

**UNIFORM ACT ORGANIZING SIMPLIFIED
RECOVERY
PROCEDURES AND MEASURES OF EXECUTION**

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**UNIFORM ACT ORGANIZING SIMPLIFIED
RECOVERY PROCEDURES AND MEASURES
OF EXECUTION.**

The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHBLA);

Mindful of the Treaty on the Harmonization of Business Law in Africa, in particular Articles 2 and 5 to 12 thereof;

Mindful of the report of the Permanent Secretary and the observations of the Contracting States;

Mindful of the opinion of the Joint Court of Justice and Arbitration dated 23 March 1998;

The Contracting States present have deliberated upon and unanimously adopted the Uniform Act set out below:

**BOOK I
SIMPLIFIED RECOVERY PROCEDURES**

**PART I
INJUNCTION TO PAY**

***CHAPTER I
CONDITIONS***

Article 1:

The recovery of an unquestionable debt due for immediate payment may be secured through the injunction to pay procedure.

Article 2:

The injunction to pay procedure may be initiated where:

(1) the debt arises from a contract;

(2) the commitment arises from the issuance or acceptance of any negotiable instrument, or any cheque for which cover was found to be inexistent or insufficient.

***CHAPTER II
PROCEDURE***

Section I - Petition

Article 3:

The request shall be made in the form of a petition to the competent court of the residence or place of abode of the debtor, or one of the debtors, in the case of several debtors.

The parties may derogate from the above rules of jurisdiction through the election of residence in the contract.

Lack of jurisdiction may only be raised by the court to which the matter is referred or by the debtor during the examination of the opposition filed by him.

Article 4:

The petition shall be filed or sent by the petitioner or his representative, authorized by the law of each Contracting State to represent him in court, to the registry of the competent court.

It shall contain, under penalty of inadmissibility:

- (1) the full names, professions and residences of the parties or, for corporate bodies, their legal form, name and registered office;
- (2) an indication of the exact amount of the claim and an account of the different components of the debt, as well as the basis therefor.

It shall be accompanied by the originals or certified true copies of the documents in proof.

Where the petition emanates from a person not resident in the State of the competent court to which the matter is referred, it shall contain, under the same penalty, election of residence in the jurisdiction of the said court.

Section II - Injunction to pay

Article 5:

Where, upon examination of the documents produced, the request seems to be founded in whole or in part, the president of the competent court shall pronounce an injunction to pay a sum to be determined by him.

Where the president of the competent court dismisses the petition in whole or in part, his decision shall be final against the creditor, save where he follows the procedures of ordinary law.

Article 6:

The originals of the petition and the injunction to pay shall be preserved by the registrar, who shall issue a copy thereof to the petitioner. The original documents annexed to the petition shall be returned to the petitioner, and their certified true copies shall be preserved in the court registry.

Where the petition is dismissed, it shall be returned to the petitioner together with the documents produced.

Article 7:

A certified true copy of the petition and the injunction to pay issued in conformity with the provisions of the preceding article shall, on the initiative of the creditor, be notified to each of the debtors by extrajudicial act.

The injunction to pay shall be null and void where it is not notified within three months from its date of issuance.

Article 8:

Under penalty of being declared void, notification of the injunction to pay shall contain a summons:

- either to pay the creditor the amount fixed by the injunction as well as interest and registry fees the amount of which shall be specified;
- or, where the debtor intends to avail himself of a defence, to enter an opposition; the opposition shall have the effect of referring the initial request by the creditor and the whole case file to the court.

Under the same penalty, the notification shall:

- indicate the time limit within which the opposition shall be filed, the court before which it shall be taken and the form in which it shall be made;
- inform the debtor that he may take cognizance, at the registry of the competent court whose president pronounced the injunction to pay, of the documents produced by the creditor and that in the absence of an opposition within the prescribed time limit, he may no longer exercise the right to any remedy and may be forced by any legal means available to pay the sums claimed.

Section III - Opposition

Article 9:

The ordinary remedy against the injunction to pay shall be an opposition which shall be brought before the competent court whose president pronounced the injunction to pay.

The opposition shall be made by extrajudicial act.

Article 10:

The opposition shall be filed within fifteen days following notification of the injunction to pay. This period shall be increased, taking into consideration the distance.

However, where the debtor has not personally received notification of the injunction to pay, the opposition shall be admissible up to the expiry of the fifteen-day period following the first act notified to the person or, failing this, following the first act of performance which shall render inalienable all or part of the debtor's property.

Article 11:

The opposing party shall, under penalty of forfeiture and in the same act as that of the opposition:

- notify his opposition to all the parties and to the registry of the court which pronounced the injunction to pay;
- serve a summons to appear before the competent court on a fixed date not exceeding a period of thirty days from the opposition.

Article 12:

The court to which the opposition is referred shall attempt a conciliation. Where the conciliation succeeds, the president shall draw up a conciliation report which shall be signed by the parties. One copy thereof shall contain an executory clause.

Where the conciliation attempt fails, the court shall immediately rule on the petition for recovery, even in the absence of the debtor who filed the opposition, by a decision which shall have the effect of a decision after trial.

Article 13:

The petitioner in the injunction to pay shall bear the burden of proving his claim.

Article 14:

The ruling of the court before which the opposition is brought shall supersede the injunction to pay.

Article 15:

The ruling made on the opposition may be appealed against under the conditions of the national law of each Contracting State. However, the time limit for the appeal shall be thirty days from the date of such ruling.

Section IV - Effects of the injunction to pay

Article 16:

In the absence of an opposition within fifteen days from notification of the injunction to pay or, in the case of withdrawal by the debtor who filed the opposition, the creditor may request the insertion of an executory clause in the ruling.

Such insertion shall produce the effects of a decision after trial and shall not be liable to appeal.

Article 17:

The request to insert the executory case shall be filed at the registry by a written or verbal declaration.

The decision shall be void where the creditor's request was not presented within two months following the expiry of the time limit for the opposition or withdrawal by the debtor.

The certified true copies of the documents produced by the creditor and provisionally preserved at the registry shall be returned to him at his request from the time of the opposition or at the moment where an executory clause shall be added to the decision.

Article 18:

There shall be kept at the registry of each court a register numbered and initialled by the president of the court, in which shall be entered the full names, profession and residence of creditors and debtors, the date of the injunction to pay or of refusal to grant the injunction, the amount and cause of the debt, the date of issuance of the copy, the date of the opposition, where it is filed, the date on which the parties were convened and the ruling made on the opposition.

PART II

**SIMPLIFIED PROCEDURE TO SECURE THE DELIVERY
OR RESTITUTION OF SPECIFIC PERSONAL PROPERTY**

Article 19:

Any person who claims to be the creditor of an obligation to deliver or restitute specific, tangible, personal property may petition the president of the competent court to order such delivery or restitution.

CHAPTER I PETITION

Article 20:

The request for delivery or restitution shall be made by petition lodged with or addressed to the registry of the competent court of the domicile or place of abode of the debtor of the obligation to deliver or restitute. The parties may derogate from the jurisdiction rule by means of election of residence provided for in the contract.

Lack of jurisdiction may only be raised by the court to which the matter is referred or by the debtor during the examination of the opposition filed by him.

Article 21:

Under penalty of inadmissibility, the petition shall contain:

- the full names, professions and residences of the parties and, in the case of corporate bodies, the name, legal form and registered office;
- an exact description of the property which is being reclaimed.

It shall be accompanied by the original or the certified true copy of all documents in proof of the petition.

Article 22:

Where the court hearing the petition dismisses it, its decision shall be final against the creditor except where he follows the procedure of ordinary law.

CHAPTER II DECISION ORDERING DELIVERY OR RESTITUTION

Article 23:

Where the petition appears founded, the president of the competent court shall make a ruling at the bottom of the petition ordering delivery or restitution of the property under litigation.

The originals of the petition and the injunction shall be preserved by the registrar, who shall issue a copy thereof to the petitioner.

The original documents produced in proof of the petition shall be returned to the petitioner and certified true copies shall be filed in the registry.

Article 24:

Where the petition is dismissed, it shall be returned to the petitioner together with the documents produced.

Article 25:

The decision ordering delivery or restitution, accompanied by the certified true copies of the documents produced in proof of the petition, shall be notified by extrajudicial act to the person required to deliver, on the initiative of the creditor.

Notification shall, under penalty of being declared void, contain the summons to proceed, within a period of fifteen days:

- either to transfer, at the deliverer's cost, the property named to a given place under the conditions indicated;
- or, where the holder of the property can avail himself of a defence, to file an opposition to the court which made the ruling, by written or verbal declaration against a receipt or by registered letter with a request for acknowledgement of receipt or by any means showing written evidence, failing which the decision shall become enforceable.

The decision ordering delivery or restitution shall be void where it has not been notified within three months from the date of issuance.

CHAPTER III EFFECTS OF THE DECISION ORDERING DELIVERY OR RESTITUTION

Article 26:

Opposition to the decision ordering delivery or restitution shall be subject to the provisions of Articles 9 to 15 of this Uniform Act.

Article 27:

Where there is no opposition within the period prescribed under Article 16 above, the petitioner may request the president of the competent court to enter an executory clause on the decision.

The conditions of such request shall be those provided for by Articles 17 and 18 of this Uniform Act.

BOOK II MEASURES OF EXECUTION

PART I GENERAL PROVISIONS

Article 28:

In the absence of voluntary execution, any creditor may, regardless of the nature of his claim and under the conditions provided for in this Uniform Act, compel the defaulting debtor to honour his obligations towards him or take preventive measures to secure his rights.

Save in the case of a debt secured by a mortgage or of a preferential debt, execution shall be carried out primarily on personality and, where this is insufficient, on immovable property.

Article 29:

The State shall be required to lend assistance in the execution of decisions and in other writs of execution.

The executory clause shall entail a direct requisition of the police force.

Any default or refusal by the State to lend assistance shall commit its liability.

Article 30:

Compulsory distraint and preventive measures shall not apply to persons enjoying immunity from execution.

However, any unquestionable debts due for payment belonging to public corporations or enterprises, regardless of their form and mission, may equally be compensated with unquestionable debts due for payment belonging to any person owing them, subject to reciprocity.

The debts of the corporations and enterprises referred to in the preceding paragraph may only be considered as unquestionable, within the meaning of the provisions of this article, where they arise from an acknowledgement by the said corporations and enterprises of the debts or of a writ enforceable on the territory of the State where the corporations and enterprises are based.

Article 31:

Compulsory distraint shall be available only to a creditor who can show an unquestionable debt due for immediate payment, subject to the provisions relating to the apprehension and claim of movables.

Article 32:

With the exception of the auction sale of immovable property, compulsory distraint may be pursued to term by virtue of a writ of provisional execution.

Execution shall then be carried out at the creditor's risk, in that where the writ is subsequently modified, he shall fully make good any damage caused by the execution, with no room for fault on his part.

Article 33:

The following shall constitute writs of execution:

- (1) court decisions bearing an executory clause and decisions enforceable immediately;
- (2) foreign writs and decisions as well as arbitration awards declared enforceable by a court decision not liable to any remedy at law suspending execution, of the State in which the writ is invoked;
- (3) conciliation reports signed by the judge and the parties;
- (4) notarial deeds bearing an executory clause;
- (5) decisions to which the national law of each Contracting State recognizes as a court decision.

Article 34:

Where a court decision is invoked against a third party, a certificate of no appeal and opposition shall be produced indicating the date of notification of the decision to the losing party. The certificate shall be issued by the registrar of the court which made the ruling concerned.

Article 35:

Any person who, on the occasion of a measure to ensure the execution or protection of a claim, avails himself of a document, shall be required to notify such document or give a copy thereof, except where it has been notified before, unless otherwise provided for in this Uniform Act.

Article 36:

Where the seizure concerns tangible property, the distrainee debtor or a third party holder in whose hands the distraint was carried out shall be deemed to be custodian of the objects seized, subject to the sanctions provided for under the criminal law.

The act of seizure shall render inalienable the property targeted by the act.

A debtor whose property has already been seized shall, under penalty of damages, within five days of knowing about the seizure, disclose to any new creditor seizing the same property, the existence of a previous seizure and the identity of the person who carried it out. He shall, in addition, produce the act of seizure.

The same obligation shall apply to a third party holding the property for the debtor.

The creditor thus informed shall bring to the notice of other creditors who are parties to the proceedings all documents and information which this Uniform Acts makes compulsory to notify by virtue of its Articles 74 to 76 below.

Article 37:

Notification of the act of seizure to the debtor, even in the case of a sequestration, shall interrupt the time limit.

Article 38:

Third parties may not obstruct proceedings aimed at enforcing or protecting a claim. They shall lend support to such proceedings where so required by law. Failure by them to fulfil these obligations may make them liable to pay damages. A third party in whose hands is the property seized may also, under the same conditions, be ordered to pay for the object seized, barring his action against the debtor.

Article 39:

A debtor may not compel a creditor to receive part payment of a debt, even a divisible debt.

However, taking into account the situation of the debtor and considering the needs of the creditor, the competent court may, save for claims for alimony and exchange debts, postpone or reschedule payment of the sums owed over a period of one year. The court may also rule that payments shall first be made on the principal debt.

It may, in addition, order that these measures be subject to the fulfilment by the debtor of acts necessary to facilitate or guarantee payment of the debt.

Article 40:

The deposit of sums, negotiable instruments or securities ordered by the court as a guarantee or as a preventive measure shall confer a preferential right on the pledgee.

Article 41:

Where the legal conditions are met, the bailiff or process-server may enter a place whether used as an abode or not and, as the case may be, open doors and movables.

Article 42:

In the absence of the occupant of the premises, or where the occupant denies access, the bailiff or process-server may put a guard at the doors to prevent any misappropriation. He shall request the competent administrative authority or the police or the gendarmerie to be present during the operations.

Under the same conditions, he may proceed to open the movables.

Article 43:

Where seizure is carried out in the absence of the debtor or of any other person on the premises, the bailiff or process-server shall ensure that the door or opening through which he entered the premises is closed.

Article 44:

The bailiff or process-server may request to be assisted by one or two adult witnesses who shall not be relatives or allies of the direct line to the parties and are not in their service. In such case, he shall state in the report their names, occupations and residences. The witnesses shall sign the original and copies of the report.

Article 45:

The bailiff or process-server may photograph the objects seized. The photographs shall be preserved by him with a view to the verification of the objects seized. They may only be disclosed in the event of a dispute brought before the competent court.

Article 46:

No act of performance shall be carried out on a Sunday or a public holiday except in the case of necessity and by virtue of a special authorization of the president of the court in whose jurisdiction the enforcement is carried out.

No act of performance may be begun before 8 a.m. or after 6 p.m., save in case of necessity, with the authorization of the competent court and only in places not used as dwellings.

The distraining party may not, except by virtue of necessity ascertained by the competent court, take part in the seizure operations.

Article 47:

The costs of the compulsory distraint shall be borne by the debtor, save where it is clear that they were not warranted at the time they were incurred.

Save where they concern an act whose performance is provided for by the national law of each Contracting State or by this Uniform Act, or is authorized by the competent court, costs incurred for recovery without an executory clause shall be borne by the creditor. At his request, however, the competent court may transfer all or part of the costs incurred to the mala fide debtor.

Article 48:

The bailiff or process-server may, whenever he encounters any difficulty in executing a writ of execution, take the initiative to refer the matter to the competent court.

The bailiff or process-server shall deliver, at the expense of the debtor, a writ of summons to the parties and inform them of the date, time and place of the hearing during which the difficulty shall be examined. He shall disclose to the parties the fact that a ruling may be made in their absence.

Article 49:

The competent authority to rule on all disputes or petitions relating to a forced act of performance or sequestration shall be the president of the court ruling in urgent proceedings, or the judge delegated by him.

His decision may be appealed against within a period of fifteen days from its pronouncement.

The time limit for appeal and the exercise of the right to appeal shall not bar enforcement unless otherwise specially decided, with reasons therefor, by the president of the competent court.

Article 50:

Seizures may be carried out on all property belonging to the debtor, even where the said property is held by a third party, save where it has been declared inalienable by the national law of each Contracting State.

They may also be carried out on conditional claims, future debts or successive execution debts. The procedures proper to these obligations shall be binding on the seizing creditor.

Article 51:

Inalienable property and rights shall be defined by each of the Contracting States.

Article 52:

Inalienable debts whose amounts are paid into an account shall remain inalienable.

Article 53:

Where an account, even a joint account, supplied by the earnings and salary of one spouse under community of property, is subject to a forced act of performance or sequestration for the payment or guarantee of a debt incurred by the other spouse, there shall immediately be placed at the disposal of the spouse under community of property a sum of his choice equivalent to the earnings and salary paid into the account during the month preceding the seizure or to the average monthly amount of earnings and salary paid in during the twelve months preceding the seizure.

**PART II
SEQUESTRATION**

**CHAPTER I
GENERAL PROVISIONS**

Article 54:

Any person whose claim appears in principle to be founded may, by petition, pray the competent court of the residence or place of abode of the debtor for an authorization to take preventive measures on all the tangible or intangible personal property of his debtor, without prior summons to pay, where he can show justifiable circumstances which are likely to jeopardize the collection.

Article 55:

Prior authorization by the competent court shall not be necessary where the creditor avails himself of a writ of execution.

The same shall apply in the case of default in payment, duly ascertained by an accepted bill of exchange, promissory note, cheque or unpaid rent after a summons to pay as soon as it becomes due and by virtue of a written lease for a house.

Article 56:

Sequestration may be carried out on all the tangible or intangible personal property belonging to the debtor. It shall render such property inalienable.

Article 57:

Where the seizure concerns a claim in the form of a sum of money, the act of seizure shall make it inalienable up to the amount authorized by the competent court or, where such authorization is unnecessary, up to the amount for which the seizure is made.

Seizure shall, as of right, entail deposit of the sums made inalienable and shall confer on the distrainor a possessory lien.

Article 58:

Where seizure is carried out on property in the hands of a banking establishment or similar financial establishment, the provisions of Article 161 shall apply.

Article 59:

The decision ordering sequestration shall, under penalty of being declared void, specify the amount of the sums in guarantee of which the preventive measure is authorized and also the nature of the property targeted.

Article 60:

The authorization of the competent court shall be null and void where the sequestration was not executed within a period of three months from the date of the decision authorizing the seizure.

Article 61:

Save where the sequestration was carried out with a writ of execution, the creditor shall, within one month following the said sequestration and under penalty of being declared void, institute proceedings or complete the necessary formalities for the obtainment of a writ of execution.

Where the seizure is carried out on property in the hands of a third party, copies of the documents justifying the proceedings shall be forwarded to the third party within a period of eight days from the date of issuance.

CHAPTER II DISPUTES

Article 62:

Even where prior authorization is not required, the competent court may, at any time at the request of the debtor, after hearing the creditor or summoning him to appear, order the release of the sequestration where the distrainor fails to show proof of fulfilling the conditions prescribed by Articles 54, 55, 59, 60 and 61 above.

Article 63:

The petition for a release order shall be brought before the competent court which authorized the measure. Where such measure was taken without prior authorization, the petition shall be brought before the court of the residence or place of abode of the debtor.

Other disputes, notably those relating to the enforcement of the measure, shall be brought before the competent court of the place of the seized property.

CHAPTER III SEQUESTRATION OF TANGIBLE PROPERTY

Section I - Seizure operations

Article 64:

After reminding the debtor that he is required to indicate any of his property which had been the object of a previous seizure and to furnish him with the report thereof, the bailiff or process-server shall draw up a seizure report containing, under penalty of being declared void:

- (1) a reference of the authorization of the competent court or the writ authorizing the seizure; these documents shall be annexed to the original of the writ or to the certified true copy thereof;
- (2) the full names and residences of the distrainee and distrainor or, in the case of corporate bodies, their legal form, name and registered office;
- (3) election of residence in the place of the competent court where the act of sequestration is done, where the creditor is not resident there; any notification or offer may be made at such elected residence;
- (4) a detailed description of the property seized;
- (5) where the debtor is present, his statement concerning any previous seizure of the same property;

- (6) a statement in bold characters that the seized property is inalienable, that it is in the custody of the debtor or third party agreed upon by the parties or, failing this, by an urgent court ruling, that it may neither be alienated nor moved except in the case provided for by Article 97 below, under penalty of criminal sanctions, and that the debtor is required to disclose the present seizure to any creditor undertaking a new seizure on the same property;
- (7) a statement in bold characters of the debtor's right, where the validity conditions of the seizure are not met, to petition the competent court of his place of residence for a release of the seizure;
- (8) a designation of the court before which shall be brought other disputes, notably those relating to the execution of the seizure;
- (9) an indication, where applicable, of the names and capacity of the persons who took part in the seizure operations and who shall append their signatures to the original and the copies; in the case of a refusal, mention thereof shall be made in the report;
- (10) a reproduction of the penal provisions attending the misappropriation of the objects seized, as well as those of Articles 62 and 63 above.

Application may be made of the provisions of Article 45 above.

Article 65:

Where the debtor is present during the seizure operations, the bailiff or process-server shall verbally remind him of the contents of Article 64 (6) and (7) above.

A copy of the report bearing the same signatures as the original shall immediately be handed to him; such handing over shall be equivalent to notification.

Where the debtor is not present during the seizure operations, a copy of the report shall be notified to him and he shall be given a period of eight days to inform the bailiff or process-server about any details relating to any previous seizure and to send him the report thereof.

Article 66:

The provisions of Articles 99 and 103 below shall apply to sequestration, where such arrestation is carried out on property in the hands of the debtor.

Article 67:

Where sequestration is carried out on property in the hands of a third party, the procedure shall be as provided for by Articles 107 to 110 and 112 to 114 inclusive below.

Where seizure is carried out without a prior court authorization in accordance with Article 55 above, the provisions of Article 105 below shall apply.

The report of the seizure shall be notified to the debtor within a period of eight days. It shall additionally contain, under penalty of being declared void:

- (1) a copy of the authorization of the competent court or, where applicable, of the writ which authorized the seizure;

- (2) a statement in bold characters of the debtor's right, in the case where the conditions of validity of seizure are not met, to petition the court of his own place of residence for a release of the seizure;
- (3) a reproduction of Articles 62 and 63 above.

Article 68:

The incidents relating to the execution of the seizure shall, where necessary, be subject to the provisions of Articles 139 to 146 below.

Section II - Conversion into seizure for sale**Article 69:**

A creditor in possession of a writ of execution showing the existence of his claim, shall notify to the debtor a conversion deed containing, under penalty of being declared void:

- (1) the full names and residences of the distrainee and the distrainor or, in the case of corporate bodies, their legal form, name and registered office;
- (2) reference to the report of the sequestration;
- (3) a copy of the writ of execution, save where such writ has already been entered in the report of the seizure, in which case it shall simply be mentioned;
- (4) a separate account of the sums payable in principal, costs and accrued interest, as well as an indication of the interest rate;
- (5) a summons to pay the said sum within a period of eight days, failing which the property seized shall be sold.

The conversion may be entered in a deed notifying the writ of execution.

Where the seizure is carried out on property in the hands of a third party, a copy of the conversion deed shall be disclosed to such third party.

Article 70:

On the expiry of the eight-day period from the date of the conversion deed, the bailiff or process-server shall proceed with a verification of the property seized. A report shall be drawn up of missing or damaged property.

In the report, the debtor shall be informed that he has a period of one month to sell the property seized by private sale, under the conditions prescribed in Articles 115 to 119 below.

Article 71:

Where the property is no longer found at the place where it was seized, the bailiff or process-server shall enjoin the debtor to inform him within a period of eight days of the place where it is found and, where it has been subject to seizure for sale, to supply to him the name and address of the bailiff or process-server who undertook the seizure for sale or the creditor on whose account it was seized.

Where there is no response, the creditor shall petition the competent court which may order the supply of the said information, subject to a daily fine for delay, without prejudice to prosecution for misappropriation of the objects seized.

Article 72:

Where there is no private sale within the prescribed period, the seized property shall be forcibly sold in accordance with the procedure laid down for seizure for sale.

Section III - Foreign attachment**Article 73:**

Where the debtor has no fixed residence or where his residence or establishment is found in a foreign country, the competent court to authorize and settle disputes relating to the seizure of his property shall be the court of the residence of the creditor.

The distrainer shall be custodian of the property, where the property is held by him; otherwise a custodian shall be appointed.

The applicable procedure shall be the one prescribed for sequestration.

Section IV - Plurality of seizures**Article 74:**

The bailiff or process-server who carries out a sequestration of property made inalienable by one or more previous sequestrations shall serve a copy of the report of seizure to each of the creditors whose action preceded his.

Where property seized as a preventive measure is subsequently subject to seizure for sale, the bailiff or process-server shall serve the report of the seizure to the creditors who carried out previous sequestrations.

Similarly, the deed converting a sequestration into a seizure for sale shall be notified to the creditors who, before the said conversion, carried out a preventive seizure on the same property.

Article 75:

Where the debtor makes proposals for a private sale, the distraining creditor who accepts the said proposals shall, by registered letter with acknowledgement of receipt or by any other means in writing, notify the contents of the proposals to the creditors who carried out a preventive seizure on the same property, either before the act of seizure or before the deed of conversion, as the case may be. Under penalty of being declared void, the letter or means used shall reproduce in bold characters the following three paragraphs.

Each creditor shall, within a period of fifteen days from receipt of the registered letter or other means used, take a decision on the proposals of private sale and inform the distraining creditor of the nature and amount of his claim.

Where there is no reply within the given period, the creditor shall be deemed to have accepted the sale proposals.

Where, within the same period, the creditor does not give any indication on the nature and amount of his claim, he shall lose the right to share in the distribution of the proceeds from the private sale, save enforcing his claim to any balance after sharing.

Article 76:

The distraining creditor who undertakes the removal of property with a view to its forced sale shall, by registered letter with acknowledgement of receipt or by any other means in writing, inform the creditors who have carried out a sequestration of the same property before the act of seizure or deed of conversion, as the case may be. Under penalty of being declared void, the said letter or means used shall indicate the name and address of the auxiliary of justice in charge of the sale and reproduce in bold characters the following paragraph.

Each creditor shall, within a period of fifteen days from receipt of the registered letter or means used to inform him of the removal of the property with a view to selling it, inform the auxiliary of justice in charge of the sale of the nature and amount of his claim on the day of the removal. Where there is no reply within the given period, he shall lose the right to share in the distribution of the proceeds from the forced sale, save enforcing his claim to any balance after sharing.

**CHAPTER IV
SEQUESTRATION OF DEBTS**

Section I - Seizure operations

Article 77:

The creditor shall carry out the seizure by way of a deed from the bailiff or process-server notified to the third party in conformity with the provisions of Articles 54 and 55 above.

The deed shall contain, under penalty of being declared void:

- (1) a statement of the full names and residences of the debtor and the distraining creditor or, in the case of corporate bodies, their name, legal form and registered office;
- (2) election of residence in the area of jurisdiction of the court where the seizure will be made, where the creditor does not reside there; any notification or offer may be made at such elected residence;
- (3) an indication of the court authorization or the writ authorizing the seizure;
- (4) a detailed account of the sums for which the seizure is carried out;
- (5) a prohibition to a third party from disposing of the sums claimed, up to the amount he owes the debtor;
- (6) a reproduction of the provisions of the second paragraph of Article 36 above as well as those of Article 156 below.

Article 78:

Where there is no private arrangement, any interested party may request by petition that the sums seized be consigned in the hands of a depositary designated by the court of the residence or place of abode of the debtor.

The handing over of the funds to the depositary shall stop the interest owed by the garnishee from accruing.

Article 79:

Within a period of eight days and under penalty of being declared void, the sequestration shall be disclosed to the debtor by deed of a bailiff or process-server.

The said deed shall contain, under penalty of being declared void:

- (1) a copy of the court authorization or the writ authorizing the seizure;
- (2) a copy of the report of the seizure;
- (3) a statement in bold characters of the debtor's right, where the validity conditions of the seizure are not met, to petition the court of his place of residence to release the seizure;
- (4) a designation of the court before which shall be brought other disputes, notably those relating to the execution of the seizure;
- (5) a reproduction of the provisions of Articles 62 and 63 above.

Article 80:

A garnishee shall be required to furnish the bailiff or process-server with the information required under Article 156 below and to submit to him copies of all documents in proof. The information shall be mentioned in the report.

Article 81:

A garnishee who, without legitimate cause, fails to supply the information required shall expose himself to paying the sums which warranted the seizure, where the said seizure is converted into a seizure-award, subject to any action he may take against the debtor.

He may also be ordered to pay damages in case of faulty negligence or inaccurate or false declaration.

Where third party declarations are not challenged before the deed of conversion, such declarations shall be deemed to be accurate for purposes of the seizure.

Section II - Conversion into seizure-award

Article 82:

A creditor in possession of a writ of execution showing the existence of his claim, shall serve the garnishee a deed of conversion which shall contain, under penalty of being declared void:

- (1) the full names and residences of the distrainee and the distrainor or, in the case of corporate bodies, their legal form, name and registered office;
- (2) a reference to the report of the sequestration;
- (3) a copy of the writ of execution, save where such writ has already been communicated during the notification of the report of the seizure, in which case it shall simply be mentioned;
- (4) a separate account of the sums payable in principal, costs and accrued interest, as well as an indication of the interest rate;
- (5) a request for payment of the sums previously indicated, up to the amount which the third party acknowledged or has been declared to be owing.

The deed shall inform the third party that within that limit, the request entails immediate award of the debt seized for the benefit of the creditor.

Article 83:

A copy of the deed of conversion shall be served to the debtor.

With effect from such notification, the debtor shall have a period of fifteen days within which to challenge the deed of conversion before the court of his residence or of his place of abode.

Where there is no challenge, the third party shall make the payment to the creditor or to his representative on the presentation of a registry certificate showing that there is no challenge.

Payment may be made before the expiry of the period where the debtor has declared in writing that he is not challenging the deed of conversion.

Article 84:

The provisions of Articles 158 and 159, 165 to 168, of the second and third paragraphs of Article 170, Articles 171 and 172 below shall apply.

CHAPTER V
SEQUESTRATION OF PARTNERSHIP
RIGHTS AND TRANSFERABLE SECURITIES

Section I - Seizure operations

Article 85:

Partnership rights and transferable securities shall be sequestered by notification of a deed to the persons mentioned in Article 236 below. The said deed shall contain, under penalty of being declared void, the provisions of Article 237 below, subject to (3) where an indication of the writ of execution may be replaced by that of the authorization of the competent court to carry out the sequestration.

Article 86:

Within a period of eight days, under penalty of being declared void, the sequestration shall be notified to the debtor by a deed containing, under penalty of being declared void:

- (1) a copy of the court authorization or document authorizing the seizure;
- (2) a copy of the report of the seizure;
- (3) a statement in bold characters of the debtor's right, where the conditions of validity of the seizure are not met, to petition the court of his place of residence for the release of the seizure;
- (4) a designation of the court before which shall be brought the other disputes, notably those relating to the execution of the seizure;
- (5) election of residence in the jurisdiction of the court of the place of execution of the seizure, where the creditor is not resident there; any notification or offer may be made at such elected residence;
- (6) a reproduction of Articles 62 and 63 above.

Article 87:

The provisions of Article 239 below shall apply.

Section II - Conversion into seizure for sale

Article 88:

The creditor in possession of a writ of execution showing the existence of his claim, shall notify the debtor of the deed of conversion into a seizure for sale which shall contain, under penalty of being declared void:

- (1) the full names and residences of the distrainee and the distrainor or, in the case of corporate bodies, their legal form, name and registered office;
- (2) the reference to the report of the sequestration;
- (3) a copy of the writ of execution, save where such writ has already been communicated during the notification of the report of the seizure, in which case it shall simply be mentioned;

- (4) a separate account of the sums payable in principal, costs and accrued interest, as well as an indication of the interest rate;
- (5) a summons to pay the said sum, failing which the property seized shall be sold;
- (6) a statement in bold characters that the debtor has a period of one month to carry out the private sale of the securities seized, under the conditions provided for by Articles 115 to 119 below;
- (7) a reproduction of Articles 115 to 119 below.

Article 89:

A copy of the deed of conversion shall be served to the garnishee.

Article 90:

The sale shall be conducted in conformity with Articles 240 to 244 below.

PART III SEIZURE FOR SALE

Article 91:

Any creditor in possession of a writ of execution showing a debt due for immediate payment may, after notification of a summons, proceed to the seizure and sale of the tangible property belonging to his debtor, whether the said property is held by the debtor or not, in order to be paid from the sale price.

Any creditor who fulfils the same conditions may join the seizure operations by way of opposition.

CHAPTER I PRELIMINARY SUMMONS TO PAY

Article 92:

The seizure shall be preceded by a summons to pay served at least eight days before the seizure to the debtor and containing, under penalty of being declared void:

- (1) a mention of the writ of execution authorizing the proceedings, with a separate account of the sums claimed in principal, costs and accrued interest, as well as an indication of the interest rate;
- (2) a summons to settle the debt within a period of eight days, failing which he may be compelled to pay through the forced sale of his personal property.

Article 93:

Where the creditor is not resident within the territorial jurisdiction of the court where the proceedings are pursued, the summons shall contain election of residence until the end of the proceedings. But where there is a change of residence before the end of proceedings, the change shall be notified to the debtor.

Article 94:

The summons shall be served to the person or at residence. It may not be served at the elected residence. It may be issued in the notification deed of the writ of execution.

CHAPTER 2 SEIZURE OPERATIONS

Section I - Common provisions

Article 95:

All the distrainable tangible personalty belonging to the debtor may be seized for sale, including property which was previously seized as a preventive measure. In the latter case, Articles 88 to 90 above shall apply.

Article 96:

Where no property is liable to seizure or has no clear market value, the bailiff or process-server shall draw up a report of the default, save where the creditor requires that the execution be continued.

Article 97:

Seized property shall be inalienable. Where, for legitimate reasons, it has to be moved, the custodian of the property shall be required to inform the creditor thereof beforehand, save in the case of absolute urgency.

In any case, he shall indicate to the creditor the place where the property shall be kept.

Article 98:

Upon expiry of the eight-day period starting from an unproductive summons to pay, the bailiff or process-server may, using the writ of execution as justification, enter a place used whether as a dwelling or not, under the conditions provided for by Articles 41 to 46 above.

Section II - Seizure operations in the hands of the debtor

Article 99:

Before any seizure operation, where the debtor is present, the bailiff or process-server shall verbally reiterate the request for payment and inform the debtor that he is required to point out the property which may have been the subject of a previous seizure.

Article 100:

The bailiff or process-server shall draw up an inventory of the property. The deed of seizure shall contain, under penalty of being declared void:

- (1) the full names and residences of the distrainee and the distrainor or, in the case of corporate bodies, their legal form, name and registered office; any election of residence by the distrainor;
- (2) a reference to the writ of execution authorizing the seizure;
- (3) a statement of the person to whom the writ is left;
- (4) a detailed description of the objects seized;

- (5) where the debtor is present, a declaration by him concerning any previous seizure of the same property;
- (6) a statement in bold characters that the property is inalienable, that it is placed in the custody of the debtor, that it may not be transferred or moved, save in the case provided for by Article 97 above, under penalty of criminal sanctions, and that the debtor is required to disclose the present seizure to any creditor who may carry out a new seizure of the same property;
- (7) a statement in bold characters that the debtor has a period of one month to carry out a private sale of the property seized, under the conditions provided for by Articles 115 to 119 below;
- (8) a designation of the court before which shall be brought any disputes relating to the seizure for sale;
- (9) a statement, where need be, of the names and capacities of the persons who were present during the seizure operations, who shall append their signatures to the original and copies; in case of refusal, mention thereof shall be made in the report;
- (10) a reproduction of the penal provisions governing misappropriation of the objects seized, as well as those of Articles 115 to 119 below;
- (11) a reproduction of Articles 143 to 146 below.

Article 101:

Where the debtor is present during the seizure operations, the bailiff or process-server shall remind him verbally of the provisions of (6) and (7) of the preceding article. He shall also remind him of the option he has of making a private sale of the property seized, under the conditions provided for by Articles 115 to 119 below.

Mention shall be made of these declarations in the report of the seizure. A copy of the report bearing the same signatures as the original shall immediately be handed to the debtor to serve as notification.

Article 102:

Where the debtor is not present during the seizure operations, a copy of the report of the seizure shall be served to him and he shall be given a period of eight days to disclose to the bailiff or process-server the existence of any previous seizure and furnish him with the report thereof.

Article 103:

The debtor shall continue to use the property made inalienable by the seizure except in the case of consumable goods. In such case, he shall be required to respect the estimated value in exchange made at the time of seizure.

However, the competent court may, on an ex parte petition, at any time, even before the commencement of the seizure operations and after hearing the parties or the parties having been duly summoned, order the return of one or more objects to a depositary it shall designate.

Where, among the objects seized is found a motor-vehicle, the competent court may, after hearing the parties or the parties having been duly summoned, order its immobilization pending removal for sale by any means not causing any deterioration to the vehicle.

Article 104:

Sums in cash may be seized up to the amount of the claim of the distrainor. They shall be kept by the bailiff or process-server or at the registry chosen by the distraining creditor.

Mention shall be made thereof in the report of the seizure, which shall also indicate, under penalty of being declared void, that the debtor has a period of fifteen days, from notification of the said report, to challenge it before the court of the place of seizure, which shall be designated in the report.

Where the seizure is challenged and there is no order for payment to the creditor or restitution to the debtor, the court may order the deposit of the amount claimed.

Where the seizure is not challenged within the prescribed period, the sums shall immediately be paid to the creditor. They shall be deducted from the total amount claimed.

Section III - Seizure operations in the hands of a third party**Article 105:**

Where the seizure concerns property held by a third party and in premises used as a dwelling by the third party, it shall be authorized by the court of the place of location of the property.

Article 106:

On presentation of the summons to pay in conformity with Article 92 to 94 above notified to the debtor and on the expiry of the period of eight days after the date of the summons on presentation, where possible, of the court authorization provided for in the preceding article, the bailiff or process-server may seize in the hands of a third party any property held by the latter for the debtor.

Following the same procedure, the creditor may also carry out a seizure on himself where he is in legitimate custody of property belonging to his debtor.

Article 107:

The bailiff or process-server shall invite the third party to declare the property in his custody belonging to the debtor and, among such property, the objects which may have been subject to a previous seizure.

In case of refusal to declare or of an inaccurate or false declaration, the third party may be ordered to pay for the objects targeted by the seizure, subject to taking legal action against the debtor. He may also be ordered to pay damages.

Article 108:

Where the third party declares that he is not holding any property belonging to the debtor or where he refuses to make a declaration, a statement shall be drawn up on the matter and submitted or notified to the third party with an indication in bold characters of the sanction referred to in the preceding article.

Article 109:

Where the third party declares that he is holding property for the debtor, an inventory shall be made thereof bearing, under penalty of being declared void:

- (1) the reference of the document authorizing the seizure;
- (2) the date of seizure, the full name and residence of the distrainor or, in the case of a corporate body, its legal form, name and registered office; election of residence, where need be;
- (3) the full name and residence of the debtor or, in the case of a corporate body, its legal form, name and registered office;
- (4) a statement of the name and residence of the third party;
- (5) the third party's declaration and in bold characters an indication that any inaccurate or false declaration shall expose him to an order to pay for the objects targeted by the seizure, without prejudice to an order to pay damages;
- (6) a detailed description of the property seized;
- (7) a statement in bold characters that the objects seized shall be inalienable, that they are placed in the custody of a third party, that they may not be transferred or moved, except as provided for by Article 97 above, under penalty of criminal sanctions, and that the third party is required to disclose the present seizure to any creditor who may carry out a seizure on the same property;
- (8) a statement that the third party may avail himself of the provisions of Article 112 below, which shall be reproduced in the document;
- (9) a statement that the third party may enforce his rights on the property seized, by declaration or registered letter with acknowledgement of receipt or by any means in writing addressed to the bailiff or process-server of the distraining creditor;
- (10) a designation of the court before which shall be brought any challenges relating to the seizure for sale;
- (11) an indication, where need be, of the names and capacities of the persons who were present during the seizure operations, who shall append their signatures to the original and the copies; in case of refusal, mention thereof shall be made in the report;

(12) a reproduction of the penal provisions governing the misappropriation of seized objects.

Article 110:

Where the third party is present during the seizure, the bailiff or process-server shall verbally remind him of the contents of Article 109 (5), (7) and (8) above. Mention shall be made of this declaration in the report. A copy of the report of the seizure bearing the same signatures as the original shall immediately be handed to him; such handing over shall be tantamount to notification.

Where the third party is not present during the seizure operations, a copy of the report of the seizure shall be served to him and he shall be given a period of eight days to disclose to the bailiff or process-server the existence of any previous seizure on the same property and to forward to him a report thereof.

Article 111:

A copy of the report shall be served to the debtor not later than eight days after the seizure.

Under penalty of being declared void, it shall be indicated that the debtor has a period of one month to sell the seized property privately under the conditions prescribed in Articles 115 to 119 of this Act, which shall be reproduced.

Article 112:

The third party may refuse custody of the seized goods. He may, at any time, request to be discharged of them. The bailiff or process-server shall make provision for the appointment of a custodian and for the removal of the goods.

Article 113:

Subject to the right of user which the third party may have on the seized property, the competent court may, at any time, even before the seizure operations and after hearing the parties or after duly summoning them, order the return of one or more objects to a depositary designated by the court.

Where, among the objects seized, there is a motor vehicle, it may, under the same reserve, be immobilized in the hands of a third party until its removal for sale, following a hearing or summoning of the parties, by any means not involving any deterioration to the vehicle.

Article 114:

Where the third party avails himself of a possessory lien on the seized property, he shall inform the bailiff or process-server thereof by registered letter with acknowledgement of receipt or through any means in writing, save where he had made a declaration thereof at the time of the seizure.

Within a period of one month, the distraining creditor may challenge such possessory lien before the competent court of the residence or place of abode of the third party. The property shall remain inalienable during the proceedings.

Where there is no challenge within the period of one month, the third party's claim shall be deemed to be founded for the purposes of the seizure.

CHAPTER III

SALE OF SEIZED PROPERTY

Section I - Private sale

Article 115:

Any debtor against whom is carried out a forced act of performance may voluntarily, under the conditions defined below, sell the seized property and use the proceeds to pay the creditors.

Article 116:

The debtor shall have a period of one month from notification of the report of the seizure to sell the seized property himself.

The seized property shall remain inalienable under the responsibility of the custodian. In no case may it be moved before the deposit of the proceeds provided for in Article 118 below, save in the case of absolute urgency.

Article 117:

The debtor shall inform the bailiff or process-server in writing of the offers which have been made to him and shall indicate the name and address of the eventual purchaser as well as the period within which such purchaser offered to deposit the proposed price.

The bailiff or process-server shall forward these details to the distraining creditor and opposing creditors by registered letter with acknowledgement of receipt or by any means in writing.

These shall have a period of fifteen days to decide whether to accept the private sale, refuse it or propose themselves as purchasers.

Where there is no response, they shall be deemed to have accepted.

The forced sale may only be carried out after the expiry of the period of one month prescribed in Article 116 above, increased, where need be, by the fifteen-day period given the creditors to respond to the offer.

Article 118:

The sale price shall be deposited in the hands of the bailiff or process-server or at the registry, as decided by the distraining creditor.

The transfer of the property and delivery of the goods shall be subject to the deposit of the price.

Failing such deposit within the agreed period, the forced sale shall be carried out.

Article 119:

Save where refusal to authorize the sale results from an intention to injure the debtor, the liability of the creditor may not be invoked.

Section II - Forced sale

Article 120:

The sale shall be carried out by auction by the auxiliary officer of justice empowered to do so by the national law of each Contracting State, either in the place of the seized objects, in a hall or an open market whose geographical location is most appropriate to attract competitive bidding at little cost.

Where there is disagreement between the creditor and the debtor over the place where the sale shall take place, the competent court, ruling on urgent matters, shall pass judgment on the dispute within five days of the matter being referred to it by the earliest party.

Article 121:

Publication of the sale shall be done by posters indicating the place, date and time of sale and the nature of the seized goods.

The posters shall be affixed at the town hall of the residence or place of abode of the debtor, at the neighbouring market and at any other appropriate place, as well as at the place of the sale, where such sale shall take place in a different place.

The sale may also be announced in the written or spoken press.

Publication shall be carried out upon the expiry of the period prescribed by the last paragraph of Article 117 above and at least fifteen days before the date fixed for the sale.

Article 122:

The bailiff or process-server shall certify that the publication formalities have been complied with.

Article 123:

The debtor shall be informed by the bailiff or process-server of the place, date and time of the sale not less than ten days before the day by registered letter with a request for acknowledgment of receipt or by any other means in writing. Mention shall be made thereof in the certificate as provided for in Article 122 above.

Article 124:

Before the sale, the composition and nature of the goods seized shall be verified by the officer in charge of the sale. A report thereof shall be drawn up. Only missing objects and damaged ones shall be mentioned in the report.

Article 125:

The sale shall be made to the highest bidder after three calls. The price shall be payable in cash, failing which, the item shall be resold following an irresponsible bid by the highest bidder.

Article 126:

The sale shall be stopped once the price of the property sold is sufficient to pay the amount of the object of the seizure and oppositions in principal, interest and costs.

Article 127:

A report of the sale shall be drawn up. Such report shall contain a description of the property sold, the amount of the sale and a statement declaring the names of the purchasers.

Article 128:

The auctioneer or any other auxiliary officer of justice charged with the sale shall be personally liable for the sale price and he may not receive any sum above the auction price, without prejudice to the applicable criminal sanctions.

CHAPTER IV INCIDENTS RELATING THE SEIZURE

Article 129:

Any disputes relating to the seizure for sale shall be brought before the court of the place of seizure.

Section I - Opposition by creditors

Article 130:

Any creditor who fulfils the conditions provided for under Article 91 of this Uniform Act may join a seizure in progress on the property of the debtor by means of an opposition and carry out, where need be, a supplementary seizure.

No opposition may be received after the property has been verified.

Article 131:

Under penalty of being declared void, the opposition shall indicate the writ of execution authorizing it, a separate account of the sums claimed in capital, costs and accrued interest, as well as an indication of the interest rate.

The opposition shall be notified to the first distraining creditor, where the opposition is not initiated by him, to make a new claim or extend the basis of the previous seizure.

It shall also be notified to the debtor.

The first distraining creditor shall continue the sale alone.

Article 132:

Any opposing creditor may extend the initial seizure to other property. A report of the supplementary seizure shall be drawn up under the conditions provided for by Articles 100 to 102 above.

The said report shall be served to the first distraining creditor and to the debtor.

The right to start a supplementary seizure shall also be exercised by the first distraining creditor.

Article 133:

Where, on the occasion of a seizure, the debtor presents to the creditor the report drawn up during a previous seizure, the creditor shall proceed by way of opposition as prescribed in Article 131 above. He may, on the spot, carry out a supplementary seizure under the conditions prescribed by Articles 100 to 102 above.

The report of the supplementary seizure shall be served to the first distraining creditor at the same time as the opposition; the whole document shall be served to the debtor.

Article 134:

In the case of an extension of the initial seizure, the forced sale of the seized property shall only take place upon the expiry of all the periods prescribed for the private sale of the property.

However, a forced sale may be carried out immediately of property for which the period prescribed for private sale has expired, either with the approval of the debtor or authorization of the competent court, or where the publication formalities were already complied with at the time of the opposition.

Article 135:

Where the first distraining creditor fails to proceed with the formalities of the forced sale upon the expiry of prescribed periods, any opposing creditor shall, after an unproductive summons to carry on the sale within a period of eight days, subrogate him as of right.

The first distraining creditor shall be discharged of his obligations. He shall be required to make the useful documents available to the subrogated creditor.

Article 136:

Release of the seizure may only result from a ruling of the competent court or from the approval of the first distraining creditor and the opposing creditors.

Article 137:

Nullity of the first seizure shall not entail nullity of the oppositions, save where such nullity results from an irregularity in the execution of the seizure operations.

The nullity shall always be without effect on any supplementary seizure.

Article 138:

Only distraining creditors or opposing creditors who had made known their claim before the verification of the seized property as prescribed by Article 124 above, and those who, before the seizure, had taken preventive measures on the same property, shall be allowed to enforce their rights on the sale price.

Section II - Disputes relating to the seized property

Article 139:

Any petitions relating to ownership or distrainability shall not obstruct the seizure but shall suspend the procedure for the seized property concerned.

Sub-section 1: Disputes relating to ownership

Article 140:

A debtor may request the annulment of seizure on property which does not belong to him.

Article 141:

A third party who claims ownership of seized property may petition the competent court to order the diversion thereof.

Under penalty of inadmissibility, the petition shall specify the components on which the right of ownership is founded. It shall be served to the distraining creditor, the distrainee and to the custodian, where applicable. The distraining creditor shall implicate the opposing creditors by registered letter with acknowledgement of receipt or by any means in writing.

The distrainee debtor shall be heard or shall be summoned to attend.

Article 142:

The action for diversion shall cease to be admissible after the sale of the seized property; after which the only course of action shall be for recovery of the property.

However, a third party recognized as owner of property already sold may, up to the distribution of the proceeds of the sale, divert the price from which costs have not been deducted.

Sub-section 2: Disputes relating to distrainability

Article 143:

Disputes relating to distrainability of the property included in the seizure shall be brought before the competent court by the debtor, bailiff or process-server, proceeding as in the case of difficulties of enforcement.

Where undistrainability is invoked by the debtor, the proceedings shall be started within a period of one month from notification of the act of seizure.

The creditor shall be heard or shall be summoned to attend.

Section III - Disputes relating to validity of the seizure

Article 144:

Nullity of the seizure due to a defect of form or substance, other than undistrainability of the property seized, may be requested by the debtor up to the sale of the seized property.

The distraining creditor shall notify the opposing creditors.

Where the seizure is declared void before the sale, the debtor may petition for restitution of the seized property, where it is in the hands of a third party, without prejudice to liability action taken in accordance with the provisions of ordinary law.

Where the seizure is declared void after the sale, but before distribution of the price, the debtor may petition for restitution of the proceeds of the sale.

Article 145:

The court which annuls the seizure may leave the burden of all or part of the costs incurred on the debtor, where such debtor refrained from petitioning for annulment in time.

Article 146:

The petition for annulment shall not suspend the seizure operations, unless otherwise provided for by the court.

**CHAPTER V
SPECIAL PROVISIONS RELATING TO SEIZURE
OF STANDING CROPS**

Article 147:

Crops and fruits nearing maturity may be seized before being moved from the ground. The seizure shall be open only to the creditor of the person who is entitled to the fruits. It may not be carried out, under penalty of being declared void, more than six weeks before the usual maturity period.

Article 148:

Under penalty of being declared void, the report of the seizure shall be drawn up in conformity with the provisions of Article 100 above, except (4) thereof, which shall be replaced by a description of the land on which the crops are found, its capacity, situation and an indication of the nature of the fruits.

The report shall be signed by the mayor or head of the administrative unit where the property is situated and a copy thereof shall be left with him.

Article 149:

The crops shall be placed under the responsibility of the debtor as custodian. However, at the request of the distraining creditor, the competent court may designate someone to manage the farm, after hearing the debtor or summoning him.

Article 150:

The sale shall be announced by way of notices posted at the town hall or at the place where deeds of public authorities are posted and at the market nearest to the place where the crops are found.

The notices shall mention the date, time and place of the sale and shall indicate the land on which the crops are found, as well as the capacity of the land and nature of the fruits.

Posting of the notices shall be recorded as in the case of seizures for sale.

Article 151:

The sale shall be carried out, in accordance with the provisions of Articles 120 et seq, at the place where the crops are found or in the nearest market.

Article 152:

All the formalities prescribed for seizures for sale shall be observed.

PART IV SEIZURE-AWARD OF DEBTS

Article 153:

Any creditor in possession of a writ of execution showing a debt due for immediate payment may, in order to secure payment of the debt, seize in the hands of a third party the debt owed by his debtor in the form of a sum of money, subject to the special provisions relating to attachment of earnings.

Article 154:

The act of seizure shall be enforced out for a specific amount, including all accessories thereto but for that amount only. It shall be for immediate award to the distrainer of the debt which is found in the hands of a third party.

The sums seized shall be made inalienable by the act of seizure. Such act shall make any third party personally indebted for the object of the seizure within the limit of his obligation.

Article 155:

Any acts of seizure served during the same day in the hands of the same third party shall be deemed to be drawn up simultaneously. Where the sums available are not enough to pay off all the distraining creditors, the said creditors shall have the same rank and rights.

Subsequent service of other seizures or of any other measure of deduction, even from preferential creditors, shall not modify the above allocation, notwithstanding the provisions organizing collective procedures.

Where an attachment of debts is without effect, subsequent seizures and deductions shall take effect on their due dates.

Article 156:

A garnishee shall be required to declare to the creditor the extent of his obligations towards the debtor, as well as any clauses which could affect such obligations and, where need be, any previous transfers of debts, assignment of debts or seizures. He shall communicate a copy of the documents in proof.

The above declaration and communication shall be done on the spot to the bailiff or process-server and shall be mentioned in the act of seizure, or where the writ is not notified in person, within at most five days. Any inaccurate, incomplete or late declaration shall expose the garnishee to an order to pay for the object of the seizure, without prejudice to an order to pay damages.

CHAPTER I WRIT OF SEIZURE

Article 157:

The creditor shall undertake the seizure through a writ served to the third party by the bailiff or process-server.

The writ shall contain, under penalty of being declared void:

- (1) an indication of the full names and residences of the debtor and the creditor or, in the case of corporate bodies, their legal form, name and registered office;
- (2) a statement of the writ of execution authorizing the seizure;
- (3) a separate account of the sums claimed in principal, costs and accrued interest, increased by provision for interest to accrue within a period of one month provided for raising an opposition;
- (4) an indication that the garnishee is personally liable towards the garnisher and that he is estopped from disposing of the sums seized within the limit of what he owes the debtor;
- (5) a word for word reproduction of Articles 38 and 156 above and 169 to 172 below.

The writ shall show the time when it was served.

Article 158:

The seizure of debts in the hands of a person living abroad shall be notified by personal service or service at the place of abode.

Article 159:

Where seizure is carried out in the hands of receivers, depositaries or trustees of public funds and monies, in those capacities, it shall not be valid where the writ of seizure is not delivered to the person empowered to receive it or to any person delegated by him, and where it is not endorsed by such person on the original or, in the case of refusal, by the Legal Department which shall immediately notify the heads of the services concerned thereof.

Article 160:

Within a period of eight days, under penalty of being declared void, the seizure shall be disclosed to the debtor by deed of the bailiff or process-server.

The said deed shall contain, under penalty of being declared void:

- (1) a copy of the writ of seizure;
- (2) an indication in bold characters that oppositions shall be raised, under penalty of inadmissibility, within a period of one month from notification of the deed, and the date when such period shall expire, as well as the designation of the court before which disputes may be brought.

Where the deed is served personally, the above indications shall also be verbally brought to the knowledge of the debtor. Mention of the verbal declaration shall be made in the act of disclosure.

The deed shall remind the debtor that he may, in writing, authorize the creditor to cause the garnishee to pay to him forthwith the sums or parts thereof which are owed the debtor.

Article 161:

Where the seizure is carried out in the hands of a banking establishment or similar financial establishment, the establishment shall be required to declare the nature of the account(s) of the debtor as well as the balance therein on the date of the seizure.

Within a period of fifteen working days following the seizure and during which the sums left in the account shall be inalienable, the said balance may be entered to the credit or debit of the distrainor by the following transactions, once it is established that their date preceded the seizure:

(a) credit entry:

- deposits made previously with a view to cashing cheques or negotiable instruments not yet entered in the account.

(b) debit entry:

- the charge on cheques deposited for cashing or credited to the account before the seizure, but returned unpaid;
- withdrawals made by cash dispenser before the seizure and payments by card, where the beneficiaries were effectively credited before the seizure.

Notwithstanding the provisions of the second paragraph, negotiable instruments returned to discount and not paid on presentation or on their due date, where such date is subsequent to the seizure, may be endorsed within a period of one month following the seizure.

The balance seized shall only be affected by these hypothetical debit and credit transactions where their aggregate result is negative and higher than the sums not affected by the seizure on the day they are settled.

Where the inalienable sums diminish, the establishment shall, by registered letter with acknowledgement of receipt or by any means in writing addressed to the garnisher at most eight days after the expiry of the period of endorsement, furnish a statement of all the transactions which affected the account from the day of the seizure inclusive.

Article 162:

Where the debtor has different accounts, payment shall be made by deducting primarily the funds visibly available, save where the debtor prescribes payment in a different manner.

Article 163:

Where the seizure is carried out on a joint account, it shall be disclosed to each holder of the account.

Where the names and addresses of the other account holders are not known to the bailiff or process-server, the latter shall request the establishment holding the account to inform them immediately of the seizure and of the amount of money claimed.

CHAPTER II PAYMENT BY THE GARNISHEE

Article 164:

The garnishee shall make payment on presentation of a certificate from the registry showing that no dispute was filed within one month following disclosure of the seizure or on presentation of the enforceable decision of the court dismissing the opposition.

Payment may equally take place before the expiry of the opposition period, where the debtor declares in writing that he is not challenging the seizure.

Article 165:

Payment shall be made against a receipt to the distraining creditor or his specially empowered representative, who shall immediately inform his mandator thereof.

Such payment shall extinguish the obligation of the debtor and of the garnishee up to the amount of the sums paid.

Article 166:

Where an opposition is raised, any party may request the competent court by petition to designate a depository to whom the garnishee shall pay the sums seized.

Article 167:

Where seizure concerns successive enforcement debts, the third party shall be released as and when the instalments are paid, under the conditions provided for in paragraph (1) of Article 165 above.

The garnishee shall be informed by the creditor of the extinguishment of his debt even where the sums have been paid to a depository in accordance with Article 166 above by registered letter with acknowledgement of receipt or by any means in writing.

The seizure shall no longer be effective where the garnishee ceases to be bound towards the debtor. The garnishee shall inform the creditor thereof by registered letter with a request for acknowledgement of receipt or by any means in writing.

Article 168:

In case of refusal by the garnishee to pay the sums he admits to be owing or in which he has been ruled debtor, his opposition shall be brought before the competent court which may issue a writ of execution against him.

CHAPTER III DISPUTES

Article 169:

Disputes shall be brought before the court of the residence or of abode of the debtor. Where the latter has no fixed residence, disputes shall be brought before the court of the residence or of abode of the garnishee.

Article 170:

Under penalty of inadmissibility, disputes shall be brought before the competent court by writ of summons within a period of one month from the disclosure of the seizure to the debtor.

The garnishee shall be summoned to the hearing of the dispute.

A distrainee debtor who has not raised any objection within the prescribed period may take action in recovery of payment made by mistake before the competent court hearing the merits of the case, following the rules which apply to such action.

Article 171:

The competent court shall give effect to the seizure for the uncontested fraction of the debt. Its judgment shall be enforceable forthwith.

Where it appears that neither the amount of the distrainor's claim nor the debt owed by the garnishee may be seriously challenged, the competent court may provisionally order payment of a sum it shall determine and, where necessary, prescribe guarantees.

Article 172:

The ruling of the court settling the dispute shall be liable to appeal within fifteen days from its notification.

The time limit for the appeal and the declaration of appeal shall bar enforcement, unless otherwise specially decided, with reasons therefor, by the competent court.

PART V ATTACHMENT AND TRANSFER OF EARNINGS

Article 173:

Any creditor in possession of a writ of execution showing a debt due for immediate payment may take proceedings to attach the earnings due by an employer to his debtor.

Article 174:

The attachment of sums due as remuneration, regardless of the amount thereof, to any salaried person or worker, in any capacity and any place whatsoever, for one or more employers, may only be effected after an attempt at conciliation before the competent court of the residence of the debtor.

Article 175:

Earnings may not be subject to sequestration.

Article 176:

There shall be kept at the registry of each court a register numbered and initialled by the president of the court, in which shall be recorded all writs of any nature whatsoever, decisions and formalities arising from transfers and attachments of earnings from work.

Article 177:

Earnings may only be assigned or attached in the proportions determined by each Contracting State.

The basis of calculation of the attachable part of earnings shall be the gross salary or wages with extra earnings, after deducting:

- the compulsory legal taxes and levies deducted at source;
- allowances representing costs;
- allowances, increases and supplements for family responsibilities;

- allowances declared unattachable by the laws and regulations of each Contracting State.

The aggregate of sums seized or voluntarily transferred may not, even for claims of alimony, exceed a limit fixed by each Contracting State.

Article 178:

Where a debtor receives from several payers the sums attachable or transferable under the conditions provided for by the present Part, the attachable fraction shall be calculated on the entire amount of the sums. Any deductions shall be made in accordance with the terms and conditions determined by the competent court.

**CHAPTER I
ATTACHMENT OF EARNINGS**

Section I - Attempt at conciliation

Article 179:

The request aimed at prior conciliation shall be made by petition addressed to the competent court by the creditor.

The request shall contain:

- (1) the full name and address of the debtor;
- (2) the name and address of his employer or, in the case of a corporate body, its legal form, name and registered office;
- (3) a separate account of the sums claimed in principal, costs and accrued interest and an indication of the interest rate;
- (4) the existence of any preferential right;
- (5) indications relating to the method of payment of the sums attached.

A copy of the writ of execution shall be joined to the petition.

Article 180:

The place, date and time of the conciliation attempt shall be notified to the creditor by registered letter with acknowledgement of receipt or by any other means in writing.

Article 181:

The registrar shall convene the debtor by registered letter with acknowledgement of receipt or by any other means in writing at least fifteen days before the hearing.

The convening letter shall:

- (1) mention the name and address of the creditor or, in the case of a corporate body, its name and registered office, as well as the place, date and time of the conciliation;

- (2) contain the object of the request and a statement of the sums claimed;
- (3) indicate to the debtor that he shall, during the hearing, raise any oppositions he may wish to enforce and that a late opposition shall not suspend the progress of attachment operations;
- (4) also indicate the conditions for his representation at the said hearing.

Where the acknowledgement of receipt is not returned and the debtor does not appear, the competent court shall, where it does not deem the circumstances necessary to convene the person concerned anew, pass a ruling by which it shall proceed to the verifications prescribed by Article 182 below. The ruling which is not subject to opposition may only be attacked by way of an appeal.

Article 182:

The president of the competent court, assisted by the registrar, shall draw up the report of the appearance of the parties before the court, whether followed by conciliation or not, or of the appearance of one of the parties.

In case of conciliation, he shall enter in the report the conditions of the settlement which shall put an end to the proceedings.

Where there is no conciliation, attachment shall be carried out after verification by the president of the amount of the debt in principal, interest and costs and, where possible, ruling on any objections raised by the debtor.

Section II - Attachment operations

Article 183:

Within eight days from the hearing not leading to conciliation or within eight days following the expiry of the time limits for opposition, where a ruling was made, the registrar shall notify the writ of attachment to the employer by registered letter with acknowledgement of receipt or by any other means showing written evidence.

Article 184:

The writ of attachment shall contain:

- (1) the full names and residences of the debtor and the creditor or, in the case of corporate bodies, their legal form, name and registered office;
- (2) a separate account of the sums targeted for attachment in principal, costs and accrued interest, as well as an indication of the interest rate;
- (3) the method of calculation of the attachable fraction and the method of payment thereof;
- (4) an injunction to declare at the registry within fifteen days the legal position between the creditor and the distrainee debtor as well as any assignments or attachments currently being enforced and any information authorizing stoppage where the attachment concerns payment or salary paid from public funds;
- (5) a reproduction of Articles 185 to 189 below.

Article 185:

Any employer who, without legal justification, does not make the declaration provided for under Article 184 (4) above or makes a false declaration, may be declared debtor of the stoppages to be carried out and ordered by the competent court to pay the costs incurred through him, without prejudice to an order to pay damages.

Articles 186:

The employer shall be required to inform the registry and the distrainor within eight days of any modification of his legal relations with the distrainee that is likely to influence the proceedings in progress.

Section III - Effects of the attachment

Article 187:

Notification of the writ of attachment shall render inalienable the attachable portion of the salary.

Article 188:

The employer shall send every month to the registry or the organization specially designated for this purpose by each Contracting State the amount of sums deducted from the remuneration of the distrainee, without exceeding the attachable portion.

He shall be validly discharged on the basis of the receipt from the registrar or through the acknowledgement of receipt of the money order issued by the postal department.

The garnishee shall attach to each payment a note showing the names of the parties, the amount paid, the date and any references of the writ of attachment served to him.

Article 189:

Where the employer omits making the payments, the competent court shall pass a ruling against him declaring him personally indebted. The ruling shall be served by the registrar or the creditor by registered letter with acknowledgement of receipt or by any other means in writing within three days from the date of the ruling. Notice thereof shall be given to the debtor and, where necessary, to the creditor. The garnishee shall have a period of fifteen days from notification of the decision to file an opposition by means of a declaration at the registry.

Any ruling which remains unopposed within a period of fifteen days shall become final. It shall be enforced at the request of the earliest party on the basis of a copy issued by the registrar and bearing an executory clause.

Section IV - Plurality of attachments

Article 190:

Any creditor in possession of a writ of attachment may, in the absence of a previous attempt at conciliation, intervene in ongoing proceedings relating to the attachment of earnings in order to partake in the sharing of the sums seized.

Such intervention shall be in the form of a petition submitted or addressed to the competent court against a receipt.

The petition shall contain the declarations required by Article 179 above.

Article 191:

The intervening creditor shall notify such intervention by registered letter with acknowledgement of receipt or by any other means in writing to the debtor and to other creditors already in the proceedings.

Article 192:

The intervention may be challenged by declaration at the registry of the competent court at any time during the seizure proceedings. In such case, the opposition shall be attached to the ongoing proceedings.

The debtor may still take action for recovery, once the seizure is over, against the intervening party who may have been unduly paid.

Article 193:

A creditor who is party to the proceedings may, by intervention, claim accrued interest and the costs and expenditures determined or verified since the attachment.

Section V - Payment of funds seized and distribution thereof

Article 194:

Any movement of funds shall be mentioned in the register prescribed in Article 176 above.

Article 195:

Where there is only one distraining creditor, the registrar shall pay to such creditor or his duly mandated representative the amount deducted as soon as he receives it from the employer.

This shall be entered in the register provided for under Article 176 above.

Article 196:

In the case of plurality of attachments, the creditors shall rank equally subject to any legitimate preferential consideration.

Article 197:

Where there are several distraining creditors, any payments made by a garnishee shall, as of right, be entered in an account opened by the registrar in a banking or postal establishment or in the public treasury.

Registrars shall make withdrawals for distribution with the authorization of the president of the competent court as justification.

Article 198:

The president of the competent court shall proceed to distribute the sums cashed quarterly during the first week of the months of February, May, August and November. He shall draw up a report showing the amount of costs to be deducted, the amount of preferential debts, if any, and the amount of the sums allocated to the other creditors.

The registrar shall notify the statement showing the distribution to each creditor and shall pay him the amount of his due.

The sums thus paid to the creditors shall be discharged in the register provided for by Article 176 above.

Article 199:

Where an intervention is opposed, the sums payable to the intervening creditor shall be held up. They shall be paid to him where the opposition is dismissed. Failing this, the said sums shall be distributed to the creditors or restituted to the debtor, whichever applies.

Article 200:

The statement of distribution may be opposed within a period of fifteen days from its notification through an opposition filed at the registry.

Article 201:

The release of the seizure shall ensue either from an approval by the creditor(s) or from an attestation by the president of the competent court showing extinguishment of the debt.

It shall be notified to the employer within eight days.

Section VI - Miscellaneous provisions**Article 202:**

Where the creditor transfers his residence or his place of abode, he shall inform the registry thereof, save where he appeared through a representative.

Article 203:

Where, without change of employer, the debtor moves his residence or place of abode outside the jurisdiction of the court before which the proceedings are brought, such proceedings shall continue before the same court. Files of seizures likely to be carried out subsequently against the debtor shall be sent to it. The registry shall inform the creditors.

Article 204:

Where there is a change of employer, the attachment may be pursued in the hands of the new employer, where there was no previous conciliation, on condition that the request for it be made within one year following the notice given by the former employer in accordance with Article 186 above. Failing this, the attachment shall come to an end.

Where, in addition, the debtor has moved his residence or place of abode to the jurisdiction of a court other than the one to which the matter was referred, the creditor shall also be dispensed from prior conciliation, on condition that the request be made at the registry of that court within the period provided for in the preceding paragraph.

CHAPTER II TRANSFER OF EARNINGS

Article 205:

The transfer of salaries and wages may only be granted, regardless of the amount, by a declaration of the transferor in person at the registry of the court of his residence or place of abode.

The declaration shall indicate the amount and cause of the debt for which payment is granted, as well as the amount of the deduction to be made from each payment of the remuneration.

Article 206:

Following verification by the competent court that the transfer is within the limits of the transferable portion, mindful of any deductions already made on the transferor's wages, the registrar shall enter the declaration in the register provided for in Article 176 above and notify the employer thereof indicating:

- the monthly amount of the transferor's wages:
- the amount of the transferable portion as well as the amount of deductions made for each wage package in respect of the transfer granted.

The declaration shall be handed over or notified to the transferee.

Article 207:

The employer shall pay directly to the transferee the amount deducted on production of a copy of the declaration of assignment. Where the employer refuses to do so, he may be compelled to pay the duly transferred sums under the conditions provided for in Article 189 above.

Article 208:

In the event of an unexpected seizure, the transferee shall, as of right, be deemed to be the distrainor for the remaining sums owed him and shall rank equally with the other distraining creditors.

Article 209:

In the event of an unexpected seizure, the registrar shall notify the writ of execution to the transferee, inform him that he shall rank equally with the distrainor for the sharing of sums seized and request him to produce a statement of the remaining sums owed him.

The registrar shall equally inform the employer that subsequent payments shall be made at the registry.

Article 210:

Where seizure ends before transfer, the transferee shall resume the rights he held from the deed of transfer.

The registrar shall notify the employer and inform him that the sums transferred shall once more be paid directly to the transferee. He shall equally inform the transferee thereof.

Article 211:

Where there are serious presumptions that transfer was made to the detriment of the distraining creditor's rights, such creditor, in taking action in annulment, may obtain from the court ruling in emergency hearing, deposit of deductions in the hands of the registrar until a final decision on the merits of the case is pronounced.

Article 212:

The registrar shall, automatically or at the request of the earliest party, proceed to cancel the entry in the register provided for by Article 176 above and immediately notify the transferor debtor and employer by registered letter with acknowledgement of receipt or by any other means in writing about:

- the judicial cancellation of the transfer;
- the private cancellation of the transfer by a declaration from the transferee set out in the forms under Article 205 above;
- payment of the last instalment intended to end the execution of the transfer.

**CHAPTER III
SIMPLIFIED PROCEDURE FOR CLAIMS
OF ALIMONY**

Article 213:

For the last accrued interest and interests still to accrue, claimants of alimony may, by virtue of a writ of execution, undertake a simplified seizure on the attachable portion of wages, remuneration, salaries and pensions paid to the debtor of alimony from public or private funds.

Their claim shall be preferred to all others, regardless of the preferential right which may be attached to those others.

Article 214:

The request shall be notified to the third party by registered letter with acknowledgement of receipt or by any means in writing addressed by the bailiff or process-server who shall notify the debtor by simple letter.

The third party shall, within eight days, acknowledge receipt of such request and indicate whether or not he is in a position to act on it. He shall also inform the debtor of the cessation or suspension of the remuneration.

Article 215:

The garnishee shall pay directly to the distrainor against a receipt the amount of his debt for alimony.

Article 216:

Any disputes relating to these proceedings shall not bar enforcement.

They shall be made by written or verbal declaration at the registry of the court of the residence of the pension debtor.

Article 217:

Where a new decision changes the amount of the alimony, cancels or modifies the method of execution of the obligation, the request for direct payment shall, as of right, be modified as a consequence with effect from the notification of the modifying decision to the third party under the conditions provided for in Article 214 above.

PART VI
SEIZURE-APPREHENSION AND SEIZURE
UNDER A PRIOR CLAIM OF TANGIBLE PROPERTY

Article 218:

Tangible property liable to delivery or restitution may only be apprehended by virtue of a writ of execution and, where necessary, by an injunction of the competent court which has become executory.

The same property may also be rendered inalienable before any apprehension by means of a seizure under a prior claim.

CHAPTER I
SEIZURE - APPREHENSION

**Section I - Apprehension in the hands of the person required
to deliver by virtue of a writ of execution.**

Article 219:

A summons to deliver or restitute shall be notified to the person required to deliver. The summons shall contain, under penalty of being declared void:

- (1) a mention of the writ of execution authorizing the delivery in question as well as the full names and addresses of the beneficiary and debtor of the thing to be delivered and, in the case of a corporate body, its legal form, name and registered office;
- (2) an indication that the person required to deliver may, within a period of eight days, transfer at his expense, the designated object to a place and under the conditions indicated;
- (3) a warning that failure to deliver within the said period, the property may be apprehended at his expense;
- (4) an indication that disputes may be brought before the court of the residence or the place of abode of the addressee of the document;
- (5) election of residence in the territorial jurisdiction of the court of the place of seizure, where the creditor does not reside there; any service or offer may be made at such elected residence.

Article 220:

The property may also be apprehended immediately without a previous summons and on the simple presentation of the writ of execution, where the person required to deliver is present and where, on the question which should be asked him by the bailiff or process-server, he does not offer to effect the transfer at his expense.

In such case, the act provided for in Article 219 above shall contain a statement that disputes may be brought before the court of the residence or place of abode of the person from whom the property is withdrawn.

Article 221:

An act shall be drawn up showing the voluntary delivery or apprehension of the property.

The act shall contain a detailed description of the property, which may be photographed, where necessary; the photograph shall be annexed to the act.

Article 222:

Where the property has been apprehended for delivery to its owner, a copy of the act provided for in Article 221 above shall be given or notified, by registered letter with a request for acknowledgment of receipt or by any other means in writing, to the person required by virtue of the writ of execution to deliver or reconstitute the property.

Article 223:

In the special case where the property has been apprehended for delivery to a pledgee, the act of delivery or apprehension shall be equivalent to seizure in the custody of the creditor and the sale shall be carried out in accordance with the procedure applicable to seizure for sale.

An act shall be delivered or notified to the debtor containing, under penalty of being declared void:

- (1) a copy of the act of delivery or apprehension, whichever applies;
- (2) an indication of the place where the property is kept;
- (3) a separate account of the sums claimed in principal, costs and accrued interest, as well as an indication of the interest rate;
- (4) a statement in bold characters that the debtor has a period of one month to carry out a private sale of the seized property, in accordance with the provisions of Articles 115 to 119 above and the date from which, failing the private sale within the said period, a forced sale may be carried out by public auction.
- (5) a reproduction of Articles 115 to 119 above.

**Section II - Apprehension in the hands of a third party by virtue
of a writ of execution**

Article 224:

Where the property is held by a third party, a summons to deliver the property shall be notified to him directly. It shall be immediately disclosed, by registered letter with a request for acknowledgment of receipt or by any other means in writing, to the person required to deliver or reconstitute it.

The summons shall contain, under penalty of being declared void:

- (1) a copy of the writ of execution authorizing the request for delivery and, where it is by court ruling, the terms of judgment as well as the full names and addresses of

the beneficiary of the delivery and of the third party holder of the property and, in the case of a corporate body, its legal form, name and registered office;

- (2) an injunction to proceed, within a period of eight days, either to deliver the property designated or to inform the bailiff or process-server, under penalty of damages, whichever applies, of the reasons for his refusal to deliver;
- (3) an indication that any difficulties shall be brought before the court of the residence or place of abode of the beneficiary of the act;
- (4) election of residence in the territorial jurisdiction of the court where the seizure is carried out, where the creditor does not reside there; any service or offer may be made at such residence.

Article 225:

Where voluntary delivery is not made within the prescribed period, the petitioner may request the court of the residence or place of abode of the third party holder of the property to order delivery of the property. The matter may also be referred to the court by the third party.

The summons referred to in Article 224 above and any preventive measures taken shall become null and void where the matter is not referred to the court within one month following notification of the summons.

Article 226:

Upon simple presentation of the court ruling ordering delivery of the property to the petitioner, such property may be apprehended. An act on the apprehension shall be drawn up in conformity with the provisions of Article 221 above. A copy of the act shall be given or notified to the third party by registered letter with a request for acknowledgment of receipt or by any other means in writing.

After removal, the person required to deliver shall be informed thereof as specified in Articles 222 and 223 above, whichever applies.

CHAPTER II SEIZURE UNDER A PRIOR CLAIM

Article 227:

Any person who has an apparent reason for requesting the delivery or restitution of tangible property may, pending delivery, render the property inalienable through seizure under a prior claim.

With the exception of the case where the creditor avails himself of a writ of execution or of a court judgment which is not yet enforceable, it shall be necessary to obtain prior authorization issued on petition by the competent court.

The petition shall be made before the court of the residence or place of abode of the person required to deliver or reconstitute the property.

The decision granting the authorization shall bear a description of the property which may be seized and the identity of the person required to deliver or reconstitute it. The authorization shall be demurrable to any holder of the designated property.

Article 228:

The validity of the seizure under a prior claim shall be subject to the conditions prescribed for preventive measures by Articles 60 and 61 above.

Where the said conditions are not met, a release of the seizure may be ordered at any time, even where the petitioner avails himself of a writ of execution or a court judgment which is not yet enforceable.

The application for a release shall be brought before the court of the residence or place of abode of the debtor required to deliver or restitute the property.

The release shall take effect from the date of notification.

Article 229:

Any other disputes, notably those relating to the execution of the seizure, shall be brought before the court of the place of location of the seized property.

Article 230:

Upon presentation of the authorization from the competent court or of one of the writs authorizing the seizure, the seizure under a prior claim shall be carried out in any place and in the hands of any holder of the property.

Where the seizure is carried out in premises used as a dwelling by a third party holder of the property, special authorization from the competent court shall be required.

Article 231:

After reminding the holder of the property that he is required to indicate whether the property has been subject to a previous seizure and, where necessary, to provide him with the report thereof, the bailiff or process-server shall draw up a writ of seizure containing, under penalty of being declared void:

- (1) the full names and residences of the creditors and debtors or, in the case of corporate bodies, their legal form, name and registered office;
- (2) a reference of the authorization of the competent court which shall be annexed to the writ, or a mention of the writ which warranted the seizure;
- (3) a detailed description of the property seized;
- (4) where the holder is present, his declaration as to a previous seizure on the same property;
- (5) a statement in bold characters that the seized property is placed in the custody of the holder who shall not transfer or move it, save in the case provided for by Article 103 above, under penalty of criminal sanctions, and that he is required to disclose the seizure under a prior claim to any creditor who may carry out a seizure on the same property;
- (6) a statement in bold characters of the right to challenge the validity of the seizure and to petition the court of the residence or place of abode of the debtor for a release;

- (7) the designation of the court before which shall be brought all disputes relating to the execution of the seizure;
- (8) a statement, where necessary, of the full names and capacity of the persons who took part in the seizure operations, who shall append their signatures to the original and copies; in case of refusal, mention shall be made thereof in the writ;
- (9) election of residence in the territorial jurisdiction of the court where the seizure is carried out, in case the creditor does not reside there; all services or offers shall be made at the said elected residence;
- (10) a reproduction of the penal provisions relating to the misappropriation of seized objects, as well as the provisions of Articles 60, 61, 227 and 228 above.

The bailiff or process-server may photograph the seized property under the conditions prescribed in Article 45 above.

Article 232:

The writ of seizure shall be given to the holder and he shall be verbally reminded of the provisions of Articles 231 (5) and (6) above. Mention shall be made thereof in the writ.

Where the seizure has been carried out in the hands of a third party holding the property, the writ shall also be notified within a period of not more than eight days to the person required to deliver or reconstitute it.

Where the holder was not present during the seizure operations, a copy of the writ shall be notified to him and he shall be given a period of eight days to bring to the knowledge of the bailiff or process-server any information relating to the existence of a previous seizure, and to furnish him with a copy of the report thereof.

Article 233:

At any time, the president of the competent court may, after hearing the parties or duly summoning them, authorize on request, the delivery of the property to a depositary designated by him.

Article 234:

Where the holder has availed himself of a personal right on the seized property, he shall inform the bailiff or process-server thereof by registered letter with acknowledgement of receipt or by any means in writing, save where he had made a declaration thereof at the time of the seizure. Within a period of one month, it shall be incumbent on the distrainor to bring any dispute before the court of the residence or place of abode of the holder.

The property shall remain inalienable during the hearing.

Where there is no challenge within a period of one month, the inalienability shall be lifted.

Article 235:

Where the person who carried out a seizure under a prior claim holds a writ of execution prescribing the delivery or restitution of the seized property, the procedure shall be that applicable to seizure-apprehension and as prescribed in Articles 219 to 226 above.

PART VII

SPECIAL PROVISIONS RELATING TO THE SEIZURE OF PARTNERSHIP RIGHTS AND TRANSFERABLE SECURITIES

CHAPTER I SEIZURE

Article 236:

The seizure shall be carried out either on the issuing company or corporate body or on the representative charged with preserving or managing the securities.

Article 237:

Eight days after an unproductive summons to pay, the creditor shall proceed to seize by a writ containing, under penalty of being declared void:

- (1) the full names and residences of the debtor and the distrainor or, in the case of corporate bodies, their legal form, name and registered office;
- (2) election of residence in the territorial jurisdiction of the court where the seizure is taking place, where the creditor does not reside there; any service or offer may be made at such elected residence;
- (3) an indication of the writ of execution authorizing the seizure;
- (4) a detailed account of the sums claimed in principal, costs and accrued interests, as well as an indication of the interest rate;
- (5) an indication that the seizure shall render inalienable the pecuniary rights attached to the totality of shares and transferable securities to which the debtor is entitled;
- (6) a summons to disclose within a period of eight days the existence of any pledges or seizures and to communicate to the distrainor a copy of the Articles of Association of the company.

Article 238:

Within a period of eight days, the seizure shall, under penalty of being declared void, be disclosed to the debtor by service of the writ, which shall contain, under pain of being declared void:

- (1) a copy of the report of the seizure;
- (2) a statement in bold characters that oppositions shall, under penalty of inadmissibility, be raised within a period of one month following service of the writ, together with the expiry date of the period in question;
- (3) a designation of the competent court, which shall be that of the residence of the debtor;
- (4) a statement in bold characters that the debtor has a period of one month to carry out a private sale of the seized securities under the conditions provided for in Articles 115 to 119 above;
- (5) a reproduction of Articles 115 to 119 above.

Article 239:

The act of seizure shall render inalienable the pecuniary rights of the debtor, who may obtain a release by depositing a sufficient sum to pay off the creditor. The said sum shall be specially assigned to the benefit of the distraining creditor.

**CHAPTER II
SALE****Article 240:**

Where a private sale is not realized as prescribed by Articles 115 to 119 above, the forced sale shall take place in form of auction, at the request of the creditor, on presentation of a certificate issued by the registrar showing that no opposition had been raised within one month following disclosure of the seizure or, where applicable, a court decision dismissing the opposition raised by the debtor.

Article 241:

The specifications, drawn up in view of the sale, shall contain, apart from a restatement of the above procedure:

- (1) the Articles of Association of the company;
- (2) any document needed to assess the composition and value of the rights put up for sale.

Contracts instituting an approval or creating a preferential right for the benefit of the partners shall only be binding on the purchaser where they feature in the specifications.

Article 242:

A copy of the specifications shall be served to the company which shall inform the partners thereof.

On the same day, a summons shall be served, where necessary, on the other opposing creditors requesting them to seek to take cognizance of the specifications at the auctioneer's office or in the office of any auxiliary of justice in charge of the sale.

Any interested party may make at the offices of the above persons any observations on the specifications. Such observations shall no longer be admissible on the expiry of a period of two months running from the notification provided for in the first paragraph.

Article 243:

The notice showing the date, time and place of the sale shall be published in the press and, where necessary, by posters not more than one month and not less than fifteen days before the date fixed for the sale.

The debtor, the company and, where necessary, the other opposing creditors shall be informed of the date of the sale by way of service.

Article 244:

Any subsequent legal or contractual proceedings for approval, pre-emption or substitution shall be applied in accordance with the provisions applicable to each one of them.

CHAPTER III

PLURALITY OF SEIZURES

Article 245:

Where there is a plurality of seizures, the proceeds of the sale shall be shared among the creditors who carried out a seizure before the sale.

However, where a sequestration was carried out before the seizure leading to the sale, the creditor shall take part in the distribution of the price, but the sums transferred to him shall be held up until he obtains a writ of execution.

PART VIII ATTACHMENT OF REAL PROPERTY

Article 246:

A creditor may only obtain the sale of real property belonging to his debtor by complying with the formalities prescribed below.

Any contracts to the contrary shall be null and void.

CHAPTER I CONDITIONS FOR THE ATTACHMENT OF REAL PROPERTY

Article 247:

The forced sale of real property may only be pursued by virtue of a writ of execution showing a liquid and due debt.

Proceedings may also take place by virtue of a provisional writ of execution, or for an unliquidated cash debt; but an auction sale may only be carried out on a conclusively enforceable writ after liquidation.

Article 248:

The court before which the sale is pursued shall be that which has full jurisdiction over the territory where the real property is found.

However, the forced sale of real property pertaining to the same business but situated under the jurisdiction of many courts shall be pursued before any of the courts concerned.

Section I - Conditions relating to the nature of the property

Article 249:

The indivisible part of real property may not be put up for sale before the sharing or liquidation that may be prompted by the creditors of a co-owner.

Article 250:

The forced sale of common real property shall be pursued against the two spouses.

Article 251:

The creditor may only pursue the sale of real property not mortgaged to him where the real property mortgaged to him is insufficient, save where all the property constitutes one and the same business and where the debtor so requires.

Article 252:

The forced sale of real property situated in the territorial jurisdiction of different courts may only be carried out successively.

However, without prejudice to the provisions of Article 251 above, it may be carried out simultaneously:

- (1) where the properties form part of one and the same business;
- (2) after the authorization of the president of the competent court, where the value of the property situated within the jurisdiction of one court is below the total sum owed the distraining creditor and the registered creditors. The authorization may cover all or part of the property.

Section II - Prior registration**Article 253:**

Where the property being pursued is not registered and where the national legislation provides for such registration, the creditor shall be bound to seek for registration at the land registry after an authorization by a decision of the president of the competent court of the location of the property, pronounced following a petition and not subject to appeal.

Under penalty of being declared void, the summons provided for under Article 254 below may only be served after the request for registration has been filed in; and the sale may only take place after issuance of the land certificate.

**CHAPTER II
PLACEMENT OF THE PROPERTY IN THE HANDS
OF LEGAL AUTHORITIES**

Section I - Summons to pay**Article 254:**

Under penalty of being declared void, the pursuit of a forced sale of real property shall be preceded by a summons to pay for the purposes of seizure.

Under penalty of being declared void, such summons shall be served to the debtor and, where necessary, to the third party holder of the property and shall contain:

- (1) a reproduction or copy of the writ of execution and the amount of the debt, as well as the full names and addresses of the creditor and the debtor and, in the case of a corporate body, its legal form, name and registered office;
- (2) a copy of the special power to seize given to the bailiff or process-server by the pursuing creditor, save where the summons to pay contains both on the original and on the copy the good for proxy signed by the latter;
- (3) the warning that, failure to pay within twenty days, the summons may be registered at the land registry and shall entail seizure from the time of publication;
- (4) an indication of the court before which expropriation shall be brought;

(5) the number of the land certificate and an indication of the precise location of the property being pursued; in the case of unregistered real property, the number of the application for registration; and, where expenses have been incurred by the debtor on land not belonging to him, but which had been assigned to him by decision of an administrative authority, its exact description as well as the reference of the assignment decision;

(6) the briefing of the lawyer in whose chambers the pursuing creditor elects residence and where all oppositions to the summons, real tenders and notifications relating to the seizure shall be served.

Article 255:

Under penalty of being declared void, the summons shall be served, where necessary, to the third party holder accompanied by an enjoinder either to pay the debt in full comprising the principal and interest, or to surrender the mortgaged property or, lastly, to undergo the expropriation procedure.

Surrender of the property shall be done at the registry of the competent court of the location of the property; it shall be confirmed in writing by the said court.

Article 256:

In order to gather the information needed for drawing up the summons to pay, the bailiff or process-server may enter the property on which the seizure shall be carried out with the assistance of the police force, where necessary.

Where the property is held by a third party against whom the plaintiff has no writ of execution, the bailiff or process-server shall request an authorization from the competent court.

Article 257:

Where the seizure concerns several properties simultaneously, a single summons to pay may be issued for all of them.

Article 258:

Where the property constitutes expenses incurred by the debtor on land which does not belong to him, but which has been assigned to him by decision of an administrative authority, the summons provided for in Article 254 above shall equally be served to the said authority and endorsed by him.

Section II - Publication of the summons to pay

Article 259:

The bailiff or process-server shall cause the original of the summons to be endorsed by the registrar of landed property, who shall be given a copy for publication.

Where the suit is for expenses incurred by the debtor on land not belonging to him, but which has been assigned to him by decision of an administrative authority, the formalities prescribed in the preceding paragraph shall be carried out by the said authority.

Where a summons had not been deposited in the office of the land registry or with the administrative authority concerned within three months from its notification and effectively published thereafter, the creditor may only recommence proceedings by reiterating them.

Article 260:

Where the land registrar or administrative authority concerned may not proceed to register the summons at the time it is presented, he shall mention the date and time of deposit on the original which is left with him.

Where there is a previously registered summons, the land registrar or administrative authority shall enter on the margin of the registration, by order of presentation, any subsequent summons presented, showing the full name, residence or declared abode of the new pursuing creditor and an indication of the lawyer briefed.

He shall also record on the margin, following the summons presented, his refusal to register and shall mention each of the summons entirely registered or mentioned with the indications made on them as well as an indication of the court where the seizure is made.

Cancellation of the seizure may not be made without the consent of subsequent distraining creditors thus revealed.

Article 261:

Where payment is made within the period prescribed in Article 254 (3) above, registration of the summons shall be cancelled by the registrar or administrative authority upon withdrawal of opposition given by the pursuing creditor.

Failing this, the debtor or any interested party may prompt the cancellation by showing payment; to this effect, he shall refer the matter to the competent court ruling in urgent matters.

The decision authorizing or refusing cancellation shall be handed down within eight days following the start of proceedings before the competent court. It shall be subject to appeal following the normal channels.

Section III - Effects of the summons to pay

Article 262:

In the case of non-payment, the summons to pay shall be tantamount to seizure with effect from its registration.

The estate and revenue therefrom shall be immobilized under the conditions provided for in the articles below. The debtor may neither transfer the estate nor burden it with a real right or charge.

The registrar or administrative authority shall refuse to carry out any new registration.

However, the transfer or constitution of real rights shall be valid where, before the date fixed for the auction sale, the purchaser or creditor deposits a sufficient sum to settle the principal, interest and costs of what is owed registered creditors as well as the distrainor, and notifies the deposited document to them. The sum thus deposited shall be specially assigned to the registered creditors and the distrainor.

Where a deposit is not made before the auction sale, under no pretext shall extra time be granted for making the said deposit.

Article 263:

Natural produce or industrial earnings, rents and tenant farming gathered after the deposit of the summons or the price therefrom shall, be immobilized for distribution together with the price of the estate, save where a previous seizure stops it. They shall be deposited either in the deposit and consignment office or in the hands of a depositary designated by the president of the competent court.

Where the estate is not tenant farmed or rented, the distrainee shall remain in possession as court depositary until the sale, save where at the request of one or more creditors, it is otherwise ordered by the president of the competent court.

The distrainee may not cut wood or cause any degradation, under penalty of damages.

In case of difficulties, referral shall be made to the president of the competent court of the location of the estate. He shall pronounce a decision from which there shall be no appeal.

Article 264:

Where the value of the seized estate is significantly higher than the amount of the debt, the distrainee debtor may obtain from the competent court a stay of proceedings on one or more estates designated in the summons, without such request estopping publication of the summons.

Before the deposit of the specifications, the petition shall be formulated before the competent court by simple exchange between lawyers; after deposit of the specifications, the petition shall be formulated by declaration received as prescribed in Article 272 below.

The debtor, with the backing of his petition, shall justify that the value of the property on which the proceedings will continue is sufficient to pay off the distraining creditor and all the registered creditors.

The petition shall be tried at a possible hearing. The court ruling granting stay of proceedings shall indicate the estates on which proceedings shall be discontinued.

After the final sale, the creditor may resume proceedings on property provisionally exempted, where the price of the property sold is not enough to pay him off.

Article 265:

Where the debtor proves that the unencumbered net income from his estates for two years is sufficient to settle the principal, costs and interest of the debt and, where he offers this income to the creditor, the proceedings may be suspended following the procedure prescribed in the preceding article.

The proceedings may be resumed in the event of any opposition or obstacles to payment.

**CHAPTER III
PREPARATION OF THE SALE**

Section I - Drawing up and deposit of the specifications

Article 266:

The specifications shall be the document drawn up and signed by the pursuing creditor's lawyer, which shall specify the conditions and procedure for the sale of the estate seized.

They shall be deposited at the registry of the court with jurisdiction over the place of location the estate within a maximum period of fifty days from the publication of the summons, under penalty of forfeiture.

Article 267:

The specifications shall contain, under penalty of being declared void:

- (1) the title of the document;
- (2) a statement of the writ of execution authorizing the proceedings against the debtor and the summons to pay with a statement of its publication, as well as the other deeds and court rulings pronounced after the summons to pay and which have been served to the pursuing creditor;
- (3) an indication of the court or notary agreed upon by the pursuing creditor and the distrainee, before which or whom the auction sale shall take place;
- (4) an indication of the place where the contingent hearing provided for by Article 270 below shall take place;
- (5) the full name, profession, nationality, date of birth and residence of the pursuing creditor;
- (6) the full name, capacity and address of the pursuing lawyer;
- (7) the designation of the estate seized as contained in the summons to pay or report of the description drawn up by the bailiff or process-server;

- (8) the conditions of sale and, notably, the rights and obligations of the vendors and purchasers, a statement of the costs of the proceedings and any special condition;
- (9) the plot, where necessary;
- (10) the upset price fixed by the plaintiff which may not be lower than a quarter of the market value of the estate. The value of the estate shall be considered following the evaluation made by the parties during the conclusion of the mortgage by contract or, failing this, by comparison with the transactions concerning estates of a similar nature or situation.

There shall be annexed to the specifications a statement of the real rights registered on the estate concerned issued by the land registrar on the date of the summons to pay.

Article 268:

The date of the sale shall be fixed in the deposit document not earlier than forty-five days from the said document. The date may not be fixed more than ninety days after the deposit.

Section II - Summons to take cognizance of the specifications

Article 269:

Within eight days latest after the deposit of the specifications, the distraining creditor shall summon the distrainee and other registered creditors to take cognizance, at the registry, of the specifications and to cause their declarations to be entered therein.

Under penalty of being declared void, the said summons shall be served to the distrainee, by personal service or at his residence, and to the registered creditors at elected residence.

Article 270:

The summons shall show, under penalty of being declared void:

- (1) the date and time of the contingent hearing during which a ruling shall be made on the declarations and observations which may have been made. Such hearing may not take place less than thirty days after the last summons;
- (2) the date and time envisaged for the auction sale which should take place between the thirtieth and sixtieth day after the possible hearing;
- (3) that declarations and observations shall be received, under penalty of forfeiture, up to the fiftieth day preceding the possible hearing and that failure to make and enter next to the specifications during the same period the petition for resolution of a previous sale or the pursuit of an irresponsible bid in a previous forced sale, they shall forfeit, as against a purchaser, their right to exercise these actions.

Article 271:

Where such petition for resolution or such pursuit of an irresponsible bid has been regularly made, there shall be a stay of proceedings in respect of the estates affected by the action in resolution or by the irresponsible bid.

The petition for resolution shall, in any case, be brought before the court where the sale after seizure is pursued.

It shall be subject to the forms, time limits and remedies at law which apply in matters of petitions to divert from execution.

Section III - Possible hearing**Article 272:**

The declarations and observations shall be judged after the exchange of the reasoned submissions of the parties, which shall take place in conformity with the principle of adversary proceedings.

Where the amount of the upset price is challenged, the burden shall be on the challenger to substantiate his claim. He may request the president of the competent court to designate an expert at his expense, paid in advance.

Article 273:

An adjournment of the possible hearing may only be made for serious and justified reasons or where the competent court is as of right exercising its control over the specifications, as provided for in Article 275 below.

Article 274:

The court ruling pronounced following the possible hearing shall be registered in the specifications by the registrar; it shall be extracted and notified at the request of the earliest party.

The competent court shall set a new date for the auction sale where the date previously set cannot be maintained.

Article 275:

The competent court may, as of right during the possible hearing and, where necessary, after consulting an expert in writing and without delay:

- (1) order the diversion of some of the seized property wherever its overall value appears to be disproportionate to the amount of debts to be recovered;
- (2) change the amount of the upset price where it was not fixed in conformity with the provisions of Article 267 (10) above.

In such case, the competent court shall inform the parties of its intention to modify the specifications and request them to make known their observations within a maximum period of five days. It shall inform them, where necessary, about the date and time of the hearing, where the case could not be tried on the date initially fixed.

Section IV - Publicity in view of the sale

Article 276:

Not earlier than thirty days and not later than fifteen days before the auction sale, an extract of the specifications shall be published, with the signature of the pursuing lawyer, by insertion in a newspaper empowered to publish legal notices and by affixing posters at the door of the residence of the distrainee, of the competent court or of the approved notary, as well as in the official places for posters of the local council where the property is located.

Article 277:

The extract shall contain, under penalty of being declared void:

- (1) the full names, professions, residences or places of abode of the parties and of their lawyers;
- (2) a designation of the estates seized, as inserted in the specifications;
- (3) the upset price;
- (4) an indication of the date, place and time of the auction sale, of the competent court or approved notary before which or whom the sale shall take place.

Article 278:

Insertion shall be proved by a copy of the newspaper, signed by the printer, and posting shall be proved by a report of the bailiff or process-server, written on a copy of the poster.

Article 279:

The president of the competent court may, by ruling following a petition and not subject to appeal, limit or extend the legal publicity, depending on the nature and value of the property seized.

CHAPTER IV SALE

Section I - Date and place of the auction sale

Article 280:

On the date indicated for the auction sale, such sale shall be carried out on the requisition, even verbal, of the pursuing lawyer or of any registered creditor. The latter shall publicly indicate the amount of costs of the proceedings previously taxed by the president of the competent court.

Article 281:

However, the auction sale may be postponed for serious and legitimate causes by a reasoned decision of the court on a petition filed not less than five days before the date fixed for the sale.

In case of postponement, the court decision shall fix a new date of the auction sale which may not be more than sixty days away. The pursuing creditor shall carry out new publicity

The court ruling shall not be subject to appeal, save where the competent court has disregarded the time limit provided for in the preceding paragraph. In such case, an appeal may be entertained under the conditions provided for by Article 301 below.

Article 282:

The sale of the estate shall be by public auction at the bar of the competent court or in the office of the approved notary.

The auction shall be in successive bids made higher and higher by persons wishing to acquire the estate. Whoever makes the highest bid shall be declared winner.

The bids shall be made through a lawyer or by the bidders themselves; one and the same lawyer may represent several bidders, where such bidders wish to be presented as joint bidders.

Article 283:

Before the opening of bidding, candles shall be prepared in such a way that each should last approximately one minute.

As soon as bidding starts, a candle shall be lit and the amount of the upset price shall be announced.

Where, over the duration of one candle, a bid is made, such bid shall only become final and entail adjudication where no new bid is made before the extinction of two candles.

The bidder shall cease to be bound where his bid is superseded by another, even where the new bid is declared void.

Where no bid is made after three candles have been successively lit, the pursuing creditor shall be declared winner for the upset price, save where he requests that the auction sale be put off for another hearing for a new upset price in conformity with the provisions of Article 267 (10) above. Postponement of the auction sale shall be as of right; the publicity formalities shall be reiterated.

In case of postponement, where no bid is made during the new auction sale, the pursuing creditor shall be declared purchaser for the first upset price.

Article 284:

The lawyers may not make bids for members of the competent courts or the office of the notary before whom or which the sale is carried out, under penalty of the auction sale or the higher bid being declared void and of damages.

They may not, under the same penalties, make bids for the distrainee or for persons with a reputation for being insolvent. The pursuing lawyer may not make himself personally winner of the bidding nor higher bidder, under penalty of the auction sale or the higher bid being declared void and of damages to all the parties.

Article 285:

The auction sale award shall be pronounced by court decision or report of the notary, for the benefit of the lawyer who made the last bid or of the pursuing creditor for the amount of the upset price, where no bid was made.

Article 286:

The lawyer who bid last shall, within three days following the auction sale award, disclose the winner of the bidding and furnish his acceptance or represent his proxy which shall remain annexed to the original of the court or notarial declaration, failing which he shall be deemed to be the winner in his own name.

Any winning bidder shall have the option, within twenty-four hours, to disclose by declaration known as declaration of "real purchaser", that he has not become purchaser in his own account, but for another person whose name he shall then disclose.

Section II - Higher bidding**Article 287:**

Any person may, within ten days following the auction sale award, make a higher bid, provided it shall be at least one-tenth of the main sale price. The time limit for the higher bid shall entail foreclosure.

The said higher bid may not be withdrawn.

Article 288:

The higher bid shall be made at the registry of the court which ordered the sale or before the approved notary by the higher bidder himself or through a lawyer who shall act for him. It shall be entered without delay in the specifications.

The higher bidder or his lawyer shall be required to disclose the higher bid within five days to the winner of the bidding, the pursuing creditor and the distrained party.

The disclosure shall be entered in the specifications within a period of five days.

Where the higher bidder fails to disclose or to enter the disclosure within the time limits, the pursuing creditor, distrainee or any registered or summoned creditor may make the disclosure and its entry within the following five days; costs shall be borne by the defaulting higher bidder.

The disclosure shall be made, without the need to obtain a copy of the declaration of the higher bid, by extrajudicial act.

It shall indicate the date of the possible hearing during which oppositions to the validity of the higher bid shall be tried.

The hearing may not be fixed before the expiry of a period of twenty days from the disclosure.

It shall also set the date for the new auction sale, which may not take place more than thirty days after the date of the possible hearing.

Article 289:

The validity of the higher bid shall be challenged by submissions filed and notified at least five days before the possible hearing. The said submissions shall be entered next to the entry of the disclosure.

Where the higher bid is not challenged, or where it is validated, the new auction sale shall be preceded by posters affixed at least eight days before the sale, in conformity with the provisions of Articles 276 to 279 above.

On the appointed date, new bids shall be opened; where the higher bid is not superseded, the higher bidder shall be declared purchaser.

No higher bid may be admitted on the second auction sale.

Section III - Public auction sale

Article 290:

The court decision or report of the auction sale by the notary shall be minuted next to the specifications.

A copy thereof shall be issued by the registrar or notary, as the case may be, to the winner of the bidding after payment of the costs of the proceedings and of the sale price and following the fulfilment of the conditions of the specifications which shall be executed within twenty days from the date of the auction sale.

However, where the winner of the bidding is the only registered or preferred creditor of the distrainee, he shall only be required to pay, apart from costs, the amount of the sale price in excess of his claim.

The receipt and documents in proof shall be annexed to the original of the court decision or report of the auction sale drawn up by the notary and reproduced next to the copy.

The winner who does not produce these justifications within twenty days from the auction sale may be pursued for irresponsible bidding, notwithstanding any other course of action.

Article 291:

Where the sale comprises several lots, a copy of the court decision or report of the sale drawn up by the notary in executory form shall be issued to each of the winners.

Article 292:

The ordinary costs of the proceedings shall preferably always be paid in addition to the price. Any provision to the contrary shall be null and void. The same shall apply to extraordinary costs, unless it has been ordered that they should be deducted from the price, subject to action against the party ordered to pay costs.

Article 293:

The court decision or report of the auction drawn up by the notary shall not be subject to any appeal, without prejudice to the provisions of Article 313 below.

Article 294:

Where the auction sale has become final, a copy of the court decision or report of the auction drawn up by the notary shall be deposited in the land registry for registration purposes.

The purchaser shall be required to carry out this formality within two months, under penalty of a resale on the basis of irresponsible bidding.

The registrar of lands shall mention this publication in the margin of the copy of the published summons. He shall also proceed to cancel all the registered preferential claims

and mortgages which have been paid off by the sale, even those registered after the issue of the registration situation. Creditors shall, in such case, have a remedy only on the price.

Article 295:

Where attachment of real property concerns expenses incurred by the debtor on land which does not belong to him but which has been transferred to him by decision of an administrative authority, and the sale has become final, a copy of the court decision or notarial report of the sale shall be lodged with such administrative authority for entry on the margin of the allotment decision.

The administrative authority shall proceed to cancel all the entries on the margin of the initial allotment decision and transfer the allotment to the benefit of the winner of the bidding. Creditors shall have a remedy only on the price.

Article 296:

The sale, even when published in the office of the registrar of lands, shall not transmit to the purchaser real property rights other than those belonging to the distrainee.

Article 297:

The time limits provided for in Articles 259, 266, 268, 269, 270, 276, 281, 287, 288(7) and (8) and 289 above shall be prescribed, under penalty of forfeiture.

The formalities provided for by these instruments and by Articles 254, 267 and 277 above shall only be penalized by nullity where the irregularity had the effect of causing a prejudice to the interest of the party invoking it.

Nullity pronounced because of lack of adequate description of one or more of the estates included in the seizure shall not necessarily entail nullity of the proceedings as concerns the other estates.

CHAPTER V INCIDENTS RELATING TO THE ATTACHMENT OF REAL PROPERTY

Article 298:

Any dispute or incidental claim relating to proceedings in attachment of real property formulated after service of the summons to pay shall be introduced by simple deed by lawyer containing the grounds and pleadings. It shall be formulated by petition with writ of summons against any party which did not brief a lawyer.

The cases shall be investigated and tried urgently.

Article 299:

Disputes or incidental claims shall, under penalty of forfeiture, be raised before the possible hearing.

However, claims founded on a fact or an act which happened or was disclosed after such hearing and those likely to cause a diversion of all or part of the property seized, nullity of all or part of the procedure followed for the possible hearing or cancellation of the seizure, may still be raised after the possible hearing, but only under penalty of forfeiture, up to the eighth day before the auction.

Article 300:

Court rulings pronounced in proceedings for attachment of real property shall not be liable to opposition.

They may only be appealed against where they decide on the very principle of the claim or on grounds of merits arising from the incapacity of one of the parties, ownership, undistrainability or inalienability of the seized property.

Decisions of the court with appellate jurisdiction shall not be liable to opposition.

Remedies at law shall be exercised under the conditions of ordinary law.

Article 301:

The appeal shall be notified to all the parties concerned at their real abodes or elected residences.

The deed shall also be notified, within the time limit for the appeal, to the registrar of the competent court endorsed and entered by him in the specifications.

The notice of appeal shall contain the appellant's statement of grounds for the appeal, under penalty of being declared void.

The court with appellate jurisdiction shall rule within fifteen days from the notice of appeal.

Section I - Incidents arising from the plurality of seizures

Article 302:

Where two or more distrainers have published the summons relating to different estates belonging to the same debtor, where the seizure is carried out before the same court, the proceedings shall be joined to the petition of the earliest party and shall be pursued by the first distrainer.

Where the summonses to pay were published on the same day, it shall be incumbent on the creditor whose summons bears the earlier date to take action and, where the summonses bear the same date, the oldest creditor shall act.

Article 303:

Where a second summons to pay presented at the land registry comprises more estates than the first, such summons shall be published insofar as concerns the property not included in the first. The second pursuing creditor shall disclose the published summons to the first distrainer, who shall be required to conduct the proceedings for the two distrainers, where they are at the same level.

Where the proceedings are not at the same level, the first distrainer shall suspend action on the first proceedings and pursue the second until both are at the same level. They shall, at that point, be brought before the court of the first seizure.

Article 304:

Where the first distrainor fails to pursue the second seizure disclosed to him, the second distrainor may, by written document addressed to the registrar of landed property, petition for subrogation.

Article 305:

Subrogation may also be requested where there is collusion, fraud, negligence or other cause for delay attributable to the distrainor, without prejudice to damages payable to whoever is affected.

Negligence shall be established where the pursuing creditor has not fulfilled a formality or has not taken out legal proceedings within the prescribed time limit.

A creditor may only petition for subrogation eight days after an unproductive summons to continue proceedings, made by act between two lawyers, to creditors whose summonses to pay were previously entered at the office of the land registry.

The distrainee shall not be informed.

Article 306:

The losing party following the opposition relating to subrogation shall be personally ordered to pay costs.

The pursuing creditor against whom subrogation is pronounced shall be required to hand over against a receipt, the documents of the proceedings to the subrogated party who shall continue the proceedings at his own risks. Through the simple handing over of the documents, the subrogated pursuing creditor shall be discharged of all his obligations; the costs incurred by him for the proceedings shall only be paid after the auction sale, either from the price or by the purchaser.

Article 307:

The petitioner for subrogation shall have the option to modify the upset price fixed by the pursuing creditor. However, the upset price may only be modified after publication made or begun on condition that new posters and notices of the auction be affixed within the time limits laid down by Article 276 above with an indication of the new upset price.

Section II - Petitions for diversion

Article 308:

A third party who claims ownership of a seized estate and who is not personally liable for the debt or responsible for the estate may, in order to remove it from the seizure, petition for diversion before the auction sale within the period provided for by Article 299 (2) above.

However, the petition for diversion shall only be admissible where the land law of the Contracting State of location of the estate allows an action for recovery of property or any other action for similar purposes.

Article 309:

The petition for diversion of all or part of seized property shall be made against both the distrainor and the distrained party.

Article 310:

Where the petition for diversion concerns the whole property, the proceedings shall be discontinued. Where the diversion requested concerns part only of the seized property, the rest of the property may be auctioned. The competent courts may also, at the request of the interested parties, order a stay of execution for the whole.

In the case of partial diversion, the plaintiff shall be allowed to change the upset price entered in the specifications.

Section III - Petitions for annulment**Article 311:**

The grounds for nullity, as to form or merits, with the exception of those referred to in paragraph 2 of Article 299 above, against the action preceding the possible hearing shall be raised, under penalty of forfeiture, by way of a declaration annexed to the specifications not more than five days before the date fixed for the hearing. Where they are admitted, the action may be resumed from the last valid act and the time limits for accomplishing the subsequent acts shall start running from notification of the court ruling which pronounced the nullity.

Where the grounds are rejected, the action shall continue from the last normal proceedings.

Article 312:

The action may not be annulled under the pretext that the creditor initiated it for a bigger sum than that owed him.

Article 313:

Nullity of the court ruling or notarial report of the auction sale may only be requested by a principal action for annulment brought before the competent court of the area of the auction within a period of fifteen days following the auction sale.

It may only be requested for concomitant causes or causes subsequent to the possible hearing by any interested person, except the purchaser.

Annulment shall have the effect of invalidating the action from the possible hearing or subsequent to such hearing, depending on the causes of annulment.

Section IV - Irresponsible bidding**Article 314:**

Irresponsible bidding shall have the effect of bringing the auction to nought by reason of the purchaser's failure to meet his obligations, and of causing a new auction sale of the estate to be carried out.

Irresponsible bidding shall arise where the purchaser:

- (1) fails to show proof within twenty days following the auction sale that he has paid the price and the costs and fulfilled the conditions of the specifications;
- (2) fails to carry out publication of the court decision or notarial report of the auction at the land registry within the period provided for in Article 294 above.

Article 315:

Proceedings in irresponsible bidding may be started by the distrainee, the pursuing creditor, the registered and the unsecured creditors. They shall be formulated against the purchaser and, where applicable, his rightful claimants. They shall not be subject to any time limit. However, action may no longer be started nor pursued where the causes for starting such action have disappeared, subject to the provisions of Article 320 below.

Article 316:

Where the deed of auction sale has not been issued, the person taking the action for irresponsible bidding shall cause the registrar or notary to issue him a certificate showing that the purchaser has not executed the clauses and conditions of the specifications.

Where there is opposition on the part of the purchaser to the issuance of such certificate, a ruling shall be made, at the request of the earliest party, by the president of the competent court, from which there shall be no appeal.

Article 317:

The certificate provided for in the preceding article shall be served to the purchaser. Within five days from such service, publication shall be made with a view to the new auction sale.

The posters and entries shall show the full name and residence of the irresponsible bidder, the amount of the auction, an upset price fixed by the pursuing creditor and the date when the new auction sale shall take place on the old specifications. The time limit between the new publication and the sale shall be not less than fifteen days and not more than thirty days.

Article 318:

Fifteen days at least before the auction sale, notice shall be served on the purchaser, distrainee, distrainor and creditor showing the date, time and place of the auction sale. The said notice shall be made by act between two lawyers and, in the absence of a lawyer, by writ of a bailiff or process-server.

Article 319:

Where the deed of auction sale has been issued, the pursuing party in the action for irresponsible bidding shall serve to the purchaser, with a summons to pay, a copy of the court decision or notarial report of the auction.

Five days after such service, he may proceed to publish the new sale as provided for in Article 317 above.

Article 320:

Up to the day of the resale, where the irresponsible bidder shows proof of having executed the conditions of the auction and deposited a sufficient sum determined by the president of the competent court to be used for settling the costs of the action in irresponsible bidding, there shall be no new auction sale.

Article 321:

The formalities and time limits provided for in Articles 316 to 319 above shall be observed, under penalty of the auction sale being declared void.

The grounds for nullity shall be made five days before the auction sale as provided for by Article 317 above.

Article 322:

Where no bid is made, the upset price may be reduced within the limit fixed by Article 267 (10) above, by decision of the president of the competent court.

Where, despite the reduction of the upset price, no bid is made, the pursuing party shall be declared winner of the auction for the first upset price.

The irresponsible bidder may not make a bid during the new auction sale.

Article 323:

The irresponsible bidder shall be liable for the interest on the amount of his bid up to the date of the second sale, and for the difference between his price and the price of the second auction, where the latter is lower.

Where the second price is higher than the first, the difference in excess shall not benefit him. He may not obtain reimbursement of the costs of proceedings and registry fees or the registration rights he has paid.

PART IX DISTRIBUTION OF THE PROCEEDS OF THE SALE

Article 324:

Where there is only one creditor, the proceeds of the sale shall be delivered to him up to the amount of his claim in principal, interest and costs within a period of not more than fifteen days from payment of the price.

Within the same period, the balance shall be paid to the debtor.

Upon the expiry of the said period, any sums owed shall yield interest at the legal rate.

Article 325:

Where there are many creditors, for chattels, or many registered and preferred creditors, for real property, the latter may reach agreement on a consensual sharing of the price of the sale.

In such case, they shall forward their agreement by private deed or in authenticated form to the registry or to the auxiliary of justice holding the funds.

Settlement of the creditors shall be effected within a period of fifteen days from reception of the agreement.

Within the same period, the balance shall be returned to the debtor.

Upon the expiry of the said period, any sums owed shall yield interest at the legal rate.

Article 326:

Where, within a period of one month following payment of the price of the sale by the purchaser, the creditors have not reached a unanimous agreement, the earliest among them shall refer the matter to the president of the court of the place of sale or the judge delegated by him, who shall rule on the distribution of the proceeds of the sale.

Article 327:

Such act of reference shall indicate the date of the hearing and enjoin the creditors to prove their claims, that is, to indicate what is owed them, the rank on which they expect to be placed and to forward all documents in proof.

The summons shall reproduce the provisions of Article 330 below.

Article 328:

The distrainee shall be served with notice of referral of the matter to court.

Article 329:

The hearing may not take place less than forty days after the last notification.

Article 330:

Within twenty days from the summons, creditors shall prove their claims at the registry of the competent court.

Expiry of this period shall, as of right, entail forfeiture against creditors who have not proved their claims.

Article 331:

Declarations may be deposited not later than five days before the hearing. They may be notified to the other parties.

Article 332:

Upon seeing the proofs of claim, declarations and explanations of the parties, the competent court shall proceed to share the sale price. It may, for serious and duly justified reasons, grant a postponement of the sharing and fix the date of the new hearing. The court decision granting or dismissing postponement shall not be liable to any appeal.

Article 333:

The court ruling deciding on the merits may be appealed against within fifteen days from its notification. The appeal shall only be admissible where the amount of the sum challenged is above the rate of the court rulings made in the final resort.

Article 334:

Where the sale or irresponsible bidding takes place during the proceedings or even after final settlement, the competent court shall modify the state of the collocation following the outcome of the sale.

PART X FINAL PROVISIONS

Article 335:

The time limits provided for in this Uniform Act shall be clear time limits.

Article 336:

This Uniform Act shall repeal all provisions relating to matters which concern it in the Contracting States.

Article 337:

This Uniform Act shall apply to preventive measures, forced acts of performance and recovery proceedings instituted after its entry into force.

Article 338:

This Uniform Act shall be published in the Official Gazette of OHBLA and of Contracting States. It shall enter into force in accordance with the provisions of Article 9 of the Treaty on the Harmonization of Business Law in Africa.

Done at Libreville on 10 April 1998

For the Republic of Benin

Moïse Mensa
Minister of Finance

For Burkina Faso

Larba Yarga
Minister of Justice

For the Republic of Cameroon

Joseph Belibi
Secretary-General of the
Ministry of Justice

For the Central African Republic

Marcel Metefara
Minister of Justice

For the Republic of Côte d'Ivoire

Kouakou Brou Jean
Minister of Justice

For the Gabonese Republic

Marcel Eloi Rahandi Chambrier
Minister of Justice

For the Republic of Equatorial Guinea

Mrs. Evangelina - Filomena Oyo
Minister of Justice

For the Republic of Mali

Amidou Diabate
Minister of Justice

For the Republic of Niger

Issifou Abba Moussa
Minister of Justice

For the Republic of Senegal

Jacques Baudin
Minister of Justice

For the Togolese Republic

Assiba Amoussou-Guenou
Secretary of State in charge
of Finance