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a contract of works, have no action against the person for whose benefit the work has been performed, except to the extent of such amount as may be due by such person to the contractor at the time their action is instituted.

Title X

OF CONTRACTS OF PARTNERSHIP

GENERAL PROVISIONS

1644. Partnership is a contract whereby two or more persons agree to place a thing in common, with a view to sharing the benefit which may derive therefrom.

Definition of contract of partnership.

1645. (1) Every partnership must have a lawful object, and must be contracted for the common interest of the parties.

Object of partnership must be lawful.

(2) Every partner must contribute either money or other property, or his skill.

1646. (1) Every agreement by which one of the partners is to contribute the ownership or enjoyment of property which may in future come to him by succession or donation, is void.

Partner cannot contribute what he expects to acquire by succession or donation.

(2) A contract containing such a provision may be wholly annulled, upon the demand of any of the other partners.

1647. The provisions of this Title do not apply to commercial partnerships except as provided by the Commercial Partnerships Ordinance .

Provisions not applicable to commercial partnerships. Amended by: XLVI.1973.86. Cap. 168.

Sub-title I

OF THE DIFFERENT KINDS OF PARTNERSHIP

1648. A general partnership of all the property of the partners, although it refers to present property only, is void.

General partnership of all property prohibited.

1649. (1) A general partnership of profits is permitted: any such partnership shall only include all that which the parties shall acquire by their skill, under any title whatsoever, during the continuance of the partnership, and the use of the movable or immovable property intended for the exercise of the trade or profession of the partner possessing such property.

General partnership of profits permitted.

(2) The partnership referred to in this article, unless made by a public deed, is null.

*Repealed by Act XXV of 1995. See the Companies Act (Chapter 386).

Particular partnership.	1650. A particular partnership is a partnership having for its object certain specified things, or the use thereof, or the fruits which may be derived therefrom, or a specified undertaking, or the exercise of some trade or profession.
Where immovable property is contributed, public deed is necessary.	1651. (1) A contract of partnership whereby any one of the partners binds himself to contribute the ownership of immovable property is void so far as regards the obligation of contributing the ownership of such property, unless it is made by a public deed. (2) The provisions of sub-article (2) of article 1646 shall also apply to any such contract.
Applicability of ss. 994 to 996.	1652. Where a partner has validly bound himself to transfer to the partnership the ownership of the property which he is to contribute, the provisions of articles 994, 995 and 996, shall apply with respect to the transfer of such property.

Sub-title II

OF THE OBLIGATIONS OF PARTNERS AS BETWEEN THEMSELVES

Commencement of partnership.	1653. A partnership commences from the moment the contract is made, unless another time is fixed.
Stipulation whereby partnership is to last for ever, is null.	1654. (1) Any stipulation whereby a partnership is to last for ever or during the whole life of any one of the partners, is void. (2) A contract of partnership containing any such stipulation shall be deemed to have been entered into for an undefined time.
Where object of partnership is an undertaking of a limited duration.	1655. If the partnership has for its object an undertaking having a limited duration, it shall be deemed to have been contracted for the whole time for which such undertaking is to last.
Liability of partners in respect of contributions.	1656. (1) Every partner owes the partnership all that which he has promised to contribute thereto. (2) Where this contribution consists of a specific thing of which the partnership has suffered eviction, the partner making such contribution is accountable therefor in the same manner as a seller is to the buyer in case of eviction.
Liability of partner for interest on sums due or availed of by him.	1657. (1) The partner who has agreed to contribute a sum of money to the partnership and has failed to do so, becomes <i>ipso jure</i> a debtor in the interest on such sum as from the day on which such sum was payable by him. (2) The same rule shall apply in regard to sums which a partner has taken from the funds of the partnership for his own private advantage, the interest on such sums to run from the day on which he shall have so taken them. (3) Nothing in this article shall affect the right of the partnership to bring an action, where competent, for further damages against such partner even though he has not been put in

default.

1658. A partner who has taken money from the partnership funds is presumed, unless he is the manager of the partnership, to have taken it for his own private advantage, saving any proof to the contrary.

Presumption of private use of money of partnership.

1659. The partners who have agreed to contribute their skill to the partnership are bound to render an account of all the profits made by the exercise of such skill as forms the object of the partnership.

Liability of partners contributing skill.

1660. Where a party who is charged with the management is himself a separate creditor, in a sum fallen due, of a person who also owes to the partnership a sum likewise, fallen due, any payment received by such partner from the debtor shall be appropriated to the debt due to the partnership and to the debt due to himself, in proportion to the two debts, even though in giving receipt he had appropriated the payment entirely to his own private debt.

Appropriation of payment made to managing partner who is also a separate creditor of the party paying.

1661. (1) The provisions of the last preceding article shall not apply where the debt due to the partner is such that, according to the rules laid down in paragraphs (c), (d), (e) and (f) of article 1171 it enjoys preference over that due to the partnership and the payment has been expressly appropriated to the debt due to the partner.

Where debt due to partner enjoys preference over that due to partnership.

(2) In all cases, however, if the partner declares in the receipt that the payment will be appropriated entirely to the debt due to the partnership, it shall not be lawful for him to demand that payment be appropriated, wholly or in part, to the debt due to him.

1662. Where one of the partners has received a share of a common debt, he shall, if the debtor becomes insolvent, be bound to contribute to the common stock the share received by him even though in receiving payment, he had expressly given release for his share of the debt.

Where partner receives share of common debt from debtor who becomes insolvent.

1663. Each partner is liable towards the partnership for any damage caused to the same through his fault, and he may not set off against such damage the profits derived by the partnership from the exercise of his skill in other affairs.

Liability of partner for damage caused to partnership.

1664. (1) Where the things of which the enjoyment only has been brought into the partnership are certain and specified objects which are not consumed by use, they remain at the risk of the partner who is the owner thereof.

Where the enjoyment only of things has been brought into partnership.

(2) If such things are consumed by use, or are such as cannot be preserved without deteriorating, or were intended to be sold, or were brought into the partnership upon a valuation, they remain at the risk of the partnership.

(3) Where the thing has been appraised, the partner may only recover the amount of the valuation.

Rights of partner
against
partnership.

1665. A partner may maintain an action against the partnership, not only for the recovery of sums which he has disbursed on account of the partnership, together with interest, but also in respect of any obligations which he has contracted in good faith in the affairs of the partnership as well as in respect of risks inseparable from his management.

Shares of partners
in profits or losses.

1666. (1) Where the contract of partnership does not fix the share of each partner in the profits or losses, such share shall be in proportion to each partner's contribution to the assets of the partnership.

(2) With regard to a partner who has only contributed his skill, his share in the profits or losses shall be regulated in the same manner as the share of the partner who has contributed to the partnership the least sum or portion.

Where partners
have agreed to
refer the
determination of
such shares to the
decision of one of
the partners, etc.

1667. (1) Where the partners have agreed to refer the determination of such shares to the decision of one of them or of a third party, such decision may not be impeached unless it is manifestly contrary to equity.

(2) It may not be impeached, even in such case, if more than three months have elapsed from the day on which the partner who deems himself aggrieved by such decision has had notice thereof or if he himself has commenced to give execution to such decision.

(3) If the party to whose decision the partners have agreed to refer is unwilling or unable to fix the shares or fails to fix such shares within the time agreed upon by the parties or, in the absence of an agreement, within the time of one month, the partnership is null.

Nullity of certain
agreements.

1668. (1) Any agreement whereby one of the partners is to have the whole of the profits is null.

(2) Any agreement whereby the capitals or things brought into the partnership by one or more of the partners are to be exempt from any contribution to losses is likewise null.

Rights, powers and
obligations of
managing partner
similar to those of
a mandatary.

1669. Unless it has been otherwise agreed or unless it is otherwise provided in this Code, the rights, powers and obligations of any partner charged with the management of the partnership are governed by the provisions relating to the rights, powers and obligations of a mandatary.

Powers of
managing partner.

1670. (1) The partner having the management of the partnership under a special covenant in the contract of partnership may, notwithstanding the opposition of the other partners, perform all such acts as appertain to the management with which he is charged, provided he acts without fraud.

(2) Such power may not be revoked without sufficient cause during the continuance of the partnership; but if such power has been given by any instrument subsequent to the contract of partnership it is revocable in the same manner as an ordinary mandate.

1671. Where several partners are charged with the management of the partnership, without their respective duties being specified, or without it being stated that one of them cannot act without the other, each of them may perform separately all acts appertaining to such management.

Where several partners are charged with management.

1672. Where it has been stipulated that one of the managing partners cannot do anything without the other, one of them alone cannot act without the other without a new agreement, even though the latter be in the actual impossibility of taking part in the acts of management, unless the matter is urgent and such that if the act is omitted a serious and irreparable loss to the partnership might ensue.

Joint management.

1673. In the absence of special stipulations as to the mode of management, the following rules shall be observed:

Rules as to management, in the absence of agreement.

- (a) the partners are presumed to have mutually given to each other the power to manage, the one for the other; and whatever is performed by each of them is valid even as regards the shares of the other partners, although their consent shall not have been obtained;
- (b) if the partners are not more than two, each of them may oppose the transaction before it is concluded, saving the right of the other partner to demand the dissolution of the partnership, together with damages, where the opposition is vexatious, or contrary to the object of the partnership, or otherwise seriously prejudicial to the interests of the partnership;
- (c) if the partners are more than two, in case of opposition, the opinion of the majority will prevail, regard being had to the number of all the partners, or, where the decision takes place at a meeting fixed by agreement, or at a meeting at which all the partners shall have been requested to attend, to the number of the partners present at the meeting:

Provided that where the decision of the majority is vexatious, or contrary to the object of the partnership, or calculated to give execution to acts not naturally included in the object of the partnership, or otherwise seriously prejudicial to the interests of the partnership, it shall be lawful for the dissenting partner to demand the dissolution of the partnership, together with damages;

- (d) each partner may make use of the things belonging to the partnership, provided he uses them for the purpose for which by custom they are intended, and does not use them against the interests of the partnership, or in such a manner as to prevent his partners from using them according to their rights;
- (e) each partner has the right to compel the other partners to bear with him the expenses which are necessary for the preservation of the property of the partnership;

- (f) one of the partners cannot make any alterations in the immovable property of the partnership, even though he claims that such alterations are advantageous to the partnership, unless the other partners consent thereto.

Non-managing partner may not alienate property.

1674. A partner who is not a manager cannot alienate or encumber the partnership property, even though such property be movable.

Admission of other partners.

1675. Each partner may, without the consent of his other partners, associate with himself a third party in his share in the partnership; but he cannot, without their consent, introduce such third party into the partnership, even if he has the management thereof.

Sub-title III

OF THE OBLIGATIONS OF PARTNERS TOWARDS THIRD PARTIES

Partners not liable jointly and severally for partnership debts.

1676. The partners are not jointly and severally liable for the partnership debts; and one of the partners cannot bind the others, unless they have given him power to that effect.

Liability of partners having unequal shares in partnership.

1677. The partners are liable to the creditors with whom they have contracted, each one for an equal sum and share, even if the share of one of them in the partnership is smaller, unless the contract has expressly limited the liability of the latter in proportion to his share.

Where obligation is contracted on account of the partnership.

1678. (1) A stipulation to the effect that an obligation is contracted on account of the partnership, binds only the contracting partner and not the others, unless the latter have given him authority to do so or unless the matter has benefited the partnership.

(2) A partner contracting in his own name does not bind his other partners, even though the matter has benefited the partnership, saving any action competent to the persons contracting with him, under the provisions of article 1143.

Sub-title IV

OF THE DISSOLUTION OF PARTNERSHIP

How partnership terminates.

1679. A partnership terminates -

- (a) by the expiration of the time for which it was entered into;
- (b) by the extinction of the partnership property, or by the completion of the undertaking for which it was entered into;

- (c) by the death of any partner;
- (d) by the inhibition, whether general or special, of any one of the partners from entering into contracts, or by his insolvency or bankruptcy;
- (e) by the declaration of any one of the partners that he does not wish to continue the partnership.

1680. (1) Where one of the partners has promised to bring into the partnership the ownership of a thing and such thing perishes before the partnership has acquired the ownership thereof, the partnership is dissolved with respect to all the partners.

Loss of thing promised.

(2) The partnership, however, is not dissolved, if the loss of the thing happens after the partnership has acquired the ownership thereof.

1681. Where one of the partners has promised to bring into the partnership the enjoyment of a thing, the loss of the thing produces the dissolution of the partnership, even though the loss happens after the partnership has commenced to enjoy the thing.

Loss of thing the enjoyment whereof has been promised.

1682. (1) It may be stipulated that in case of the death of one of the partners, the partnership shall continue with his heir, or only between the surviving partners.

Agreement to continue partnership in case of death of any one of the partners.

(2) In the latter case, the heir of the deceased is only entitled to a partition of the partnership property having regard to the state of the partnership at the time of the partner's death, and he shall not be entitled to participate in any subsequent right, except in so far as such right is the necessary consequence of transactions made before the death of the partner from whom he inherits.

1683. The dissolution of a partnership at the will of one of the partners may only take place if the partnership is entered into for an undefined time, and it is effected by a renunciation, notice whereof is given to all the other partners, provided such renunciation is made in good faith and not at an inopportune moment.

Dissolution by renunciation.

1684. (1) A renunciation is not in good faith, when the partner renounces for the purpose of appropriating to himself alone the profits which the partners expected to earn jointly.

When renunciation is not in good faith, etc.

(2) It is made at an inopportune moment, when things are no longer in their entirety, and the interest of the partnership requires that its dissolution be postponed.

1685. Any agreement whereby any one of the partners is deprived of the power to demand the dissolution of a partnership entered into for an undefined time, is void.

Agreement precluding dissolution of partnership entered into for an undefined time, is void.

1686. Nevertheless, an agreement is valid whereby the partners reserve to themselves the power to oppose the dissolution demanded by any of them, by releasing him from all his engagements towards the partnership or towards third parties, and

Validity of agreement to prevent dissolution.

paying to him a fixed sum, or the amount of his shares, if the partnership is divided into shares.

Dissolution of partnership entered into for a limited time.

1687. The dissolution of a partnership entered into for a fixed time cannot be demanded before the expiration of such time, unless there be a just cause, such as when one of the partners fails to fulfil his engagements, or a habitual infirmity unfits him for the business of the partnership, or other similar causes the justness and importance of which are left to the discretion of the court.

Rules for partition.

1688. The rules respecting partitions of common property are also applicable to partitions between partners, and to the effects thereof.

Title XI

OF THE CONSTITUTION OF ANNUITIES

Constitution of annuity.

1689. An annuity, or a yearly payment in money or in goods, may be stipulated by the assignment of a movable or an immovable thing or by the payment of a sum of money of which the payer binds himself not to claim the return.

Instrument creating annuity.

1690. A contract creating an annuity is null if it is not made in writing, or, where an immovable thing is assigned, if it is not made by a public deed.

Effects of assignment of an immovable.

1691. The assignment of an immovable thing as provided in article 1689 conveys to the assignee the ownership of the thing assigned notwithstanding any stipulation to the contrary, even that whereby the ownership is reserved, saving always the provisions of article 996.

Kinds of annuities.

1692. An annuity may be perpetual or for life.

Laws relating to rents *ad formam bullae*.

1693. The laws relating to the so called rents *ad formam bullae* are repealed, except in regard to those constituted previously to the 14th August, 1862.

Sub-title I

OF PERPETUAL ANNUITIES

Definition of land annuity and simple annuity.

1694. (1) A perpetual annuity constituted as the consideration of an alienation or as a burden on an assignment of an immovable, whether under an onerous or a gratuitous title, is called a land annuity.

(2) An annuity constituted by the payment of a sum of money or other movable thing, is called a simple annuity.

Rate of annuity.

1695. An annuity constituted by the payment of a sum of money

*Amended by:
XIV. 1989.13;
XX. 1994.4.
Substituted by:
XIII. 2004.34.*

SCHEDULE
(Articles 2 and 5A)
**CONVENTION ON THE LAW APPLICABLE TO
TRUSTS AND ON THEIR RECOGNITION**

CHAPTER 1- SCOPE

Article 1

This Convention specifies the law applicable to trusts and governs their recognition.

Article 2

For the purposes of this Convention, the term "trust" refers to the legal relationship created - *inter vivos* or on death - by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics:

- (a) the assets constitute a separate fund and are not a part of the trustee's own estate;
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law. The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

The Convention applies only to trusts created voluntarily and evidenced in writing.

Article 4

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

Article 5

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

CHAPTER II - APPLICABLE LAW

Article 6

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

Article 7

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected. In ascertaining the law with which a trust is most closely connected reference shall be made in particular to:

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.

Article 8

The law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects, and the administration of the trust.

In particular that law shall govern -

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

Article 9

In applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

Article 10

The law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.

CHAPTER III – RECOGNITION**Article 11**

A trust created in accordance with the law specified by the preceding Chapter shall be recognised as a trust. Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity. In so far as the law applicable to the trust requires or provides, such recognition shall imply, in particular -

- (a) that personal creditors of the trustee shall have no recourse against the trust assets;

- (b) that the trust assets shall not form part of the trustee's estate upon his insolvency or bankruptcy;
- (c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate upon his death;
- (d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

Article 12

Where the trustee desires to register assets, movable or immovable, or documents of title to them, he shall be entitled, in so far as this is not prohibited by or inconsistent with the law of the State where registration is sought, to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed.

Article 14

The Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

CHAPTER IV - GENERAL CLAUSES**Article 15**

The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters:

- (a) the protection of minors and incapable parties;
- (b) the personal and proprietary effects of marriage;
- (c) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (d) the transfer of title to property and security interests in property;
- (e) the protection of creditors in matters of insolvency;
- (f) the protection, in other respects, of third parties acting in good faith.

If recognition of a trust is prevented by application of the preceding paragraph, the court shall try to give effect to the objects of the trust by other means.

Article 16

The Convention does not prevent the application of those provisions of the law of the forum which must be applied even to international situations, irrespective of rules of conflict of laws.

Article 17

In the Convention the word "law" means the rules of law in force in a State other than its rules of conflict of laws.

Article 18

The provisions of the Convention may be disregarded when their application would be manifestly incompatible with public policy (*ordre public*).

Article 22

The Convention applies to trusts regardless of the date on which they were

created.
