entrepreneurs and commercial enterprises are subject to registration and publication according to the law.

Section V
Balance sheet and rendering of accounts

Article 60
(Compulsory balance sheet)

Every commercial entrepreneur is under an obligation to prepare an annual balance sheet of assets and liabilities during the first three months of the year immediately following, and to enter the same into the book of inventories and balance sheets and sign it.

Article 61
(Rendering of accounts. Time limits)

Every commercial entrepreneur is under an obligation to render accounts:

- a) in isolated transactions, at the end of each one;
- b) in continuous commercial transactions, at the end of each year;
- c) in running account contracts, upon their closure.

CHAPTER III
ENTREPRENEURS' ASSISTANTS

Article 62
(Powers of entrepreneurs' assistants)

1. Assistants of an entrepreneur can carry out all acts normally included in the type of operations of which they are in charge.
2. However, they cannot demand the price of merchandise that they have not sold, nor grant extensions for payment or discounts that are not in accordance with trade usage, unless they have been expressly authorised to do so.

Article 63
(Powers of derogation from general contractual clauses)

Even where assistants are authorised to enter into contracts on behalf of an entrepreneur, they do not have the power to derogate from the general contractual clauses of the enterprise, unless they have special written authorisation to do so.

Article 64
(Powers of assistants in relation to transactions they conclude)

1. As regards transactions they conclude, assistants are authorised to receive, on behalf of the entrepreneur for whom they act, declarations as to the performance of the contract and claims related to the non-performance of contracts.
2. They shall also have legal standing to apply for provisional remedies in the interests of the entrepreneur.

Article 65

(Other powers of assistants)

1. Assistants who are appointed to effect sales at the premises where the enterprise is carried on may demand the price of merchandise they sell, except if there is a special cashier for collection.
2. Assistants cannot demand the price for merchandise sold outside of the premises of the enterprise, unless they have been authorised to do so or they deliver a receipt signed by the entrepreneur.

TITLE III Places used for commerce

Article 66 (Markets and fairs)

Markets and fairs shall be established at the place, for the duration and in the manner prescribed by legislation and regulations.

Article 67 (General commercial warehouses)

General commercial warehouses shall comprise all warehouses that have been authorised by the Government to receive goods and merchandise on deposit, against a guarantee, for the price established in the respective schedule.

Article 68 (Retail stores or shops)

For the purposes of this Code, the following shall be considered as stores or shops for retail sales to the public:

- a) Those established by registered commercial entrepreneurs;
- b) Those established by unregistered commercial entrepreneurs, when such establishments are kept open to the public for eight consecutive days, or have been advertised by means of loose-leaf advertisements or notices in newspapers, or display the customary signboards.

TITLE IV COMMERCIAL ESTABLISHMENT

Article 69 (Protection of commercial establishments)

Commercial law protects the commercial establishment as the combination of the constitutive elements of a commercial business as a whole, represented by capital and labour, valorised by organisation, in order to enable the commercial entrepreneur to carry on his business efficiently.

Article 70 (Principal establishment, branches and subsidiaries)

Commercial entrepreneurs may have more than one centre of activity. The principal establishment is considered as the one where the administration and actual control of productive activity take place, while the secondary establishments are those equipped with less administrative autonomy, represented by subsidiaries, branches and agencies, which, together, comprise the entrepreneur's goodwill.

Article 71
(Disposal of commercial establishments)

1. The proprietor of a commercial establishment may dispose of the establishment by:
 - a) lease;
 - b) usufruct;
 - c) transfer.
2. An establishment may only be transferred when it comprises sufficient assets to guarantee the performance of its obligations or if the transaction has been authorised beforehand by its creditors.

Article 72
(Calculation of the value of commercial establishments)

1. The value of a commercial establishment is represented by the sum of all corporeal and incorporeal assets appearing in the accounting records of the commercial entrepreneur, together with its goodwill value, that is, the capacity of the establishment to generate operating profits as a result of its good organisation.
2. For the purposes of this article, goodwill value shall be equivalent to the value increase represented by the difference between the book value of the entrepreneur's movable and immovable assets and their sale value on the date when the calculation is made.

Article 73
(Form)

1. The instrument containing the transaction in respect of the commercial establishment shall be formalised in writing.

2. Where a contract involves the transfer of a commercial establishment comprising immovable property, it shall be null and void unless it is executed by public notarial deed.
3. The contracting parties must specify, in the contract, the subject matter of the transaction and the constitutive elements that make up the commercial establishment.

Article 74
(Duration of leases)

The duration of leases of commercial establishments shall be five years, unless the parties specify a different term.

Article 75
(Compulsory renewal)

1. In order to protect the business location where the commercial entrepreneur operates, the entrepreneur shall have a right to compulsory renewal of the lease, provided that:
 - a) the lease contract is in writing and for a term of not less than five years;
 - b) the lessee conducts a commercial activity in the same field of business, for a continuous period of at least three years.
2. The lease of an establishment shall not be subject to compulsory renewal more than once.

Article 76
(Non-competition)

1. In order to avoid the diversion of customers, a commercial entrepreneur who cedes his establishment by lease, usufruct or transfer shall not, without the express consent of the other party, for a period of five years after the date of the transaction, set up business in the same area of influence and in the same field of activity engaged in at the time when the transaction was carried out.
2. The consent must be in the same form as the contract.
3. Non-compliance with the provision in the preceding paragraph shall render the transferor liable for the damages sustained by the other contracting party.

Article 77
(Liabilities of the acquirer, usufructuary or lessor of a commercial establishment)

1. Save as expressly provided otherwise by contract, the acquirer, the usufructuary and the lessor of a commercial establishment shall be liable, as successors, for the obligations of the proprietor of the establishment assumed before the transaction was entered into.

2. Even where there is a contractual provision excluding their liability, the acquirer, the usufructuary and the lessor of a commercial establishment may still be liable to third parties in good faith if a fraudulent or fictitious act has been found in the negotiation; and substance shall prevail over contractual form.

Article 78
(Usufruct or lease of a commercial establishment)

1. In contractual relations involving the usufruct or leasing of a commercial establishment, the usufructuary and the lessee shall administer the establishment in such a way as to preserve the unity of its constitutive elements, in order to maintain the efficiency of the organisation, without modifying the purpose for which it is intended.
2. In the abovementioned contractual relations, the usufructuary and the lessee shall be obliged to look after the assets that comprise the commercial establishment, and shall assume the responsibilities of trustees administering assets of third parties, including the responsibility for safekeeping and, if they dispose of the assets improperly, they may incur liability as fraudulent bailees.

Article 79
(Risk of default)

If there is a risk of default, the court may, at the request of the proprietor of the commercial establishment, order the usufructuary or lessee to provide a bond to guarantee the performance of the contract, and creditors shall have the right to intervene in the process to defend their interests.

Article 80
(Just cause to rescind the contract)

The following grounds, in addition to others established in this Code or in special legislation, shall be just cause to rescind a lease or usufruct contract:

- a) non-performance of the obligations assumed under the lease or usufruct contract, particularly default in payment of the price for the transactions agreed upon;
- b) unfair competition;
- c) breach of the duty to preserve the unity of the constitutive elements of the commercial establishment;
- d) failure to fulfil the duty to preserve and safeguard the assets that are the subject matter of the contract;
- e) commission of acts that are offensive against and incompatible with the conditions of the deal the parties entered into;f) disposal of the assets comprising the commercial establishment without prior authorisation from the proprietor of these

assets.

Article 81
(Judicial attachment and execution)

1. A commercial establishment may be subject to judicial attachment in execution proceedings brought against the commercial entrepreneur.
2. Once the attachment has been effected, the court shall appoint an administrator who shall administer the establishment as a bailee, in accordance with the terms of article 78 hereof.
3. In the execution proceedings, it shall be lawful for the parties to agree on an administrator and on the manner in which the commercial establishment is to be administered, in which case the judge shall, provided there is no detriment to the interests of third parties, ratify the agreement.
4. The provisions of the preceding article having been observed, the judge in execution proceedings may grant the creditor judicial usufruct of the commercial establishment, where this would be less onerous for the debtor and would be an efficient means for the creditor to recover the debt.
5. When an order for judicial usufruct has been made, the debtor loses his right to operate and benefit from the commercial establishment for as long as is necessary for the debt and the costs of the execution to be paid.