

**UNIFORM ACT OF 10 APRIL 1998 ORGANIZING  
BANKRUPTCY PROCEEDING FOR THE  
DISCHARGE OF LIABILITIES**

## **UNIFORM ACT ORGANIZING BANKRUPTCY PROCEEDING FOR THE DISCHARGE OF LIABILITIES**

The Council of Ministers of OHADA,

- 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 Common Court of Justice and Arbitration dated 20 March 1998;

has, after duly pondered the matter, adopted, with a unanimous vote of the Contracting States present, the Uniform Act set out below:

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## **PRELIMINARY PART**

### **Article 1**

This Uniform Act:

- organizes bankruptcy proceeding for preventive settlement, court-ordered turnaround and liquidation of assets of a debtor for a general discharge of his liabilities;
- defines the pecuniary, professional and penal sanctions relating to the default of the debtor and managers of a debtor company.

### **Article 2**

(1) The preventive settlement is a proceeding intended to avoid the suspension of payments or activity by a company or to facilitate the discharge of its liabilities by means of a preventive composition agreement.

Preventive settlement shall apply to any natural person or corporate body, that is a trader and to any non-trading private corporate body, to any public corporation in the form of a private corporate body, which, irrespective of the nature of its liabilities, is in a difficult economic and financial condition without being irremediable.

(2) Court-ordered turnaround is a proceeding intended to safeguard a company and to discharge its liabilities through composition of turnaround.

(3) Liquidation of assets is a proceeding intended to sell the assets of a debtor in order to pay his liabilities.

(4) Court-ordered turnaround and liquidation of property shall apply to any natural person or corporate body, which is to a trader, to any non-trading private corporate body and to any public corporation in the form of a private corporate body that suspends payments.

### **Article 3**

Preventive settlement, court-ordered turnaround or liquidation of assets shall fall within the jurisdiction of the competent court in charge of commercial matters.

This court shall also be competent to settle all disputes arising from bankruptcy proceeding, disputes on which the bankruptcy proceeding has a legal impact as well as disputes concerning personal bankruptcy and other sanctions, with the exception of disputes falling exclusively within the jurisdiction of administrative, criminal and labour courts.

### **Article 4**

The court with competent jurisdiction to deal with bankruptcy proceeding shall be the one within whose jurisdiction the debtor has his principal place of business or, where it is a corporate body, its registered office or where it has no registered office on the national territory, its principal place of business. Where the head office is located abroad, the bankruptcy proceeding shall be before the court within whose jurisdiction the main operation centre, situated on the national territory, is found.

The court of the registered office or of the principal place of business of the corporate body shall also have jurisdiction in the preventive settlement, court-ordered turnaround or liquidation of assets of persons jointly and severally liable for the liabilities of the corporate body.

The latter shall settle any dispute on the competence of jurisdiction to which the case is submitted within a period of fifteen days from the date the matter is brought before it and, in case of appeal, within a period of one month by the court of appeal.

Where the court's jurisdiction is challenged because of its venue, it shall, where it declares itself competent, also rule on the merits of the case in the same decision. The validity of such decision regarding jurisdiction and merits of the case may only be challenged through appeal.

## **PART I PREVENTIVE SETTLEMENT**

### **CHAPTER I INITIATING PROCEEDING FOR PREVENTIVE SETTLEMENT**

#### **Article 5**

The case shall be submitted to the competent court by petition of the debtor stating his economic and financial situation and presenting the prospects for the recovery of the company and discharge of liabilities.

The petition shall be addressed to the President of the competent court and lodged at the registry of the said court against a receipt. It shall specify the claims for which the debtor is requesting the suspension of individual lawsuits.

No petition for preventive settlement shall be lodged by the debtor before the expiry of a period of five years following a previous petition that resulted in a decision granting preventive settlement.

#### **Article 6**

The petitioner for preventive settlement shall deposit the following together with his petition:

- 1° an extract of registration in the Trade and Personal Property Credit Register;
- 2° summary financial statements comprising, notably, the balance sheet, income statement and statement of source and expenditure of funds;
- 3° a cash position;
- 4° a statistical statement of claims and liabilities, mentioning the name and residence of the creditors and debtors;
- 5° a detailed statement, assets and liabilities, of personal sureties and securities given and received by the company and its managers;

- 6° an inventory of the debtor's property showing the personal assets subject to claim by their owners and that affected by an ownership reserve clause;
- 7° the number of workers and the amount of wages and wage costs;
- 8° the turnover and profits of the last three years;
- 9° the name and address of staff representatives;
- 10° in case of a corporate body the list of persons jointly and severally liable for its liabilities, with their names and residences, as well as the names and addresses of its managers.

All these documents shall be dated, signed and certified true by the petitioner.

Where one of the documents cannot be furnished or can be furnished only incompletely, the petition shall contain the reasons for such impediment.

#### **Article 7**

The debtor shall, at the same time as the documents provided for under Article 6 above or no later than thirty days following the deposit of the said documents, under penalty of his petition being declared inadmissible, lodge a proposal of a preventive composition scheme specifying the measures and conditions envisaged to redress the company, in particular:

- modalities for the continuation of the operation of the company such as request for time limits and debt cancellations, partial transfer of assets specifying the assets to be transferred; transfer or management under lease of a branch of activity forming a business; transfer or management under lease of the entire company, without such modalities being restrictive and exclusive of each other;
- persons who must execute the composition and all the commitments entered into by them and needed to recover the company, modalities for maintaining and financing the company and settling liabilities contracted prior to the decision provided for under Article 8 below, as well as, where necessary, the guarantees given to ensure the execution. Such commitments and guarantees may consist, in particular, of a subscription to increase the registered capital of the company by former or new partners, the opening of credits by banking or financial establishments, the continuation of the performance of contracts concluded before the petition and the provision of securities;
- layoffs for economic reasons which shall be carried out under the conditions laid down by labour law provisions; and
- replacement of managers.

#### **Article 8**

From its presentation, the proposal of the preventive composition scheme shall immediately be transmitted to the President of the competent court. He shall suspend individual lawsuits and appoint an expert in order to report to him on the economic and financial situation of the firm, its prospects for recovery considering the time limits and remission of debt granted or liable to be granted by the creditors and any other measures contained in the preventive composition scheme proposals.

The expert so appointed shall be subject to the provisions of Articles 41 and 42 of this Uniform Act.

The expert shall be informed of his mission by registered letter or by any means in writing of the President of the competent court or that of the debtor within a period of eight days following the decision to suspend individual lawsuits.

#### **Article 9**

The decision provided for under Article 8 above shall suspend or prohibit all individual lawsuits for the payment of liabilities indicated by the debtor and contracted prior to the said decision.

The suspension shall concern measures of execution as well as preventive measures.

It shall apply to all unsecured creditors with general liens or special real securities such as, notably, a special personal property lien, a pledge, a collateral security or a mortgage, with the exception of creditors due wages.

The suspension of individual lawsuits shall apply neither to actions for the acknowledgments of rights or disputed liabilities nor to actions relating to exchange against the signatories of negotiable instruments other than the beneficiary of the suspension of individual lawsuits.

The time limits granted creditors under penalty of forfeiture, prescription or cancellation of their rights shall consequently be suspended during the entire period of suspension of the lawsuits.

#### **Article 10**

Except in case of cancellation of a debt by the creditors, legal interest or interest stipulated by contract as well as interest on overdue payments and surcharges shall continue to accrue but shall not be payable.

#### **Article 11**

Except upon a reasoned authorization of the President of the competent court, the preventive settlement decision shall prohibit the debtor, under penalty of his right not being demurrable to other parties:

- from paying, in whole or in part, liabilities contracted prior to the decision to suspend individual lawsuits and covered by the decision;
- from making any disposal likely to hamper the normal operation of the company or giving any security.

The debtor shall equally be forbidden to pay off the sureties given for liabilities contracted prior to the decision provided for under Article 8 above.

#### **Article 12**

(1) The expert shall appraise the debtor's situation.

To this end, he shall, notwithstanding any laws and regulations to the contrary, obtain from auditors, accountants, staff representatives, public services, security and

social insurance agencies, banking or financial establishments and services in charge of centralizing banking risks and payment incidents information likely to give him an exact picture of the economic and financial situation of the debtor.

(2) The expert shall have the responsibility of notifying the competent court of breaches of the provisions of Article 11 above.

(3) The expert shall hear the debtor and creditors and give them assistance in order to reach an agreement on the modalities for recovering the company and discharging its liabilities.

### **Article 13**

The commissioned expert shall deposit, in duplicate, at the registry his report containing the preventive composition scheme, proposed by the debtor or concluded by the latter and his creditors, within a two-month period as of the date of the action, at the latest, save in case of a reasoned authorization of the President of the competent court extending the said period by one month.

The expert shall comply with the time limit specified in the preceding paragraph, under penalty of committing his liability to the debtor or creditors.

A copy of the report shall be forwarded to the representative of the Public Prosecutor's Department by the registrar-in-chief.

### **Article 14**

The President shall, within a period of eight days following the deposit of the report, refer the matter to the competent court and summon the debtor to appear before the said court to be heard in camera. He shall also summon to the said hearing the expert who shall act as reporter as well as any creditor he deems expedient to be heard.

The debtor and, subsequently, the creditor(s) shall be summoned by registered letter or by any means in writing at least three days before the hearing.

### **Article 15**

The competent court shall rule in camera.

(1) Where it establishes the suspension of payments, it shall pronounce, automatically, and at any time, a court-ordered turnaround or the liquidation of assets, without prejudice to the provisions of Article 29 below.

(2) Where the situation of the debtor so requires, it shall decide on preventive settlement and approve the preventive composition scheme by stating the time limits and cancellations granted by the creditors and by notifying the debtor of the measures proposed for recovering the company. The time limits and cancellations granted by the creditors may be different.

The competent court shall ratify the preventive composition scheme where:

- the conditions for the validity of the composition are met;
- no reason arising from the common interest or public policy is likely to hinder the composition;

- the composition offers genuine possibilities of rehabilitation of the company, paying off liabilities and sufficient guarantees of execution;
- the time limits given do not exceed three years for all the creditors and one year for creditors due wages.

Where preventive composition scheme includes a request for a grace period not exceeding two years, the competent court may render the said grace period demurrable to the creditors who refused any grace period and any write-off unless such grace period endangers the company of the said creditors.

Creditors due wages shall neither grant any write-off nor accept any grace period that they themselves have not granted.

(3) Where the competent court feels that the debtor's situation does not fall under any bankruptcy proceeding or it rejects the preventive composition scheme proposed by the debtor, it shall annul the decision provided for under Article 8 above. Such annulment shall put the parties in the situation in which they were before the decision.

(4) The competent court shall rule within a period of one month following the date on which the matter is referred to it.

#### **Article 16**

The decision of the competent court ratifying the preventive composition scheme shall terminate the appointment of the expert who acts as reporter, subject to the provisions of Articles 17 below. However, the competent court may appoint a receiver and auditors responsible for supervising the execution of the preventive composition scheme under the same conditions as those provided for the court-ordered composition with creditors.

The court shall also appoint an official receiver.

#### **Article 17**

The preventive settlement decision shall be published under the conditions stipulated by Articles 36 and 37 below.

The expert shall verify the publication under the condition stipulated by Article 38 below.

## **CHAPTER II ORGANS AND EFFECTS OF PREVENTIVE SETTLEMENT**

#### **Article 18**

The ratification of the preventive composition scheme shall render same binding on all the creditors prior to the preventive settlement decision whether their claims are unsecured or guaranteed by a security under the grace period and write-off conditions they granted the debtor without prejudice to the provisions of Article 15 (2) above. The same shall apply to sureties who have paid the liabilities of the debtor contracted prior to the said decision.

Creditors with secured liabilities shall not lose their guarantees but shall enforce them only in the event of annulment or cancellation of the preventive composition scheme to which they consented or which has been imposed on them.

The sureties of the debtor and persons jointly and severally liable with the debtor shall not avail themselves of the grace periods and write-offs granted under the preventive composition scheme.

The statute of limitations remains suspended with respect to the creditors who, due to the preventive composition scheme, cannot claim their rights or institute actions.

The debtor shall recover his freedom to administer and dispose of his assets as soon as the preventive settlement decision becomes final.

#### **Article 19**

The expert appointed pursuant to the provisions of Article 8 above shall submit a report on his mission to the President of the competent court within a period of one month following the decision accepting the preventive composition scheme.

The President of the competent court shall endorse the report.

Where the debtor fails to take back the documents and bills he gave to the expert, the latter shall keep them for only two years following his report.

#### **Article 20**

The receiver appointed pursuant to the provisions of Article 16 above shall supervise the execution of the preventive composition scheme. He shall report immediately any violations to the official receiver.

He shall report, every three months, to the official receiver on the conduct of the settlement operations and notify the debtor thereof. The debtor shall submit his remarks and petitions, if any, within a period of fifteen days.

A receiver who terminates his duties shall submit his accounts to the court registry within a period of one month following the cessation of his duties.

The remuneration of the receiver in his capacity of auditor shall be determined by the court that appointed him.

#### **Article 21**

At the request of the debtor and upon a report of the receiver responsible for controlling the execution of the preventive composition scheme, where one has been appointed, the competent court may effect any change likely to shorten or foster such execution.

The provisions of Articles 139 to 143 below shall apply to the termination and cancellation of the preventive composition scheme.

### **CHAPTER III Appeal**

#### **Article 22**

The decision to suspend individual lawsuits provided for under Article 8 above shall not be subject to any appeal.

### **Article 23**

The decisions of the competent court relating to the preventive settlement shall be provisionally enforceable and may be challenged only by way of appeal that shall be lodged within a period of fifteen days following the date the decisions are given. The provisions of Article 218 below relating to the computation of time limits shall apply to the preventive settlement.

The court of appeal shall rule within a period of one month following the date the matter is brought before it.

Where the court of appeal confirms the preventive settlement decision, it shall accept the preventive composition scheme.

Where the court of appeal shall establish suspension of payments, determine the date thereof, pronounce a court-ordered turnaround or liquidation of assets and transfer the proceeding to the competent court.

Within three days period of its decision, the registrar of the court of appeal shall forward an extract of the said decision to the registrar of the court of first instance that shall make the publication stipulated in Article 17 above.

### **Article 24**

The decisions of the President of the competent court referred to in Article 11 above may be challenged only before the said court within a period of eight days following their pronouncement. The provisions of Article 218 below relating to the computation of time limits shall apply to the preventive settlement.

In this connection, the decisions shall be deposited at the court registry on the day they are rendered. They shall be notified forthwith to the debtor by registered letter or by any means in writing.

The competent court shall rule within a period of eight days from the day the opposition is lodged. The opposition shall be made by declaration at the court registry. The registrar shall summon the opposing party, by registered letter or any means in writing, to the very next court session to be heard in court chambers.

The decisions of the court ruling on the opposition shall not be liable to an appeal other than an appeal before the *Cour de cassation*.

## **PART II COURT-ORDERED TURNAROUND AND LIQUIDATION OF ASSETS**

### **CHAPTER I OPENING OF COURT-ORDERED TURNAROUND AND LIQUIDATION OF ASSETS**

### **Article 25**

A debtor who is unable to settle his current liabilities with his available assets shall file a declaration of suspension of payments for the purpose of opening a proceeding for

court-ordered turnaround or liquidation of assets, regardless of the nature of his liabilities.

The declaration shall be made within a thirty days period following the suspension of payments deposited at the registry of the competent court against a receipt.

#### **Article 26**

The declaration provided for in Article 25 above shall include the following documents drawn up on the same date as the declaration:

- 1° an extract of registration in the Trade and Personal Property Credit Register;
- 2° summary financial statements comprising, notably, the balance sheet, income statement and statement of source and expenditure of funds;
- 3° a cash position;
- 4° a statistical statement of claims and liabilities, mentioning the name and residence of the creditors and debtors;
- 5° a detailed statement (assets and liabilities) of personal sureties and securities given or received by the company and its managers;
- 6° an inventory of the debtor's property showing the chattels subject to claim by their owners and that affected by an ownership reserve clause;
- 7° the number of workers and the amount of wages and wage costs;
- 8° the turnover and profits of the last three years;
- 9° the name and address of staff representatives;
- 10° in case of a corporate body, the list of members jointly and severally liable for its liabilities, with their names and residences, as well as the names and addresses of its managers.

All these documents shall be dated, signed and certified true by the applicant.

Where one of the documents cannot be furnished, or can be furnished only incompletely, the declaration shall contain the reasons for such impediment.

#### **Article 27**

The debtor shall, at the same time as the declaration provided for in Article 25 above or no later than fifteen days following the said declaration, lodge a composition proposal specifying the measures and conditions envisaged for the recovery of the company, in particular:

- modalities for continuing the operation of the company such as request for time limits and debt write-offs, partial transfer of assets specifying the property to be transferred; transfer or management under lease of a branch of activity forming a business; transfer or management under lease of the entire company, without such modalities being restrictive and exclusive of each other;

- persons who have to execute the composition scheme and all commitments entered into by them and needed to recover the company, modalities for maintaining and financing the company, and settling liabilities contracted prior to the decision to initiate the composition as well as, where necessary, the guarantees provided to ensure the execution. These commitments and guarantees may consist, in particular, of a subscription to increase the registered capital of the company by former or new partners, the opening of credits by banking or financial establishments, the continuation of the execution of contracts concluded before the decision to initiate proceeding and the provision of securities;
- layoffs for economic reasons which shall be carried out under the conditions stipulated by Articles 110 and 111 of this Uniform Act; and
- the replacement of managers.

### **Article 28**

Bankruptcy proceeding may be initiated at the request of one creditor, no matter the nature of his claim, as long as it is unquestionable, liquid and due.

The creditor's writ of summons shall specify the nature and amount of his claim. It shall also mention the proof of liabilities.

The debtor shall have the possibility of making the declaration and the composition proposal provided for under Articles 25, 26 and 27 above within a period of one month following the writ of summons.

### **Article 29**

(1) The competent court may examine the matter of its own motion, notably based on information provided by a representative of the Public Prosecutor's Department, auditors of private corporate bodies where they have one, partners or members of the corporate bodies or institutions representing the staff who shall furnish the court with the facts likely to motivate such initiative by the court.

The President of the competent court shall have the debtor summoned by the registrar, by extrajudicial act, to appear before the court sitting in camera. The extrajudicial act shall contain a full reproduction of this article.

(2) Where the debtor appears before the court, the President shall inform him of the facts justifying his initiative and shall obtain his remarks. Where the debtor acknowledges being in suspension of payments or in difficulty or where the President has the deep-seated conviction that he is in such a situation, the President shall grant him a period of thirty days within which he shall make the declaration and the composition with creditors proposal provided for in Articles 25, 26 and 27 above. The same time limit shall be granted to members of a corporate body who are indefinitely, jointly and severally liable for its liabilities.

After this time limit, the competent court shall give a ruling in open court.

(3) Where the debtor fails to appear before the court, note shall be taken of the fact and the competent court shall give a ruling at the very next open court session.

**Article 30**

In the event of death of a trader in a state of suspension of payments, the case shall be submitted to the competent court within a period of one year following his death, either upon the declaration of an heir or upon the summons of a creditor.

The competent court may examine the matter of its own motion within the same period, after having heard or duly summoned the known heirs of the debtor. In this case, the proceeding stipulated under Article 29 above shall be applicable.

Where the heirs bring the matter before the competent court, they shall submit a declaration of suspension of payments and deposit a composition proposal under the conditions laid down in Articles 25, 26 and 27 above.

Where the matter is brought before the competent court upon the summons of creditors, the provisions of Article 28 above shall apply.

**Article 31**

The opening of a bankruptcy proceeding may be requested, within a period of one year following the date the debtor is struck off the Trade and Personal Property Credit Register, where the suspension of payments occurred before he was struck off the register.

It may also be requested against a partner who is indefinitely, jointly and severally liable for a company's liabilities within a period of one year following the mention of his withdrawal from the Trade and Personal Property Credit Register where the suspension of payments by the company occurred before such mention.

In both cases, the case shall be submitted to the competent court upon the summons of creditors or examine the matter of its own motion under the conditions laid down in Articles 28 and 29 above.

**Article 32**

Only a decision of the competent court may order the opening of the bankruptcy proceeding for a court-ordered turnaround or liquidation of assets.

Before taking a decision to open a bankruptcy proceeding, the President of the competent court may appoint a judge who shall be a member of the Bench or any person he deems qualified to prepare and submit to him, within a period which he shall determine, a report containing all information on the situation and acts of the debtor and on the composition proposal made by him.

The competent court shall take its decision at the first hearing and, where necessary, upon the report provided for in the preceding paragraph. It may not take its decision before the expiry of a thirty days time limit following the date the matter is referred to it, no matter the method of referral.

The competent court that the case is referred to may not put it in the general cause-list.

**Article 33**

The competent court, which establishes the suspension of payments, shall pronounce a court-ordered turnaround or liquidation of assets.

It shall pronounce a court-ordered turnaround where it appears to it that the debtor has proposed a genuine composition. Where the contrary appears true, it shall pronounce the liquidation of assets.

The decision establishing the suspension of payments by a corporate body shall have effect on all the members of the corporate body who are indefinitely and joint and severally liable for its liabilities and shall order, against each of them, either a court-ordered turnaround or liquidation of assets.

The competent court may, at any stage of the proceeding for a court-ordered turnaround, convert such turnaround proceeding into liquidation of assets where it appears that the debtor is not or is no longer capable of proposing a genuine composition.

The decision of the competent court shall be subject to appeal. The court of appeal that annuls or quashes the decision of the court of first instance may pronounce, as of right, a court-ordered turnaround or liquidation of assets.

#### **Article 34**

The competent court shall fix provisionally the date of suspension of payments, failing which it shall be deemed to have taken place on the date of the decision that establishes it.

The date of suspension of payments may not precede the decision to open a proceeding by more than eighteen months.

The competent court may modify, within the limits fixed in the preceding paragraph, the date of suspension of payments by a decision taken after the decision to open a proceeding.

No petition for the determination of the date of suspension of payments on a date other than that fixed by the decision to open a proceeding or by a latter decision shall be admissible after the expiry of the time limit for lodging appeal provided for under Article 88 below. Beginning this date, the date of suspension of payments shall remain irrevocably fixed.

#### **Article 35**

The decision to open a proceeding shall appoint an official receiver from amongst the judges of the court, excluding the President of the court except in the case of a single judge. It shall appoint the receiver(s) who shall not be more than three. The expert appointed for the preventive settlement of a debtor, where necessary, may not be appointed receiver.

The court registrar shall forward immediately an extract of the decision to the representative of the Public Prosecutor's Department. The extract shall indicate the main provisions of the decision.

#### **Article 36**

Every decision to open a bankruptcy proceeding shall be entered immediately in the Trade and Personal Property Credit Register. Where the debtor is a non-trading private corporate body, the entry shall be made in the chronological register. In addition, a form shall be drawn up in the name of the party concerned in the alphabetical card

index, mentioning the decision concerning the party. The full names and address of the manager(s) as well as the registered office of the corporate body shall also be indicated.

In addition, an extract of the decision shall be inserted with the same indications in a newspaper empowered to publish legal notices at the place of the competent court. A second publication shall be made, under the same conditions, after a period of fifteen days. Apart from the indications provided for in this article, the two extracts shall contain a notice to creditors to file in their claims to the receiver and a full reproduction of the provisions of Article 78 of this Uniform Act.

The same publication shall be made at the place where the debtor or the corporate body has his or its main places of business.

The court registrar on his own initiative shall make the above publication.

### **Article 37**

The indications made in the Trade and Personal Property Credit Register shall be forwarded to the Official Gazette for publication within a period of fifteen days following the delivery of the decision. Such publication shall mention the debtor or the debtor corporate body, his residence or its registered office, his or its registration number in the Trade and Personal Property Credit Register, the date of the decision pronouncing the preventive settlement, the court-ordered turnaround or liquidation of assets and the issues of the newspaper in which the extracts provided for in Article 36 above were published. It shall also indicate the name and address of the receiver to whom the creditors shall submit their claims and reproduce entirely the provisions of Article 78 of this Uniform Act.

The publication in the Official Gazette shall be made, as of right, by the registrar or, failing which, by the receiver.

It shall be optional where publication in a newspaper empowered to publish legal notices has been made in accordance with the provisions of Articles 36 above. Otherwise, it shall be compulsory.

### **Article 38**

The receiver shall be bound to verify whether the indications and publications provided for under Articles 36 and 37 of this Uniform Act have been made.

He shall also be bound to publish the decision initiating proceeding in accordance with the provisions governing land publication.

## **CHAPTER II ORGANS RESPONSIBLE FOR A COURT-ORDERED TURNAROUND AND LIQUIDATION OF ASSETS PROCEEDING**

### **Section I - Official Receiver**

### **Article 39**

The official receiver, under the authority of the competent court, shall ensure the rapid conduct of the proceeding and look after the interests at stake.

He shall collect all the information he deems useful. In particular, he may hear the debtor or the managers of the corporate body, their authorized agents, the creditors or

any other person, including the known spouse or heirs of the debtor deceased in a state of suspension of payments.

Notwithstanding any law or regulation to the contrary, the official receiver may receive information, likely to give him an exact picture of the economic and financial situation of the company, from auditors, accountants, members and representatives of the staff, public services and bodies, insurance and social security agencies, credit establishments as well as services in charge of centralizing banking risks and payment incidents.

The official receiver shall submit a report to the competent court on all disputes arising from the bankruptcy proceeding.

The competent court may replace the official receiver at any time.

#### **Article 40**

The official receiver shall give a decision on petitions, disputes and claims within his jurisdiction, within a period of eight days following the day the matter is referred to him. After this period, where he has not given a decision, he shall be deemed to have taken a decision to reject the petition.

The decisions of the official receiver shall be deposited forthwith at the court registry and notified by the registrar, by registered letter or any means in writing, to all persons likely to object to them.

They may be subject to opposition lodged by simple declaration at the court registry within a period of eight days of their deposit or notification or within the time limit provided in the first paragraph of this article. The competent court may, within the same time limit, attend to the matter of its own motion and reverse or annul the decisions of the official receiver.

The competent court shall take its decision on the first hearing.

When the competent court is giving a ruling on an opposition lodged against a decision of the official receiver, the latter shall not attend the session.

### **Section II - Receiver**

#### **Article 41**

No relative or relation by marriage of the debtor up to the fourth degree inclusive shall be appointed receiver.

In the event where one or more receivers have to be added or replaced, the official receiver may refer the matter to the competent court that shall make the appointment or replacement.

#### **Article 42**

The competent court either may order the dismissal of one or more receivers upon the proposal of the official receiver acting of his own motion or upon petitions addressed to him by the debtor, creditors or the auditors.

Where a petition calls for the dismissal of a receiver, the official receiver shall, within a period of eight days, give a decision dismissing the petition or proposing the dismissal of the receiver to the competent court. Where, at the expiry of this period, the official receiver has not given a decision, the petition may be brought before the competent court. Where he has given a decision, the decision may be the object of an opposition under the conditions laid down by Article 40 above.

The competent court shall hear, in camera, the report of the official receiver and the explanations of the receiver. It shall give its decision in open court.

#### **Article 43**

The receiver(s) shall represent the creditors subject to the provisions of Articles 52 and 53 below. They shall have the capacity of remunerated agent and shall be civilly liable for their errors under ordinary law provisions, without prejudice to their criminal responsibility.

Where several receivers have been appointed, they shall act collectively. However, the official receiver may, depending on the circumstances, give one or more of them the authority to act individually. In this case, only the receivers who have received such authority shall be liable in the event of an error committed by them.

Where an objection is lodged against any of the liquidation operations of the receiver, such objection shall be referred to the official receiver who shall give a decision under the conditions laid down by Article 40 above.

The receiver shall be bound to report on his mission and the conduct of the bankruptcy proceeding to the official receiver in accordance with the timetable defined by the latter. In the absence of a defined timetable, he shall report once a month and, in any case, each time the official receiver requests him to do so.

#### **Article 44**

The receiver who terminates his duties shall render account of his operations to the new receiver, in the presence of the official receiver, the debtor having been duly invited to attend by registered letter or any means in writing.

#### **Article 45**

Funds eventually collected by the receiver, whatever their source, shall be paid immediately into an account specially opened for each bankruptcy proceeding in a bank, post office or the Public Treasury. The receiver shall show proof of such deposits to the official receiver within a period of eight days following the collection of the funds. In case of delay in the payment of the sums collected into the account, the receiver shall pay interest on the sums he has not deposited. The official receiver shall fix the sums of money necessary for expenses and costs of the proceeding.

Where funds due the debtor have been deposited into a special account by third parties, they shall be transferred into an account opened by the receiver in the name of the bankruptcy proceeding. The receiver shall be responsible for having any opposition withdrawn.

The funds so deposited may be withdrawn only by virtue of a decision of the official receiver.

#### **Article 46**

The receiver shall be responsible for books, documents and bills given by the debtor or belonging to him as well as those given by the creditors or by any contributor during a period of five years from the day of review of the accounts.

### **Section III - Public Prosecutor's Department**

#### **Article 47**

(1) The representative of the Public Prosecutor's Department shall be informed of the conduct of the bankruptcy proceeding by the official receiver. He may, at any time, request that all acts, books and documents relating to the bankruptcy proceeding be submitted to him.

Only the representative of the Public Prosecutor's Department may invoke the default in the submission of information or document.

(2) The representative of the Public Prosecutor's Department shall forward to the official receiver, at his request or on his own initiative, information useful for the administration of the bankruptcy proceeding and coming from any criminal proceedings, notwithstanding the secrecy of preliminary inquiries.

### **Section IV - Auditors**

#### **Article 48**

The official receiver may appoint at any time one or more auditors chosen from among the creditors. They shall not be more than three auditors.

However, the appointment of auditors shall be compulsory at the request of creditors holding at least one-half of the total amounts of claims even where they have not been verified.

In this case, the official receiver shall appoint three auditors chosen respectively from among creditors with special transferable or untransferable real securities, staff representatives and unsecured creditors.

No relative or relation by marriage of the debtor or managers of the corporate body up to the fourth degree inclusive may be appointed auditors or representative of a corporate body designated as auditor.

The auditors may be dismissed by the competent court upon the proposal of the official receiver. After dismissal, the official receiver shall appoint other auditors to replace them.

#### **Article 49**

The auditors shall assist the official receiver in his task of overseeing the conduct of the bankruptcy proceeding and shall take care of the interests of the creditors.

They shall always have the right to verify the accounts and the economic and financial situation presented by the debtor, to request an account of the stage of the proceeding, the acts done by the receiver as well as funds collected and deposits made.

They shall compulsorily be consulted for the continuation of the activity of the company during the verification of claims and during the sale of the property of the debtor.

The may refer all disputes to the official receiver who shall give a decision thereon in accordance with the provisions of Article 40 above.

The duties of auditor shall be honorary and shall be performed personally.

The auditors shall only be answerable for serious offences committed by them.

## **Section V - General Provisions**

### **Article 50**

Where the debtor's funds are insufficient to immediately defray the costs of the decision of the court-ordered turnaround or liquidation of assets, that of the notification, posting and publication of the said decision in newspapers, affixing, keeping and removing seals or institution of actions declaring undemurrability, making up liabilities, extending the bankruptcy proceeding and the personal bankruptcy of the managers of corporate bodies, the Public Treasury shall, upon the decision of the official receiver, advance such costs, which shall be reimbursed, through the preferential right proceeding, using the first sums recovered.

This provision shall be applicable to appeal proceedings against the decision ordering the court-ordered turnaround or liquidation of assets.

### **Article 51**

The receiver and all those who took part in the administration of any bankruptcy proceeding shall be forbidden from personally acquiring, either directly or indirectly, by private sale or sale by court order, all or part of the movable or immovable assets of the debtor under preventive settlement, court-ordered turnaround or liquidation of assets.

## **CHAPTER III**

### **EFFECTS OF THE DECISION TO OPEN A BANKRUPTCY PROCEEDING ON THE DEBTOR**

#### **Section I: Assistance and dispossession of the debtor**

### **Article 52**

The decision ordering the court-ordered turnaround shall entail, as of right, from the date it is taken and up to the ratification of the composition or the conversion of the court-ordered turnaround into liquidation of assets, the compulsory assistance of the debtor for the acts concerning the administration and disposal of his assets, under penalty of undemurrability of such acts.

However, the debtor can validly perform, alone, conservatory acts and those relating to day-to-day management within the framework of the habitual activity of the company, in accordance with the practices of the profession, on condition that he renders account of such acts to the receiver.

Where the debtor or the managers of the corporate body refuse to do an act to safeguard the estate, the receiver may do so alone, provided that the official receiver authorizes him. The same shall apply, in particular, when it concerns taking preventive

measures, recovering bills and liabilities due, selling objects cumbersome to preserve or about to perish or depreciate and instituting or conducting a personal or real action.

Where the receiver refuses to lend assistance towards the performance of acts of administration or disposal to the debtor or the managers of a corporate body, the latter or the auditors may compel him to do so by decision of the official receiver given under the conditions laid down by Articles 40 and 43 above.

#### **Article 53**

The decision declaring the liquidation of the assets of a corporate body shall, as of right, entail the dissolution of the corporate body.

The decision declaring the liquidation of assets shall, as of right, entail, as of its date of pronouncement until the end of the proceeding, the withdrawal from the debtor his power to administer and dispose his existing assets and those that he may acquire in whatever capacity, under penalty of undemurrability of such deeds, save where they are preventive ones.

The acts, rights and actions of the debtor concerning his estate shall be done or exercised during the entire duration of the liquidation of assets by the receiver acting alone as authorized agent of the debtor.

Where the receiver refuses to perform a deed, to exercise a right or an action concerning the debtor's estate, the latter or the managers of the corporate body or the auditors, where they have been appointed, may compel him to do so by decision of the official receiver given under the conditions laid down in Articles 40 and 43 above.

#### **Article 54**

As soon as the receiver takes up office, he shall be bound to take all necessary actions to preserve the debtor's rights against his debtors.

He shall be bound, in particular, to apply, in the name of the general body of the creditors, for the registration of transferable and untransferable securities subject to publication that was not applied for by the debtor himself. The receiver shall attach a certificate establishing his appointment to his application.

#### **Article 55**

The debtor shall, within a period of three days following the decision to initiate a proceeding, report to the receiver with his account books in order to have them examined and closed.

Any third party in possession of the said books shall be bound to hand them over to the receiver, at his request.

The debtor or the third party holding the books may be represented where he has well-founded reasons preventing him from presenting himself.

In the event where the debtor fails to hand over the balance-sheet to the receiver, the latter shall draw up, using the books, account documents, documents and information which he obtains, a statement on the debtor's situation.

#### **Article 56**

In the event of liquidation of assets, the letters addressed to the debtor shall be handed over to the receiver, with the exception of those of a personal nature. The debtor shall assist in the opening of the letters where he is present.

#### **Article 57**

From the time the decision to open a bankruptcy proceeding against a corporate body is taken, the rightful or de facto managers, apparent or hidden, remunerated or not, may, under penalty of nullity, only transfer company shares, stocks or all other company rights with the authorization of the official receiver and under the conditions determined by him.

The competent court shall declare the rights of the company untransferable to any person who has interfered in the management of the corporate body whenever such interference is established.

Documents establishing company rights shall be deposited with the receiver. Where they are not deposited voluntarily, the receiver shall summon the managers to deposit them in his hands. Failure to hand over the documents shall constitute the offence provided for in Article 231, 7° below.

The receiver, where necessary, shall have the inalienability of the company rights to the managers entered in the registers of the corporate body and in the Trade and Personal Property Credit Register.

The receiver shall draw up a statement of company rights and issue to the managers a certificate of deposit or registration of inalienability in order to enable them to take part in the meetings of the corporate body.

#### **Article 58**

The receiver shall, under his responsibility, keep the documents handed over to him by the managers of the company.

He may return them only after the ratification of the composition or the termination of the operations of the liquidation of assets, save handing them over at any moment to any person designated by court order.

#### **Article 59**

The decision to open a proceeding may order the affixing of seals on the cash-boxes, safes, portfolios, books, documents, furniture, effects, stores and warehouses of the debtor and, where it concerns a corporate body with members who are indefinitely liable for its liabilities, on the assets of each of them. The affixing of seals on the assets of the managers of corporate bodies may also be ordered.

The court registrar shall immediately forward notice of the decision to the official receiver who shall affix the seals.

Before the decision to affix seals, the President of the competent court may appoint, from among the members of the said court, either of his own motion or at the request of one or more creditors, a judge to affix the seals, but only in the case of the disappearance of the debtor or embezzlement of all or part of his assets.

The official receiver or the judge appointed in accordance with the provisions of the preceding paragraph shall give, immediately, notice of the affixing of the seals to the President of the court which ordered it.

#### **Article 60**

Where the competent court ordered the affixing of seals, the official receiver may on the proposal of the receiver, exempt the affixing or authorizes the removal of seals from the following:

- 1° personalities and effects indispensable to the debtor and to his family figuring on the statement submitted to him;
- 2° objects likely to decay or sure to depreciate; and
- 3° objects needed for the professional activity of the debtor or for his company where the continuation of operation is authorized.

The said objects shall then be inventoried and valued by the receiver, in the presence of the official receiver who shall sign the report thereon.

#### **Article 61**

The account books and documents shall be removed from the seals and handed over to the receiver by the official receiver after listing them and summarily stating in his report the state in which he found them.

Short-dated portfolio bills or those likely to be accepted or for which it is necessary to carry out conservatory acts shall be removed from seals by the official receiver, and described and handed over to the receiver for recovery.

#### **Article 62**

The receiver shall demand the removal of seals within a period of three days following the date they are affixed with a view to carrying out inventory operations.

#### **Article 63**

The receiver shall carry out an inventory of the debtor's assets that shall be present or duly summoned by registered letter or by any means in writing.

While making the inventory, personalities on which seals have not been affixed or those from which seals have been removed after inventory and evaluation shall be checked.

The receiver may enlist the assistance of any person he deems useful for drawing up the inventory or for the evaluation of assets.

Goods under customs constraint shall, where the receiver has knowledge of them, be the object of a special entry.

Where a bankruptcy proceeding is opened after the death of the debtor and where the inventory has not been drawn up, it shall be prepared or pursued in the presence of the known heirs or after they have been duly summoned by registered letter or by any means in writing.

The representative of the Public Prosecutor's Department may take part in the inventory.

The inventory shall be drawn up in duplicate: one shall be deposited immediately at the registry of the competent court and the other shall remain in the hands of the receiver.

In the case of liquidation of assets, once the inventory has been completed, the goods, cash, bills, negotiable instruments and proofs of debt, books and documents, furniture and objects of the debtor shall be handed over to the receiver who shall sign for them at the bottom of the inventory.

#### **Article 64**

The debtor may receive from the assets, for himself and his family, aid determined by the official receiver who shall take his decision after hearing the receiver.

#### **Article 65**

(1) In the case of a court-ordered turnaround, the receiver shall ask the debtor to make all the tax, customs and social security and insurance declarations incumbent on him.

The receiver shall oversee the production of the said declarations.

(2) In the case of liquidation of assets, the receiver shall immediately ask the debtor to furnish him with all information not contained in the trade books that is necessary for the determination of all taxes, duties and social insurance contributions due.

The receiver shall forward to the tax, customs and social security services all the information provided by the debtor and information available to him.

(3) In either of the cases referred to above, where the debtor fails to accede, within a period of twenty days, to the request of the receiver, the latter shall record such failure and notify the official receiver thereof. He shall inform, within a period of ten days, the tax, customs and social insurance services of the fact by furnishing them with information available to him on the business done and the wages paid by the debtor.

#### **Article 66**

The receiver shall, within a period of one month following his assumption of duty, except in the case of a special extension of this period granted by a duly reasoned decision of the official receiver, submit to the latter a brief report on the apparent situation of the debtor, the causes and nature of such situation giving an economic and social account of the company and prospects for recovery as seen from the composition proposals of the debtor.

Where auditors have been appointed, their opinion shall be appended to the report.

The official receiver shall immediately forward the report with his observations to the representative of the Public Prosecutor's Department.

Where the report has not been submitted to him within the prescribed time limit, he shall notify the representative of the Public Prosecutor's Department and explain to him the causes of the delay.

## **Section II - Acts undemurrable to the general meeting of creditors**

### **Article 67**

Acts done by the debtor during the period of suspicion starting from the date of suspension of payments and ending on the date of the decision to open a bankruptcy proceeding shall automatically be undemurrable or may be declared undemurrable to the general meeting of creditors as defined in Article 72 below.

### **Article 68**

The following shall automatically be undemurrable to the general meeting of creditors where they are done during the period of suspicion:

- 1° all deed-polls assigning movable or immovable property;
- 2° any commutative contract in which the debtor's obligations exceed by far those of the other party;
- 3° any payment, whatever the method of payment, of liabilities not due, except where it concerns the payment of a negotiable instrument;
- 4° any payment of liabilities due made other than in cash, negotiable instrument, bank transfer, deduction, payment or credit card or court-ordered or contractual compensation of liabilities that are connected or any other normal method of payment;
- 5° any mortgage by contract or contractual collateral security, any pledge given on the property of the debtor for liabilities previously contracted; and
- 6° any provisional registration of a conservatory mortgage ordered by court or a conservatory pledge ordered by court.

### **Article 69**

(1) The following may be declared undemurrable to the general meeting of creditors where they have inflicted loss on it:

- 1° deed-polls assigning movable or immovable property done within a period of six months preceding the period of suspicion;
- 2° registration of secured transferable or untransferable securities given or taken for concomitant liabilities where their beneficiary has had knowledge of the suspension of payments by the debtor;
- 3° contracts for valuable consideration where those who carried out transactions with the debtor had knowledge of the suspension of payments by him at the time of conclusion of the transactions; and
- 4° voluntary payments of outstanding liabilities where those who received the payments had knowledge of the suspension of payments by the debtor at time of the payments.

(2) Notwithstanding the provisions of paragraph (1), 4° of this article, a payment made to the prompt bearer of a bill of exchange, a promissory note or a cheque shall be demurrable to the general meeting of creditors except in the following cases where an action for reimbursement to the meeting of creditors is possible against:

- 1° the drawer or the principal, in the case of a drawing on an account, who has had knowledge of the suspension of payments by the drawee either at the time of drawing or at the time of payment of the bill of exchange issued him by the drawee;
- 2° the beneficiary of the promissory note who has had knowledge of the suspension of payments by the maker of the note either at the time of endorsement of the note by him or at the time of payment made to him by the maker;
- 3° the drawer of a cheque who has had knowledge of suspension of payments by the drawee at the time of issue of the cheque;
- 4° the beneficiary of a cheque who has had knowledge of the suspension of payments by the drawer at the time of issue of the cheque; and
- 5° the beneficiary of a cheque who has had knowledge of the suspension of payments by the drawee either at the time of issue or at the time of payment of the cheque.

#### **Article 70**

The receiver alone may act by declaring undemurrability of the acts done during the period of suspicion before the court that pronounced the opening of the bankruptcy proceeding.

He may not institute such action after the deposit of the statement of claims provided for by Article 86 below.

#### **Article 71**

The undemurrability shall benefit the general meeting of creditors.

(1) The general meeting of creditors shall be collocated in the place of a creditor whose security has been declared undemurrable.

(2) A deed poll declared undemurrable shall have no effect where it has not been implemented. Where it has been implemented, the beneficiary of a gift shall restore the property the ownership of which has been transferred free of charge.

In the case of a subsequent transfer as a gift, the sub-purchaser, even where he is of good faith, shall be subject to undemurrability and to restoration of the property or to the payment of its value, except where the property has disappeared from his estate because of a case of *force majeure*.

In the case of a subsequent transfer for valuable consideration, the sub-purchaser shall be subject to restoration of the property or payment of its value only where, at the time he purchased the property, he had knowledge of the suspension of payments by the debtor.

In any case, the principal beneficiary of the deed poll shall be bound to pay the value of the property where the sub-purchaser cannot or is not required to restore the property.

(3) The payment declared undemurrable shall be restored by the creditor who shall prove claims in the liabilities of the debtor.

(4) Where the commutative contract without sufficient consideration declared undemurrable has not been executed, it shall no longer be executed.

Where it has been executed, the creditor may only prove claims in the liabilities of the debtor up to the true value of the service provided.

(5) Deed-polls declared undemurrable shall have no effect where they have not been executed.

Where it concerns an already executed transfer, the purchaser shall restore the property and produce his claim in the liabilities of the debtor. Where there has been a subsequent transfer free of charge, the sub-purchaser shall return the property with no possibility to initiate action against the general meeting of creditors. Where there has been a subsequent transfer for valuable consideration, the sub-purchaser shall restore the property and produce his claim in the liabilities of the debtor if, by the time he purchased the property, he had knowledge of the undemurrable nature of the act of the author.

Where the debtor has received all or part of the service of the co-contracting party that may not be restored in kind, the creditor shall produce his claim up to the value of the service provided.

## **CHAPTER IV EFFECTS OF THE DECISION TO OPEN A BANKRUPTCY PROCEEDING ON CREDITORS**

### **Section I - Constituting the general meeting of creditors and suspensive effects**

#### **Article 72**

The decision to open a proceeding shall constitute the creditors into a meeting represented by the receiver who, alone, shall act in his name and in the general interest and may commit it.

The meeting shall be constituted by all the creditors whose claim existed prior to the decision to open a bankruptcy proceeding, even where the payability of the claim is fixed at a date after the said decisions, if the said date is not undemurrable by virtue of Articles 68 and 69 above.

#### **Article 73**

The decision to open a proceeding shall put an end to the registration of all transferable and untransferable securities.

#### **Article 74**

The decision to open a proceeding shall imply, for the general meeting of creditors, a mortgage that the court registrar shall be bound to have registered immediately against the real property of the debtor and against property that he will acquire subsequently as he acquires such property.

The mortgage shall be registered in accordance with the provisions relating to land registration. It shall have priority from the day when it was entered on each of the debtor's realties.

The receiver shall ensure compliance with this formality and, where necessary, he shall accomplish it himself.

#### **Article 75**

The decision to open a proceeding shall suspend or prohibit all individual lawsuits for acknowledgement of rights and claims as well as all measures of execution by the general meeting of creditors on the debtor's personal and real assets.

The suspension of individual lawsuits shall also apply to creditors whose claims are guaranteed by a general lien or special security such as special preferential rights on movables, pledge, collateral security or mortgage, subject to the provisions of Articles 134 (4), 149 and 150 (3) and (4) below.

The suspension of individual lawsuits shall not apply to actions for nullity and resolution.

Actions solely for acknowledgement of rights or disputed claims or for determination of the amount of such claims shall be taken or pursued automatically by the creditors after producing their claims where such rights and claims have been rejected definitively or accepted provisionally or partially by the official receiver. The actions shall be taken or pursued against the debtor and the receiver under the conditions laid down in Articles 52 and 53 above.

The grace period given to the creditors under penalty of forfeiture, prescription or resolutions of their rights shall consequently be suspended during the entire period of suspension of the lawsuits.

Actions and measures of execution not affected by the suspension may be taken or pursued during a bankruptcy proceeding only against the debtor assisted by the receiver in case of a court-ordered turnaround or represented by the receiver in case of liquidation of assets.

#### **Article 76**

The decision to open a proceeding shall render liabilities not due payable only in the case of liquidation of assets and regarding the debtor only.

Where such liabilities are expressed in foreign currencies, they shall be converted into the currency of the place where the liquidation of assets decision was taken based on the rate of exchange prevailing on the date the decision was taken.

#### **Article 77**

Regardless of the proceeding and only with respect to the general meeting of creditors, the decision to open a proceeding shall stop the accruing of legal interest and interest stipulated by contract, all interest and interest on overdue payments and all

claims whether or not they are guaranteed by a security. However, concerning interest resulting from loan agreements concluded for duration equal to or more than one year or loan agreements with a deferred payment of one year or more, interest shall continue to accrue where the decision has initiated proceeding for a court-ordered turnaround.

## **Section II - Production and verification of claims**

### **Article 78**

From the date the decision to open a proceeding is taken and until the expiry of a period of thirty days following the second publication of the decision in a newspaper empowered to publish legal notices provided for in Article 36 above or following the publication made in the Official Gazette provided for in Article 37 above, where such publication is compulsory, all unsecured creditors or those with securities who make up the general meeting of creditors shall, under penalty of debarment, produce their claims to the receiver. This period shall be sixty days for creditors residing outside the national territory where the bankruptcy proceeding has been opened.

The same shall apply to a creditor who, with a proof of debt, introduced, before the decision to open a proceeding, proceedings for judgment by virtue of a legal title or, in the absence of a legal title, for acknowledgement of his right.

Holders of a right of claim shall also produce their claim, specifying whether they intend to exercise their right of claim. Failing such specification, they shall be considered as unsecured creditors.

The production (of a claim) shall stop the extinctive prescription of the claim.

### **Article 79**

All known creditors shall, in particular those who are entered on the balance sheet and those published secured creditors who failed to produce their claims within a period of fifteen days, as of the first publication of the decision opening the proceeding in a newspaper empowered to publish legal notices, be informed personally by the receiver of the need to produce their claims by registered letter with acknowledgment of receipt or by any means in writing addressed, where necessary, to their elected residence.

The same notice shall be addressed, in all the cases, to the auditor representing the staff where one has been appointed.

Where the creditors and claimants fail to produce their claims or their rights of claim of property within a period of fifteen days following the receipt of the notice or no latter than the period provided for in Article 78 above, they shall be precluded from producing them. This period shall be thirty days for creditors and claimants residing outside the national territory where the proceeding has been opened.

### **Article 80**

The creditors shall hand over to the receiver, directly or by registered letter, a declaration showing the amount of the debt due on the day of the decision to open a proceeding, the sums accruing and the dates of their maturity.

The declaration shall specify the kind of security eventually given for the debt. In addition, the creditor shall furnish all information likely to prove the existence and the amount of the claim where it is not based on a legal title, evaluate the claim where it is not cash and indicate the court that the case is referred to where the claim is disputed.

Supporting documents shall be appended to the declaration. They shall be in a memorandum and may be copies of the originals.

The receiver shall issue the creditors with a receipt for their dossier.

#### **Article 81**

The production of the claims of the Public Treasury, customs services and social insurance agencies shall always be made subject to claims, which have not yet been established, and individual adjustments or reimbursement.

The claims shall be accepted provisionally where they are the result of an automatic taxation or a turnaround, even where the debtor under the conditions laid down in Article 85 below disputes them.

#### **Article 82**

After the bankruptcy meeting in the case of a court-ordered turnaround or after the termination of operations in the case of liquidation of assets, the receiver shall, at the request of the creditors, return the documents entrusted to him.

The documents may be returned as soon as the verification has been completed where, in the case of exchange documents, the creditors intend to lodge appeals against signatories other than the debtor.

#### **Article 83**

Where claims are not produced within the period provided for in Articles 78 and 79 above, the defaulters may be released from their debarment by reasoned decision of the official receiver only as long as the statement of claims has not been made and deposited under the conditions laid down in Article 86 below and where they show the proof that their default is not due to an act done by them.

In the case of a court-ordered turnaround, the debarment shall extinguish the claims, unless there is any best estate reversion clause.

Until the bankruptcy meeting is held, default in the production of claims may not be demurrable to preferential wage creditors.

Where the competent court releases the creditors and the defaulting claimants from their debarment, the court registrar mention it on the statement of claims. Costs of proceeding relating to the release of the debarment shall be borne fully by them, save in the case of preferential wage creditors.

The defaulting creditors, released from the debarment, may rank equally with other creditors only for the sharing of dividends due after their request.

#### **Article 84**

The verification of claims and demand shall be compulsory regardless of the amount of assets and liabilities.

It shall be carried out within three months following the decision to open the proceeding.

The receiver shall conduct the verification as the claims are produced, in the presence of the debtor and auditors where they have been appointed or, in their

absence, where they have been duly summoned by registered letter or by any means in writing.

**Article 85**

Where the claim, security or claiming is challenged or disputed in whole or in part, the receiver shall notify the official receiver and the creditor or the claimant concerned by registered letter with acknowledgment of receipt or by any means in writing. Such notice shall specify the object and reason for the challenge or dispute, and the amount of the debt the acceptance of which has been proposed. It shall also contain a full reproduction of this article.

The creditor or the claimant shall have a period of fifteen days with effect from the date of receipt of the said notice within which to furnish his written or verbal explanations to the official receiver. After this time limit, he may no longer challenge the receiver's proposal. The said period shall be thirty days for creditors residing outside the national territory where the bankruptcy proceeding has been opened.

However, tax, customs and labour claims may be disputed only under the conditions laid down in instruments applicable to them respectively.

**Article 86**

Immediately after the expiry of the time limit stipulated in Article 78 above, where there is no challenge or dispute, or after the expiry of the period provided for in Article 85 above, where there was a challenge or dispute, the receiver shall establish a statement of claims. The statement contains his proposals for the definitive or provisional admission or rejection of the claims, with indication on the unsecured or secured nature of the claims, and when secured by what.

A creditor whose security alone is disputed shall be admitted provisionally as an unsecured creditor.

The statement of claims shall be deposited at the court registry after verification and signature by the official receiver who shall indicate for each claim the amount, the definitive or provisional nature of the admission, if it is unsecured or secured, when secured by what, if there is a pending proceeding or if the dispute is not within its competence.

The official receiver may reject a claim or a demand in whole or in part or declare himself incompetent only after having heard or duly summoned the creditor or claimant, the debtor and the receiver by registered letter with acknowledgment of receipt or by any means in writing.

**Article 87**

The court registrar shall immediately notify the creditors and claimants of the deposit of the statement of claims through a publication in one or more newspapers empowered to publish legal notices and by a publication in the Official Gazette containing an indication of the issue of the newspaper in which the first publication was made.

In addition, he shall forward a full copy of the statement of claims to the creditors.

Likewise, he shall send to the creditors and claimants, whose debt or claim has been rejected in whole or in part or whose security is refused, a notice indicating the

rejection or refusal, by registered letter with acknowledgment of receipt or by any means in writing. The notice must arrive at least fifteen days before the expiry of the time limit stipulated in Article 88 below for the filing of objection and contain a full reproduction of the provisions of Article 88 below.

#### **Article 88**

Every claimant or creditor mentioned on the balance-sheet and whose security is duly published or whose claim was produced shall be admissible, during a period of fifteen days with effect from the date of publication in a newspaper empowered to publish legal notices or of receipt of the notice provided for in Article 87 above, to raise objections, by way of opposition lodged directly at the court registry or by an extrajudicial act addressed to the court registry, against the decision of the official receiver.

The debtor or any interested person shall have the same right under the same conditions.

The decision of the official receiver shall be irrevocable in respect of persons who have not lodged an opposition.

#### **Article 89**

The demands and claims disputed or admitted provisionally shall be transferred to the competent court in matters of bankruptcy proceeding, by the court registrar, at the first hearing, to be adjudicated, upon the report of the official receiver, where the matter falls within the competence of the said court.

The court registrar shall notify the parties of the transfer by registered letter with acknowledgment of receipt or by any means in writing at least eight days before the court session.

Where the competent court cannot decide, on the merits of the claims before the termination of the bankruptcy proceeding, the creditor or claimant shall be admitted provisionally.

The court registrar shall, within a period of three days, notify the parties, by registered letter with acknowledgment of receipt or by any means in writing, of the decision taken by the competent court in their respect. He shall also mention the decision of the competent court on the statement of claims.

#### **Article 90**

Where the competent court in bankruptcy proceeding establishes that the claim of the creditor or claimant falls under the jurisdiction of another court, it shall declare itself incompetent and admit the claim provisionally.

The court registrar shall notify the parties of the said decision under the conditions laid down in the last paragraph of Article 89 above.

Where the creditor fails to refer the matter to the competent court within a period of one month from the date of reception of the registrar's notice provided for in the last paragraph of Article 89 above, he shall be barred and the official receiver's decision shall become irrevocable with respect to him.

Notwithstanding any provision to the contrary, individual disputes falling within the jurisdiction of labour courts shall not be subject to the attempts at conciliation provided for by the national law of each Contracting State.

### **Section III – Sureties and persons jointly and severally liable**

#### **Article 91**

A creditor who holds commitments subscribed, endorsed or guaranteed jointly and severally by two or more persons jointly and severally liable who have stopped payments may produce claims against all the general meetings of creditors up to the full amount of his debt and participate in distributions until complete payment of his claim where he has not received any partial payment thereof before the suspension of payment by persons jointly and severally liable with him.

#### **Article 92**

Where the creditor, who holds the commitments jointly and severally subscribed by the debtor in a state of court-ordered turnaround or liquidation of assets with other persons jointly and severally liable, has received a down payment on his claim before the suspension of payments, he shall produce claims against the general meeting of creditors only after deduction of such payment and shall retain, on the remainder due him, his rights against the persons jointly and severally liable or the surety.

The person jointly and severally liable or the surety who has made a partial payment shall produce claims against the same meeting of creditors for all that he has paid and was to be borne by the debtor.

#### **Article 93**

Notwithstanding the composition, the creditors shall retain their action for the full payment of their claim against the persons jointly and severally liable with their debtor.

#### **Article 94**

Where a creditor has received payment of a dividend on the assets of one or more persons jointly and severally liable who face a court-ordered turnaround or liquidation of assets, the latter have no action against one another except where the dividends generated by the said proceeding exceed the total amount of the principal and surcharges of the claim. In this case, the excess shall be attributed, according to the order of commitments, to those persons jointly and severally liable who would have others as guarantors and, where there is no order, the assets shall be distributed pro rata amongst them.

### **Section IV - Preferential right of wage earners**

#### **Article 95**

In the case of a court-ordered turnaround or liquidation of assets, claims resulting from a contract of employment or apprenticeship shall be guaranteed by the preferential right to wages established for the causes and amount defined by labour legislation and the provisions relating to securities.

#### **Article 96**

The receiver shall, within a period of ten days following the decision to open a proceeding and upon a mere decision by the official receiver, pay all the highly preferred claims of workers after deduction of down payments already received.

Where the necessary sums for this purpose are not available, the said claims shall be settled from the first funds collected before any other claim.

Where the said claims are paid thanks to an advance granted by the receiver or any other person, this allows the lender to enter into the rights of the workers and shall be reimbursed as soon as the necessary funds are collected without any other claims constituting an obstacle.

### **Section V - Right of cancellation of lease and preferential right of lessor of real property.**

#### **Article 97**

The opening of a bankruptcy proceeding shall not automatically entail the termination of the lease on buildings for the professional activity of the debtor, including premises adjoining the buildings and which are inhabited by the debtor or his family. Any provision to the contrary shall be deemed unwritten.

The receiver, in the case of liquidation of assets, or the debtor assisted by the receiver, in the case of a court-ordered turnaround, may continue with the lease or transfer it under conditions eventually provided in the contract concluded with the lessor and with all the rights and obligations attaching thereto.

Where the receiver, in the case of liquidation of assets, or the creditor assisted by the receiver, in the case of a court-ordered turnaround, decides not to pursue the lease, it shall be terminated upon a mere release formulated by extrajudicial act. The termination shall take effect at the end of the notice period stipulated in the said act that shall not be less than thirty days.

The lessor, who intends to request the termination of a lease or to have it established for reasons existing prior to the decision to open a proceeding, shall, where he has not yet done so, submit his request within a one month period following the second publication of the lease in a newspaper empowered to publish legal notices stipulated in Article 36 above or the publication in the Official Gazette stipulated in Article 37 (3) above.

The lessor who intends to make a request for termination of a lease for reasons occurring after the decision to open a proceeding shall make the request within a period of fifteen days following the date he had knowledge of the reason for termination. Termination shall be pronounced where the guarantees offered are considered inadequate by the competent court to safeguard the preferential right of the lessor.

#### **Article 98**

Where the lease is terminated, the lessor shall have a preferential right for the last twelve months of rents due before the opening of the proceeding as well as for the twelve months due or accruing after the said decision and for damages that could be awarded to him the payment of which he may request as soon as the termination is pronounced. In addition, he shall be creditor of the general meeting of creditors of the company for all rents due or damages awarded after the decision to open a proceeding.

Where the lease is not terminated, the lessor shall have a preferential right for the last twelve months of rents due before the decision to open a proceeding as well as for the twelve months of rents due or accruing after the said decision. He may demand the

payment of rents due or accruing after the decision to initiate a proceeding, for which he is besides creditor of the general meeting of creditors, as they become due, where the securities given to him during the contract are maintained or where those granted to him from the date of the decision to open a proceeding are considered adequate.

Where the lease is not terminated and in case of the sale or removal of the personal property furnishing the rented premises, the preferential right of the lessor on the real property shall guarantee the same claims and it shall be exercised in the same way as in case of termination. In addition, the lessor may request the termination of the lease as of right.

In the event of conflict between the preferential right of the lessor of real property and that of the vendor of the business on some items of movable property, the preferential right of the latter shall prevail.

## **Section VI - Rights of the spouse**

### **Article 99**

The content of the personal property of the spouse of the debtor, declared while in a court-ordered turnaround or liquidation of assets proceeding, shall be established by him in accordance with the rules of antenuptial settlement.

The general meeting of creditors could, by using all means to prove that the property acquired by the spouse of the debtor was purchased with assets provided by the latter, request that the purchases so made be added to the assets of the debtor.

The concerned spouse shall claim property recovered by virtue of these rules only with the duty of the liabilities and securities given on it.

### **Article 100**

A spouse, whose spouse was a trader at the time of celebration of the marriage or who became a trader in the year of the celebration, may not institute in a bankruptcy proceeding any action based on the benefits given by one spouse to the other by the marriage contract or during the marriage. For their part, the creditors may not avail themselves of the benefits given by one of the spouses to the other.

## **Section VII - Claims**

### **Article 101**

Actions of claims may be revived or instituted only where the claimant has produced his claims and complied with the formalities and time limits provided for by Articles 78 to 88 above.

The claims accepted by the receiver, the official receiver or the competent court shall be enforced, under penalty of debarment, within a period of three months from the date of the notice provided for in Article 87 (3) above or of the court decision admitting the claims.

### **Article 102**

Unpaid negotiable instruments or other securities given by their owner to be specially used for specific payments may be claimed where they are still in the debtor's portfolio.

**Article 103**

Goods deposited and personalties handed over to the debtor either to be sold on the owner's account or as a deposit, a loan, a trust or hire or any other contract subject to restitution may be claimed, provided that they are in kind.

Goods and personalties, in kind, sold with a clause subjecting the transfer of ownership to the full payment of the price may also be claimed, where such clause has been agreed upon between the parties in a written document and has been duly published in the Trade and Personal Property Credit Register.

However, concerning goods and personalties deposited with the debtor to be sold with or without an ownership reserve clause, there shall be no claim where, before the return of the goods and personalties, the price has been paid in full and immediately by the receiver assisting or representing the debtor, as the case may be.

In the case of transfer of the goods and personalties, the price or part of the price due may be claimed against the sub-purchaser where the price has neither been paid in value nor made up in a current account between the debtor and the sub-purchaser.

**Section VIII - Rights of vendor of movable property****Article 104**

Goods and personalties which have not been delivered or forwarded to the debtor or to a third party acting on his account may be retained by the vendor.

This exception shall be admissible even where the price is stipulated payable on credit and the transfer of property has taken place before the delivery or dispatched.

**Article 105**

Goods and personalties forwarded to the debtor may be claimed as long as the delivery thereof was never carried out in his warehouses or in those of the commission-agent responsible for selling them on his account or of an agent responsible for receiving them.

Nevertheless, the claim shall not be admissible where, before their arrival, the goods and personalties had been resold, without fraud, on regular invoices or transportation tickets.

**Article 106**

Goods and personalties may be claimed if they are in kind, in whole or in part, and if their sale was cancelled before the decision opening the proceeding either by a court decision or by way of a clause or a vested resolutive condition.

The claim shall also be admitted even where the cancellation of the sale is pronounced or established after the decision opening the proceeding where the action for cancellation was instituted by the vendor who has not been paid before the decision opening the proceeding.

However, no claim shall be admissible where, before the restoration of the goods and personalties, the price, together with the charges and damages awarded, is paid fully and immediately by the receiver assisting or representing the debtor, as the case may be.

## **Section IX - Execution of on-going contracts**

### **Article 107**

The suspension of payments ordered by a court decision shall not be a reason for cancellation of a contract and any resolatory clause for such a reason shall be deemed unwritten, except in the case of contracts concluded with regard to the person of the debtor and those expressly provided for by the law of each Contracting State.

### **Article 108**

The receiver alone shall have the option, regardless of the proceeding opened, to demand the execution of ongoing contracts, on condition that he provides the service promised to the other party.

Where the contract is a bilateral one and the receiver has not furnished the service promised, the other party may raise the plea of non-execution. Where the other party fulfils the promise without having received the service promised, he shall become the creditor of the general meeting of creditors.

The receiver may be called upon, by registered letter or by any means in writing, to make his choice or to provide the service promised within a period of thirty days, under penalty of cancellation, automatically, of the contract.

### **Article 109**

Where the receiver fails to take his option or to provide the promised service within the time limit specified in the notice, his non-execution may give rise, apart from cancellation of the contract, to damages the amount of which shall be added to the liabilities in favour of the other party.

The contracting party may not offset the down payments received for services not yet provided by him with the damages due for the cancellation. However, the competent court before which his action for cancellation against the receiver is brought may pronounce compensation or authorize him to defer the refund of the down payments until a decision is given regarding the damages.

### **Article 110**

Where dismissals for economic reason are urgent or indispensable, the receiver may be authorized to effect the dismissals by the official receiver according to the proceeding provided for in this article et seq., notwithstanding any provision to the contrary but without prejudice to the right to a notice and to compensation relating to the termination of the contract of employment.

The receiver shall, before referring the matter to the official receiver, establish the order of dismissals, in accordance with the provisions of the applicable labour law.

Dismissals of workers with the least professional aptitudes for the jobs maintained shall be proposed first and, in the case of equality of professional aptitudes, the least senior workers in the company, seniority being calculated according to the applicable labour law provisions.

The receiver shall, in order to have their opinions and suggestions, inform, in writing, staff representatives of the measures which he intends to take by providing them the list of workers he intends to dismiss and stating the criteria that he adopted. The staff representatives shall reply, in writing, within a period of eight days.

The employer shall forward to the Labour Inspectorate his letter of consultation of the staff representatives and the written reply of the latter or state that the staff representatives have not replied within the specified period of eight days.

**Article 111**

The order of dismissals established by the receiver, the opinion of the staff representatives where it has been given and the letter forwarded to the Labour Inspectorate shall be handed over to the official receiver.

The official receiver shall authorize the dismissals envisaged or some of them where they are necessary for rehabilitating the company, by decision served on the workers whose dismissal is authorized and on the auditor representing the workers where one has been appointed.

The decision authorizing or refusing the dismissals shall be liable to opposition within a period of fifteen days of its notification before the court that opened the proceeding that shall give its decision within a period of fifteen days.

The decision of the competent court shall be final.

**Section X - Continuation of activity****Article 112**

In the case of a court-ordered turnaround, the activity of the company shall be continued with the assistance of the receiver for an unspecified duration, unless otherwise decided by the official receiver.

The receiver shall, at the end of each period fixed by the official receiver and at least every three months, forward the results of operation of the company to the official receiver and to the representative of the Public Prosecutor's Department. In addition, he shall mention the amount of money deposited into the account of the bankruptcy proceeding opened under the conditions laid down in Article 45 above.

The official receiver may, at any time, put an end to the continuation of the activity of the company after having heard the receiver who he shall convene in the forms and within the time limits to be determined by him.

He may, where necessary, hear the creditors and auditors who so request by a reasoned declaration deposited at the court registry that shall notify him of such request immediately. Where the official receiver deems it necessary, he shall have the court registrar convene the creditors and auditors within a period of eight days by registered letter or by any means in writing. He shall hear them and draw up minutes of their declarations.

The official receiver shall take a decision within a period of eight days following the hearing of the receiver, the creditors and the auditors.

**Article 113**

In the case of liquidation of assets, the continuation of activity may be authorized by the competent court only for the purposes of liquidation and where such continuation does not endanger public interest or that of creditors.

The competent court shall take a decision upon a report of the receiver forwarded to the representative of the Public Prosecutor's Department.

The continuation of operation or activity shall cease three months after the authorization, unless the competent court renews it one or more times.

It shall end one year after the pronouncement of liquidation of assets, save in the case of an especially motivated decision of the competent court for a serious reason, in exceptional cases.

The receiver shall, every three months, forward the results of operation to the President of the competent court and to the representative of the Public Prosecutor's Department. In addition, he shall mention the amount of money deposited into the account of the bankruptcy proceeding opened under the conditions laid down in Article 45 above.

#### **Article 114**

In the case of a court-ordered turnaround, the official receiver shall, at the request of the receiver, decide whether the debtor or the managers of the corporate body shall participate in the continuation of operation and shall determine, in this case, the conditions under which they shall be remunerated.

In the case of liquidation of assets, the debtor or the managers of the corporate body may be employed to facilitate management only with the authorization of the competent court and under the conditions defined by the said court.

#### **Article 115**

The competent court may, at the request of the representative of the Public Prosecutor's Department, the receiver or an auditor, if one has been appointed, authorize the conclusion of a management under lease contract where the disappearance or suspension of activity, even provisionally, of the company is likely to jeopardize its recovery or to cause serious trouble to the national, regional or local economy in the production and distribution of goods and services.

The conclusion of a management under lease contract shall be possible even in the presence of a clause to the contrary in the lease on the real property.

The competent court shall refuse authorization where it considers that the guarantees offered by the manager under lease are inadequate or where the latter is not sufficiently independent of the debtor.

The conditions of duration of operation of the business by the debtor for the conclusion of a management under lease shall not apply.

The duration of the management under lease contract may not exceed two years. It shall be renewable.

The decision on the authorization of the management under lease shall be communicated and published as provided for in Articles 36 and 37 above.

#### **Article 116**

The receiver shall ensure that the manager under lease complies with his commitments. He may request the manager under lease to forward to him all documents

and information necessary for his mission. He shall report to the official receiver on the manager under lease's performance of his obligation at least every three months, stating the amount of money received and deposited into the account of the bankruptcy proceeding, interferences with the items leased and measures likely to solve any difficulty faced in the execution of the contract.

The competent court may decide, at any time, to terminate the management under lease contract, either of its own motion or at the request of the receiver, that of the representative of the Public Prosecutor's Department, that of an auditor, upon a report by the official receiver or where the lessee deliberately reduces the guarantees he had given or undermines the value of the business.

#### **Article 117**

All liabilities incurred regularly, after the decision opening the proceeding, from the continuation of activity and any regular activity of the debtor or that of the receiver shall be claims on the general meeting of creditors, except those incurred from the operation by the manager under lease which shall be borne exclusively by him without joint and several liability with the owner of the business.

### **Section XI - Liability of third parties**

#### **Article 118**

Third parties, whether creditors or not, who, through their wrongdoings, helped to delay the suspension of payments, to reduce the assets or to increase the liabilities of the debtor may be ordered to make good the loss suffered by the general meeting of creditors upon an action instituted by the receiver acting in the common interest of the creditors.

The competent court shall, to make good the loss, choose the most appropriate solution, that is either payment of damages or forfeiture of their securities for creditors who hold such guarantees.

## **CHAPTER V**

### **SOLUTIONS OF COURT-ORDERED TURNAROUND OR LIQUIDATION OF ASSETS**

#### **Section I – Solution of court-ordered turnaround**

##### **Sub-section I - Formation of the composition of turnaround**

#### **Article 119**

The debtor shall propose a composition with creditors under the conditions laid down in Articles 27, 28 and 29 above. Where a composition is not proposed or in case of withdrawal of the proposal, the competent court shall pronounce the opening of liquidation of assets or shall convert a court-ordered turnaround into a liquidation of assets.

As soon as the debtor deposits the composition proposal, the court registrar shall forward it to the receiver who shall seek the opinion of the auditors where they have been appointed. The court registrar shall notify the creditors of the said proposal by publishing same in a newspaper empowered to publish legal notices as well as of the deposit of the statement of claims under the conditions laid down in Article 87 above.

In addition, the court registrar shall notify creditors with a special real security to make known, no later than at the expiry of the time limit provided for in Article 88 above, whether they accept the said composition proposals or intend to grant time limits and cancellations different from those proposed, which they shall specify. The creditors shall be notified personally by registered letter with acknowledgement of receipt or by any means in writing containing a copy of the composition proposals. The time limit provided for in Article 88 above shall start running from the reception of the said notice.

The receiver shall avail himself of the periods for the production and verification of claims to compare the proposals of the debtor and the creditors on the preparation of the composition.

#### **Article 120**

Creditors with special real security, even where their securities, whatever the nature thereof, are disputed, shall deposit at the registry or shall address to the court registrar, by registered letter with acknowledgement of receipt or by any means in writing, their replies to the notice provided for in the preceding articles.

The court registrar shall forward certified true copies of the declarations of the creditors to the official receiver and the receiver as he receives them.

#### **Article 121**

Creditors whose claim is guaranteed by a special security shall retain the benefit of their security, whether or not they have made the declaration provided for in Article 120 above and regardless of the content of the declaration, save express renunciation of their security by them.

#### **Article 122**

The official receiver shall, within a period of fifteen days following the expiry of the period provided for in Article 88 above, refer the matter to the President of the competent court who shall order the court registrar to summon, by a notice published in newspapers and by letters addressed individually, the creditors whose claims have been admitted as unsecured claims definitively or provisionally.

The following shall be appended to the said individual notice comprising a full reproduction of Article 125 below:

- a statement drawn up by the receiver and deposited at the court registry showing the assets and liabilities of the debtor with an evaluation of his personal and real assets and preferential liabilities or secured and unsecured liabilities;
- the final text of the debtor's composition proposals with an indication of the guarantees offered and measures of turnaround as provided, in particular, in Article 27 above;
- the opinion of the auditors where they have been appointed;
- an indication that each creditor with a secured debt has made or not the declaration provided for in Articles 119 and 120 above and, where they have, the specification of the time limits and cancellations granted.

In the case where the composition proposal does not comprise any request for cancellation or requests for time limits exceeding two years, no bankruptcy meeting shall

be convened, even where other legal, technical and financial measures such as provided for in Article 27 above are proposed. Only the receiver, the official receiver, the representative of the Public Prosecutor's Department and the auditors, where they have been appointed, shall be heard.

### **Article 123**

The meeting shall hold at the venue, on the day and at the time fixed by the competent court in the presence of the official receiver and the representative of the Public Prosecutor's Department who shall be heard.

The creditors admitted shall attend the meeting in person or be represented by an authorized agent with a regular and special power of attorney.

A creditor whose secured debt only, whatever it may be, is challenged shall attend the deliberations as an unsecured creditor.

The debtor or the managers of corporate bodies invited to this meeting by the court registrar by registered letter or by any means in writing shall attend in person; they may be represented at the meeting only for reasons recognized as just by the competent court.

### **Article 124**

The receiver shall present a report to the meeting on the state of the court-ordered turnaround, the formalities fulfilled, the operations carried out and the results obtained during the continuation of activity.

A financial statement drawn up and closed on the last day of the preceding month shall be presented in support of the report.

The statement shall indicate the available or realizable assets, the unsecured liabilities and those guaranteed by a special real security or a general lien as well as the receiver's opinion on the composition proposals.

The receiver's signed report shall be handed over to the competent court that shall receive it after hearing the official receiver in his observations on the nature of the court-ordered turnaround and on the admissibility of the composition.

The representative of the Public Prosecutor's Department shall be heard in his oral or written submissions.

### **Article 125**

The competent court shall bring the matter to vote after submission of the report of the receiver.

Voting by correspondence and voting by proxy shall be admitted.

Creditors holding a special real security and having not made the declaration provided for in Article 120 above may take part in the voting without renouncing their security and grant time limits and cancellations different from those proposed by the debtor.

Unsecured creditors and those with a secured debt who have not made the declaration provided for in Article 120 above shall be presumed to have accepted the

composition where, having been duly summoned, they do not take part in voting at the bankruptcy meeting.

The composition shall be voted by the majority of creditors definitively or provisionally holding at least half of the total number of claims.

Where only one of these two conditions is met, the deliberations shall continue a week from the day of the meeting at the latest and without any other formality. In this case, the creditors present or duly represented who signed the minutes of the first meeting shall not be required to attend the second meeting. The resolutions taken by them and their adhesions given shall be irrevocable.

#### **Article 126**

The competent court shall prepare minutes of what was said and decided upon during the meeting; the signature by the creditor or his representative of the ballot papers appended to the minutes shall be as good as signature of the minutes.

Establishment by the competent court of the fulfilment of all the conditions provided for in Article 125 above shall be as good as ratification of the composition with creditors.

Otherwise, the decision shall establish the rejection of the composition and shall convert the court-ordered turnaround into liquidation of assets.

#### **Article 127**

The competent court shall ratify the composition only:

- 1° where the conditions of validity of the composition are met;
- 2° where no reason relating to the common interest or to law and order is likely to hinder the composition;
- 3° where the composition offers genuine possibilities of recovery of the company and settlement of its liabilities;
- 4° where, in the case of court-ordered turnaround of a corporate body, the management of the corporate body is no longer ensured by the managers whose replacement has been proposed in the composition proposals or by the receiver or managers against whom personal bankruptcy or prohibition to direct, manage or administer a commercial company has been pronounced.

In no case, the ratification of the composition shall validate the special benefits defined and punished by Articles 244 and 245 below. The time limits and cancellations granted by creditors with special real security under the conditions laid down in Articles 120 and 125 above shall not be considered as special benefits.

Nullity of the provision of special benefits shall not entail the cancellation of the composition, subject to the provisions of Article 140 below.

Where the composition does not comprise any cancellation or time limit exceeding two years, the competent court may pronounce the ratification thereof after receiving the reports of the receiver and the official receiver and hearing the auditors,

where they have been appointed, in their observations without inviting the creditors to vote.

#### **Article 128**

The competent court may appoint auditors or maintain those already appointed, failing which, the receiver to oversee the execution of the composition with creditors in bankruptcy. The duties of auditor shall be honorary, except where they are performed by the receiver. The remuneration of the receiver in his capacity as auditor shall be fixed by the competent court.

#### **Article 129**

The decision to ratify the composition shall be forwarded and published as provided for in Articles 36 and 37 above. The extract published in a newspaper empowered to publish legal notices shall indicate the name and address of the auditors of the composition or the receiver appointed as such. The composition may only be subject to appeal within a period of fifteen days and only by the representative of the Public Prosecutor's Department.

The decision dismissing the composition shall be forwarded and published as provided for in Articles 36 and 37 above. Only the representative of the Public Prosecutor's Department or the debtor may appeal against the composition within a period of fifteen days.

The decision of the court of appeal shall be forwarded and published as provided for in this article.

#### **Article 130**

Where a corporate body comprising members who are indefinitely and jointly and severally liable for the liabilities of the company is admitted for court-ordered turnaround, the creditors may accept the composition only in favour of one or more members.

Where the liquidation of assets of the corporate body is pronounced, the company's assets shall remain under the administration of the general meeting of creditors. The personal property of those in favour of whom the composition was granted shall be excluded from the composition that may contain the commitment to pay a dividend only on assets outside the company's assets. A member who has obtained a special composition shall be discharged of all obligations resulting from the liabilities of the company as long as he has paid the promised dividends.

### **Sub-section II - Composition with partial transfer of assets**

#### **Article 131**

Where composition comprises proposals of the partial transfer of assets, the time limit provided for in Article 22 (1) above for the convening of a bankruptcy meeting shall be one month.

The partial transfer of assets may concern a number of tangible, intangible, movable, or immovable properties.

The transfer of a company or a subsidiary shall be any transfer of property likely to be operated autonomously to maintain an economic activity, jobs relating thereto and to pay off liabilities.

Where the partial transfer of assets, company or subsidiary is envisaged in the composition scheme, the receiver shall draw up a descriptive statement of the tangible and intangible property whose transfer is envisaged, the list of jobs concerned, the real securities by which they are affected and the share of each property in the transfer price. This statement shall be appended to the individual notice provided for in Article 122 above.

The receiver shall be responsible for making known these transfer proposals by all means, in particular through legal notices, as soon as he and the debtor have adopted them definitively and approved by a decision of the official receiver.

### **Article 132**

The debtor assisted by the receiver and brought to the knowledge of the bankruptcy meeting that shall decide, under the majority conditions provided for in Article 125 above, to accept the most advantageous purchase offer, shall receive offers of purchase.

The competent court may ratify the partial transfer of assets only:

- where the price is enough to pay off creditors with special real security on the property transferred, except in the case of renunciation by them to this condition and acceptance of the provisions of Article 168 below;
- where the price is paid cash or where, in the case where the purchaser is granted grace periods for payment, the said grace periods do not exceed two years and shall be guaranteed by a joint guarantee of a banking establishment.

The debtor shall, with the assistance of the receiver, accomplish all the transfer formalities.

Where no purchase offer is made before the bankruptcy meeting or is deemed satisfactory by the meeting, the debtor may withdraw his offer to transfer. Where he maintains the offer, the transfer shall be made later under the conditions provided for in Articles 160 and seq. below.

### **Article 133**

The price of the partial transfer of assets shall be paid into the debtor's assets.

Where the entity transferred comprises property on which by a special security is attached, the transfer shall comprise redemption of the said security only where the price is fully paid and where the creditor guaranteed by the said security is paid off.

The purchaser may not transfer, under penalty of nullity, items of the assets that he has purchased, except in the case of goods, as long as the price has not been fully paid. The untransferable nature of the items of assets shall be published in the Trade and Personal Property Credit Register under the same conditions as those provided for the preferential right of the vendor of a business and in the land register in accordance with the provisions governing land registration as concerns items of real property.

The preferential rights of creditors with special secured debt on the price of property transferred shall be exercised in the order provided for in Articles 166 and 167 below.

Where the price is not paid in full, the debtor shall choose between the cancellation of the transfer and the implementation of the guarantee provided for in Article 132 (2) above.

### **Sub-section III - Effects and execution of the composition**

#### **Article 134**

The ratification of the composition shall render it compulsory for all creditors recorded prior to the decision opening the proceeding, regardless of the nature of their claims, except where a special legal provision prohibits the administration from granting cancellations or grace periods.

However, creditors with special real security shall be compelled only by the special grace periods and cancellations granted by them. Where the composition comprises grace periods not exceeding two years, the said time limits may be demurrable to them where the time limits granted by them are shorter.

No cancellation or grace periods exceeding two years may be imposed on workers without prejudice to the provisions of Article 96 above.

Creditors with secured liabilities shall not lose their guarantees but may enforce them only in the case of annulment or cancellation of the composition to which they assented or which was imposed on them.

The composition accorded the principal debtor or a person jointly and severally liable shall apply neither to the guarantor nor to other persons jointly and severally liable.

#### **Article 135**

Unless otherwise decided by the composition in bankruptcy, ratification shall preserve for each of the creditors, on the real property of the debtor, the mortgage registered by virtue of Article 74 above. In this case, the receiver shall be required to demand, by virtue of the ratification decision, a new registration of the same property specifying the sums guaranteed, in accordance with land registration regulations.

#### **Article 136**

As soon as the ratification decision becomes final, the debtor shall be free to administer and dispose of his property, with the exception of property transferred in accordance with Articles 131 to 133 above.

#### **Article 137**

The receiver shall report to the official receiver on his assistance mission.

Where the debtor fails to withdraw the documents and effects given to the receiver, the receiver shall be depositary for only two years with effect from the date he reports to the official receiver.

The official receiver shall endorse the written report. His duties and those of the receiver shall end at this moment, except in the case where the transfer of assets provided for in the last paragraph of Article 132 above is maintained.

The competent court shall give a ruling in the case of a challenge.

#### **Article 138**

Where one or more auditors have been appointed for the execution of the composition, in accordance with Article 128 above, they shall immediately make a report on any delay or any other default regarding the execution of the composition to the President of the competent court who may order an inquiry by the receiver who shall report to him thereon.

Where the mission of the auditors of the composition comprises the payment of dividends to creditors, the auditors shall have opened in a bank in their name and in their capacity as auditors of the execution of the composition, a special deposit account for the composition or for each composition, where they are appointed for several bankruptcy proceedings.

The auditors shall forward to the President of the competent court at the end of each half calendar year, the credit balance statements of the accounts that they have opened for compositions under their control.

The auditors shall hold an insurance policy covering their civil liability. They shall show proof of such policy to the President of the competent court.

#### **Sub-section IV - Cancellation and annulment of composition**

##### **Article 139**

The cancellation of the composition may be pronounced:

- 1° in case of non-performance by the debtor of his commitments under the composition or the cancellations and grace periods given. However, the competent court shall determine whether these defaults are sufficiently serious to definitively compromise the execution of the composition and, when the contrary is realized, may grant a grace period for payment which shall not exceed by more than six months those already granted by the creditors;
- 2° the debtor is prohibited, for whatever reason, from carrying on a commercial activity, except where the duration and nature of the said prohibition are compatible with the pursuance of the activity of the company under a management lease, for purposes of a possible transfer of the company under satisfactory conditions in the common interest;
- 3° where, in the case of a corporate body to which the composition is granted, the managers against whom personal bankruptcy or prohibition to direct, manage or administer a commercial company has been pronounced assume again, in fact or in law, the direction of the said corporate body. Where the prohibition is imposed on the managers during the execution of the composition, the latter shall be cancelled unless the managers stop, in fact, performing the duties that they have been prohibited from performing. However, the competent court may grant a reasonable grace period, which shall not exceed three months, within which to replace the said managers.

The matter may be referred to the competent court at the petition of a creditor or the auditors of the composition. The said court may also examine the matter of its own motion after hearing or duly summoning the debtor.

The cancellation of the composition shall not release the securities given to guarantee its full or partial execution.

**Article 140**

The composition shall be annulled in case of fraud resulting from a concealment of assets or an exaggeration of liabilities where the fraud was discovered after the ratification of the composition scheme or the composition with creditors.

The annulment shall, as of right, release the sureties guaranteeing the composition except where they had knowledge of the fraud at the time of their commitments.

Action for annulment shall be the preserve of the representative of the Public Prosecutor's Department who shall judge the appropriateness of instituting it or not. It may be instituted only within a period of one year following the discovery of the fraud.

The competent court shall alone judge the appropriateness of pronouncing or not the annulment of the composition depending on the common interest of creditors and workers.

**Article 141**

- (1) In case of cancellation or annulment of the preventive composition scheme, the competent court shall pronounce a court-ordered turnaround or liquidation of assets where it establishes suspension of payments.
- (2) In case of cancellation or annulment of the composition with creditors, the competent court shall convert the court-ordered turnaround into a liquidation of assets and shall appoint a receiver. Only one general meeting of creditors shall be constituted before and after the composition.

The receiver shall proceed, immediately, based on the former inventory and with the assistance of the official receiver, where seals had been affixed in accordance with Article 59 above, to check the assets, shares and bills. Where necessary, he shall make an inventory of them and draw up a supplementary balance sheet.

He shall immediately have the court registrar publish an extract of the decision given and an invitation to new creditors, if any, to produce their proofs of debt for verification under the conditions provided for in Articles 78 et seq. above.

The new proofs of debt produced shall be verified immediately.

The previously admitted claims shall automatically be carried forward to the new statement of claims, less sums of money that had been paid to the creditors as dividends.

**Article 142**

Where, before the cancellation or annulment of the composition, the debtor has paid no dividend, the cancellations under the composition shall be annulled and creditors recorded before the composition shall recover all their rights.

Where the debtor has already paid a part of the dividend, creditors recorded before the composition may claim, against the new creditors only part of their first claims corresponding to the share of the dividend promised which they have not yet received.

Holders of claims against the first general meeting of creditors shall conserve their preferential right with regard to the creditors who make up the said meeting.

**Article 143**

Acts done by the debtor between the ratification of the composition and its cancellation or annulment may be declared undemurrable only in case of fraud with respect to the rights of creditors and in accordance with provisions relating to revocatory action.

**Sub-section V – Occurrence of a second bankruptcy proceeding****Article 144**

The provisions of Articles 141, 142 and 143 above shall apply in the case where a second court-ordered turnaround or liquidation of assets is pronounced without prior annulment or cancellation of the composition.

**Article 145**

The competent court shall convert the court-ordered turnaround into a liquidation of assets where the debtor does not propose a composition or does not obtain same or where the composition has been annulled or cancelled.

The same shall apply where a natural person is incapable of continuing his activity because of the forfeitures suffered by him, without prejudice to the provisions of Articles 139, 2° above.

The decision converting the court-ordered turnaround into a liquidation of assets shall be subject to the rules of publication provided for in Articles 36 to 38 above.

**Section II – Solution of court-ordered liquidation of assets****Article 146**

As soon as liquidation of assets is pronounced, the creditors shall be constituted into a meeting.

Unless where he has already done so within the framework of Article 124 above, the receiver shall, within a one month period of assumption of duty, submit to the official receiver a statement drawn up using information in his possession containing an evaluation of the available or realizable assets and the unsecured liabilities and liabilities guaranteed by a special security or a lien with, where it concerns a corporate body, all information on possible pecuniary liability of the manager(s) of the corporate body.

The receiver shall draw up the statement of claims even where it appears to him that the funds derived from the realization of assets will be absorbed completely by court charges and preferential claims.

**Sub-section I – Sale of assets****Article 147**

The receiver alone shall sell the debtor's goods and personal property, collect liabilities owed him and pay the liabilities he owes.

The debtor's long-term claims may be transferred so as not to delay liquidation operations, under the conditions provided for in Article 148 for compromises and out-of-court settlements.

Funds derived from sales and debt recovery shall, after deduction of the amount of expenses and costs fixed by the official receiver, be immediately paid into an account specially opened with a bank or post office or the Public Treasury under the conditions laid down in Article 45 above. The receiver shall show proof to the official receiver of such deposits. In case of delay, he shall pay interest on the sums that he has not deposited into the account.

No objection to the funds paid into the special account of the bankruptcy proceeding shall be admissible.

#### **Article 148**

The receiver may, with the authorization of the official receiver, compromise and negotiate out-of-court settlement for all disputes concerning the general meeting of creditors, even those relating to real property rights and actions.

Where the object of the compromise or out-of-court settlement is of an unspecified value or falls outside the jurisdiction of the competent court of last resort, the compromise or out-of-court settlement shall besides be ratified by a decision of the competent court.

In any case, the court registrar shall, three days before the decision of the official receiver, summon the debtor by registered letter or by any means in writing stating the scope of the compromise or out-of-court settlement envisaged, and the conditions and legal and economic reasons for such act.

#### **Article 149**

The receiver may, where authorized by the official receiver, when reimbursing the debt, withdraw for the benefit of the general meeting of creditors, the pledge or security given on the debtor's property.

Where, within a period of three months following the decision liquidating assets, the receiver has not withdrawn the pledge or security or initiated the proceeding for the sale of the pledge or security, the pledgee or secured creditor may exercise or recover his right for individual lawsuit on which he shall report to the receiver.

The Public Treasury, the customs services and security and social insurance agencies shall have the same right for recovery of their preferential claims, which they shall exercise under the same conditions as the pledgees and secured creditors.

### **1. Common provisions for the sale of real property**

#### **Article 150**

The sale of immovable property shall take place following the forms prescribed for attachment of real property. However, the official receiver shall, after receiving the observations of the auditors, where they have been appointed, and hearing the debtor and the receiver or summoning them, fix the reserve price and the main conditions of sale and determine the terms and conditions of publication.

The official receiver may, under the same conditions, where the content of the property, its location and the offers received are of a nature to allow for a transfer out-of-court, authorize the sale, either by auction at a reserve price that he shall fix, or by mutual agreement at a price and under conditions, which he shall determine.

Where, within a period of three months following the decision liquidating assets, the receiver has not initiated the proceeding for the sale of the immovable property, a secured creditor may exercise or recover his right to institute an individual lawsuit on which he shall report to the receiver.

The Public Treasury, the customs services and security and social insurance agencies shall have the same right for recovery of their preferential claims that they shall exercise under the same conditions as the secured creditors.

Auction sales carried out in pursuance of the preceding paragraphs shall entail redemption of mortgages.

The receiver shall distribute the proceeds of the sales and establish order among the creditors subject to disputes that shall be brought before the competent court.

#### **Article 151**

At the request of the receiver or the pursuing creditor, the official receiver authorizing the sale of immovable property in pursuance of Article 150 above shall specify in the decision:

- 1° the reserve price of each of the property to be sold and the conditions of sale. Where a creditor pursues the sale, the reserve price shall be determined in agreement with the pursuing creditor, after duly hearing the receiver;
- 2° the number(s) of land certificates and the location of the real property which are the object of the sale or, where it concerns immovable property which have not yet been registered, their precise description as well as a copy of the decision or act authorizing the pursuing creditor to request registration;
- 3° the modalities of publication in relation to the value, nature and location of the property;
- 4° the notary commissioned, where necessary.

The official receiver may specify that failing auction sales attaining the reserve price, the sale could be made at a lower reserve price that he shall fix. He may, where the value and content of the property so justify, carry out a total or partial evaluation of the property.

#### **Article 152**

The official receiver's decision shall replace the summons to pay before execution of attachment of real property.

It shall be notified by extrajudicial act, by the court registrar, to the landed property registrar, to the debtor, to the receiver and to the registered creditors, at their elected residence, whose names are indicated in the decision.

It shall be published by the landed property registrar under the conditions provided for summons to pay before execution of attachment of real property.

The landed property registrar shall publish the decision even where the summons to pay before execution had been published earlier, which summons shall cease to be effective with effect from the date of publication of the decision.

He shall issue a statement of real property rights entered on the land certificates concerned to the receiver, the pursuing creditor or to the notary where necessary.

### **Article 153**

The pursuing creditor or the notary commissioned shall establish specifications that shall indicate the decision authorizing the sale and mention the goods to be sold and the reserve price, the conditions of sale and modalities of payment of the price.

## **2. Special provisions for sale by attachment of real property**

### **Article 154**

(1) Sale by attachment of real property shall be subject to the provisions relating to such sale, with the exception of those otherwise provided for by this Uniform Act.

The decision authorizing sale by attachment of real property shall comprise, apart from the information mentioned in Article 151 above:

- an indication of the competent court before which the expropriation shall be pursued;
- the briefing of the lawyer at whose chambers the residence of the creditor instituting the action shall automatically be elected and at whose chambers acts relating to objection to the summons to pay before execution and real property offers and all notifications relating to the sale.

(2) The official receiver may authorize the receiver or the creditor to pursue simultaneously the sale of several or all of the real property, even where they are located within the jurisdictions of different courts.

He shall decide whether the sale of real property shall be pursued before the courts within whose jurisdictions they are located or before the court within whose jurisdiction the residence of the debtor or the registered office of the company is located.

## **3. Special provisions for private sale of real property by auction**

### **Article 155**

The private sale of real property by auction shall be subject to the provisions relating to such sale, with the exception of those otherwise provided for by this Uniform Act.

The decision authorizing the private sale by auction shall appoint the notary who shall carry out the sale.

The notary shall, by registered letter with acknowledgement of receipt or by any means in writing, inform the registered creditors mentioned on the list of real property rights issued after publication of the decision, in order to make them consult the

specifications deposited at his chambers at least two months before the date fixed for the auction sale and to have their assertions and observations entered on it at least one month before the said date. The notary shall summon the creditors to the sale by the same letter or means in writing.

The notary shall summon the receiver and the debtor to the sale at least one month in advance.

#### **Article 156**

Sales by auction may be made without a lawyer.

Where no bid attains the amount of the reserve price, the notary shall record the highest bid and may award the property provisionally for the amount of the bid. The official receiver who fixed the reserve price, to whom the matter is referred at the request of the notary or any interested party, may either declare the award final and the sale concluded or he may order that a new sale will take place according to one of the forms provided for in Article 150 above. Where the new sale is a sale by auction, he shall fix the time for the new sale without such time being less than fifteen days, the reserve price and the terms and conditions of publication.

#### **Article 157**

Within a period of ten days following the auction sale, any person may make a higher bid of one-tenth on the price by a declaration lodged at the registry of the court within whose jurisdiction the notary who made the sale resides. The court registrar shall immediately refer the declaration to the official receiver.

The outbidder shall give notice of the said declaration by extrajudicial act to the person or at the residence of the purchaser within a period of ten days and shall inform the notary of the declaration.

The official receiver shall, by a decision ratifying the higher bid, transfer the new bid before the same notary who shall carry out the sale according to the specifications previously drawn up.

Where a second bid is made after a higher bid, no other higher bid may be made on the same property.

#### **Article 158**

Where there has been an irresponsible bid, the proceeding shall be pursued before the competent court within whose jurisdiction the notary who made the sale resides. The receiver shall issue the certificate establishing that the highest bidder has not fulfilled the clauses and conditions of the sale.

The minutes of the sale by auction shall be deposited at the registry of the competent court.

### **4. Special provisions for the sale of real property by mutual agreement**

#### **Article 159**

The decision authorizing the sale by mutual agreement of one or more items of real property shall determine the price of each item and the basic conditions of sale.

The court registrar shall notify the decision by extrajudicial act, to the debtor and the registered creditors, at their elected residence, whose names are mentioned in the decision.

Where the price is inadequate to pay off the registered creditors, they shall have a period of thirty days following notification of the decision to make a higher bid of one-tenth on the price by registered letter with acknowledgement of receipt or by any means in writing addressed to the receiver.

After this period, the receiver shall ratify the acts necessary for the sale, either with a purchaser of his choice where there is no higher bid or with the highest bidder in case of a higher bid.

## **5. Overall transfer of assets**

### **Article 160**

All or part of the personal and real assets comprising, possibly, operation units, may be transferred in whole.

In this connection, the receiver shall call for bids and shall fix the period within which they are received. Any interested person may submit a tender to the receiver, with the exception of the managers of the corporate body under liquidation, the relatives or relations by marriage of the said managers or of the debtor who is a natural person up to the second degree.

Every bid shall be written and shall state, in particular:

1. the price and modalities of payment. Where payment time limits are requested, they may not exceed twelve months and shall be guaranteed by a joint and several security of a banking establishment; and
2. the date of the transfer.

The bid shall be deposited at the registry of the competent court where any interested party may consult it and forwarded to the receiver, to the official receiver and to the representative of the Public Prosecutor's Department.

### **Article 161**

The receiver shall consult the debtor and, where they have been appointed, the auditors to have their opinions on the bids made.

He shall choose the bid that appears to him to be the most serious and submit it, together with the opinions of the debtor and auditors, to the official receiver.

### **Article 162**

The official receiver shall order the transfer by allocating a share of the transfer price to each of the items of real estate transferred with a view to sharing the price and exercising preferential rights.

The receiver shall draw up the deeds necessary for the transfer.

## **6. Effects of sale of assets**

**Article 163**

The effects of the transfer in whole of assets shall be those defined by Article 133 above.

The receiver shall be responsible for the cancellation of security registrations.

**Sub-section II - Payment of liabilities****Article 164**

The official receiver shall, where necessary, order the distribution of funds among the creditors, fix the amount to be distributed and ensure that all the creditors are notified of the distribution.

As soon as the distribution is ordered, the receiver shall forward to each admitted creditor, in payment of his dividend, a cheque in his name drawn on the account opened specially to that end in a banking establishment, post office or the Public Treasury.

**Article 165**

The amount of the assets, after making allowance for property liquidation expenses and charges as well as aid that would have been granted to the debtor or to his family, shall be distributed among all the creditors whose claim is verified and admitted.

The share corresponding to claims on whose admission a final decision has not yet been taken and, in particular, the earnings of managers of corporate bodies as long as a decision has not been taken on their case, shall be put aside.

The expenses and costs of liquidation of assets, including the receiver's fees, shall be deducted from the assets in proportion to the value of each item of the assets to the entire assets.

**Article 166**

Proceeds from the sales of real property shall be distributed as follows:

1. to creditors owed legal costs incurred in the process leading to the sale of the property and in the actual distribution of the proceeds;
2. to creditors of highly preferred wages in proportion of the value of the property to the entire assets;
3. to creditors having a mortgage and individual creditors registered within the legal time limit, each according to the rank of his registration in the land register;
4. to creditors of the general meeting of creditors as defined by Article 117 above;
5. to creditors with a general lien according to the order established by the Uniform Act organizing securities;
6. to unsecured creditors.

Where the funds are inadequate to fully pay off the creditors of any of the categories mentioned in 1°, 2°, 4°, 5° and 6° of this article and the said creditors occupy equal rank, the funds shall be distributed proportionately to their total liabilities.

#### **Article 167**

Proceeds from the sale of chattels shall be distributed as follows:

1° to creditors owed legal costs incurred in the process leading to the sale of the property and in the actual distribution of the proceeds;

2° to creditors who incurred the cost in conserving the debtor's property in the interest of the creditor with older liabilities;

3° to creditors of highly preferred wages in proportion of the value of the property to the entire assets;

4° to creditor guaranteed by a pledge according to the date of establishment of the pledge;

5° to creditors guaranteed by a pledge or preferential right subject to publication, each according to his rank in the Trade and Personal Property Credit Register;

6° to creditors with a special personal property lien, each according to the property to which the lien attaches;

7° to creditors of the general meeting of creditors as defined by Article 117 above;

8° to creditors with a general lien according to the order established by the Uniform Act organizing securities;

9° to unsecured creditors.

Where the funds are inadequate to fully pay off the creditors of any of the categories mentioned in 1°, 2°, 3°, 6°, 7° and 8° of this article and the said creditor occupy equal rank, the funds shall be distributed proportionately to their total liabilities.

#### **Article 168**

Where the sale price of property specially attached to a security is not enough to pay the principal and interest of a claim, the creditor holding the said security shall be treated, for the rest of his claim that has not been paid, as an unsecured creditor.

#### **Article 169**

The receiver shall draw up, half-yearly, a report on the state of the liquidation of assets. The report shall be deposited at the court registry and, save a waiver by the official receiver. A copy thereof shall be forwarded to the debtor, to all the creditors and to the auditors where they have been appointed.

The receiver shall inform the debtor of the liquidation operations as they are carried out.

### **Sub-section III - Closure of the meeting of creditors**

#### **Article 170**

When the liquidation of assets operations are terminated, the receiver, in the presence of the debtor or after he has been duly summoned by the court registrar by registered letter or by any means in writing, shall submit his accounts to the official receiver who shall establish the end of the liquidation operations in a report.

The debtor or the creditors shall forward the report to the competent court that shall pronounce the end of the liquidation of assets and, at the same time, settle disputes relating to the accounts of the receiver lodged.

The meeting of creditors shall automatically be dissolved and the creditors shall recover their right to individually institute their actions.

#### **Article 171**

Where the creditors' claims have been verified and admitted, the President of the competent court pronouncing the decision terminating the liquidation of assets shall endorse the final admission of the creditors, the dissolution of the meeting of creditors, the amount of the claim admitted and the rest of the claims due.

The court registrar shall include the executory clause in the decision. It shall not be subject to any remedy at law.

#### **Article 172**

The court registrar shall immediately forward an extract of the decision to terminate the liquidation of assets to the representative of the Public Prosecutor's Department.

The decision to terminate the liquidation of assets shall be published under the conditions provided for in Articles 36 and 37 above.

### **Section III – Termination for inadequacy of assets**

#### **Article 173**

Where funds are inadequate to undertake or complete liquidation of assets operations, the competent court, upon the report of the official receiver, may, at any time, pronounce, at the request of any interested party or even of its own motion, the termination of operations for inadequacy of assets.

The decision shall be published under the conditions provided for in Articles 36 and 37 above.

#### **Article 174**

The decision to close operations for inadequacy of assets shall enable each creditor to recover his right to institute individual actions.

To this end, the provisions of Article 171 above shall apply.

#### **Article 175**

The decision may be rescinded at the request of the debtor or any other interested party on justification that the funds necessary to defray expenses relating to operations have been deposited with the receiver.

#### **Article 176**

In all cases where it would be necessary to institute vicarious liability actions, the receiver shall be authorized to request legal aid by decision of the official receiver taken upon a petition outlining the purpose of the aid and the means to be used and before the decision to terminate the liquidation of assets.

**Article 177**

The receiver shall deposit his accounts at the court registry within a period of three months following termination for inadequacy of assets.

The court registrar shall immediately notify the debtor, against receipt, that he has a period of eight days within which to raise objections, where necessary.

In the case of a dispute, the competent court shall give a decision.

**Section IV - Termination for discharge of liabilities****Article 178**

After the establishment of claims and as long as the court-ordered turnaround proceeding is not closed by a decision ratifying the composition scheme or by the meeting of creditors by its decision taken under the conditions laid down in Article 170 above, the competent court shall, at any time, pronounce, at the request of the debtor or the receiver, or even on its own motion, the termination of the bankruptcy proceeding where there are no more liabilities due or where the receiver has enough funds or where the sums due in capital, interest and expenses have been deposited.

In the even of disappearance, absence or refusal of one or more creditors to receive the money, the sum due shall be deposited into an account specially opened in a bank or post office or the Public Treasury. The justification of the deposit shall be as good as a receipt.

Creditors may not claim more than three years of interest at the legal rate due with effect from the date of the decision establishing the suspension of payments.

This termination shall be pronounced upon the report of the official receiver establishing the existence of the conditions provided for in paragraphs (1) and (2) of this article.

The decision shall be published as provided for in Articles 36 and 37 above.

**Article 179**

After payment of all the liabilities due, the receiver shall deposit his accounts under the conditions laid down in Article 177 above.

**CHAPTER VI  
SPECIAL PROVISIONS FOR MANAGERS OF CORPORATE BODIES****Article 180**

The provisions of this chapter shall apply, in case of suspension of payments by a corporate body, to managers be they natural persons or corporate bodies, ex officio or de facto, apparent or hidden, remunerated or not and to natural persons who are permanent representatives of managing corporate bodies.

**Article 181**

Partners, who are indefinitely and jointly and severally liable for the liabilities of the company, where they are not managers, shall be subject to the bankruptcy proceeding in accordance with Articles 31 and 33 above.

#### **Article 182**

Provisions relating to seals and to aid to a debtor shall be extended to managers of corporate bodies subject to the provisions of this chapter.

### **Section I - Making up liabilities**

#### **Article 183**

Where a court-ordered turnaround or liquidation of assets of a corporate body results in an inadequacy of assets, the competent court may, where a management error contributed to such inadequacy of assets, decide, at the request of the receiver or even of its own motion that the corporate body's liabilities will be borne in whole or in part, with or without joint and several liability, by all or some of the managers.

The receiver's writ of summons shall be served on each manager implicated at least eight days before the court session. Where the competent court is examining the matter on its own motion, the President of the court shall have the court registrar summon them by extrajudicial act within the same period.

The competent court shall take a decision as soon as possible, after hearing the official receiver in his report and the managers in camera.

#### **Article 184**

The competent court shall be the one which pronounced the court-ordered turnaround or liquidation of assets of the corporate body.

#### **Article 185**

The competent court may enjoin the managers responsible in whole or in part for the liabilities of the corporate body to transfer their stocks, share capital in the company or order their compulsory transfer by the receiver, where necessary, after evaluation. The proceeds of the sale shall be allocated for the payment of the share of the liabilities of the corporate body to be borne by the managers.

#### **Article 186**

Action for making up the liabilities shall be barred after a period of three years following the date the final statement of claims is drawn up. In the case of cancellation or annulment of the composition agreement of the corporate body, the time lapse, which shall be suspended during the duration of the composition, shall begin to run again. However, the receiver shall again have a time limit which may not, in any case, be less than one year, to institute the action.

#### **Article 187**

Where a manager of a corporate body is already declared in a state of suspension of payments, the amount of the liabilities to be borne by him shall be determined by the competent court which pronounced the court-ordered turnaround or liquidation of assets of the corporate body.

In this case, the receiver of the bankruptcy proceeding of the corporate body shall prove claims in the court-ordered turnaround or liquidation of assets of the manager.

**Article 188**

The decision taken in pursuance of Article 183 above shall be subject to the provisions of Articles 36 and 37 above.

The publication shall be done under the registration number of the said corporate body in the Trade and Personal Property Credit Register with respect to the partners responsible for the liabilities of the company or the managers of a trading corporate body. Where they themselves are traders, the publication in the Official Gazette shall besides be made under the personal number of the managers.

**Section II - Extension of bankruptcy proceeding to managers****Article 189**

In the case of a court-ordered turnaround or liquidation of assets of a corporate body, any manager who, without being in a state of suspension of payments himself:

- carried out a personal commercial activity either through an intermediary or under cover of a corporate body concealing his dealings;
- disposed of the credit or property of the corporate body as his own;
- pursued abusively, in his personal interest, operation at a deficit which could but lead to suspension of payments by the corporate body;

may be declared personally in a court-ordered turnaround or liquidation of assets.

The competent court may also pronounce a court-ordered turnaround or liquidation of assets of managers who are responsible for all or part of the liabilities of the corporate body and fail to pay such liabilities.

**Article 190**

The competent court shall be the one that pronounced the court-ordered turnaround or liquidation of assets of the corporate body.

**Article 191**

Creditors admitted in the bankruptcy proceeding initiated against the corporate body shall, as of right be admitted in the court-ordered turnaround or liquidation of assets of the manager. The liabilities shall comprise, apart from the personal liabilities of the managers, those of the corporate body.

**Article 192**

The date of suspension of payments by the managers may not be later than that fixed by the decision pronouncing the court-ordered turnaround or liquidation of assets of the corporate body.

**Article 193**

The provisions of Article 188 above shall apply to the decision pronouncing the extension of the bankruptcy proceeding to managers of corporate bodies.

**PART III  
PERSONAL BANKRUPTCY AND DISCHARGE**

**Article 194**

The provisions of this Part shall apply:

1° to traders who are natural persons;

2° to natural persons who are managers of corporate bodies subject to bankruptcy proceeding;

3° to natural persons who are permanent representatives of corporate bodies that are managers of corporate bodies referred to in 2° above.

The managers of corporate bodies referred to in this article shall be ex officio or de facto managers, remunerated or not, apparent or hidden.

**Article 195**

The representative of the Public Prosecutor's Department shall oversee the implementation of the provisions of this Part and shall pursue their enforcement.

## **CHAPTER I PERSONAL BANKRUPTCY**

### **Section I - Cases of personal bankruptcy**

**Article 196**

The competent court shall, at any time during the bankruptcy proceeding, pronounce the personal bankruptcy of persons who have:

1° abstracted the accounts of their company, embezzled or hidden part of its assets or recognized fraudulently liabilities that did not exist;

2° carried out a commercial activity in their personal interest either through an intermediary or under cover of a corporate body concealing their dealings;

3° disposed of the credit or property of a corporate body as their own;

4° by fraudulent misrepresentation, obtained for themselves or for their company, a composition agreement which is later annulled.

5° committed acts in bad faith or inexcusable misfeasance or serious offences against trade rules and practices such as defined in Article 197 below.

Managers of a corporate body convicted for fraudulent bankruptcy or bankruptcy with irregularities deemed a breach of the law shall also be declared in personal bankruptcy.

**Article 197**

The following shall be presumed to be fraudulent acts, inexcusable misfeasance or serious offences against of trade rules and practices:

1° the carrying on of a commercial activity or the exercise of the function of manager, administrator, chairperson, general manager or liquidator in violation of a prohibition provided by the Uniform Acts or by the law of each Contracting State;

2° the absence of accounts in conformity with accounting regulations and with the practices of the profession, in consideration of the importance of the company;

3° the purchases for resale at lower prices with intent to delay the establishment of suspension of payments or the use, with the same intent, of ruinous means to obtain funds;

4° the subscription, on the account of third parties, without consideration, of commitments considered too important at the time of their conclusion, having regard to the situation of the debtor or of his company;

5° the abusive continuation of an unprofitable operation leading the company to suspension of payments.

#### **Article 198**

The competent court may pronounce the personal bankruptcy of managers who:

1° have committed serious errors other than those referred to in Article 197 above or who have shown proof of manifest incompetence;

2° have not declared, within a period of thirty days, the suspension of payments by the corporate body;

3° have not paid the share of the company's liabilities for which they are responsible.

#### **Article 199**

The personal bankruptcy of managers of corporate bodies shall deprive them of the right to vote at the meetings of the corporate bodies against which the bankruptcy proceeding is initiated. This right shall be exercised by an agent appointed by the official receiver to that end at the request of the receiver.

### **Section II - Proceeding**

#### **Article 200**

Where the receiver has knowledge of facts likely to justify personal bankruptcy, he shall immediately inform the representative of the Public Prosecutor's Department and the official receiver of the facts and submit a report thereon to them within a period of three days.

The official receiver shall forward the report to the President of the competent court. Where the receiver fails to submit such a report, the official receiver may himself make a report to the President of the competent court.

As soon as the report of the receiver or the official receiver is submitted to the President of the competent court, he shall immediately order the court registrar summon by extrajudicial act, at least eight days in advance, the debtor or the managers of the corporate body to appear before the court on a fixed day in order to be heard by the competent court sitting in camera in the presence of the receiver or after he has been duly summoned by the court registrar by registered letter or by any means in writing.

#### **Article 201**

The debtor or the managers of the corporate body implicated shall appear before the court in person. In case they are unable to appear which shall be duly justified, they may be represented by a person empowered to assist or represent parties before the court to which the case is referred.

Where the debtor or the managers of the corporate body do not appear before the court or are not represented, the competent court shall again summon them to appear in the same forms and time as those provided in Article 200 above. In case of repeated default, the competent court shall give a decision after full argument in their respect.

#### **Article 202**

Independently of information provided in the criminal record by the Criminal Procedure Code, decisions pronouncing personal bankruptcy shall be entered in the Trade and Personal Property Credit Register.

Concerning managers of non-trading corporate bodies, the said decisions shall be entered in the Register as well as on the margin of the entry stating the court-ordered turnaround or liquidation of assets.

Extracts of the decisions shall also be published by the court registrar in the Official Gazette and in a newspaper empowered to publish legal notices within the jurisdiction of the court that gave the decisions, under the conditions laid down in Articles 36 and 37 above.

### **Section III - Effects of personal bankruptcy**

#### **Article 203**

The decision pronouncing personal bankruptcy shall as of right imply:

- a general ban to trade and particularly to direct, manage, administer or control an individual business concern or any corporate body with an economic activity;
- a ban to hold an elective public office or to be an elector for the said public office; and
- a ban to hold any administrative, legal or professional representation office.

Where a competent court pronounces personal bankruptcy, it shall fix the duration thereof, which may not be less than three years and more than ten years.

Forfeitures, incapacities and bans resulting from personal bankruptcy shall, as of right, end at the appointed time of expiry.

## **CHAPTER II DISCHARGE**

### **Section I - Cases of discharge**

#### **Article 204**

The decision to close due to the discharge of liabilities shall entail the discharge of the debtor where the liabilities are discharged under the conditions laid down in Article 178 above.

To be automatically discharged, a partner who is jointly and severally liable for the liabilities of a corporate body declared in a state of suspension of payments shall justify that he has paid, under the same conditions, all the liabilities of the corporate body, even where a special composition scheme had been granted to it.

**Article 205**

The following may be discharged where their integrity is proved:

1° any person who has obtained a special composition scheme from creditors and who has fully paid the dividends promised;

2° any person who justifies the entire cancellation of his debt by his creditors or their unanimous consent to his discharge.

Managers of corporate bodies:

- against whom the court-ordered turnaround or liquidation of assets has been pronounced and who are personally in the situation provided for in the first paragraph of Article 204 above, and
- against whom only personal bankruptcy has been pronounced where the corporate body in respect of which the court-ordered turnaround or liquidation of assets has been pronounced is in the situation provided for in the first paragraph of Article 204 above, may also be discharged.

**Article 206**

A person declared in a state of personal bankruptcy may be discharged after his death where, during his lifetime, he met the conditions laid down in Articles 204 and 205 above.

**Article 207**

Persons convicted for a felony or a misdemeanour as long as the conviction leads to their prohibition to carry on a commercial, industrial or handicraft activity shall not be admitted for discharge.

**Section II - Proceeding****Article 208**

Every request for discharge shall be sent, together with receipts and documents justifying the request, to the representative of the Public Prosecutor's Department within whose jurisdiction the suspension of payments was established.

This magistrate shall forward all the documents to the President of the competent court who gave the decision and to the representative of the Public Prosecutor's Department of the residence of the applicant, asking them to gather all possible and useful information on the veracity of the facts given. The receiver shall be given the same documents and the same mission from this officer with the obligation to deposit a report within a period of one month with effect from the date the matter was referred to him.

**Article 209**

Notice of the request shall be given by registered letter or by any means in writing, by the registrar of the competent court, to each of the creditors admitted or recognized even by a subsequent court decision.

**Article 210**

Any creditor who has not been fully paid under the conditions laid down in Articles 178 and 204 above may, during the one month period with effect from the date of the notice, lodge opposition against the discharge by a mere declaration to the court registry supported by documents in proof.

The opposing creditor may also intervene in the discharge proceeding by a petition lodged with the President of the competent court and notified to the debtor.

**Article 211**

After the expiry of the periods provided for in Articles 208 and 210 above, the findings of the inquiries and reports prescribed above and the opposition lodged by the creditors shall be forwarded to the representative of the Public Prosecutor's Department to whom the request is referred who shall send them to the competent court together with his written address.

**Article 212**

The competent court shall, where necessary, summon the applicant and the opposing parties and shall hear them in camera.

**Article 213**

Where the request is rejected, it may be renewed only after a period of one year.

Where it is admitted, the decision shall be entered in the register of the competent court which gave the decision and in that of the residence of the applicant.

The decision shall also be addressed to the representative of the Public Prosecutor's Department of the place of birth of the applicant who shall enter it in the criminal record of the applicant against the declaration of a court-ordered turnaround or liquidation of assets.

**Article 214**

Discharge proceeding shall be exempt from stamp duty and registration.

**Section III - Effects of discharge****Article 215**

A debtor who is discharged shall be re-established in all the rights he had been deprived of by the decision pronouncing his personal bankruptcy.

**PART IV  
REMEDIES AT LAW****Article 216**

The following shall not be liable to opposition or appeal:

1° decisions relating to the appointment or replacement of the official receiver, the appointment or dismissal of receivers, and the appointment or dismissal of auditors;

2° decisions by which the competent court rules on a petition against decisions given by the official receiver within the limits of his powers, with the exception of decisions on claims and on the decisions provided for in Articles 162 and 164 above;

3° a decision taken by the competent court in pursuance of the last paragraph of Article 111 above;

4° decisions authorizing the continuation of operation of a company, except in the case provided for in paragraph 4 of Article 113 above.

#### **Article 217**

Decisions given in matters of court-ordered turnaround or liquidation of assets shall be provisionally enforceable, notwithstanding any opposition or appeal, with the exception of a decision ratifying a composition scheme as well as decisions pronouncing personal bankruptcy.

#### **Article 218**

Within the time limits provided for in matters of preventive settlement, court-ordered turnaround, liquidation of assets and personal bankruptcy, the day of the act, event or decision from which the time limits started running, on the one hand, and the last day, on the other hand, shall not be counted.

Any time limit which would normally expire on a Saturday, a Sunday or a public holiday shall be extended up to the following first working day. The same shall apply for notifications to be served at the town-hall or at the Legal Department where services are closed to the public on the last day of the time limit.

#### **Article 219**

An opposition, where it is admissible, shall be lodged against a decision given in matters of court-ordered turnaround or liquidation of assets by declaration at the court registry within a period of fifteen days with effect from the date of notification of the said decision.

However, for decisions subject to posting and publication in newspapers empowered to publish legal notices or in the Official Gazette, the said time limit shall start running only on the day when the last formality is fulfilled.

A decision shall be given on the opposition within a period of one month.

#### **Article 220**

An opposition, where it is admissible, shall be lodged against decisions given in matters of personal bankruptcy by declaration at the court registry within a period of fifteen days following notification of the decisions.

The debtor or the managers of corporate bodies shall be summoned to appear before the court in the forms, within the time limits and under the conditions provided for in Articles 200 and 201 of this Uniform Act.

A decision shall be given on the opposition with a period of one month.

**Article 221**

An appeal, where it is admissible, against a decision given in matters of court-ordered turnaround or liquidation of assets or personal bankruptcy shall be lodged within a period of fifteen days with effect from the date the decision is given.

The appeal shall be tried, on presentation of documents, by the court of appeal within a period of one month. The appeal decision shall be enforceable immediately.

**Article 222**

In matters of personal bankruptcy, the court registrar shall notify, within a period of three days, the representative of the Public Prosecutor's Department of the decision handed down.

The representative of the Public Prosecutor's Department may, within a period of fifteen days following the said notification, lodge an appeal against the decision given.

The Public Prosecutor's Department appeal shall be lodged by a declaration at the registry of the court which handed down the decision. The court registrar shall notify, against receipt, the debtor and the receiver of the decision.

**Article 223**

In the case of personal bankruptcy or other sanctions, the debtor or the managers shall lodge appeal by petition addressed to the President of the court of appeal.

The receiver shall be summoned to the suit by registered letter or by any means in writing addressed to him by the registrar of the court of appeal at the request of the representative of the Public Prosecutor's Department of the said court.

**Article 224**

Where the whole or part of the liabilities of a corporate body are borne by one or all of the managers of the body, the appeal shall be lodged as provided for in Article 221 above.

**Article 225**

In any case, the registrar of the court of appeal shall forward a copy of the decision of the court of appeal to the registry of the competent court to be entered on the margin of the decision and for the fulfilment, where necessary, of the publication formalities stipulated by Article 202 above.

**PART V  
BANKRUPTCY AND OTHER OFFENCES**

**CHAPTER I  
BANKRUPTCY AND ASSIMILATED OFFENCES**

**Article 226**

Persons declared guilty of bankruptcy and misdemeanours likened to bankruptcy shall incur the penalties provided for these offences by the provisions of the criminal law in force in each Contracting State.

**Section I – Ordinary bankruptcy and fraudulent bankruptcy**

**Article 227**

The provisions of this section shall apply:

- to traders who are natural persons; and
- to partners of commercial companies who have the status of trader.

#### **Article 228**

Every natural person in a state of suspension of payments who is in one of the following cases shall be guilty of bankruptcy with irregularities deemed a breach of the law:

1° where he has contracted, without receiving securities in exchange, commitments deemed too important in consideration of his situation when he contracted them;

2° where, with intent to delay the establishment of suspension of payments, made purchases for resale at lower prices or where, with the same intent, used ruinous means to obtain funds;

3° where, without a just excuse, he fails to make at the registry of the competent court the declaration of his state of suspension of payments within a period of thirty days;

4° where his accounts are incomplete or irregularly kept or where he has kept no accounts in conformity with accounting regulations and practices of the profession, in consideration of the importance of the company;

5° where, having been declared twice in a state of suspension of payments within a period of five years, this proceeding has been closed for inadequacy of assets.

#### **Article 229**

(1) Every natural person referred to in Article 227 above, in case of suspension of payments, who:

1° abstracted his accounts;

2° embezzled or concealed all or part of his assets;

3° either in his entries or by public acts or commitments under private deed or in his balance sheet fraudulently declares himself debtor of sums which he did not owe;

4° carried on the profession of trader in violation of a ban provided by the Uniform Act or by the law of each Contracting State;

5° after suspension of payments paid a creditor to the detriment of the general meeting of creditors;

6° stipulated with a creditor special benefits because of his vote during the deliberations of the general meeting of creditors or who concluded with a creditor a special agreement from which the creditor would enjoy a benefit to be borne by the assets of the debtor with effect from the date of the decision to initiate proceeding,

shall be guilty of fraudulent bankruptcy.

(2) Every natural person referred to in Article 227 above, during compulsory liquidation proceeding, who:

1° in bad faith, presented or permitted to be presented an income statement or a balance sheet or a statement of claims and liabilities or a statement of preferential claims and securities that is inexact and incomplete;

2° without the authorization of the President of the competent court, did one of the acts banned by Article 11 above,

shall also be guilty of fraudulent bankruptcy.

## **Section II - Offences assimilated to bankruptcy**

### **Section 230**

The provisions of this section shall apply to:

1° natural persons who are managers of corporate bodies subject to bankruptcy proceeding; and

2° natural persons who are permanent representatives of corporate bodies which are managers of corporate bodies referred to in 1° above.

The managers referred to in this article mean all the ex officio or de facto managers and, in general, any person having directly or by an intermediary administered, managed or liquidated the corporate body under cover or in the stead and place of its legal representatives.

### **Article 231**

The managers referred to in Article 230 above, in that capacity and mala fide, who:

1° used money belonging to the corporate body by carrying out mere chance operations or fictitious operations;

2° with intent to delay the establishment of suspension of payments by the corporate body, made purchases with a view to reselling them at lower prices or, with the same intent, used ruinous means to obtain funds;

3° after suspension of payments by the corporate body paid or permitted a creditor to be paid to the detriment of the general meeting of creditors;

4° made the corporate body contract, for others, without receiving securities in exchange, commitments deemed too important in consideration of its situation when the commitments were contracted;

5° kept or permitted to be kept or allowed to be kept irregularly or incompletely the accounts of the corporate body under the conditions laid down in Article 228-4° above;

6° failed to make at the registry of the competent court, within a period of thirty days, the declaration of the state of suspension of payments of the corporate body;

7° with a view to hiding all or part of their estate from proceeding against the corporate body in state of suspension of payments or those against partners or creditors of the corporate body, embezzled or concealed, attempted to embezzle or to conceal a part of their property or who fraudulently declared themselves debtors of sums of money they did not owe,

shall be punished with the penalties of bankruptcy.

#### **Article 232**

In corporate bodies comprising partners, who are indefinitely and jointly and severally liable for the liabilities of the corporate bodies, the legal or de facto representatives shall be guilty of bankruptcy with irregularities deemed a breach of the law where, without just excuse, they fail to make at the registry of the competent court, within a period of thirty days, a declaration of their state of suspension of payments or where such declaration does not include the list of jointly and severally liable partners with an indication of their names and residences.

#### **Article 233**

(1) The managers referred to in Article 230 above who have fraudulently:

1° hidden the books of the corporate body;

2° embezzled or concealed a part of its assets;

3° declared the corporate body debtor of sums of money that it did not owe either in entries or by public acts or commitments under private deed or in the balance sheet;

4° performed the function of manager in violation of a ban provided by the Uniform Acts or by the law of each Contracting State;

5° stipulated with a creditor, on behalf of the corporate body, special benefits because of his vote during the deliberations of the general meeting of creditors or who have concluded with a creditor a special agreement from which the creditor would enjoy a benefit to be borne by the assets of the corporate body, with effect from the date of the decision declaring the suspension of payments;

shall be punished with the penalties of bankruptcy.

(2) The managers referred to in Article 230 above, during preventive settlement proceeding, who:

1° in bad faith, presented or permitted to be presented an income statement or a balance sheet or a statement of claims and liabilities or a statement of preferential claims and securities that is inexact or incomplete;

2° without the authorization of the President of the competent court did one of the acts banned by Article 11 above;

shall also be punished with the penalties of fraudulent bankruptcy.

### **Section III - Prosecution of bankruptcy and assimilated offences**

#### **Article 234**

The matter shall be referred to the criminal court either upon prosecution by the representative of the Public Prosecutor's Department or upon the institution of a civil party action or by way of a summons of the receiver or any creditor acting in his own name or in the name of the general meeting of creditors.

The receiver may act in the name of the general meeting of creditors only after he has been authorized to do so by the official receiver, the auditors, where they have been appointed, after having stated their case.

Any creditor may intervene individually in bankruptcy proceeding where the receiver in the name of the general meeting of creditors institutes them.

#### **Article 235**

The receiver shall hand over to the representative of the Public Prosecutor's Department documents, stocks, bills and information requested from him.

The documents, stocks and bills given by the receiver shall, during the proceeding, be kept at the court registry for consultation.

Consultation shall take place at the request of the receiver who may make private extract of the documents, stocks and bills or request certified true copies which shall be sent to him by the court registrar.

Documents, stocks and bills, which have not been ordered to be presented to the court, shall, after the decision, be given to the receiver who shall acknowledge receipt thereof.

#### **Article 236**

Conviction for bankruptcy with irregularities deemed a breach of the law or fraudulent bankruptcy may be pronounced even where the suspension of payments has not been established under the conditions laid down by this Uniform Act.

#### **Article 237**

The costs of the proceeding instituted by the representative of the Public Prosecutor's Department may not be borne by to the general meeting of creditors.

In the case of conviction, the Public Treasury may institute its action for recovery of costs against the debtor only after the execution of the composition scheme in the case of a court-ordered turnaround or after the end of the meeting of creditors in the case of liquidation of assets.

#### **Article 238**

The costs of the proceeding instituted by the receiver in the name of the creditors shall be borne by the general meeting of creditors in case of discharge and, in case of conviction, by the Public Treasury except where the latter brings action against the debtor under the conditions laid down in paragraph 2 of Article 237 above.

#### **Article 239**

The costs of proceeding instituted by a creditor shall be borne by him in the case of discharge and, in the case of conviction, by the Public Treasury except the latter brings action against the debtor under the conditions laid down in paragraph 2 of Article 237 above.

## CHAPTER II OTHER OFFENCES

### Article 240

The following shall be punished with penalties of fraudulent bankruptcy:

1° persons convicted of having, in the interest of the debtor, hidden, concealed or covered up all or part of his personal property or real estate, without prejudice to the criminal provisions relating to aiding and abetting;

2° persons convicted of having fraudulently produced, in bankruptcy proceeding, either in their name or by putting forward another person not really concerned or impersonation, fictitious claims;

3° persons who, trading under the name of another person or under a false name, have, in bad faith, embezzled or concealed, attempted to embezzle or to conceal a part of their property.

### Article 241

The spouse, descendants, ascendants or relatives of the debtor or his relations by marriage who, unknown to the debtor, would have embezzled, misappropriated or concealed negotiable instruments pertaining to the assets of a debtor in a state of suspension of payments, shall incur the penalties provided by the criminal law in force in each Contracting State for offences committed to the detriment of a person under a disability.

### Article 242

Even where there is discharge in the cases provided for in Articles 240 and 241 above, the court before which the matter is brought shall rule on damages and on the re-incorporation, into the estate of the debtor, of property, rights or stocks hidden.

### Article 243

Any receiver of a bankruptcy proceeding who:

- carries out a personal activity under the cover of the company of the debtor concealing his dealings;
- disposes of the credit or property of the debtor like his own;
- dissipates the property of the debtor;
- pursues abusively and mala fide, in his own interest, either directly or indirectly an unprofitable operation of the company of the debtor;
- in violation of the provisions of Article 51 above, becomes purchaser on his own account, directly or indirectly, of the debtor's property;

shall be punished with the penalties provided by the criminal law in force in each Contracting State for offences committed by a person making a public call to the detriment of a hirer out, trustee, an authorized agent, a pledgee, bailor or a project owner.

### Article 244

A creditor who has:

- stipulated with the debtor or with any person special benefits by reason of his vote in deliberations of the general meeting of creditors;

- concluded a special agreement from which would derive in his favour a benefit to be borne by the debtor's assets with effect from the date of the decision to open a bankruptcy proceeding;

shall be punished with the penalties provided by the criminal law in force in each Contracting State for offences committed to the detriment of a person lacking capacity.

#### **Article 245**

The agreements provided for in the preceding article shall, in addition, be declared null and void by the criminal court in respect of any person, including the debtor.

Where the annulment of the said agreements is pursued by way of a civil action, the action shall be brought before the competent court which initiated the bankruptcy proceeding.

The creditor shall be required to return, to the rightful owner, the sums of money or stocks which he has received by virtue of the annulled agreements.

The annulment of a special benefit shall not entail the annulment of the composition scheme, subject to the provisions of Article 140 above.

#### **Article 246**

Without prejudice to the provisions relating to the criminal record, all conviction decisions given by virtue of the provisions of this Part shall, at the expense of the convicts, be posted and published in a newspaper empowered to publish legal notices. Summary extracts of the decision shall also be published in the Official Gazette, mentioning the issue of the newspaper empowered to publish legal notices in which the first publication was made.

### **PART VI INTERNATIONAL BANKRUPTCY PROCEEDING**

#### **Article 247**

Where decisions to open and close a bankruptcy proceeding as well as decisions settling disputes arising from the said proceeding and decisions on which bankruptcy proceeding have legal impact, pronounced in the territory of a Contracting State have become irrevocable, they shall be res judicata on the territory of the other Contracting States.

#### **Article 248**

The main content of decisions relating to bankruptcy proceeding and, where necessary, the decision appointing the receiver shall, at the request of the latter, be published in any Contracting State where such publication may be useful regarding the legal security or interests of creditors.

The same publication may be decided, of its own motion, by the competent court which opened the bankruptcy proceeding.

The receiver may also enter, where necessary, decisions relating to the bankruptcy proceeding in the land register, the Trade and Personal Property Credit Register or in any other public register kept in the Contracting States.

#### **Article 249**

A receiver appointed by a competent court may exercise, on the territory of another Contract State, all the powers conferred on him by this Uniform Act as long as no other bankruptcy proceeding has been initiated in that State.

The appointment of a receiver shall be established by presentation of a certified true copy of the original of the decision appointing him or by any other certificate drawn up by the competent court. A translation of this document into the official language of the Contracting State on whose territory the receiver wants to act may be required.

#### **Article 250**

A creditor who, after the opening of bankruptcy proceeding by the competent court of a Contracting State, obtains, by any means, the complete or partial payment of his claim on the property of the debtor located on the territory of another Contracting State, shall return to the receiver whatever he has already obtained without prejudice to ownership reserve clauses and actions for recovery of property.

Whoever, on the territory of a Contracting State, executes a commitment in favour of a debtor subject to bankruptcy proceeding opened in another Contracting State, while he ought to have done so in favour of the receiver of the said bankruptcy proceeding, shall be discharged where he executed the said commitment before the publication measures provided for in Article 248 of this Uniform Act, except where it is proved that he otherwise had knowledge of the proceeding.

#### **Article 251**

The acknowledgement of the effects of bankruptcy proceeding opened by the competent court of a Contracting State shall not be a bar to the opening of another bankruptcy proceeding by the competent court of another Contracting State.

Where bankruptcy proceeding is opened on the territory of a Contracting State where the debtor has his main place of business or the corporate body its registered office, they shall be called principal bankruptcy proceeding. Proceeding shall be referred to as secondary bankruptcy proceeding where it is opened on the territory of a Contracting State where the debtor does not have his main place of business or the corporate body its registered office.

#### **Article 252**

The receivers of the main bankruptcy proceeding and secondary bankruptcy proceeding shall have a duty of reciprocal information. They shall immediately communicate all information which may be useful for another proceeding, in particular the statement of production and verification of claims and measures aimed at putting an end to the bankruptcy proceeding for which they are appointed.

The receiver of secondary bankruptcy proceeding shall, at the right time, enable the receiver of the main bankruptcy proceeding to present proposals relating to the liquidation of assets or to any use of assets of the secondary bankruptcy proceeding.

#### **Article 253**

Any creditor may produce his claim at the main bankruptcy proceeding and at all secondary bankruptcy proceeding.

The receivers of the main and secondary bankruptcy proceeding shall also be empowered to produce in another proceeding claims already produced in proceeding for which they had been appointed, subject to the rights of creditors to object to it or to withdraw the claims they produced.

The provisions of this article shall apply, subject to those of Article 255 below.

#### **Article 254**

Secondary bankruptcy proceeding by preventive composition scheme or by composition with creditors or by liquidation of assets may be terminated only after consent is given by the receiver of the main bankruptcy proceeding. The consent shall be given within a period of thirty days with effective from the date of receipt of the request for notification made by the receiver of the secondary bankruptcy proceeding by registered letter or by any means in writing.

Silence on the part of the receiver of the main proceeding during a period of thirty days shall be regarded as consent.

The receiver of the main bankruptcy proceeding may refuse his consent only where he establishes that the solution proposed jeopardizes the financial interests of creditors of the proceeding for which he is appointed.

In case of disputes, the competent court for the termination of the secondary bankruptcy proceeding shall give a ruling as in matters of preventive composition scheme or composition with creditors or liquidation of assets.

#### **Article 255**

A creditor who obtained, in bankruptcy proceeding, a dividend on his claim, shall take part in distributions opened in another proceeding only where the creditors with the same rank have obtained, in the said other proceeding, an equivalent dividend.

#### **Article 256**

Where liquidation of the assets of a bankruptcy proceeding allows paying all the claims admitted in the proceeding, the receiver appointed for the bankruptcy proceeding shall immediately transfer the surplus of assets to the receiver of the other proceeding. Where there are many bankruptcy proceedings remaining, the surplus of assets shall be distributed equally amongst them.

### **PART VII FINAL PROVISIONS**

#### **Article 257**

All previous provisions repugnant to those of this Uniform Act are hereby repealed. This Uniform Act shall apply only to bankruptcy proceeding opened after its entry into force.

#### **Article 258**

This Uniform Act shall be published in the Official Gazette of OHADA and in the Contracting States. It shall enter into force on 1 January 1999.

Done at Libreville on 10 April 1998

For the Republic of Benin

Mr. Moïse Mensa  
Minister of Finance

Mr. Amidou Diabate  
Minister of Justice

For Burkina-Faso

Mr. Lerba Yarga  
Minister of Finance

For the Republic of Niger

Mr. Issifou Abba Moussa  
Minister of Justice

For the Republic of Cameroon

Mr. Joseph Belibi  
Secretary General of the  
Ministry of Justice

For the Republic of Senegal

Mr. Jacques Baudin  
Minister of Justice

For the Central African Republic

Mr. Marcel Metefara  
Minister of Justice

For the Republic of Togo

Mr. Assiba Amoussou-Guenou  
Secretary of State for Finance

For the Republic of Côte d'Ivoire

Mr. Kouakou Brou Jean  
Minister of Justice

For the Gabonese Republic

Mr. 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