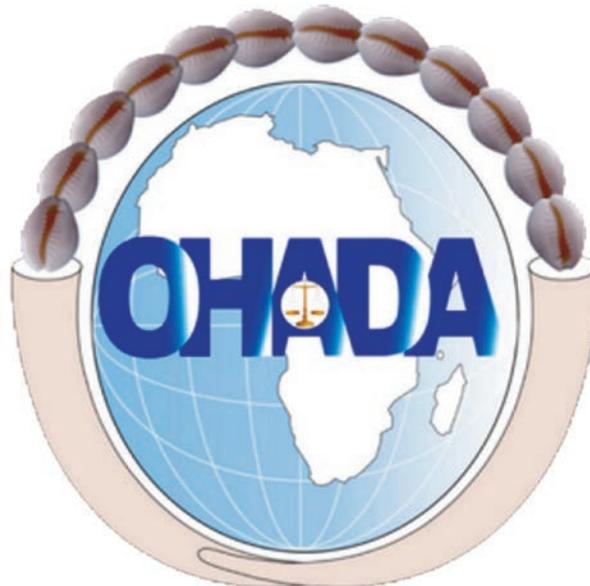


# Official Bulletin

## ORGANIZATION FOR THE HARMONIZATION OF BUSINESS LAW IN AFRICA



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## COMPILATION OF TREATIES AND UNIFORM ACTS

*Official Translation*





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**TREATY OF 17 OCTOBER 1993  
ON THE HARMONIZATION OF  
BUSINESS LAW IN AFRICA**



**PREAMBLE**

The President of the Republic of BENIN,  
The President of BURKINA FASO,  
The President of the Republic of CAMEROON,  
The President of the CENTRAL AFRICAN REPUBLIC,  
The President of the Islamic Federal Republic of the of COMOROS,  
The President of the Republic of CONGO,  
The President the Republic of CÔTE D'IVOIRE,  
The President of the Republic of GABON,  
The president of the Republic of EQUATORIAL GUINEA,  
The President of the Republic of MALI,  
The President of the Republic of NIGER,  
The President of the Republic of SENEGAL,  
The President of the Republic of CHAD,  
The President of the Republic of TOGO.



**HIGH CONTRACTING PARTIES TO THE TREATY FOR THE  
HARMONISATION OF BUSINESS LAW IN AFRICA.**

Determined to make more progress on the path to African unity and to establish an atmosphere of trust conducive to the economies of States Parties with a view to setting up a new pole of development in Africa;

Reaffirming their commitment to establishing an African Economic Community;

Convinced that membership in the Franc Zone, a factor of economic and monetary stability constitutes a major asset for the progressive realisation of their economic integration which must be pursued within a larger African framework;

Convinced that achieving these objectives requires the enactment in the States Parties, of harmonised, simple, modern and adapted business law, in order to facilitate business activities;

Conscious of the fact that it is essential that this law be applied with diligence in order to guarantee legal stability of economic activities, encourage the growth of the latter and create favourable environment for investment;

Desirous of promoting arbitration as an instrument for the settlement of contractual disputes;

Determined to jointly put in greater effort towards improving the training of judicial and legal officers and auxiliaries of justice;

Hereby agree as follows:



## **TITLE I GENERAL PROVISIONS**

### **ARTICLE 1**

The object of the present Treaty is to harmonise business law in the States Parties by the elaboration and adoption of simple modern common rules adapted to their economies, by setting up appropriate judicial procedures, and promoting arbitration as a means of settling contractual disputes.

### **ARTICLE 2**

For the purpose of the Treaty, business law shall include all regulations relating to company law, the definition and classification of traders, recovery procedures measures of enforcement, liquidation and administration proceedings and arbitration, labour law, accounting law, carriage and sales of goods, and any such other matters that the Council of Ministers shall unanimously decide, to include in accordance with the object of the Treaty and the provisions of Article 8 below.

### **ARTICLE 3**

The execution of the tasks laid down in the Treaty shall be ensured by an organisation known as the Organisation for the Harmonisation of Business Law in Africa (OHADA), comprising a Council of Ministers and a Common Court of Justice and Arbitration

The Council of Ministers shall be assisted by a Permanent Secretariat to which shall be attached a Regional Advanced School of Magistracy.

### **ARTICLE 4**

Rules for the implementation of the present Treaty shall be enacted, where necessary, by an absolute majority of the Council of Ministers.

## **TITLE II UNIFORM ACTS**

### **ARTICLE 5**

Acts enacted for the adoption of the common rules provided for in Article 1 of the Treaty shall be known as “Uniform Acts”.

Uniform Acts may include provisions relating to criminal offences. States Parties undertake to determine criminal sanctions that may be incurred.

### **ARTICLE 6**

Uniform Acts shall be drafted by the Permanent Secretariat in consultation with the Governments of the States Parties. They shall be debated and adopted by the Council of Ministers upon the opinion of the Common Court of Justice and Arbitration.

### **ARTICLE 7**

Draft versions of the Uniform Acts shall be forwarded by the Permanent Secretariat to the Governments of States Parties, who shall submit their written observations to the Permanent Secretariat within ninety days of receipt of the draft versions.

Upon expiry of the above time limit, the draft Uniform Acts, including the observations of the States Parties and a report from the Permanent Secretariat, shall be forwarded immediately by the latter to the Common Court of Justice and Arbitration for its opinion. The Court shall present its opinion thereto within thirty days of receipt of the said request.

Upon expiry of this time limit, the Permanent Secretariat shall finalise the text of the draft Uniform Acts and propose that it be included in the agenda of the next Council of Minister's meeting.

#### **ARTICLE 8**

Adoption of the Uniform Acts by the Council of Ministers shall be by a unanimous vote of the representatives of the Member States present and voting.

Adoption of the Uniform Acts shall not be valid unless at least two-thirds of the States Parties are represented.

Abstention shall not prevent the adoption of the Uniform Acts.

#### **ARTICLE 9**

Uniform Acts shall enter into force ninety days from the date of adoption, subject to contrary provisions in a particular Uniform Act. The Uniform Acts shall be enforceable within thirty clear days following their publication in the OHADA Official Gazette. The Uniform Acts shall also be published in the Official Gazette of States Parties or by any other appropriate means.

#### **ARTICLE 10**

Uniform Acts shall be directly applicable to and binding on the States Parties notwithstanding any previous or subsequent conflicting provisions of the national law.

#### **ARTICLE 11**

The annual programme for the harmonisation of business law shall be approved by the council of ministers on the recommendation of the permanent secretariat.

#### **ARTICLE 12**

Uniform Acts may only be amended in accordance with the provisions of Articles 7 to 9 above upon the request of a State Party.

### **TITLE III**

## **DISPUTES RELATING TO THE INTERPRETATION AND APPLICATION OF THE UNIFORM ACTS**

#### **ARTICLE 13**

Disputes relating to the application of the Uniform Acts shall be settled at first instance and on appeal therefrom by national courts of States Parties.

#### **ARTICLE 14**

The Common Court of Justice and Arbitration, shall, in the States Parties, ensure uniform interpretation and application of the Treaty, regulations laid down for its application, as well as the Uniform Acts.

Any State Party or the Council of Ministers may seek the advisory opinion of the Court on any issue relating to the preceding paragraph. National courts may also seek the opinion of the Court on matters relating to the application of section 13 above.

When sitting as the court of final appeal, the court shall rule on decisions delivered by the court of appeal of the States Parties on all matters relating to the Uniform Act and rules provided for in this treaty with the exception of decisions applying criminal sanctions.

The Court shall rule as above with regard to decisions delivered by any national courts of the States Parties in the same disputes, which are not be appealable to the court of appeal.

Where the Court quashes the decision of the national court, it shall reconsider the case on its merits.

#### **ARTICLE 15**

Appeals to the Common Court of Justice and Arbitration, as provided for in Article 14 above, shall be brought either directly by one of the parties to the proceedings, or upon referral of the highest appellate court of a State Party before which issues relating to the application of the Uniform Acts have been brought.

#### **ARTICLE 16**

The lodging of an appeal before the Common Court of Justice and Arbitration shall stay any proceedings pending before the highest appellate national Court. However this rule does not concern the enforcement of the decision under appeal. Any such proceedings may only be relisted after the Common Court of Justice and Arbitration has declared its lack of jurisdiction.

#### **ARTICLE 17**

The manifest lack of jurisdiction of the Common Court of Justice and Arbitration may be raised either by the Court of its own motion or in *limine litis* by any party to the proceedings. The Court shall rule within thirty days.

#### **ARTICLE 18**

Any party who challenges the jurisdiction of a national final appellate court, and has been overruled, may bring the issue before the Common Court Justice and Arbitration within two months of notification of the said ruling.

The court shall rule on the issue of its jurisdiction by a decision which shall be notified to the party and the national court concerned.

Where the court decides that the national court had in error decided that the matter in issue was outside its jurisdiction such decision of the national court shall be deemed null and void

#### **ARTICLE 19**

The procedure before the Common Court of Justice and Arbitration shall be determined by the Rules adopted by the Council of Ministers pursuant to Article 8 above and shall be published in the OHADA Official Gazette, as well as in the Official Gazette of the States Parties or by any other appropriate means.

The hearing shall be in the presence of all parties. The assistance of a counsel is mandatory. The hearing shall be in open court.

## ARTICLE 20

Judgments of the Common Court of Justice and Arbitration are final and enforceable. They shall be enforceable in the States Parties in the same manner as decisions of national courts. Any decision which is contrary to a judgment of the Common Court of Justice and Arbitration delivered in respect of the same matter shall not be enforceable in the territory of a State Party.

## TITLE IV ARBITRATION

### ARTICLE 21

Pursuant to an arbitration clause or submission agreement, any party to a contract may submit a contractual dispute to arbitration as provided for in this part, where one of the parties is domiciled or has his usual place of residence in the territory of a State Party, or where the contract is performed or will be performed wholly or partly in the territory of one or more States Parties.

The Common Court of Justice and Arbitration shall not itself settle such a dispute. It shall appoint or confirm arbitrators who shall keep the court informed of the progress of the proceedings and submit the draft award to the court for its approval in conformity with article 24 below.

### ARTICLE 22

Disputes may be settled by a sole or by three arbitrators. Under the following articles, the term “arbitrator” may either refer to one or more arbitrators

Where the parties have agreed that the dispute shall be settled by a sole arbitrator, he shall be appointed by mutual agreement, subject to the approval of the Court. Where the parties fail to agree within thirty days of notification of the request for arbitration, the arbitrator shall be appointed by the Court.

Where the dispute is to be referred to three arbitrators, each party shall in the request for arbitration or in the reply to the request appoint an independent arbitrator, subject to the approval of the Court. If one of the parties fails to appoint an arbitrator, the latter shall be appointed by the Court. The third arbitrator who will act as President of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed that the two arbitrators they had designated would appoint the third arbitrator within a given time limit. In that case the Court shall confirm the third arbitrator. If the two arbitrators fail to agree on the third arbitrator within the time limit fixed by the parties or the Court, the third arbitrator shall be appointed by the court.

Where the parties have not mutually agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator; unless it appears that the dispute is such as to justify the appointment of three arbitrators. In that case, the parties shall appoint the arbitrators within a period of fifteen days.

The arbitrators may be chosen from the list of arbitrators established by the Court and updated annually. No members of the Court may be registered on the said list.

The Court shall rule on any challenge of an arbitrator by a party. Its decision shall not be subject to appeal.

An Arbitrator shall be replaced upon his death or when he is unable to perform functions, or when he has to resign from assignment either by reason of his challenge a party or for any other reason or when the Court, after having examined his observations, decides that he has not fulfilled his obligations pursuant to the provisions of this Part or the time limit provided herein or in the Rules of Arbitration of the Common Court of Justice Arbitration. In either case, the court shall precede in accordance with paragraphs two and three above.

### **ARTICLE 23**

Any national court of a State Party before which a dispute which the parties had agreed to settle by arbitration is brought shall upon the request of one of the parties declare it lacks jurisdiction and, where applicable, refer the matter to Arbitration, in accordance with the present Treaty.

### **ARTICLE 24**

Before signing a partial or final arbitral award, the arbitrator shall submit the draft to the Common Court of Justice and Arbitration. The Court may only propose amendments as to the form of the award.

### **ARTICLE 25**

Arbitral awards made in compliance with the provisions of this Part shall be final and binding in the territory of each

State Party, in the same manner as decisions delivered by their national courts.

Such awards may be forcefully enforced by virtue of *exequatur*.

The Common Court of Justice and Arbitration has exclusive jurisdiction to grant such *exequatur*

*Exequatur* shall only be refused in the following cases:

- 1) where the Arbitrator has ruled without an arbitration agreement-or where the arbitration agreement was void or had expired;
- 2) where the Arbitrator has not ruled within the scope of the mission conferred upon him;
- 3) where the principle of an adversary process has not been respected.
- 4) where the award is contrary to international public-policy

### **ARTICLE 26**

The Rules of Arbitration of the Common Court of Justice and Arbitration shall be laid down by the Council of Ministers in accordance with the provisions of Article 8 above. The Rules shall be published in the OHADA Official Gazette of and in the Official Gazette of the States Parties and by any other appropriate means

## TITLE V INSTITUTIONS

### ARTICLE 27

The Council of Ministers shall be composed of the Ministers in charge of Justice and Ministers in charge of Finance.

Each State Party shall in turn preside, over the Council of Ministers for a year, in the following order: Benin, Burkina Faso, Cameroon, Central Africa, Comoros, Congo, Côte d'Ivoire, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo.

Where a State Party is unable to take office when due, the Council of Ministers shall designate the state coming immediately after in the order provided above

### ARTICLE 28

The Council of Ministers shall meet at least once a year. It shall be convened by its president on his own initiative or at the request of at least one third of the States Parties. No deliberation shall take place unless at least two-thirds of the States Parties are represented.

### ARTICLE 29

The President of the Council of Ministers shall establish the agenda of the council on the proposal of the Permanent Secretariat.

### ARTICLE 30

The decisions of the Council of Ministers, other than those provided for in Article 8 shall be arrived at by an absolute majority of the States Parties present and voting. Each State shall have one vote.

### ARTICLE 31

The Common Court of Justice and Arbitration shall be composed of seven judges elected for a seven year term renewable once, from among nationals of the States Parties, in the following functions and under the following conditions:

- 1) Judicial and legal officers with at least fifteen years of professional experience, having held high judicial or legal office;
- 2) Lawyers who are members of the Bar of one of the States Parties with at least fifteen years of professional experience;
- 3) Lecturers of law with at least fifteen years of professional experience.

Only two members of the court may belong to the categories provided for in paragraphs 2 and 3 above

One seventh of the composition of the Court is renewed each year.

The Court shall not consist of more than one judge from the same State Party.

### ARTICLE 32

The members of the Court shall be elected by a ballot of the Council of Ministers from a list of candidates nominated by the States Parties for this purpose

No State may nominate more than two candidates.

### **ARTICLE 33**

The Permanent Secretary of OHADA shall invite the States Parties to furnish a list of their candidates, within a period of at least four months before the elections

The Permanent Secretary of OHADA shall establish a list in alphabetical order of the candidates presented and shall transmit a copy thereof to the States Parties at least one month before the elections.

### **ARTICLE 34**

Upon their election, the members of the Court shall solemnly take oath to faithfully perform their functions with total impartiality.

### **ARTICLE 35**

In the event of death of a member of the Court, the President of the Court shall immediately inform the Permanent Secretary, who shall declare the seat vacant from the date of the member's death.

In case of the resignation of a member of the Court, or if, in the unanimous opinion of the other members of the Court, a member has ceased to perform his functions for reasons other than temporary absence or if he is no longer able to perform them, the President of the Court, after having invited the member concerned to present his oral observations before the Court, shall inform the Permanent Secretary who shall then declare the seat vacant.

In each of the circumstances mentioned above, the Council of Ministers shall proceed under the conditions set forth in Articles 32 and 33, with the replacement of the member whose seat has become vacant, for the remaining period of the mandate, unless the remaining period is less than six months.

### **ARTICLE 36**

Members of the Court shall be irremovable.

A member of the court shall remain in office until the date his successor assumes duty.

### **ARTICLE 37**

The Court shall elect from among its own members, for a non renewable term of three and a half years, its President and two Vice Presidents. The members of the Court whose remaining term of office at the date of the election is less than this duration may be re-elected by the Council of Ministers to exercise a new term as members of the Court. Members of the Court shall not be allowed to exercise political or administrative functions. Any other paid activity must be authorised by the Court.

### **ARTICLE 38**

The duration of the term of office of the seven judges elected simultaneously for the initial constitution of the Court will be respectively three years, four years, six years, seven years, eight years and nine years. The term of office of each judge shall be determined by lots drawn by the President of the Council of Ministers at a session of the Council. The first renewal of the members of the Court shall take place three years from the date of its initial constitution.

**ARTICLE 39**

The President of the Common Court of Justice and Arbitration shall appoint the Registrar-In-Chief on the recommendation of the Court from among the Registrars-in-Chief, who have served in that capacity for at least fifteen years, and nominated by States Parties. Upon the proposal of the Registrar-In-Chief, the President shall employ other personnel of the Court.

The Registrar-in-Chief shall serve as the Secretary of the Court.

**ARTICLE 40**

The Permanent Secretary shall be appointed by the Council of Ministers for a four year term renewable once.

He shall appoint his collaborators in compliance with the criteria laid down by the Council of Ministers and within the limit of the number provided for in the budget.

He shall be in charge of the Permanent Secretariat.

**ARTICLE 41**

There shall be created a Regional Advanced School of Magistracy which shall help in the training and further training of judicial and legal officers and auxiliaries of justice of States Parties. The Director of the School shall be appointed by the Council of Ministers.

The organisation, functioning, resources and the services of the school shall be laid down by regulations of the Council of Ministers pursuant to a report of the Director of the school.

**ARTICLE 42**

French shall be the working language of OHADA

**TITLE VI  
FINANCIAL PROVISIONS**

**ARTICLE 43**

The resources of OHADA consist principally of:

- a) The annual contributions of the States Parties,
- b) Assistance provided for in conventions between OHADA and States or International Organisations.
- c) Gifts and legacies.

The annual contributions of Member States shall be determined by the Council of Ministers. The Council of Ministers shall approve the conventions referred to in paragraph b) and shall receive the gifts and legacies referred to in paragraph c).

#### **ARTICLE 44**

The schedule of fees for arbitral proceedings provided for in the present, Treaty, as well as the distribution of the corresponding income shall be approved by the Council of Ministers.

#### **ARTICLE 45**

The annual budgets of the Common Court of Justice and Arbitration and of the Permanent Secretariat shall be approved by the Council of Ministers.

The accounts of the last financial year shall be certified by auditors appointed by the Council of Ministers. The said accounts shall be approved by the Council of Ministers.

## **TITLE VII STATUS, IMMUNITIES AND PRIVILEGES**

#### **ARTICLE 46**

OHADA shall have full international legal personality. In particular, it shall have the capacity:

- a) to enter into contracts;
- b) to acquire and dispose of movable and immovable property
- c) to sue and be sued.

#### **ARTICLE 47**

In order to perform its functions, OHADA shall enjoy in the territories of each State Party the immunities and privileges provided for in this title.

#### **ARTICLE 48**

OHADA as well as its property and assets, shall not be subject to any judicial-proceedings, unless it waives its immunity.

#### **ARTICLE 49**

The civil servants and employees of the Permanent Secretariat, the Regional Advanced School of Magistracy and the Common Court of Justice and Arbitration, as well as the Judges of the Court and the Arbitrators designated by the Court, shall enjoy privileges and diplomatic immunities in the course of their duties. Furthermore, the judges shall not be prosecuted for acts performed outside of their duties, unless otherwise authorised by the Court,

#### **ARTICLE 50**

The archives of OHADA shall be inviolable irrespective of where they are kept.

#### **ARTICLE 51**

OHADA as well as its assets, property and revenue, including the operations authorised by the present Treaty, shall be exonerated from taxes, custom and excise duties. OHADA shall also be exempt from any obligation related to the recovery or payment of taxes, custom or excise duties.

## TITLE VIII PROTOCOL CLAUSES

### ARTICLE 52

The present Treaty shall be ratified by the States Parties in accordance with the procedure laid down by their respective constitutions.

The present Treaty shall enter into force sixty days after the date of deposit of the seventh instrument of ratification. However, if the date of the deposit of the instrument is earlier than the hundred and eightieth day that follows the day of signing the Treaty, the Treaty shall enter into force the two hundred and fortieth day following the day of signing.

With regard to any State Party which shall deposit the instrument of ratification following the above, the Treaty and the Uniform Acts adopted before the ratification, shall enter into force sixty days after the date of the said deposit.

### ARTICLE 53

As soon as the treaty enters into force, membership shall be open to all Member States of the O.A.U. which are not signatory to the Treaty. Membership shall also open to any other state which is a non-Member State of the O.A.U. invited to adhere to it, upon the mutual agreement of all the States Parties.

With regard to any adhering State, the Treaty and the Uniform Acts enacted prior to its adherence shall come into force sixty days after the deposit of the instrument of adhesion.

### ARTICLE 54

No reservation shall be allowed to the present Treaty.

### ARTICLE 55

As soon as the Treaty enters into force, the common institutions provided for in Articles 27 to 41 will be established. States Parties which have not yet ratified the Treaty may nonetheless sit at the Council of Ministers as observers without the right to vote.

### ARTICLE 56

Any dispute that may arise between States Parties regarding the interpretation or the application of the present Treaty and which is not settled by mutual agreement may be referred by a State Party to the Common Court of Justice and Arbitration.

Where a judge of the nationality of one of the parties is a member of the panel any other party to the case may choose an ad hoc judge to sit in his place. The latter shall comply with the criteria set forth in Article 31 above.

### ARTICLE 57

The instruments of ratification and adhesion shall be deposited with the Government of Senegal which shall be the depository Government.

### ARTICLE 58

Any State ratifying the present Treaty or adhering to it after the entry into force of an amendment to it shall be deemed to be a party to the Treaty as amended.

The Council of Ministers shall include the name of the adhering State on the list provided for in Article 27 immediately before the name of the State assuming the presidency of the Council of Ministers at the date of its adherence

#### **ARTICLE 59**

The depositary Government shall register the Treaty with the Secretariat of the O.A.U. and with the United Nations Secretariat in accordance with Article 102 of the United Nations Charter.

#### **ARTICLE 60**

The depositary Government shall inform, without delay all the signatories or adhering States of:

- a) the dates of signature;
- b) the dates of registration of the Treaty;
- c) the dates of filing of the instruments of ratification and adhesion.
- d) the date of the entry into force of the Treaty.

## **TITLE IX REVISION AND DENUNCIATION**

#### **ARTICLE 61**

The present Treaty may be amended or revised where a State Party makes a written request to the Permanent Secretariat of OHADA. The amendment or the revision must be adopted in the same manner as the Treaty.

#### **ARTICLE 62**

The present Treaty is concluded for an unlimited duration. In any event it shall not be denounced before ten years from the date of its entry into force.

Any denunciation of the Treaty shall be notified to the depositary Government and shall not become effective until one year after the date of such notification.

#### **ARTICLE 63**

The Treaty, drawn up in two copies in the French language, shall be deposited in the archives of the Republic of Senegal which shall deliver a certified true copy to each State Party.

In witness whereof, the Heads of State and plenipotentiaries undersigned have affixed their signatures at the end of the present Treaty.

The President of the Republic of Benin,  
**Mr Nicéphore SOGLO**

The President of the Republic of Burkina Faso,

**Mr Blaise COMPAORE**

The President of the Republic of Cameroon,  
**P.p Mr Paul BIYA,**  
Minister of Foreign Affairs

The President of the Central African Republic,  
**Mr Ange-Félix PATASSE**

The President of the Islamic Federal Republic of the Comoros,  
**Mr SAID MOHAMED DJOHAR**

The President of the Republic of Congo,  
**Mr Pascal LISSOUBA**

The President of the Republic of Côte d'Ivoire,  
**P.p. Mr Alassane Dramane OUATTARA,**  
The Prime Minister

The President of the Republic of Gabon,  
**P.p. Monsieur Casimir Oyé MBA,**  
The Prime Minister

The President of the Republic of Equatorial Guinea,  
**General Téodoro, OBIANG NGUEMA MBASOGO**

The President of the Republic of Mali,  
**Mr Alpha Oumar KONARE**

The President of the Republic of Niger,  
**Mr Mahamane OUSMANE**

The President of the Republic of Senegal,  
**P.p. Mr Moustapha NIASSE,**  
The State Minister, Minister of foreign affairs and expatriate Senegalese

The President of the Republic of Chad,  
**Colonel Idriss DEBY**

The President of the Republic of Togo,  
**Mr Gnassingbé EYADEMA.**

**TREATY TO AMEND THE TREATY  
FOR THE HARMONISATION OF  
BUSINESS LAW IN AFRICA**



**SIGNED AT PORT-LOUIS [MAURITIUS]  
ON 17 OCTOBER 1993**



**PREAMBLE**

The President of the Republic of BENIN,  
The President of BURKINA FASO,  
The President of the Republic of CAMEROON,-  
The President of the CENTRAL AFRICAN REPUBLIC,  
The President of the UNION OF COMOROS,  
The President of the Republic of CONGO,  
The President of the Republic of CÔTE D'IVOIRE,  
The President of the Republic of GABON,  
The President of the Republic of GUINEA,  
The President of the Republic of GUINEA BISSAU,  
The President of the Republic of EQUATORIAL GUINEA,  
The President of the Republic of MALI,  
The President of the Republic of NIGER,  
The President of the Republic of SENEGAL,  
The President of the Republic of CHAD,  
The President of the Republic of TOGO,



## HIGH CONTRACTING PARTIES TO THE TREATY RELATING TO THE ORGANISATION FOR THE HARMONISATION OF BUSINESS LAW IN AFRICA



Reaffirming their commitment to accomplish further progress on the path of African unity and their desire to reinforce legal and judicial security within the Organisation for the Harmonisation of Business Law in Africa [OHADA] zone, aimed at creating an atmosphere of trust, with a view to setting up a new pole of development in Africa;

Resolved to make the harmonisation of business law in Africa a tool for the continuous enhancement of the rule of law as well as legal and economic integration;

Determined to provide all the conditions necessary for the consolidation of the achievements of OHADA, as well as their reinforcement and promotion;

Hereby agree to amend and supplement the Treaty for the Harmonisation of Business Law in Africa, signed at Port Louis [Mauritius] on 17 October 1993;

### ARTICLE ONE

**Articles 3, 4, 7, 9, 12, 14, 17, 27, 31, 39, 40, 41, 42, 43, 45,**

**49, 57, 59, 61 and 63** of the Treaty for the Harmonisation of Business Law in Africa, signed at Port Louis [MARITIUS ISLAND] on 17 October 1993 are hereby amended and supplemented as follows;

### ARTICLE 3

The execution of the tasks laid down in the Treaty shall be ensured by an organisation known as the Organisation for the Harmonisation of Business Law in Africa.

OHADA shall comprise the Conference of Heads of State and Government, the Council of Ministers, the Common Court of Justice and Arbitration and the Permanent Secretariat.

The seat of OHADA shall be in Yaoundé in the Republic of Cameroon. It may be transferred to another place by decision of the Conference of Heads of State and Government.

### ARTICLE 4

Rules for the implementation of the present treaty and decisions taken shall be enacted, where necessary, by an absolute majority of the Council of Ministers.

### ARTICLE 7

Draft versions of the Uniform Acts shall be forwarded by the Permanent Secretariat to the Governments of States Parties, who shall submit their written observations to the Permanent Secretariat within ninety days of receipt of the draft versions.

However, the time limit provided for in subsection 1 above may, on the demand of the Permanent Secretariat, be extended for an equivalent duration, depending on the circumstances and the nature of the text to be adopted.

Upon expiry of the above time limit, the draft Uniform Acts, including the observations of the

States Parties and a report from the Permanent Secretariat, shall be forwarded immediately by the latter to the Common Court of Justice and Arbitration for its opinion. The Court shall present its opinion thereto within thirty days of receipt of the said request.

Upon expiry of this time limit, the Permanent Secretariat shall finalise the text of the draft Uniform Acts and propose that it be included in the agenda of the next meeting of the Council of Ministers.

#### **ARTICLE 9**

The Uniform Acts shall be published in the OHADA Official Gazette within sixty days of adoption. They shall be enforceable ninety days after such publication, subject to contrary provisions in a particular uniform act.

Uniform Acts shall also be published in States Parties, in the official gazette or by any other appropriate means. This formality shall not affect the coming into force of the Uniform Acts.

#### **ARTICLE 12**

Uniform Acts may be amended at the request of a State Party, or the Permanent Secretariat upon the approval of the Council of Ministers.

Such amendment shall be made in accordance with the conditions provided in article 6 to 9 above.

#### **ARTICLE 14**

The Common Court of Justice and Arbitration shall ensure the uniform interpretation and application of the Treaty, its rules of enforcement as well as Uniform Acts and decisions.

Any State Party or the Council of Ministers may seek the advisory opinion of the Court on any issue relating to the preceding paragraphs. National Courts may also seek the opinion of the Court in matters relating to the application of article 13 above.

When sitting as a court of final appeal, the Court shall rule on decisions delivered by the Courts of Appeal of States Parties on all matters relating to the Uniform Acts and rules provided for in this Treaty with the exception of decisions administering criminal sanctions.

The Court shall rule as above with regard to decisions delivered by the national courts of the States Parties in the same disputes, which are not appealable to the national Court of Appeal.

Where the Court quashes the decision of the national court, it shall reconsider the case on its merits.

#### **ARTICLE 17**

Manifest lack of jurisdiction of the Common Court of Justice and Arbitration may be raised either by the Court of its own motion or in *limine litis* by any party to the proceedings.

The court shall rule within thirty days of receipt of the observations of the adverse party or at the expiry of the time limit for the presentation of the said observations.

#### **ARTICLE 27**

The Conference of Heads of State and Government shall be composed of the Heads of State and Government of the States Parties. It shall be presided over by the Head of State or the Head

of government of the country presiding over the Council of Ministers.

It shall be convened when need be on the demand of the President either of his own motion or at the request of one third of the States Parties; it shall take decisions on questions related to the treaty.

The Conference shall carry on its deliberations only when two thirds of the States Parties are represented.

The decisions of the Conference shall be unanimous, failing which, it shall be by an absolute majority of the States present.

2) The Council of Ministers shall be composed of the Ministers in charge of Justice and the Ministers in charge of Finance of the States Parties.

The States Parties shall take turns in alphabetical order at presiding over the Council of Ministers for a year.

The President of the Council of Ministers shall be assisted by the Permanent Secretary.

The States subsequently adhering to the treaty shall chair the Council of Ministers for the first time in order of adherence, after the turn of countries which are signatory to the Treaty.

Where a State Party is unable to take office when due, the Council of Ministers shall designate the state coming immediately after in the order provided for in the preceding sub-sections.

However, the State that could hitherto not preside over the council and considers that it is ready to do so shall, in good time, notify the Permanent Secretary for a decision to be taken by the Council of Ministers.

### **ARTICLE 31**

The Common Court of Justice and Arbitration shall be composed of nine judges.

However, the Council of Ministers may, depending on the needs of the service and the financial means, fix a higher number of judges than provided for in the preceding sub-section.

The judges of the Common Court of Justice and Arbitration shall be elected for a seven year non renewable term, from among nationals of States Parties.

They shall be chosen from among:

- 1) Judicial and Legal Officers with at least fifteen years of professional experience, qualified to hold high judicial office in their respective countries;
- 2) Lawyers who are members of the Bar of one of the States Parties with at least fifteen years of professional experience;
- 3) Lecturers of law with at least fifteen years of professional experience.

Only two members of the Court may belong to the categories provided for in paragraphs 2 and 3 above

One seventh of the composition of the Court shall be renewed each year.

The Court shall not comprise of more than one judge from the same State Party.

The mode of enforcement of the present article shall be determined by the rules provided for in article 19 above.

### ARTICLE 39

The President of the Common Court of Justice and Arbitration shall appoint the Registrar-in-Chief of the Court on the recommendation of the court, from among the Registrars-in-Chief, who have served in that capacity for at least fifteen years, and who are nominated by the States Parties. Upon consultation with the Court, The President shall also appoint the Secretary General who shall assist the Court in the discharge of administrative functions in matters of arbitration in accordance with the criteria laid down by regulation of the Council of Ministers.

He may employ other personnel on the proposal of the Registrar-in-Chief or the Secretary General as the case may be.

### ARTICLE 40

The Permanent Secretariat shall be the executive organ of OHADA. It shall be placed under the authority of a Permanent Secretary appointed by the Council of Ministers for a four year term.

The Permanent Secretary shall represent OHADA. He shall assist the Council of Ministers.

The appointment and functions of the Permanent Secretary as well as the organisation and functioning of the Permanent Secretariat shall be determined by regulation of the Council of Ministers.

### ARTICLE 41

There shall be created a Centre for training, further training and research in business law known as The Advanced Regional School of Magistracy [E.R.SU.M.A].

The Centre shall be attached to the Permanent Secretariat.

The name and orientation of the Centre may be changed by regulation of the Council of Ministers.

The Centre shall be placed under the authority of a Director General appointed by the Council of Ministers for a term of four years renewable once.

The organisation, functioning, resources and services of the Centre shall be determined by regulation of the Council of Ministers.

### ARTICLE 42

The working languages of OHADA shall be French, English, Spanish and Portuguese.

Pending their translation into the other languages, the documents already published in French shall have their full effect. When the translations are at variance, the French version shall be the authentic version.

### ARTICLE 43

The resources of OHADA consist principally of:

- a) The annual contributions of States Parties, the modalities of which shall be determined by regulation of the Council of Ministers;

- b) Assistance provided for in conventions between OHADA and States or International Organisations;
- c) Gifts and legacies.

The annual contributions of States Parties shall be determined by the Council of Ministers.

The Council of Ministers shall approve the conventions referred to in paragraph (b) and accept the gifts and legacies provided for in paragraph (c).

#### **ARTICLE 45**

The annual budget of OHADA shall be voted by the Council of Ministers.

The accounts for each financial year shall be certified correct by auditors appointed by the Council of Ministers.

They shall be approved by the Council of Ministers.

#### **ARTICLE 49**

Civil servants and employees of OHADA, Judges of the Common Court of Justice and Arbitration as well as arbitrators appointed or confirmed by the Court shall, under conditions laid down by regulation, enjoy diplomatic privileges and immunities in the course of their duties.

The immunities and privileges referred to above may be lifted by the Council of Ministers depending on the circumstances.

Furthermore, Judges shall not be prosecuted for anything done outside the scope of their duties except with the authorisation of the Court.

#### **Article 57**

The instruments of ratification and the instruments of adhesion shall be deposited with the Government of Senegal which shall be the depository Government.

A copy thereof shall be issued by the latter to the Permanent Secretariat.

#### **ARTICLE 59**

The depository Government shall register the Treaty with the African Union and with the United Nations Organisation in accordance with article 102 of the Charter of the United Nations.

The depository Government shall issue a copy of the registered Treaty to the Permanent Secretariat.

#### **ARTICLE 61**

The Treaty may be amended or revised where a State Party makes a written request to the Permanent Secretariat of OHADA. Such request shall be submitted to the Council of Ministers for action.

The Council of Minister shall assess the purport of the request and the extent of the amendment.

The amendment or the revision shall be adopted in the same manner as the Treaty at the instance of the Council of Ministers.

## ARTICLE 63

The Treaty, drawn up in two copies in French, English, Spanish and Portuguese, shall be deposited in the archives of the Government of Republic of Senegal which shall deliver a certified true copy to each State Party.

## ARTICLE TWO

The Treaty shall come into force sixty days after the date of deposit of the eighth instrument of ratification.

The instruments of ratification and the instruments of adhesion shall be deposited with the Government of Senegal which shall be the depository government. A copy shall be issued by the latter to the Permanent Secretariat.

The depository government shall register the present Treaty with the African Union and the United Nations Organisation in accordance with article 102 of the United Nations Charter.

A stamped copy of the present Treaty shall be issued to the Permanent Secretariat by the depository government.

The Council of Ministers shall approve the consolidated version of the revised Treaty.

In witness whereof, the Heads of State and Government and Plenipotentiaries undersigned have affixed their signatures at the end of the present Treaty.

*Done at Quebec, the 17<sup>th</sup> day of October 2008*

The President of the Republic of BENIN,  
**Boni YAYI**

The President of the Republic of BURKINA FASO,  
**Blaise COMPAORE**

The President of the Republic of CAMEROON,  
**Paul BIYA,**

The President of the CENTRAL AFRICAN REPUBLIC,  
**François BOZIZE**

The President of the Union of COMOROS,  
**Ahmed Abdullah Mohamed SAMBI**

The President of the Republic of CONGO,  
**Denis SASSOU N'GUESSO**

For The President of the Republic of CÔTE D'IVOIRE,  
**Youssouf BAKAYOKO**  
Minister of Foreign Affairs

The President of the Republic of GABON,  
**EL Hadj OMAR BONGO ONDIMBA**

For the President of the Republic of GUINEA,

**Ahmed Tidiane SOURE**

Prime Minister

For the President of the Republic of GUINEA-BISSAU,

**Maria da Conceição NOBRE CABRAL**

Minister of Foreign Affairs,

The President of the Republic of EQUATORIAL GUINEA,

**Teodoro, OBIANG NGUEMA MBASOGO**

The President of the Republic of MALI,

**Amadou Toumani TOURE,**

For the President of the Republic of NIGER,

**Seyni OUMAROU,**

Prime Minister,

The President of the Republic of SENEGAL,

**Abdoulaye WADE**

The President of the Republic of CHAD,

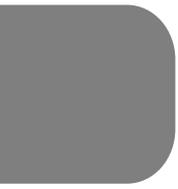
**Idriss DEBY ITNO**

For the President of the Republic of TOGO,

**Gilbert FOSSUN HOUNGBO,**

Prime Minister







# **UNIFORM ACT RELATING TO GENERAL COMMERCIAL LAW**



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## UNIFORM ACT RELATING TO GENERAL COMMERCIAL LAW

The Council of Ministers of the Organisation for the Harmonization of Business Law in Africa (OHADA),

- Considering the Treaty on the Harmonization of Business Law in Africa, and in particular Articles 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;
- Considering the report by the OHADA Permanent Secretariat and the observations of the States Parties;
- Considering the opinion of the Common Court of Justice and Arbitration dated 7 April 1997;

Having deliberated thereon, adopt by unanimous vote of the States Parties present and voting, the Uniform Act set out below.

### PRELIMINARY CHAPTER SCOPE

#### ARTICLE 1

This Uniform Act shall apply to every Trader irrespective of whether he is a natural or corporate person and shall include all commercial companies of which a State or person governed by public law is a member. It shall also apply to an economic interest group, whose place of business or registered office is situated on the territory of a State which is a signatory to the Treaty for the Harmonization of Business Law in Africa (hereinafter referred to as “State party”).

Furthermore, every trader shall be subject to those laws applicable in the States Parties where his place of business or registered office is located provided the said laws are not contrary to the provisions of this Uniform Act.

Any natural or corporate person, as well as any economic interest group, which is either set up or which is in the process of being set up as at the date on which this Uniform Act enters into force shall harmonise the conditions under which they carry out their activity with this new legislation within a period of two years from the date of publication of this Uniform Act in the Official Gazette.

Upon the expiry of such period, any interested party may bring an action before the court of competent jurisdiction for an order for such regularisation to be carried out, where necessary, upon the payment of a periodic monetary penalty.

# BOOK I STATUS OF A TRADER

## CHAPTER I DEFINITION OF TRADER AND COMMERCIAL TRANSACTIONS

### ARTICLE 2

Traders are persons whose usual occupation is to carry out commercial transactions.

### ARTICLE 3

Commercial transactions shall include in particular:

- the purchase of movable or immovable property for resale;  
banking, stock exchange, currency exchange, brokerage, insurance, and transit transactions;  
contracts between Traders for business purposes;
- the industrial exploitation of mines, quarries and any natural resources  
the rental of movable property;
- manufacturing, transportation and telecommunications transactions;
- transactions by middle men by such as commission agents, brokers and commercial agents,  
as well as transactions by middle men relating to the purchase, subscription, sale or rental of  
real property, business property, shares in any commercial or real estate company; and
- transactions carried out by commercial companies.

### ARTICLE 4

A bill of exchange, a promissory note, and a warrant shall, by virtue of their form, also be considered as commercial transactions.

**ARTICLE 5** With regards to Traders commercial transactions may be proved by any means.

## CHAPTER II CAPACITY TO TRADE

### ARTICLE 6

No person shall engage in trading unless he has the legal capacity to do so.

### ARTICLE 7

A minor shall not have the status of Trader or engage commercial transactions unless he or she is emancipated.

The spouse of a Trader shall not have the status of Trader unless he or she carries out the transactions referred to under Articles 3 and 4 above as a regular occupation and separately from his or her spouse.



## ARTICLE 8

No person shall engage in a commercial activity while subject to a particular status which is incompatible to that of a Trader.

There shall be no incompatibility unless provided for by Law

The burden of proving an incompatibility shall lie on the party who alleges it.

No commercial transaction carried out by a party lacking capacity shall be invalidated by such incapacity.

A third party may, where they so desire, rely on commercial transaction carried out by a party who lacks capacity, but such party shall not rely upon such transaction.

## ARTICLE 9

The functions and occupations of the following shall be incompatible with trading:

civil servants, local governments staff and employees of State-owned enterprises;

cabinet officials, auxiliary officers of Justice: lawyers, bailiffs, official auctioneers, stockbroker, notaries public, court registrars, receivers and liquidators

certified public accountant and chartered accountant, auditor and contribution in-kind valuers  
legal expert, ship broker.

in general, a person carrying out an occupation which is subject to regulations forbidding the carrying out of such activity concurrently with that of a commercial occupation.

## ARTICLE 10

No person may carry out a commercial activity, whether directly or through an intermediary, if he has been the subject of:

- a permanent or temporary general prohibition imposed by a court of one of the State Parties, whether such prohibition is imposed as a principal or an accessory penalty;
- a prohibition imposed by a professional tribunal regulatory body in which case the prohibition shall apply only to the commercial activity concerned;
- a final sentence of imprisonment for a crime under common law or a sentence of not less than three months imprisonment for an offence against property interest or an offence of an economic or financial nature.

## ARTICLE 11

A temporary ban of more than 5 years as well as a permanent ban may be lifted, at the request of the person under such ban, by the court that imposed the ban.

Such request shall be admissible only after the expiration of a period of 5 years from the date on which the ban was imposed.

A ban on a bankrupt shall end upon his or her discharge, under the conditions and forms provided for in the Uniform Act on the collective procedures for the wiping off of debts.

## **ARTICLE 12**

Without prejudice to any other sanctions, transactions carried out by a person under a ban shall not be enforceable against third parties acting in good faith.

Good faith shall always be presumed.

Such transactions shall however be enforceable against the person under a ban.

## **CHAPTER III ACCOUNTING OBLIGATIONS OF THE TRADER**

### **ARTICLE 13**

Every trader, whether a corporate or natural person shall keep a Journal in which his daily commercial transactions shall be recorded.

He shall also keep a General Ledger, with a general summary balance, as well as an Inventory Book.

Such accounts books shall be kept in accordance with the provisions of the Uniform Act relating to the organisation and harmonisation of accounts of enterprises.

Every corporate person carrying out commercial activities shall also comply with the provisions of the Uniform Act relating to commercial companies and economic interest groups and the Uniform Act on the organisation and harmonisation of accounts of enterprises.

### **ARTICLE 14**

The Journal and the Inventory Book must bear the registration number of the natural or corporate person concerned in the Trade and Personal Property Rights Register.

They shall be numbered and initialled by the President of the court of competent jurisdiction, or by the Judge empowered for such purposes.

The accounts books shall contain no blank spaces or alterations of any kind.

### **ARTICLE 15**

The accounts books referred to under Article 13 above which have been regularly kept may be admitted in evidence by the judge in disputes between the traders.

### **ARTICLE 16**

In the course of a dispute, the Judge may order, even at his own initiative, the production of accounts books to obtain therefrom any information necessary for the determination of a dispute.

### **ARTICLE 17**

Every corporate person engaged in trading shall also draw up each year summary financial statements in accordance with the provisions of the Uniform Act relating to the organisation and harmonisation of accounts of enterprises, and to the Uniform Act relating to commercial companies and economic interest groups.

## CHAPTER IV LIMITATION PERIODS

### ARTICLE 18

An obligation which arises from trade between traders or between a trader and a non-trader will lapse after a period of five years in a case where such obligation is not subject to any shorter limitation period.

## BOOK II COMMERCIAL REGISTRY

### PART I COMMON PROVISIONS

#### CHAPTER I GENERAL PROVISIONS

### ARTICLE 19

The purpose of the Trade and Personal Property Rights Register shall be:

1°) for the registration of

- a) natural persons who within the meaning of this Uniform Act have the status of trader;
- b) commercial companies and other corporate persons subject to registration, as well as branches of foreign companies operating on the territory of a State Party.

The Registry shall also have entries and information on changes in the status and legal capacity of natural and corporate persons that have occurred since their registration.

It shall also record documents which by the provisions of this Uniform Act and by those of the Uniform Act relating to commercial companies and economic interest groups must be filed.

2°) for registering entries relating to:

- a) the pledge of shares;
- b) the pledge of a business and the lien of the vendor of business;
- c) the pledge of professional equipment and motor vehicles;
- d) the pledge of stocks;
- e) the preferential rights of the Treasury, the Customs Department and of the Social Security Institutions;
- f) ownership reserve clauses; and
- g) leasehold contracts.

## CHAPTER II ORGANISATION OF THE COMMERCIAL REGISTRY

### ARTICLE 20

The Trade and Personal Property Rights Registry shall be kept by the Registry of the court of competent jurisdiction under the supervision of the President or a Judge delegated to that effect.

Information entered in each Trade and Personal Property Rights Registry shall be centralised in a National Register.

Information entered in each National Register shall be centralised in a Regional Register kept at the Common Court of Justice and Arbitration.

### ARTICLE 21

The Accounts books kept at the Registry shall comprise:

- 1 °) a register for in-coming registrations which shall specify in chronological order the date and number of each admitted declaration, the full names or corporate name of the declarant, as well as the subject of the declaration;
- 2 °) a collection of individual files in alphabetical order comprising:
  - a) for natural persons: under the indication of their full names, date and place of birth, the nature of the activity in which they are engaged and the address of their principal place of business, as well as the addresses of the other places of business set up within and out of the jurisdiction of the court in which the registered office is located, all declarations, transactions and filed documents concerning them;
  - b) for commercial companies and other corporate persons subject to registration: under the indication of their corporate name, their legal form, the nature of the activity performed, the address of the registered office as well as that of the registered office of places of business set up within and out of the jurisdiction of the court, all declarations, transactions and documents concerning them.

### ARTICLE 22

All declarations shall be drawn up in four copies on forms provided by the Registry.

The forms shall bear the signature of the declarant or of his authorised agent, who must also provide proof of his identity and possess a power of attorney signed by the declarant unless he is a Lawyer, Proxy, Bailiff Notary or *Syndic*.

The first copy shall be kept by the Registry.

The second shall be given to the declarant with reference to the date and description of the formality carried out.

The third and fourth copies shall be forwarded by the Registry to the National Register which shall then send one of them to the Regional Register.



## ARTICLE 23

In accordance with the provisions of Article 20 above, a National Register shall be kept in each State Party and a Regional Register at the Common Court of Justice and Arbitration, each such register comprising an extract of each individual file in alphabetical order indicating:

- 1°) for natural persons: their full names, date and place of birth, nature of the activity in which they are engaged, address of their principal place of business, as well as the addresses of other places of business set up within and out of the jurisdiction of the court in which the registered office is located;
- 2°) for commercial companies and other corporate person subject to registration: their corporate name, legal form, nature of activity exercised, their share capital, address of the registered office and those of the other places of business set up within and out of the jurisdiction of the court in which the registered office is located.

## ARTICLE 24

Furthermore, the following shall as a matter of course be mentioned in the Trade and Personal Property Rights Register:

- 1°) decisions taken in individual bankruptcy proceedings or in collective proceedings forced liquidation, receivership or the liquidation of assets;
- 2°) decisions pronouncing pecuniary sanctions against company executives;
- 3°) rehabilitation or amnesty orders lifting forfeitures or bans.

Communication of the information provided for under this article to the Registries of the courts within whose jurisdiction the secondary places of business are located shall be done by the court which took the decision or, failing this, by any interested party.

# PART II REGISTRATION IN THE TRADE AND PERSONAL PROPERTY RIGHTS REGISTER

## CHAPTER I REGISTRATION CONDITIONS

### SECTION 1 REGISTRATION OF NATURAL PERSONS

## ARTICLE 25

Every natural person having the status of a trader as provided for in this Uniform Act shall, within the first month of operation of his business, apply to the Registry of the competent court within whose jurisdiction the business is operated for registration in the Trade and Personal Property Rights Register.

The application for registration shall state:

- 1°) the full names and residence of the declarant;
- 2°) his date and place of birth;
- 3°) his nationality;
- 4°) where applicable, the name under which he carries on business as well as any trade mark, emblem, symbol or logo;
- 5°) the activity or activities carried out, and the form of operation;
- 6°) the date and place of marriage, the type of marriage settlement adopted, any provisions enforceable against third persons restricting the free disposal of a spouses property or the absence of any such provisions, any petitions regarding the separation of property;-
- 7°) the full names, date and place of birth, residence and nationality of the persons mandated by the declarant to sign on his behalf,
- 8°) the address of the principal place of business and, where applicable, the address of each of the other establishments or branches operating on the territory of the State party;
- 9°) where applicable, the nature and the place of operation of the former places of business specifying their registration numbers in the Trade and Personal Property Rights Register.
- 10°) the date operation of the principal establishment started, and where necessary, that of the others establishments.

#### **ARTICLE 26**

The declarant shall be required to furnish the following documents in support of his declaration:

- 1°) a copy of his birth certificate or any official document in proof of his identity;
- 2°) copy of his marriage certificate, where necessary;
- 3°) an extract of his criminal record or, failing this, any other document in lieu thereof.  
Where the declarant is not a national of the State party in which he is requesting registration, he shall also furnish an extract of his criminal record from the authorities of his country of birth, and, failing this, any other document in lieu thereof;
- 4°) a residence permit;
- 5°) a copy of the title deed or lease of the principal establishment/enterprise, and, where the need arises, that of the other places of business;
- 6°) in the event of a purchase of a business or management lease, a copy of the deed of purchase or of the management lease;
- 7°) where the need arises, a prior authorisation to operate the business.

### **Section 2**

#### **Registration of companies and other corporate persons**

#### **ARTICLE 27**

The companies and other corporate persons referred to in the Uniform Act relating to commercial companies and economic interest groups shall, within a month of their formation, apply to the

Registry of the court within whose jurisdiction their registered office is located for registration in the Trade and Personal Property Rights Register.

The application shall state:

- 1°) the corporate name;
- 2°) where applicable, the business name, trade mark, emblem, symbol, acronym or logo;
- 3°) the activity or activities carried out;
- 4°) the form of the company or corporate person
- 5°) the amount of the share capital specifying the amount of any contributions in cash and the valuation of any contributions in kind;
- 6°) the address of the registered office and, if need be, that of the principal establishment and that of each of the other establishments;
- 7°) the duration of the company or corporate person as provided for in its Articles of Association;
- 8°) the full names and address of partners who have unlimited personal liability for the company's debts, specifying their date and place of birth, nationality, date and place of marriage, the kind of marriage settlement adopted and any provisions enforceable against third persons restricting the free disposal of property of the spouses or the absence of such provisions, as well as any petitions for the separation of property;
- 9°) the full names, date and place of birth and address of managers, directors or partners with general power to bind the company or corporate person;
- 10°) the full names, date and place of birth and address of the Auditors where their appointment is provided for by the Uniform Act relating to commercial companies and economic interest groups.

#### **ARTICLE 28**

The following supporting documents shall, under pain of rejection, be attached:

- 1°) two certified copies of the Articles of Association;
- 2°) two originals of the certificate of validity and conformity or of a notarised certificate confirming the subscription for and payment of the shares;
- 3°) two certified copies of the list of managers, directors or partners having an unlimited liability for the company's debts or with power to commit the company;
- 4°) two extracts of the criminal record of the persons referred to in paragraph (3) above. Where the declarant is not a national of the State Party in which he is applying for registration, he shall also provide an extract of his criminal record obtained from the authorities of his country of birth and, failing this, any other document in lieu thereof;
- 5°) where necessary, a prior authorisation to operate the business.

#### **ARTICLE 29**

Every natural or corporate person not subject to registration in the Trade and Personal Property Rights Register because of the location of his registered office shall, within a month of the setting

up of a branch or agency the territory of one of the States Parties, apply for the registration of such agency.

The application, which shall be filed at the Registry of the court within whose jurisdiction such branch or agency shall be established, shall state:

- 1°) the name of the branch or agency;
- 2°) if need be, its business name, acronym, trade mark or logo;
- 3°) the activity or activities carried out;
- 4°) the corporate name of the foreign company that owns the said branch or agency; its business name, acronym, trade mark or logo; the activity or activities carried out; the form of the company or corporate person; its nationality; the address of its registered office; where applicable, the full names and residence of the partners having an unlimited liability for the company's debts; and
- 5°) the full names, date and place of birth of the natural person resident on the territory of the State Party with power to represent and manage the branch.

### **Section 3**

#### **Common provisions for the registration of natural and Corporate persons**

##### **ARTICLE 30**

Registration shall be personal, whether the trader is a natural or a corporate person.

No enterprise operated by a trader may be registered as principal enterprise in many registers or under many numbers in the same register.

Once the application is complete, the Registry shall assign the declarant a registration number and mention of this shall be made on the form given to him.

The Registry shall then forward a copy of the individual file and the other documents deposited by the applicant to the National Register.

##### **ARTICLE 31**

Where the trader transfers his business place or the registered office of his company to a location within the jurisdiction of another court, he shall apply for:

- such business or company to be struck off from the of the Trade and Personal Property Rights Register of the court within whose jurisdiction they were registered;
- a new registration in the Trade and Personal Property Rights Register of the court within whose jurisdiction his business or registered office has been transferred; such registration shall only be final after the verification provided for under paragraphs 4 and 5 below.

To this effect, individual traders carrying out business shall submit information and document in accordance with Articles 25 and 26 above; companies and other corporate persons subject to registration shall furnish the information and documents as provided for in Articles 27 and 29 above.

These formalities shall be complied with by the declarant within one month of the transfer.

The Registry responsible for the Trade and Personal Property Rights Register within whose

jurisdiction the trader has transferred his business or where the company has transferred its registered office shall, within one month of the new registration, ensure that the name of the business or company has been removed from the register by requiring that the declarant produce a certificate issued by the Registry of the place where the business or company was previously registered.

Where the declarant fails to act within time, the Registry shall as a matter of course effect the change at the expense of the declarant.

#### **ARTICLE 32**

Any registration, as well as any entry or indication in respect of any changes that have occurred since the date of their registration relating to the status and legal capacity of natural or corporate persons subject to registration, shall also, within a month of the entry of such formality, be published as a notice in a newspaper authorised to publish legal notices.

The notice shall contain:

- for natural persons:, the information provided for under Article 25 (1) to (6) above; and
- for corporate persons, the information provided for under Article 27 (1) to (9) above.

### **Section 4** **Supplementary, secondary and amending entries**

#### **ARTICLE 33**

Where the situation of a person subject to registration subsequently undergoes a change which requires that the information entered in the Trade and Personal Property Rights Register to be modified or supplemented, such person shall, within thirty days of such change, file an application for modification of the information or supplementary entry in respect of such change.

Any change concerning particularly the civil status the form of marriage settlement the legal capacity and activity of a natural person subject to registration, or particularly any change concerning the Articles of Association of a corporate person, shall be entered in the Trade and Personal Property Rights Register

Any application for a supplementary, secondary or modifying entry shall be signed by the person bound to declare the change or by an authorised agent who shall show proof of his identity and hold a special power of attorney, where he is not a Lawyer, Bailiff, Notary public, *Syndic* or other auxiliary officer of Justice empowered by law for that purpose.

#### **ARTICLE 34**

Any natural or corporate person subject to registration in the Trade and Personal Property Rights Register shall be bound, where he opens secondary commercial establishments or branches within the jurisdiction of other courts, to apply for secondary registration within one month from the beginning of operations.

Apart from a reference to the principal registration such application shall, state the required information:

- in the case of a natural person, by Article 25 (1) to (6) above ;
- in the case of a corporate person, by Article 27 (1) to (9) above.

## ARTICLE 35

The application shall be filed in the Trade and Personal Property Rights Register of the court within whose jurisdiction the secondary business is located.

The Registry in charge of the Trade and Personal Property Rights Register shall, within one month of the secondary registration, forward a copy of the statement of secondary registration to the Registry in charge of the Register where the principal registration was made.

A registration number shall be assigned to every registration of secondary commercial establishment, notice of which shall be published, within one month of such registration, in a newspaper authorized to publish legal notices.

### Section 5 Cancellation of Registration

## ARTICLE 36

Any registered natural person shall, within one month from the date of cessation of his commercial activity, apply for the removal of his name from the Trade and Personal Property Rights Register

In the event of the death of a registered natural person, his successors shall, within a period of three months from the date of such death, apply for the cancellation of his name at the Registry or for its change where they themselves have to continue to operate the business.

Where the application for removal is not filed within the time-limit referred to in the two preceding paragraphs of this article, the Registry shall proceed to the cancellation following a decision of the competent court before which the matter is referred by the Registry or by any interested party.

Notice of every cancellation from the Register shall be published in the newspaper authorized to publish legal notices.

## ARTICLE 37

The dissolution of a corporate person for any reason whatsoever shall be declared within a period of one month at the Registry of the competent court where the corporate person is registered for the purpose of having such dissolution recorded in the Trade and Personal Property Rights Register.

The same shall apply in the case of nullity of a company, with effect from the date on which the decision relating to the nullity is pronounced.

The liquidator shall request the corporate person's removal from the Register within one month of completion of the liquidation operations.

Where the request for removal is not made within the prescribed deadline, the Registry of the competent court before whom the matter is referred shall, of its own motion or at the request of any interested party, and upon the decision of said court, remove the company from the register.

Notice of every cancellation from the Register shall be published in the newspaper authorized to publish legal notices.

## CHAPTER II EFFECTS OF REGISTRATION AND DISPUTES

### Section 1 Effects of registration

#### ARTICLE 38

Any person registered in the Trade and Personal Property Rights Register shall be presumed, unless otherwise proven, to have the status of Trader within the meaning of this Uniform Act.

However, such presumption shall not apply in respect of economic interest groups.

The registration number and place of registration of every natural or corporate person shall be indicated on all invoices order forms, price list and any other commercial document as well as on all correspondences.

#### ARTICLE 39

Natural and corporate persons subject to registration in the Trade and Personal Property Rights Register who have not applied for registration within the prescribed deadline shall not claim the status of Trader until they are duly registered.

However, they shall not rely on their failure to register in the Trade and Personal Property Rights Register to avoid the liabilities and obligations inherent in such status.

#### ARTICLE 40

Persons subject to registration in the Trade and Personal Property Rights Register may not, in their commercial activities, rely on deeds and documents subject to registration as against third parties and public authorities who may however rely on them except where such deeds and documents have been published in the Register.

This provision shall not apply where the persons subject to registration proves that, at the time of the transaction, the third party and service involved had knowledge of the deeds and documents concerned.

### Section 2 Disputes relating to registration

#### ARTICLE 41

The Registry in charge of the Trade and Personal Property Rights Register shall be responsible of ensuring that applications are complete and ascertaining the conformity of the information contained in the supporting documents attached there to.

Where the Registry notices inaccurate information or experiences difficulties in the accomplishment of its task, it shall refer the matter to the competent court.

Disputes between the declarant and the Registry may also be referred to the said court.

#### ARTICLE 42

Where a corporate or natural person who is a Trader fails to apply for registration within the prescribed time-limit, the competent court may, of its own motion or at the request of the Registry



in charge of the Trade and Personal Property Rights Register or, at the request of any other person order that such registration be done.

The competent court may, under the same condition, order any natural or corporate person registered in the Trade and Property Rights Register to either:

- have necessary information added or amendments made in the Register in the case of any incorrect or incomplete declaration; or
- be removed from the Register.

#### **ARTICLE 43**

Any person who is bound to comply with any of the formalities prescribed in this part and who fails to do so or who has been found to have fraudulently fulfilled a formality, shall be punished with the penalties provided by the national criminal law or, where applicable, by the special criminal law enacted by the State Parties pursuant to this Uniform Act.

## **PART III REGISTRATION OF PERSONAL SECURITIES**

### **CHAPTER I CONDITIONS FOR THE REGISTRATION OF PERSONAL SECURITIES**

#### **Section 1 Pledge of shares**

#### **ARTICLE 44**

Where the shares of a commercial company are pledged, the pledgee shall present the following to the Registry of the competent court within whose jurisdiction the company is registered:

- 1°) the original pledge agreement if it is a private contract, or a copy thereof if it was drawn up by a notary public or results from a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
  - a) the full names, corporate name, share capital, address or registered office of the parties, as well as the registration number of the company whose shares have been pledged;
  - b) the nature and date of the filed pledge agreement(s);
  - c) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions on which the debt may be repayable;
  - d) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

Any modification by agreement or court order shall be the subject of an amendment in the Register under the same conditions and forms as provided for the initial entry.

## ARTICLE 45

The Court Registrar shall ascertain the conformity of the form to the security deed presented.

He shall then enter it in the in coming register and, at the same time:

- 1°) refer to the entry in the individual file opened in the name of the company whose shares have been pledged;
- 2°) file the deeds and a copy of the declaration that was given to him in the file kept in the name of the corporate person whose shares have been pledged;
- 3°) give to the declarant the second copy of the declaration with mention of the date and the number of the registration.

The third and fourth copies of the declaration shall be forwarded to the National Register which shall then send one of them to the Regional Register.

### Section 2

#### **Pledge of business and registration of the Vendor's lien over the business**

## ARTICLE 46

Where the subject of a pledge is the business, the pledgee shall present to the Registry of the competent court within whose jurisdiction the natural or Corporate person who owns or operates the business is registered the following:

- 1°) the original copy of the security deed where it is a private contract or a copy thereof if it has been executed by a notarised deed or a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
  - a) the full names, corporate name, Residence or registered office of the parties, as well as the registration number of the natural or corporate person who owns or operates the business in respect of which the registration is requested;
  - b) the nature and date of the filed pledge deed(s);
  - c) a description of the business which is subject of the pledge;
  - d) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
  - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

## ARTICLE 47

In the case of a sale of the business, the Vendor's lien may entered in the Trade and Personal Property Rights Register

To this effect the vendor shall provide:

- 1°) the original copy of the sales agreement where it was executed as a private document or, an authentic copy of the deed where the agreement was notarised,;

2°) four copies a registration form specifying:

- a) the full names, corporate name, residence or registered office of the parties, and, where necessary, the registration number of the natural person corporate person purchasing the business property;
- b) the nature and date of the documents filed;
- c) a description of the business to be pledged in order to facilitate its identification;
- d) the amount of money due on the last day preceding the registration of the preferential rights and, where applicable, the conditions under which the debt shall be due payment;
- e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

#### ARTICLE 48

Where the pledge or the vendor's lien concerns patents, trade marks, and industrial drawings and designs, it shall, besides the registration of the creditor's security under the conditions stipulated in Articles 46 and 47 above, meet the specific provisions relating to industrial property.

#### ARTICLE 49

The Court Registrar shall ascertain conformity of the form to the pledge presented.

He shall then enter it in the in coming register and, at the same time:

- 1°) make mention of the entry in the individual file opened in the name of the natural or corporate person against whom the pledge is registered;
- 2°) file the deed and a copy of the declaration that was given to him in the file kept in the name of the natural or corporate person against whom the pledge is registered, stating the date and number of the registration;
- 3°) give the second copy of the declaration as endorsed by the Registry stating the date and number of the registration, to the declarant.

The third and fourth copies of the declaration shall be forwarded to the National Card Index which shall then send one of them to the Regional Card Index.

#### ARTICLE 50

Any modification by agreement or by court order of the pledge or preferential right shall be entered as an amendment in the Register under the same conditions and in the same form as provided for the initial entry.

Any application for Court order to cancel the sale of business may be the subject matter of an injunction order which shall be entered in the Trade and Personal Property Rights Register in accordance with the provisions provided for that purpose by the Uniform Act on Securities.

### Section 3 Pledge of professional equipment and motor vehicles

#### ARTICLE 51

Where the subject of a pledge is professional equipment belonging to a natural or corporate person subject to registration in the Trade and Personal Property Rights Register, the pledgee shall present to the Registry of the competent court within whose jurisdiction the purchaser is registered:

- 1°) the original copy of the security deed if it is a private contract, or a copy if it is a notarised deed or a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
  - a) the full names, corporate name, residence or registered office of the parties, as well as the registration number of the purchaser against whom the pledge is registered;
  - b) the nature and date of the filed pledge agreement(s);
  - c) a description of the property to be pledged to facilitate its identification and location, and an indication, where necessary, that the property is likely to be moved;
  - d) the amount of the money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
  - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

#### ARTICLE 52

For vehicles subject to a certificate of entry into service or to an administrative registration the Vendor shall present the following to the Registry of the competent court within whose jurisdiction the purchaser is registered:

- 1°) the pledge agreement where it is a private contract or a copy where it is a court decision authorising the creditor to register the pledge;
- 2°) four copies of the registration form stating:
  - a) the full names, corporate name, address or registered office of the parties, as well as the registration number of the owner against whom the pledge is registered;
  - b) the nature and date of the filed pledge agreement(s);
  - c) a description of the property pledged in order to facilitate its identification;
  - d) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
  - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

#### ARTICLE 53

After ascertaining that the form conforms to the pledge agreement presented, the Registry shall register the security under the conditions stipulated in Article 49 above.

Any modification by agreement or court order of the pledge shall be entered as an amendment in the Register under the same conditions and in the form stipulated for the original entry.

#### **Section 4 Pledge of stocks**

##### **ARTICLE 54**

Where the pledge concerns stocks, the pledgor shall file the following at the Registry of the court having jurisdiction where the pledgor who owns the stocks is registered:

- 1°) the original of the pledge agreement if it is a private contract, or a copy where it is a notarized deed or a court decision authorising the creditor to register the pledge;
- 2°) four copies of a registration form stating:
  - a) the full names, corporate name, residence or registered office of the parties, as well as the registration number of the natural or corporate person who owns the pledged stocks against whom the pledge is registered;
  - b) the nature and date of the filed pledge agreement(s);
  - c) a description of the stocks pledged in order to facilitate their identification;
  - d) the amount of money due on the last day preceding the registration of the pledge and, where applicable, the conditions under which the debt shall be due payment;
  - e) the pledgee's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

##### **ARTICLE 55**

After ascertaining that the form conforms to the pledge agreement filed, the-Registry shall register the pledge as stipulated in Article 49 above.

The form delivered to the declarant after registration shall bear clearly the indication "pledge of stocks" and the date of issue thereof which shall correspond to the date of entry in the Register.

Any modification by agreement or court order of the pledge agreement shall be entered as an amendment in the Register under the conditions and in the forms stipulated for the original entry.

#### **Section 5 Preferential rights of the Treasury, the Customs Department and of the Social Security Institutions**

##### **ARTICLE 56**

Where registration concerns the preferential rights of the Treasury the competent Public Accounting Officer shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1°) the original copy of the written instrument in proof of the debt, or the court ruling authorising the Treasury to register the preferential rights;
- 2°) four copies of a registration form specifying:

- a) the full names, corporate name, residence or registered office of the debtor, as well as his registration number;
- b) the nature and date of the debt;
- c) the amount of money due on the last day preceding the registration of the preferential right and, where applicable, the conditions under which the debt shall be due payment;
- d) the Treasury's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.



After ascertaining that the form is in conformity with the written document referred to above, the Registry shall proceed with the registration in accordance with the conditions stipulated in Article 49 above.

Any modification by agreement or court order of the preferential right shall be entered as an amendment in the Register under the same conditions and in the form stipulated in the initial entry.

#### **ARTICLE 57**

Where registration concerns the preferential rights of the Customs Department the latter shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1°) the original of the written instrument in proof of the debt, or the court decision authorising the Customs Department to register the preferential right;
- 2°) four copies of a registration form stating:
  - a) the full names, corporate name, residence or registered office of the debtor against whom the entry is made, as well as his registration number;
  - b) the nature and date of the debt;
  - c) the amount of money due on the last day preceding the registration of the preferential right and, where applicable, the conditions under which the debt shall be due payment;
  - d) the Customs Department's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

After ascertaining that the form is in conformity with the documents referred to above, the Registry shall register in accordance with the conditions stipulated in Article 49 above.

Any modification by agreement or court order of the preferential right shall be entered as an amendment in the Register under the conditions and in the forms stipulated for the original entry.

#### **ARTICLE 58**

Where registration concerns the preferential right of a social security institution the latter shall present the following to the Registry of the competent court within whose jurisdiction the debtor is registered:

- 1°) the original copy of the written instrument in proof of the debt authorising the social security institution to register the preferential rights, or the court order authorising the social security institution to register the preferential claim;

- 2°) four copies of a registration form specifying:
- a) the full names, corporate name, residence or registered office of the debtor against whom the preferential rights is registered, as well as his registration number;
  - b) the nature and date of the debt;
  - c) the amount of money due on the last day preceding the registration of the preferential rights and, where applicable, the conditions under which the debt shall be due payment;
  - d) the social security institution's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

After ascertaining that the form is in conformity with the document referred to above the Registry shall proceed with the registration in accordance with Article 49 above.

Any modification by agreement or court order of the preferential right shall be entered as an amendment in the Register under the conditions and in the forms stipulated for the original entry.

## **Section 6**

### **Registration of the Ownership Reserve Clause**

#### **ARTICLE 59**

A Vendor of goods who has an agreement or order form accepted by the purchaser bearing an ownership reserve clause may have such clause registered in Trade and Personal Property Rights Register.

To that effect, he must file the following at the Registry of the competent court within whose jurisdiction the purchaser of the goods is registered:

- 1°) a certified copy of the agreement which sets out the clause providing for retention of title;
- 2°) four copies of a registration form stating:
  - a) the full names, corporate name, residence or registered office of the parties, as well as the registration number of the natural or corporate person who purchased the goods which are the subject of the ownership reserve clause providing for retention of title;
  - b) the nature and date of the filed agreement(s);
  - c) a description of the goods which are the subject of the ownership reserve clause providing for retention of title in order to facilitate their identification;
  - d) the amount of money due on the last day preceding the registration of the clause and, where applicable, the conditions under which the debt shall be due payment;
  - e) the address of service, within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept, of the creditor benefitting from the said clause providing for retention of title.

#### **ARTICLE 60**

After ascertaining that the form is in conformity with the document referred to above the Registry shall proceed with the registration in accordance with the conditions stipulated in Article 49 above.



The Registry shall give the applicant a copy of the form bearing clearly the statement “clause providing for retention of title” as well as the number and date of the entry.

Any modification by agreement or court order of the clause shall be entered as an amending entry in the Register under the conditions and in the forms stipulated for the original entry.

## **Section 7** **Registration of leasehold contracts**

### **ARTICLE 61**

Where a leasehold contract has been signed, the lessor may file the following at the Registry of the competent court within whose jurisdiction the natural or corporate person acting as the lessee is registered:

- 1) the original copy of the leasehold contract where it is a private contract, or a copy where it is a notarised deed;
- 2) four copies of a registration form stating:
  - a) the full names, corporate name, residence or registered office of the lessee, as well as his registration number;
  - b) the nature and date of the filed document(s);
  - c) a description of the property which is the subject of the leasehold contract in order to facilitate its identification;
  - d) the amount of money due on the last day preceding the registration of the agreement and, where applicable, the conditions under which the debt shall be due payment;
  - e) the lessor’s address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

### **ARTICLE 62**

After ascertaining that the form conforms to the document filed, the Registry shall register the leasehold contract as stipulated in Article 49 above.

The form given to the declarant after registration shall clearly bear the statement “leasehold contract” and the date it is issued which shall correspond to the date of entry in the Trade and personal Property Rights Register Any modification by agreement or court order of the leasehold contract shall be entered as an amendment in the Register under the same conditions and in the same forms stipulated for the initial entry.

## **CHAPTER II** **EFFECTS OF REGISTRATION AND DISPUTES RELATING TO THE** **REGISTRATION**

### **ARTICLE 63**

Any regular registration in the Trade and Personal Property Rights Register shall be binding on the parties and third parties as from the date of registration:

- 1°) for a period of five years for the registration of a pledge of shares, business, professional equipment and motor vehicles, the vendor's lien or a leasehold contract;
- 2°) for a period of three years for the registration of general preferential rights of the-Treasury, the Customs Department and social security institutions;
- 3°) for a period of one year for the registration of the pledge of stock or an ownership reserved clause.

At the end of any such periods, and save in the case of renewal thereof by the declarant under the conditions stipulated in Article 62 above, the registration shall expire and shall as a matter of course be cancelled in the Register.

#### **ARTICLE 64**

The conditions for the renewal of a registration shall be the same as those for the original registration.

After verifying that the forms submitted at the Registry are in accordance with the documents filed, the Registry shall renew the registration.

A validly renewed registration shall be binding on the parties and third persons as from the date of filing of the application for renewal, in accordance with the conditions stipulated in Article 63 above.

The Registry shall give the applicant a copy of the form which shall clearly bear the statement "renewal of registration".

#### **ARTICLE 65**

A natural or corporate person against whom one or more entries mentioned in Chapter I of this part are made may, at any time, bring an action before the competent court for the cancellation, modification or limitation of the effects of the entry.

In any case, the competent court may, even before deciding on the merits of the dispute, totally or partially cancel the entry, where the declarant gives good and proper reasons therefor.

#### **ARTICLE 66**

Applications for total or partial cancellation of the entry may also be made by filing a deed showing consent of the creditor or of his successors.

Whoever applies for the cancellation of an entry shall file four copies of a form containing the following information:

- 1°) the full names, corporate name, residence or registered office, as well as the registration number of the natural or corporate person against whom the entry was made or, in the case of-an entry concerning shares, the registration number of the company whose shares are subject of the entry;
- 2°) the nature and date of the filed documents;
- 3°) the declarant's address of service within the jurisdiction of the court where the Trade and Personal Property Rights Register is kept.

The cancellation shall be entered by the Registry in the Register after ascertaining that the form conforms to the documents presented.

Two copies of the form shall be forwarded to the National Card Index who shall then send one of them to the Regional Card Index.

A certificate of cancellation shall be issued to any person who applies for it.

#### **ARTICLE 67**

The Registry shall have the responsibility of insuring that applications for entry, renewal of entry or cancellation of personal securities are complete and that the information contained in them is in conformity with the documents tendered in support thereof.

Where the Registry notices any inaccurate information or has difficulties in the accomplishment of its task, it shall refer the matter to the President of the competent court.

#### **ARTICLE 68**

Any registration of personal security made by fraud or containing inaccurate information given in bad faith, shall be punished with penalties provided for by the national criminal law

When pronouncing the sentence, the competent court may order that the inaccurate information be corrected under conditions to be determined by the court.

## **BOOK III COMMERCIAL LEASES AND THE BUSINESS**

### **PART I COMMERCIAL LEASES**

#### **PRELIMINARY CHAPTER SCOPE**

#### **ARTICLE 69**

The provisions of this Part shall be applicable, in towns of more than five thousand inhabitants to all leases concerning immovable property of the following categories:

- 1°) premises or buildings used for commercial, industrial, handicraft or professional purposes;
- 2°) undeveloped land on which buildings have been constructed for industrial, commercial, handicraft or professional use, either before or after conclusion of the lease, where such buildings are built or used with the consent or knowledge of the owner.

#### **ARTICLE 70**

The provisions of this Part shall also apply to industrial or commercial corporate persons governed by public law and to public corporations irrespective of whether they are lessors or lessees.

## CHAPTER I CONCLUSION AND DURATION OF LEASE

### ARTICLE 71

A commercial lease shall be said to exist whether written or not between the owner of immovable property or a part thereof falling within the scope of Article 69 of this Act and any natural or corporate person allowing the latter to carry out any commercial, industrial, or professional activity on the premises with the consent of the owner.

### ARTICLE 72

The parties shall freely determine the duration of the lease.

A commercial lease may be concluded for a fixed or unfixed duration.

Where the lease is unwritten or of any unspecified duration it shall be deemed to have been concluded for an unfixed duration.

## CHAPTER II OBLIGATIONS OF THE LESSOR

### ARTICLE 73

The lessor shall be bound to hand over the premises in good condition.

The lessor shall be presumed to have fulfilled this obligation:

- where the lease is verbal; or
- where the lessee signed the lease without making any express provisions concerning the condition of the premises.

### ARTICLE 74

Major repairs that have become necessary and urgent on the leased premises shall be carried out by the lessor at his own expense.

The lessee shall bear the inconveniences of the repairs.

Major repairs shall in particular include the repairs of major walls, vaults, beams, roofs, supporting walls, enclosing walls, septic tanks and drainage tanks.

The amount of the rent shall in such a case be reduced in proportion to the use and the time the lessee was deprived of the use of the premises.

If the urgent repairs are of such a nature that they make it impossible to enjoy the premises, the lessee may request the legal termination of the lease or its suspension during the repair works.

### ARTICLE 75

If the lessor refuses to carry out the major repairs which are his responsibility, the lessee may bring an action before the competent court to authorise him to have such repairs carried out by a competent professional and then charge the cost of the repairs to the account of the lessor.

In such case, the competent court shall determine the cost of the repairs and the manner in which they shall be reimbursed.

#### **ARTICLE 76**

The lessor may not, of his own free will, change the state of the premises leased or restrict the use thereof.

#### **ARTICLE 77**

The lessor, his assigns or agents shall undertake not to interfere with the lessee's quiet enjoyment of the property.

#### **ARTICLE 78**

The sale of the premises shall not terminate lease.

Where there is a transfer of ownership of the immovable property in which the leased premises are located, the buyer shall of right assume the obligations of the lessor and shall continue the execution of the lease.

#### **ARTICLE 79**

The death of either party shall not terminate the lease.

In case of the death of the lessee, who is a natural person, the lease shall be continued with the surviving spouse or direct ascendants or descendants of the lessee, at their request, through an extrajudicial act within a period of three months following the said death. Where there are several requests, the lessor shall refer the matter to the competent court to designate a successor to take over the lease. Where no request is made within the period of three-month, the lease shall as of right be terminated.

### **CHAPTER III OBLIGATIONS OF THE LESSEE**

#### **ARTICLE 80**

The lessee shall pay the rent on the terms agreed upon to the lessor or his representative designated in the lease.

#### **ARTICLE 81**

The lessee shall undertake to keep the premises given out on lease as a responsible tenant and in accordance with the intended use provided for in the lease, or in the absence of any written agreement, according to the expected use dictated by the circumstances.

Where the lessee uses the premises for any purpose other than that stated in the lease, and the lessor suffers damage as a result thereof, the lessor may apply to the competent court to terminate the lease.

The same shall apply where the lessee carries out a related or additional activity to that specified in the lease.

## **ARTICLE 82**

The lessee shall be responsible for maintenance repairs.

He shall be answerable for any damage or losses due to lack of maintenance during the lease.

## **ARTICLE 83**

A lessee who, for any reason other than the one provided for in Article 94 below, remains on the premises after the expiry of the lease against the wish/will of the lessor shall pay an occupancy allowance equal to the amount of the rent fixed during the duration of the lease, without prejudice to the eventual payment of damages

## **CHAPTER IV RENT**

### **ARTICLE 84**

The parties shall freely fix the amount of the rent, subject to any applicable laws and regulations.

The rent shall be reviewed under the conditions provided for by the parties or, failing this, at the expiry of each three year period.

### **ARTICLE 85**

In the absence of a written agreement between the parties as to the new amount of rent, the more diligent party shall refer the matter to the competent court.

The competent court shall take particular account of the following in fixing the new amount of rent:

- the location of the premises;
- the surface area of the premises;
- the state of repairs of the premises,
- the commercial rent currently charged in the neighbourhood for similar premises.

## **CHAPTER V ASSIGNMENT OF LEASED PROPERTY - SUBLEASE**

### **ARTICLE 86**

Any assignment of the leased property shall be notified to the lessor by an extrajudicial act, or by any other means in writing, specifying:

- the full identity of the assignee;
- his address;
- where applicable, his registration number in the Trade and Personal Property Rights Register.

### **ARTICLE 87**

The assignment shall not be binding on the lessor if he is not notified under the conditions stipulated in Article 86 above.



## **ARTICLE 88**

The lessor shall have a period of one month following such notification to contest, where necessary, the assignment and to bring the matter before the competent court within such time limit, giving good and proper reasons for objecting to such assignment.

Any breach by the lessee of the obligations of the lease, especially the non-payment of rent, shall constitute a good and proper reason for objecting to the assignment.

The obligations of the lease shall be binding on the assignor during the entire period of the proceedings.

## **ARTICLE 89**

Unless otherwise stipulated in the lease, any total or partial sub lease shall be forbidden.

Where the sublease is authorised, the lessor shall be notified of the same in any written form.

In the absence of such written notification, the sub-lease shall not be binding on him.

## **ARTICLE 90**

Where the rent payable under any total or partial sub-lease is higher than the rent payable under the main lease, the lessor shall have the right to ask for a corresponding increase in the rent payable under the main lease; failing an agreement between the parties, the amount of such increase shall be fixed by the competent court taking into consideration the information referred to in Article 85 above.

## **CHAPTER VI CONDITIONS AND FORMS OF RENEWAL**

### **ARTICLE 91**

The right to renew a lease for a specified or an unspecified duration shall be vested in a lessee who can establish that he has carried out the activity provided for in the lease during a minimum period of two years in accordance with the conditions stipulated in the lease.

### **ARTICLE 92**

In the case of a fixed term lease, the lessee who has a right to renew the lease, by virtue of Article 91 above, may request such renewal by an extrajudicial act not later than three months before the date of expiry of the lease.

The right to renewal of the lease shall be forfeited where the lessee fails to make his request within the time limit stated above.

A lessor who fails to make known his response to the request for renewal at least one month before the expiry of the lease shall be deemed to have given his consent to the renewal of the lease.

### **ARTICLE 93**

In the case of a lease for an unspecified duration, any party wishing to terminate it shall give at least a six months' notice of such intention through an extrajudicial act. A lessee who has a right

to renew the lease by virtue of the provisions of Article 91 above may object to such notice before the expiry of the six months by notifying the lessor through any extrajudicial act.

Where no objection is raised within such time-limit a lease of an unspecified duration shall cease on the date fixed by the notice of termination.

#### **ARTICLE 94**

The lessor may object to the right to renew a lease of specified or unspecified duration by paying the tenant an eviction indemnity.

Where there is no agreement on the amount of the indemnity to be paid, it shall be fixed by the competent court taking into consideration in particular the turnover and investments made by the lessee and the geographical location of the premises.

#### **ARTICLE 95**

The lessor may object to the right to renew a lease for a specified or an unspecified duration without having to pay an eviction indemnity in the following cases:

1°) where he shows good and proper cause for such objection;

Such cause shall either be the failure by the lessee to perform a substantial obligation under the lease or the fact that the business of the lessee is no longer in operation.

Such cause may not be invoked unless the state of affairs continued to exist or started again more than two months after a formal notice by the lessor through an extrajudicial act for such facts to cease.

2°) where he intends to demolish and to rebuild the structures in which the premises rented are located.

In this case, the lessor shall show proof of the nature and description of the planned works.

The lessee shall have the right to stay on the premises until the commencement of the demolition works and shall have a preferential right to be granted a new lease in the reconstructed building.

Where the rebuilt premises are for a purpose different from that of the premises under the lease or where the lessee is not offered a lease on the new premises, the lessor shall have to pay the lessee the eviction indemnity provided for in Article 94 above.

#### **ARTICLE 96**

Furthermore, the lessor may, without having to pay any eviction indemnity, refuse to renew the lease relating to the portion of property used as a dwelling house attached to the main premises where he intends to live in it himself or to have his spouse, or ascendants, or descendants or those of his spouse live in it.

He shall not be allowed to take back this portion where the lessee establishes that taking back the said portion seriously affects his use and enjoyment of the lease in respect of the main premises or where the main premises and the said portion form an indivisible whole.

#### **ARTICLE 97**

Where a renewal is expressly or impliedly accepted by the parties, and unless otherwise agreed between them, the duration of the new lease shall be three years.

The new lease shall take effect from the date of expiry of the previous lease where such lease is for a specified duration, or from the date specified in the notice of termination where the previous

lease is for an unspecified duration.

#### **ARTICLE 98**

The sub-lessee may request the principal lessee to renew his lease depending on the rights granted to the lessee by the lessor. Such rights shall be subject to the provisions of Articles 91 to 94 and 95 (1) of this Uniform Act.

The lessor shall be notified of the renewal of the sub-lease under the same conditions as the sub-lease he had initially authorised.

#### **ARTICLE 99**

A lessee with no right to renew for whatever reason may nevertheless be reimbursed for the cost of constructions and improvements carried out on the premises with the authorisation of the lessor.

Where there is no agreement between the parties, the lessee may bring an action before the competent court as soon as the lease for a specified duration expires, or as soon as the notice to quit is given with respect to a lease for an unspecified duration.

#### **ARTICLE 100**

Disputes arising from the implementation of the provisions of Part I of this Book shall be brought, on the application of the more diligent party before the competent court within whose jurisdiction the leased premises are located.

### **CHAPTER VII LEGAL TERMINATION OF LEASE**

#### **ARTICLE 101**

The lessee shall be bound to pay the rents and to comply with the clauses and conditions of the lease.

Where the lessee fails to pay the rents or to comply with a clause in the lease, the lessor, after serving him through an extrajudicial act with a formal notice to comply with the clauses and conditions of the lease, may bring an action before the competent court for the termination of the lease and the eviction of the lessee and all the occupants under his authority.

Such notice shall reproduce, under penalty of being declared null and void the provisions of this article and inform the lessee that where he fails to pay or comply with the clauses and conditions of the lease within a period of one month, the action for termination of the lease shall be pursued.

A lessor who intends to pursue an action for termination of a lease in respect of premises from which a business is operated shall give notice of the action to the registered creditors.

The judgment declaring the termination of the lease shall only be pronounced after a period of one month following notification of the action to the registered creditors.

**CHAPTER VIII  
PROVISIONS RELATING TO MATTERS OF PUBLIC POLICY**

**ARTICLE 102**

The provisions of Articles 69, 70, 71, 75, 78, 79, 85, 91, 92, 93, 94, 95, 98 and 101 of this Uniform Act relate to matters of public policy.

**PART II  
THE BUSINESS**

**CHAPTER I  
DEFINITION OF BUSINESS**

**ARTICLE 103**

Business is made up of all the things which enable a trader to attract and maintain customers. It shall comprise the different movable, tangible and intangible elements.

**ARTICLE 104**

The business shall necessarily comprise the goodwill and trade sign or trade name. Such elements are referred to under the term business.

**ARTICLE 105**

Provided that they are specifically referred to by name, the business may also comprise the following elements:

- fittings,
- fixtures,
- equipment,
- furniture,
- goods in stock,
- the right to a lease,
- operational licences,
  - patents, trade marks, drawings and designs and any other intellectual property rights necessary for the operation of the business.

**CHAPTER II  
METHODS OF BUSINESS MANAGEMENT**

**ARTICLE 106**

A business may be run directly or within the framework of a management lease scheme.



Direct operation may be carried on by a trader or a commercial company.

A management lease shall be an agreement whereby a natural or corporate person who owns a business gives it out on lease to a manager who may be a natural or corporate person who runs the business at his own risk.

#### **ARTICLE 107**

The manager of a management lease scheme shall have the status of trader and shall be subject to all the obligations arising from such status.

He shall comply with the regulations on registration in the Trade and Personal Property Rights Register. Any management lease scheme shall also be published within fifteen days following its date of signature in the form of an extract in a newspaper authorized to publish legal notices.

Where the owner of the business is a trader, he shall be bound to have his registration in the Trade and Personal Property Rights Register modified to show that his business is under a management lease scheme.

The expiry of the term of the management lease scheme or its early termination shall give rise to the same publicity obligations.

#### **ARTICLE 108**

The manager of a management lease scheme shall be bound to indicate at the top of his order forms, invoices and other documents which have a financial or commercial character, his status as manager under lease as well as his registration number in the Trade and Personal Property Rights Register.

Any breach of this provision shall be punished by the relevant provisions of the national criminal law.

#### **ARTICLE 109**

Any natural or corporate person who grants a management lease shall:

- have had the status of trader for two years or performed for an equivalent duration the duties of manager or commercial or technical manager of a company;
- have run the leased business as trader for a period of at least one year.

However, persons prohibited or deprived of the right to carry on a commercial activity may not grant a management lease.

#### **ARTICLE 110**

The time limits provided for in the preceding article may be cancelled or reduced by the competent court, especially where the person concerned proves that he was unable to run his business personally or through his agents.

#### **ARTICLE 111**

The conditions laid down in Article 109 above shall not be applicable to:

- the State;

- local governments;
- Public corporations;
- legally incapable persons, with regard to the business they owned prior to the onset of their incapacity;
- the heirs or legatees of a deceased trader regarding the business run by the latter;
- management lease schemes signed by a court appointed officer in the course of a receivership proceeding responsible in whatever capacity for the running of a business, provided that they have been so authorised by the competent court and that they have been published in the newspaper authorized to publish legal notices.

#### **ARTICLE 112**

The debts of the owner of the business under a management lease scheme shall be declared due payment forthwith by the competent court where it deems that such management lease scheme jeopardizes their chances of recovery.

Under pain of foreclosure the action for payment shall be instituted by any interested party within three months following the date of publication of the management lease scheme as provided for in Article 115 of this Uniform Act.

#### **ARTICLE 113**

Up to the date of publication of the management lease scheme, the owner of the business shall be jointly and severally liable for the debts incurred by the business.

#### **ARTICLE 114**

All the debts contracted by the manager of the management lease scheme shall be due payment forthwith upon the expiry of the scheme or upon its termination before the fixed period.

### **CHAPTER III TRANSFER OF BUSINESS**

#### **ARTICLE 115**

Any transfer of a business shall comply with the general rules which apply to sales subject to the provisions below and to any of the specific provisions which apply to the carrying on of certain commercial activities.

#### **ARTICLE 116**

The transfer of business shall necessarily concern the business as defined by Article 104 of this Uniform Act.

It may also concern other elements of business as referred to in Article 105 above, provided that they are expressly named in the transfer agreement.

The provisions of the preceding paragraphs shall not stop the transfer of separate elements of the business.

#### **ARTICLE 117**

The sale of the business shall be made either by a private agreement or by a notarised deed.

The provisions of this chapter shall apply to any document recording a transfer of a business

even where such transfer is made subject to conditions, including the case of contribution of business to the capital of a company.

#### **ARTICLE 118**

Any document recording the transfer of the business shall set out:

- 1°) for natural persons, the complete civil status of the vendor and the purchaser, the full name, corporate name, legal form, address of the registered office, and the trade objectives of the vendor and the purchaser in the case of corporate persons.
- 2°) their registration number in the Trade and Personal Property Rights Register;
- 3°) where applicable, the origin of the property belonging to the previous vendor;
- 4°) the statement of preferential rights, pledges and entries burdening the business;
- 5°) the turnover for each of the past three years of operation or, where it has not been operated for over three years, since the acquisition of the business;
- 6°) results obtained during the same period;
- 7°) the lease, its date and duration, the name and address of the lessor and where applicable, of the vendor;
- 8°) the agreed price;
- 9°) the situation and the elements of the business sold;
- 10°) the name and address of the bank designated escrow agent where the sale is made by a private contract.

#### **ARTICLE 119**

The omission or inaccuracy of any of the above information may lead to the nullity of the sale where the purchaser so requests and where he proves that such omission or inaccuracy has substantially affected the composition of the transferred business and where he has suffered loss as result thereof.

Such request shall be made within one year with effect from the date of the transfer agreement.

#### **ARTICLE 120**

Any document recording the sale of business shall be filed in two certified true copies by the vendor and purchaser in the Trade and Personal Property Rights Register;

It shall be the duty of the vendor and purchaser, as far as each of them is concerned, to ensure that any corresponding amendment is made in the Register.

#### **ARTICLE 121**

Any document recording the sale of business shall, within a period of fifteen clear days from the date the document was signed, be published as soon as possible by the purchaser in the form of a notice in a newspaper authorized to publish legal notices at the place where the vendor has his registration in the Trade and personal Property Rights Register.-

#### **ARTICLE 122**

The vendor of business shall place the business sold at the disposal of the purchaser on the date stipulated in the transfer agreement.

However, where provision has been made for the price to be paid in cash, the vendor shall only be required to do so, except otherwise agreed by the parties, when payment has been made in full.

#### **ARTICLE 123**

The seller of a business shall refrain from any act tending to disturb the purchaser's running of the business.

The combination in restraint of trade shall be valid only where it is limited, either in time or in space; one of such restrictions is enough to make the agreement valid.

A seller shall guarantee the purchaser the peaceful possession and quiet enjoyment of the business sold, and shall in particular guarantee him against any rights which other persons may claim over the business sold.

#### **ARTICLE 124**

Where the purchaser is dispossessed of any part of the business or where he discovers charges or encumbrances that were not declared in the transfer agreement, or again, where the business has hidden defects, he may request the cancellation of the sale, only where the reduction in the value of the business which he suffers is of such a magnitude that he would not have bought the business if he had had knowledge thereof.

#### **ARTICLE 125**

The purchaser shall have the obligation to pay the price of the business on the day and at the place fixed in the sales agreement to the Notary or in a bank designated by the mutual agreement of the parties to the agreement.

The Notary or the bank so designated shall keep the funds as escrow agent for a period of thirty days which shall run from the day of publication of the sale in a newspaper authorized to publish legal notices.

Where at the end of this period, no objection has been notified to the escrow agent, he shall put the sale price at the disposal of the vendor.

Where one or more objections have been notified to the escrow agent within the said period, the sale price shall be made available to the vendor only on proof that the objections have been withdrawn.

#### **ARTICLE 126**

Any secret agreement or agreement whose aim is to conceal part of the sale price of a business shall be null and void.

#### **ARTICLE 127**

Any creditor of a vendor who lodges an objection shall give notice of the said objection by an extrajudicial act:

- 1°) to the Notary or the bank designated as escrow agent;
- 2°) to the purchaser, at his address as mentioned in the sale agreement;



3°) to the Registry of the court keeping the Trade and Personal Property Rights Register in which the vendor is registered; it shall be the responsibility of the Registry to enter the objection in the Trade and personal Property Rights Register.

The filed objection shall state the amount and origin of the debt and contain an address of service within the jurisdiction of the court where the Trade and personal Property Rights Register is kept.

Under pain of his objection being declared null and void the person filing the objection shall comply with formalities imposed on him by this article.

#### **ARTICLE 128**

The objection shall have the effect of a protective measure.

The person filing the objection shall bring an action before the competent court to have his debt recorded and to have it paid.

#### **ARTICLE 129**

The vendor shall file an action before the competent court to have the objections cancelled and to receive the available funds.

The vendor may also have the objection withdrawn by amicable settlement; in that case the person who made the objection shall give notice of the withdrawal in the form provided for that purpose in Article 125 above.

#### **ARTICLE 130**

Any objection that is not settled out of court or which shall not have been subject to the action referred to in Article 128 above within a period of one month following notification of the objection to the bank acting as escrow agent shall be set aside by the competent court to which the matter is referred by the vendor.

#### **ARTICLE 131**

Any creditor who has had a preferential right or a pledge entered in the Register or who has duly lodged an objection may, within a period of one month following the publication of the sale in a newspaper authorized to publish legal notices, make a bid which exceeds by one-sixth the amount of the purchase price of the business indicated in the transfer agreement.

Where the business is the subject of a compulsory sale, the secured creditors and persons who have lodged objections shall enjoy the same right to make a bid in excess of the purchase price ; this right shall be claimed within the same time limit following the auction.

In all circumstances, the highest bidder shall, within the same time limit, deposit at the Registry of the competent court the amount of the price increased by one-sixth.

#### **ARTICLE 132**

The terms of reference of sale shall reproduce in full the deed that gave rise to the higher bid and shall also indicate at the instance of the Registry the pledges previously entered in the register and the objections duly notified following the publication after the voluntary sale of the business, or while higher bids were being made.

No new objection may be allowed while higher bids are being made.

**ARTICLE 133**

The sale shall be conducted in open court in the form of an auction after the publicity formalities provided for such matters have been complied with.

**ARTICLE 134**

Where the price is not paid in cash, the vendor shall have a lien over the business sold.

For that purpose, he shall have his right entered in the Register in the form stipulated in this Uniform Act.

**ARTICLE 135**

Where the vendor is not paid, he may also institute proceedings for the cancellation of the sale in accordance with the provisions of the common law.

**ARTICLE 136**

A vendor who intends to institute an action for cancellation shall give notice of such action through an extrajudicial act or by any means in writing to the creditors registered in the Trade and Personal Property Rights Register at the registered address of service of each of them.

He shall also ensure that his action for cancellation is preceded by application for an injunction order in accordance with the provisions provided for that purpose in the Uniform Act on securities.

The rescission shall be pronounced only by the competent court where the vendor of the business is registered.

Any agreement for an amicable cancellation of the sale of business shall not be binding on creditors registered at the initiative of the purchaser.

**BOOK IV  
COMMERCIAL INTERMEDIARIES**

**PART I  
COMMON PROVISIONS**

**CHAPTER I  
DEFINITION AND SCOPE**

**ARTICLE 137**

A commercial intermediary shall be a person who has the power to act or who intends to act, on a regular basis and as an occupation, on behalf of another person, called the principal, for the purpose of concluding with a third party a contract of sale of a commercial nature.

**ARTICLE 138**

A commercial intermediary shall be a trader and shall fulfil the conditions provided for in Articles 6 to 12 of this Uniform Act.



The conditions of access to any of the professions of commercial intermediary shall, in addition be supplemented by conditions specific to each category of commercial intermediary referred to in this Book.

A commercial intermediary shall be a natural or a corporate person.

#### **ARTICLE 139**

The provisions of this Book shall govern not only the conclusion of contracts by the commercial intermediary but also any act done by the commercial intermediary with a view to concluding contracts or relating to the performance of the said contracts.

These provisions shall apply to the relationship between the principal, the commercial intermediary and the third party.

They shall apply whether the intermediary acts in his own name, as in the case of a commission agent or broker, or in the name of the principal, as in the case of a commercial agent.

#### **ARTICLE 140**

The provisions of this Book shall apply even where the businesses of the principal or of the third party are based in States other than those that are signatories to this Uniform Act as long as:

- a) the commercial intermediary is registered in the Trade and Personal Property Rights Register of one of the State Parties; or
- b) the commercial intermediary acts in the territory of one of the State Parties; or
- c) rules of Private International Law lead to the implementation of this Uniform Act.

#### **ARTICLE 141**

The provisions of this Book shall not apply;

- a) to the agency resulting from a legal or judicial authorisation to act on behalf of persons who lack legal capacity;
- b) to the agency by any person selling by auction, by authority of the administration or by order of the court;
- c) to legal agency in Family Law, Matrimonial Law and Law of Succession.

#### **ARTICLE 142**

The manager, director or partner of a company, an association or any other corporate person with or without a legal personality, shall not be considered as the intermediary of such association or person in so far as, in the performance of his duties, he acts in accordance with powers conferred by operation of law or by the legal instruments of such association or person.

## **CHAPTER II**

### **ESTABLISHMENT AND SCOPE OF THE POWERS OF THE INTERMEDIARY**

#### **ARTICLE 143**

Subject to the specific provisions of this Book, rules of agency shall apply to the relationship between the intermediary, the principal and the third party.

#### **ARTICLE 144**

The mandate of an intermediary shall be written or oral.

It shall not be subject to any formalities.

In the absence of a written document, it may be proved by any means, including the testimony of a witness.

#### **ARTICLE 145**

The principal and the intermediary on the one hand, and the intermediary and the third party involved on the other hand, shall be bound by the customs and usages which they knew or should have known, and which, in trade are widely known and generally followed by parties involved in matters of agency of the same nature in the commercial sector under consideration.

They shall also be bound by the practices established between them.

#### **ARTICLE 146**

In the absence of any specific provision in a contract, the scope of the authority of the intermediary shall be determined by the type of business it relates to.

The authority shall include in particular the power to carry out legal acts required for its performance.

However, the intermediary shall not, without a special power of attorney, institute legal proceedings, enter into a compromise and settlements agreement, accept arbitration, subscribe to the exchange of commitments, transfer or encumber any real property, or make any donation.

#### **ARTICLE 147**

A commercial intermediary who has received specific instructions may not deviate from them except where it is established that circumstances did not permit him to seek the authorisation of the principal when it can be shown that the principal would have given that authorisation had he been informed of the situation.

## **CHAPTER III**

### **LEGAL EFFECTS OF ACTS CARRIED OUT BY THE COMMERCIAL INTERMEDIARY**

#### **ARTICLE 148**

Where the intermediary acts on behalf of the principal within the scope of his authority and third parties knew or should have known of his status as an intermediary, his acts shall directly bind



the principal to the third party unless it results from circumstances of the case, particularly by reference to a commission or brokerage contract, that the intermediary only intended to bind himself.

#### **ARTICLE 149**

Where an intermediary acts on behalf of a principal within the scope of his authority, his acts shall only bind the intermediary and the third party where:

- the third party did not know or was not supposed to know the status of the intermediary; or
- where circumstances of the case, with particular reference to a commission contract, show that the intermediary only intended to bind himself.

#### **ARTICLE 150**

The liability of the intermediary shall generally be subject to the rules governing agency.

The intermediary shall thus be answerable to the principal for the good and faithful performance of his mandate as agent.

He shall be bound to personally perform it except where, forced by circumstances not to perform it himself, he gets authority to delegate his powers to a third party, or where the customs and usages allow for such substitution of powers.

#### **ARTICLE 151**

When a commercial intermediary acts without authority or beyond the scope of his authority, his acts shall bind neither the principal nor the third party.

However, when the behaviour of the principal leads the third party to reasonably believe and in good faith that the commercial intermediary has the authority to act on his behalf, the principal shall not rely on the fact, with regard to the third party, that he did not give the commercial intermediary such authority.

#### **ARTICLE 152**

A transaction carried out by a commercial intermediary acting without authority, or beyond the scope of his authority, may be ratified by the principal.

Once it is ratified, such a transaction shall have the same effects as if it had been carried out under authority.

#### **ARTICLE 153**

A commercial intermediary who acts without authority or beyond the scope of his authority shall, in the absence of ratification, be bound to compensate the third party so that the latter is put back in the position in which he would have been if the commercial intermediary had acted with authority and within the scope of such authority.

The commercial intermediary shall, however, incur no liability where the third party knew or should have known that the intermediary had no authority or was acting beyond the scope of his authority.

#### **ARTICLE 154**

The principal shall reimburse the commercial intermediary, in terms of principal and interest, any advances paid and costs incurred by the latter in the normal performance of the mandate, and shall release him from obligations entered into.

#### **ARTICLE 155**

The commercial intermediary shall be bound to give to the principal, at any time at the latter's request, an account of his management.

He shall pay interest on any late payments and shall also compensate for any damages resulting from the non-fulfilment or poor fulfilment of the mandate unless he proves that he is not responsible for the damages.

### **CHAPTER IV TERMINATION OF THE AUTHORITY OF THE COMMERCIAL INTERMEDIARY**

#### **ARTICLE 156**

The authority of a commercial intermediary shall be terminated:

- upon an agreement between the principal and the commercial intermediary;
- upon the full performance of the transaction or transactions for which the authority was given;
- upon revocation at the initiative of the principal, or upon renunciation by the commercial intermediary.

However, a principal who without good cause revokes the mandate given to the commercial intermediary shall compensate him for any damage suffered.

A commercial intermediary who without good cause renounces the performance of his mandate shall compensate the principal for any damage suffered.

#### **ARTICLE 157**

The mandate of the commercial intermediary shall also cease upon his death, incapacity, or upon the institution of receivership and bankruptcy proceedings irrespective of whether these events concern the principal or the commercial intermediary.

#### **ARTICLE 158**

The termination of the authority given to the commercial intermediary shall have no effect on a third party unless the latter knew or should have had knowledge of the termination.

#### **ARTICLE 159**

Notwithstanding the termination of the authority, the commercial intermediary shall still be empowered to accomplish, on behalf of the principal or beneficiaries of the principal, any necessary and urgent acts of a nature to avoid any damage.

## PART II THE COMMISSION AGENT

### ARTICLE 160

In matters of sale and purchase, the commission agent shall be a person who undertakes in his own name to carry out, but on behalf of a principal, the sale or purchase of goods for a commission.

### ARTICLE 161

The commission agent shall be bound to carry out transactions covered by the commission contract in accordance with the instructions of the principal.

Where the commission contract contains specific instructions, the commission agent shall strictly comply with them except, where need be, he takes the initiative to have contract terminated on the ground that such instructions are against the nature of the contract or the customs and usages of the commercial sector.

Where instructions are only indicative, the commission agent shall act as if his own interests were at stake while following as closely as possible the instructions received.

Where instructions are optional, or where specific instructions are not given, the commission agent shall to the best of his ability serve the interests of the principal, and the respect of the customs and usages.

### ARTICLE 162

The commission agent shall act honestly on behalf of the principal. In particular, he shall not buy on his own account goods entrusted to him to sell or sell his own goods to the principal.

### ARTICLE 163

The commission agent shall give the principal any useful information on the transaction covered by the commission, inform him of his dealings and give him a faithful account once the transaction covered by the commission has been performed.

### ARTICLE 164

The principal shall be bound to pay the commission agent a remuneration or commission which shall be due once the agency agreement is performed, whether or not the transaction is profitable.

### ARTICLE 165

The principal shall reimburse the commission agent the normal costs and expenses incurred and presented by the latter, provided that they were necessary or simply useful for the transaction and are backed by supporting documents.

### ARTICLE 166

Every commission agent shall have a possessory lien on the goods which he holds for all debts owed to him by the principal.



### ARTICLE 167

Where goods forwarded for sale on commission are in an obviously defective condition, the commission agent shall safeguard the rights of action against the carrier, have a report of the damage established, take necessary measures to preserve the damaged goods and inform the principal promptly.

Failing this, he shall be liable for the damage caused by his negligence.

Where there is cause to fear that goods forwarded under a commission for sale will deteriorate rapidly and where the principal's interest so requires, the commission agent shall be bound to have them sold.

### ARTICLE 168

The commission agent who sells goods below the minimum price fixed by the principal shall be bound to pay the net balance to the latter unless he proves that by selling the goods he spared the principal from suffering loss and that circumstances did not allow him to seek his instructions.

Where he is at fault, he shall, in addition, make up for all loss caused by non-compliance with the contract.

The commission agent who buys at a lower price or who sells above the price indicated by the principal shall not be entitled to keep the net balance.

### ARTICLE 169

The commission agent shall be deemed to be acting at his own risk where he grants a credit or an advance to a third party without the consent of the principal.

### ARTICLE 170

The commission agent shall not be liable for payment or performance of other obligations of persons with whom he dealt with except where he has undertaken to do so or where such is the trading practice in the place where he runs his business.

The commission agent who stands as guarantor for the person he deals with shall be entitled to an additional commission called a *del credere* commission.

### ARTICLE 171

The commission agent shall lose all rights to a commission where he is found to have acted in bad faith towards the principal, especially where he has indicated to the principal a price higher than the purchase price or lower than the selling price.

Furthermore, in these two cases, the principal shall have the right to consider the commission agent himself as the purchaser or seller.

### ARTICLE 172

The forwarding commission agent or the agent responsible for transportation who, for remuneration and in his own name, undertakes to send or forward goods on behalf of his principal, shall be considered as a commission agent but shall be no less subject to the provisions governing the contracts for the carriage of goods.



#### **ARTICLE 173**

The forwarding commission agent or agent responsible for transportation shall, inter alia, be liable for the arrival of the goods within the agreed time limit and for any damages and missing goods, except where this results from the act of a third party or an act of God.

#### **ARTICLE 174**

The customs clearing agent shall be bound to pay, on behalf of his client duties, taxes or fines charged by customs services.

The customs clearing agent who has paid, for a third party, duties, taxes or fines charged by customs services shall be subrogated to the rights of the customs services.

#### **ARTICLE 175**

The customs clearing agent shall be accountable to his principal for any error in the customs declaration or in the implementation of customs tariffs, and for any loss which may arise from delay in the payment of duties, taxes or fines.

He shall be liable to the Customs and Treasury Authorities for customs operations carried out by him.

### **PART III THE BROKER**

#### **ARTICLE 176**

A broker shall be an agent whose habitual occupation is to bring parties together in order to facilitate the successful conclusion of agreements, deals or transactions between such parties.

#### **ARTICLE 177**

A broker shall be bound to remain independent of the parties and shall limit his activities by bringing together parties who wish to enter into contracts and by taking all the necessary steps to facilitate an agreement between them.

Unless the parties so agree he shall not intervene personally in any transaction.

#### **ARTICLE 178**

A broker shall:

- do all that is necessary to permit the conclusion of a contract;
- give the parties all relevant information to enable them to make their deals with full knowledge of the facts.

The broker shall be liable for any damage resulting from his misrepresentation where he knowingly presents a party as having abilities and qualities he does not have in order to get the other party to enter into a contract.

#### **ARTICLE 179**

A broker shall not carry out commercial transactions on his own account, either directly or indirectly, or under the name of somebody else or through the intermediary of a third party.

#### **ARTICLE 180**

The broker's remuneration shall consist of a percentage of the amount of the transaction.

Where the vendor alone is the principal, the purchaser may not bear, even partially, the commission which shall be deducted from the normal price received by the vendor.

Where the purchaser alone is the principal, he shall be responsible for the commission in addition to the price paid to the vendor.

#### **ARTICLE 181**

The broker shall be entitled to his remuneration as soon as the information he gave or the negotiation he carried out results in the successful conclusion of a contract.

Where the contract is concluded on a suspensive condition, the remuneration of the broker shall only be paid after the condition has been fulfilled.

Where it is agreed that the broker's expenses shall be reimbursed, reimbursement thereof shall be due to him even if the contract has not been concluded.

#### **ARTICLE 182**

Remuneration that is not agreed upon by the parties shall be paid on the basis of the existing tariff. Where no tariff exists, remuneration shall be fixed in accordance with the established customs and usages.

In the absence of established customs and usages, the broker shall be entitled to a remuneration which takes into account all the components which relate to the transaction.

#### **ARTICLE 183**

The broker shall not be entitled to remuneration or to the reimbursement of his expenses where he has acted in the interest of the third party in disregard of his commitments towards his principal or, where the contracting third party paid him remuneration, without the knowledge of the principal.

## **PART IV THE COMMERCIAL AGENT**

#### **ARTICLE 184**

A commercial agent shall be an authorised agent who by virtue of the independence of his profession, shall be charged in a permanent manner to negotiate and eventually conclude contracts of sale, purchase, or lease or service contract in the name and on behalf of producers, manufacturers, traders or other commercial agents, without being bound to them by a contract of employment.



#### **ARTICLE 185**

Any contract between a commercial agent and his principal shall be concluded in the common interest of the parties.

The relationship between the commercial agent and the principal shall be governed by an obligation of honesty and a reciprocal duty of disclosure of information.

The commercial agent shall execute his mandate with diligence; the principal shall take all necessary steps to facilitate the execution of the agency agreement.

#### **ARTICLE 186**

Unless otherwise provided for by a written agreement, the commercial agent may agree without authorisation to act as agent for other principals.

He shall not be a representative of an enterprise which competes in the same business with one of his principals without the agreement of the latter.

#### **ARTICLE 187**

The commercial agent shall not, even after the termination of the contract of agency, use or disclose information given to him in confidence by the principal or which came to his knowledge in his capacity as agent by virtue of the contract.

Where a combination in restraint of trade has been reached between the commercial agent and his principal, the commercial agent shall be entitled to a special indemnity at the end of the combination.

#### **ARTICLE 188**

Every element of remuneration that varies with the number or value of transactions shall constitute a commission.

Where no provision is made in the contract, the commercial agent shall be entitled to a commission in accordance with established customs and usages in the sector of activity covered by his agency agreement.

Where there are no established customs and usages the commercial agent shall be entitled to a remuneration which takes into account all the elements which relate to the transaction.

#### **ARTICLE 189**

An agent who has been granted exclusive rights in a given geographical sector or over a specific group of clients shall be entitled to a commission for any transaction carried out during the validity of the agency contract.

#### **ARTICLE 190**

The commercial agent shall be entitled to a commission for any commercial transaction concluded after the termination of the agency contract where such transaction is mainly due to his activity during the validity of the agency contract and was carried out within a reasonable period of time following the termination of the contract.

### **ARTICLE 191**

Unless circumstances make it equitable to share the commission between two or more commercial agents, the commercial agent shall not be entitled to a commission where it is payable:

- to an agent who preceded him in respect of a commercial transaction carried out before his agency contract entered into force;
- to an agent who succeeds him in respect of a commercial transaction carried out after the termination of his agency agreement.

### **ARTICLE 192**

The commission shall be due as soon as the principal has carried out the transaction or should have carried it out by virtue of the agreement concluded with the third party, or as soon as the third party has carried out the transaction.

The commission shall be paid no later than on the last day of the month following the quarter during which it was earned, unless otherwise agreed by the parties.

### **ARTICLE 193**

The right to a commission shall be lost only where it is established that the contract between the third party and the principal shall not be performed and where such non-performance is not due to circumstances that can be attributed to the principal.

### **ARTICLE 194**

Except where there is agreement or custom to the contrary, the commercial agent shall not be entitled to the reimbursement of costs and expenses resulting from the normal performance of his activity but only of costs and expenses incurred by virtue of special instructions of the principal.

The reimbursement of costs and expenses shall be due payment in such a case, even where the transaction was not concluded.

### **ARTICLE 195**

An agency agreement entered into for a specified duration shall end at the expiry of such specified period without any formality to terminate it.

A contract for a specified duration which continues to be performed by both parties after its expiry shall be deemed to have been transformed into a contract for an unspecified duration.

### **ARTICLE 196**

Where a contract is for an unspecified duration, either party may terminate it on prior notice to the other party.

The period of notice shall be one month for the first year of the contract, two months where the contract has entered a second year and three months where it has entered a third year and in that manner in respect of the subsequent years.

Where there is no agreement to the contrary, the end of the period of notice shall coincide with the end of a calendar month.

Where a contract for a specified duration becomes a contract for an unspecified duration, the period of notice shall be calculated from the beginning of contractual relations between the parties.

The parties may not agree to shorten the periods of notice.

Where they agree to lengthen the periods of notice, the said periods must be identical for both the principal and the agent.

These provisions shall not apply where the contract is terminated due to the gross misconduct of one of the parties or due to an act of God.

#### **ARTICLE 197**

Where relationship between the principal and the commercial agent comes to an end, the commercial agent shall be entitled to compensatory damages, without prejudice to the possible award of other damages.

The commercial agent shall lose the right to compensation if he fails to notify the principal, by an extra judicial act within a period of one year from the date of termination of the contract that he intends to claim his rights.

The beneficiaries of the commercial agent shall also be entitled to compensatory damages where the termination of the contract is due to the death of the agent.

#### **ARTICLE 198**

The compensatory damages provided for in the preceding article shall not be due:

1. where the termination of the contract results from the gross misconduct of the commercial agent; or
2. where the termination of the contract has been initiated by the agent, unless such termination is justified by circumstances attributable to the principal or is due to the age, disability or illness of the commercial agent or, more generally, to circumstances beyond the agent's control as a result of which the continuation of his activity can no longer be reasonably expected; or
3. when, by an agreement with the principal, the commercial agent assigns to a third party the rights and obligations which he holds by virtue of the agency contract.

#### **ARTICLE 199**

The compensatory damages shall, as least, be equal to:

- one month of commission for the first year the contract was completely performed;
- two months of commission for the second year the contract was completely performed;
- three months of commission as from the third year the contract was completely performed.

The compensatory damages shall be freely agreed upon by the commercial agent and his principal for the period after the third year the contract shall be completely performed.

The monthly payment to be considered for the calculation of the damages shall be the average amount for the last twelve months of performance of the contract of agency.

These provisions shall not apply where the contract is terminated due to gross misconduct on

the part of one of the parties or due to an act of God.

**ARTICLE 200**

Any clause or agreement derogating from the provisions of Articles 196 to 199 above to the detriment of the commercial agent shall be disregarded.

**ARTICLE 201**

Each party shall be bound at the end of the contract to return anything given to him during the contract by either the other party or by any third party on behalf of the other party; this shall be without prejudice to either party's possessory right.

**BOOK V  
COMMERCIAL SALES**

**PART I  
SCOPE AND GENERAL PROVISIONS**

**CHAPTER I  
SCOPE**

**ARTICLE 202**

The provisions of this Book shall apply to contracts of sale of goods between traders irrespective of whether they are natural or corporate persons.

**ARTICLE 203 X**

The provisions of this Book shall not govern:

1. Sales to consumers that is, to any person who is acting for purposes which are outside the scope of his occupation;
2. sales upon distraint, sales by order of the court and sales by auction;
3. sales of securities, stock, money or currency and the assignment of debts.

**ARTICLE 204**

The provisions of this Book shall not apply to contracts in which the major part of the obligation of the party that supplies the goods consists in the supply of labour or other services.

**ARTICLE 205**

Apart from the provisions of this Book, the commercial sale shall be subject to common law rules.

## CHAPTER II GENERAL PROVISIONS

### ARTICLE 206

In matters of commercial sales, the will and behaviour of one party must be interpreted in accordance with his intention where the other party knew or could not ignore such intention.

The will and behaviour of one party shall be interpreted in accordance with the meaning the reasonable man having the same status as the other party, and placed in the same situation, will give them.

In order to determine one party's intention or that of the reasonable man, it shall be necessary to take into account factual circumstances, particularly negotiations which might have taken place between the parties, any customs and usages established between them, and even customs and usages in force in the profession concerned.

### ARTICLE 207

The parties shall be bound by any customs and usages they have agreed upon and by the customs and usages established in their commercial relations.

Where there is no agreement to the contrary, the parties shall be deemed, in the commercial sales contract, to have tacitly accepted the customs and usages they are aware of or ought to have been aware of, and which, in trade, are widely known and generally accepted by parties to contracts of the same type in the commercial sector concerned.

### ARTICLE 208

The commercial sales contract shall be written or oral and shall not be subject to any condition with respect to form.

In the absence of a written document, it shall be proved by any means, including the testimony of a witness.

### ARTICLE 209

Within the context of this Book, the word "written" shall mean any communication using a written medium including telegram, telex or telefax.

## PART II CREATION OF A SALES CONTRACT

### ARTICLE 210

An offer addressed to one or more specific persons shall constitute a valid offer where it is sufficiently detailed and indicative of the intention of the offeror to be bound where the offer is accepted.

The offer shall be sufficiently detailed where it describes the goods and expressly or implicitly fixes their quantity and price or provides the information necessary to determine them.

## **ARTICLE 211**

An offer shall become effective when it reaches the offeree.

An offer may be revoked where the revocation reaches the offeree before the latter communicates his acceptance.

However, an offer cannot be revoked where it is specified that it is irrevocable or where a given time limit is set for its acceptance.

An offer, even where it is irrevocable, shall end when the offeror receives its rejection.

## **ARTICLE 212**

A statement or any other conduct of the offeree which indicates that he accepts the offer shall amount to acceptance.

Silence or inaction shall not alone amount to acceptance.

## **ARTICLE 213**

The acceptance of an offer shall take effect from the time when the offeror receives notice of acceptance.

The acceptance shall not take effect where the offeror does not receive the notice of acceptance within the time limit stipulated by him or, where this is not stipulated, within a reasonable time limit considering the circumstances of the transaction and the method of communication used by the offeror.

An oral offer shall be accepted forthwith unless from the circumstances the contrary is implied.

## **ARTICLE 214**

An answer which tends to indicate acceptance of an offer but which contains additional or different elements which do not substantially alter the terms of the offer shall amount to acceptance.

An answer which tends to indicate acceptance of an offer but which contains additions, restrictions or other amendments shall be considered as a rejection of the offer and shall amount to a counter-offer.

## **ARTICLE 215**

The time limit for acceptance set by the offeror in a telegram or a letter shall begin to run from the day the offer is sent, as evidenced by the stamp of the Postal Services.

The time limit for acceptance set by the offeror by telephone, telex, telefax or any other method of instantaneous communication shall begin to run from the time the offeree receives the offer.

## **ARTICLE 216**

Acceptance may be withdrawn where the offeror receives the withdrawal notice before the acceptance becomes effective.

#### ARTICLE 217

In accordance with the provisions of this Book, the contract shall be concluded the moment the

#### ARTICLE 218

Each party intended to accept when it was made, by intention it shall be considered as having means to the intended recipient himself, to his principal place of business or to his postal address.

## PART III OBLIGATIONS OF THE PARTIES

### CHAPTER I OBLIGATIONS OF THE VENDOR

#### ARTICLE 219

The vendor shall be bound, under the conditions provided for in the contract and in this Book, to deliver the goods and to hand over, where need be, documents relating to them, to ascertain that they are in conformity with the order and to give a guarantee.

#### Section 1 Delivery

#### ARTICLE 220

Where the vendor is not bound to deliver the goods at a specific place, his delivery obligations shall consist of:

- a) handing over the goods to a carrier for delivery to the purchaser, where the contract of sale provides for such transportation;
- b) in respect of all other cases, making the goods available to the purchaser at the place where he has his principal place of business or at the place where they are stored or at the place where the vendor

#### ARTICLE 221

Where the vendor is bound to ensure the transportation of goods, he shall enter into a contract to that effect and ensure that the goods are transported to the place agreed upon with the purchaser by appropriate means of transport and according to the customs and usages of the trade.

Where the vendor is not bound to take out a transport insurance policy himself, he shall, at the purchaser's request, provide him with all available information necessary for the conclusion of such an insurance contract.

#### ARTICLE 222

The vendor shall deliver the goods:

- a) on the date which is fixed in the contract or which may be determined by reference to the contract;

- b) at any time during the period specified in the contract or which may be determined by reference to the contract;
- c) in all other cases, within a reasonable period from the time the contract is concluded.

### **ARTICLE 223**

Where the vendor is bound to hand over documents relating to the goods, he shall do so at the time, place and in the form provided for in the contract.

## **Section 2 Conformity**

### **ARTICLE 224**

The vendor shall deliver the goods according to the quantity, quality, specification, and packaging as provided for in the contract.

Unless otherwise agreed by the parties, the goods shall only be considered to conform to the contract where:

1. they are merchantable, that is to say, they are fit for the purpose goods of that nature are generally used;
2. they can properly serve any special purpose which was brought to the knowledge of the vendor at the time of the contract;
3. their characteristics conform to any sample or model which was given to the purchaser by the vendor;
4. they are packaged according to the usual method of packaging goods of the same nature or, if there is no such usual method, in a manner to ensure their conservation and protection.

### **ARTICLE 225**

In accordance with the contract and these provisions, the vendor shall be liable for any defect which exists at the time risk is transferred to the purchaser, even where such defect only appears subsequently.

### **ARTICLE 226**

In case of early delivery, the vendor shall have the right until the fixed delivery date either to deliver a part or a missing quantity or new goods in replacement of goods that do not conform to the contract, or to cure any defects, provided that the exercise of such right causes neither loss nor expense to the purchaser.

### **ARTICLE 227**

The purchaser shall inspect the goods or have them inspected as early as possible depending on the circumstances.

Where the contract includes transportation of the goods, the inspection exercise shall be delayed until the goods reach their destination.

Where the goods are diverted or redirected by the purchaser without him having a reasonable opportunity to inspect them and where, at the time of the contract, the vendor knew or ought to have known of the possibility of such diversion or redirection, the inspection shall be delayed until the goods reach their new destination.



#### **ARTICLE 228**

The purchaser shall be deprived of the right to claim redress in respect of a defect where he fails to report it to the vendor, indicating the nature of the defect, within a reasonable period from the time he noticed it or ought to have noticed it.

#### **ARTICLE 229**

In any case, the purchaser shall be deprived of the right to claim redress in respect of a defect where he does not notify it to the vendor within a year from the date on which the goods were effectively delivered to him unless such time limit is incompatible with the duration of a contractual guarantee.

### **Section 3 Guarantee**

#### **ARTICLE 230**

The vendor shall guarantee that the goods are delivered free from any third party right or claim unless the purchaser agrees to take the goods in that condition.

#### **ARTICLE 231**

The vendor shall be liable for the guarantee where a hidden defect in the goods sold reduces their use to the extent that the purchaser would not have bought them or would have bought them at a lower price had he been aware of it.

The guarantee shall be invoked by a purchaser against a vendor and by a sub-purchaser against a manufacturer or an intermediary vendor, for the guarantee covering a hidden defect affecting the goods sold from the time they were manufactured.

#### **ARTICLE 232**

The interpretation of any clause limiting the guarantee shall be restrictive.

The vendor who invokes a clause limiting the guarantee shall prove that the purchaser knew and accepted the existence of such clause when the sale was concluded.

## **CHAPTER II OBLIGATIONS OF THE PURCHASER**

#### **ARTICLE 233**

The purchaser shall be bound, under the conditions provided for in the contract and in accordance with the provisions of this Part, to pay the price and take delivery of the goods.

### **Section 1 Payment of price**

#### **ARTICLE 234**

The obligation to pay the price shall include an obligation to take all steps and accomplish all the formalities aimed at facilitating the payment of the price provided for by the contract or by the laws and regulations in force.

### **ARTICLE 235**

The sale shall not be validly concluded without the price of the goods having been fixed in the contract of sale unless the parties referred to the price generally charged at the time of conclusion of the contract in the commercial sector under consideration in respect of the same goods sold under similar circumstances.

### **ARTICLE 236**

Where the price is fixed on the basis of the weight of the goods, the net weight shall be used to determine the price in case of any doubt.

### **ARTICLE 237**

Unless the purchaser is bound to pay the price in another specific place, he shall pay the vendor:

- at the latter's place of business; or
- where the payment shall be made on delivery of goods or handing over of documents, at the place agreed upon for such delivery or handing over.

### **ARTICLE 238**

Where the purchaser is not bound to pay the price at some other time fixed by the contract, he must pay it when the vendor makes available to him either the goods or the documents representing the goods.

The vendor shall make delivery of the goods or handing over of the documents conditional upon payment of the purchase price.

Where the contract includes transportation of the goods, the vendor may forward them on condition that the goods or the documents representing the goods are only handed over to the purchaser on payment of the purchase price.

However, the parties may expressly provide in the contract that the purchaser shall only be bound to pay the purchase price once he has had the opportunity to inspect the goods.

### **ARTICLE 239**

The purchaser shall pay the price on the date fixed in the contract or resulting from the contract without the vendor having to ask for it or to accomplish any other formality.

## **Section 2 Taking delivery**

### **ARTICLE 240**

The obligation to take delivery shall consist in the purchaser:

- taking any action which may reasonably be expected of him to enable the vendor make the delivery; and
- collecting the goods.

### **ARTICLE 241**

Where a purchaser is late in taking delivery of the goods or does not pay the purchase price where payment of the price and delivery should be simultaneously, the vendor shall, where the goods are in his possession or under his control, take reasonable measures, having regard to the circumstances, to ensure their safety.



He shall be entitled to keep the goods until the purchaser pays the agreed price and reimburses the expenses incurred in preserving them.

**ARTICLE 242**

Where the purchaser has received the goods and intends to refuse them, he shall take reasonable steps, having regards to the circumstances, to ensure their safe preservation.

He shall be entitled to keep them until the vendor reimburses the expenses he incurred to ensure their safe preservation.

**ARTICLE 243**

The party who is bound to take steps to ensure the safe-keeping of the goods may store them in the warehouse of a third party at the expense of the other party provided the cost thereof is not unreasonable.

**ARTICLE 244**

The party responsible for the preservation of the goods may sell them by all appropriate means where the other party delays in taking possession of them, or in paying the purchase price, or in paying the costs related to their preservation; notice of such intention to sell shall be given to the other party.

The party who sells the goods shall have the right to deduct from the proceeds of the sale an amount equal to the costs of preservation.

He shall be responsible to the other party for the balance.

**CHAPTER III**  
**PENALTIES FOR THE BREACH OF CONTRACTUAL OBLIGATIONS**

**Section 1**  
**General Provisions**

**ARTICLE 245**

A party may bring an action before the competent court for authorisation to defer the performance of his obligations where it appears, after a contract has been entered into, that the other party will not perform a fundamental part of his obligation due to:

- 1) a serious shortfall in his capacity to execute the contract; or
- 2) his insolvency; or
- 3) the manner in which he is preparing to execute or is executing the contract.

**ARTICLE 246**

Where, before the date the contract shall be executed, it is clear that one of the parties will be in breach of a fundamental part of his obligation, the other party may bring an action before the competent court to terminate of the contract.

**ARTICLE 247**

Where, for contracts which involve successive deliveries, the failure by one of the parties to meet an obligation relating to a delivery constitutes a fundamental breach of the contract, the other party may bring an action before the competent court to terminate the contract.

He may at the same time claim for the goods already delivered or for future deliveries where, by virtue of their connexity, such deliveries may not be used for the purposes intended by the parties at the time the contract was entered into.

#### **ARTICLE 248**

A breach of a contract of sale by one of the parties shall be deemed fundamental when it causes damage to the other party to the extent of substantially depriving him of what the party was entitled to expect from the contract except where such breach was due to an act of a third party or to an act of God.

### **Section 2**

#### **Penalties for breach by the vendor**

#### **ARTICLE 249**

Where the vendor fails to perform any of his obligations under the contract of sale, the purchaser shall be entitled to:

- exercise the rights provided for in this section;
- claim damages.

#### **ARTICLE 250**

The purchaser may demand that the vendor perform specifically all his obligations.

Where the goods do not conform with the contract, the purchaser may demand that the vendor replace them where the defect constitutes a fundamental breach of the contract and where the demand for the replacement is made at the time the defect is denounced, or within a reasonable period following such denunciation.

Where the goods do not conform with contract, the purchaser may require that the vendor cure the defect. The demand to cure the defect shall be made at the time the defect is denounced, or within a reasonable period following such denunciation.

#### **ARTICLE 251**

The purchaser may grant the vendor another time-limit of a reasonable duration to perform his obligations.

The purchaser may not, before the expiry of such time limit, invoke any of the measures available to him where there is a breach of the contract unless he has received notification from the vendor of the latter's unwillingness to perform his obligations within the time limit so granted.

However, the purchaser shall not on that account lose the right to claim damages for the vendor's delay in performing his obligations.

#### **ARTICLE 252**

The vendor may, even after the date of delivery, cure at his expense any default in his obligations.

However, the purchaser shall retain the right to claim damages.

#### **ARTICLE 253**

Where the vendor asks to know whether the purchaser will accept the performance of his obligations within a certain time limit and where the purchaser fails to reply within a reasonable period of time, the vendor may perform his obligations within the time limit specified in his request.



The purchaser may not, before the expiry of the said time limit, invoke any measure which is incompatible with the performance of the vendor's obligations.

#### **ARTICLE 254**

The purchaser shall apply to the competent court to cancel the contract:

- where failure by the vendor to comply with any of his obligations or these provisions constitutes a fundamental breach of the contract; or
- where the vendor again fails to deliver the goods within the additional time limit granted to him.

However, where the vendor has delivered the goods, the purchaser's right to consider the contract terminated shall be forfeited where he fails to terminate it within reasonable time:

- in case of a late delivery, from the time when he knew that the delivery had been made;
- in case of a breach other than the late delivery.

#### **ARTICLE 255**

Where the vendor delivers only part of the goods or where only part of the goods delivered comply with the contract, the provisions of Articles 251 to 254 shall apply regarding the part that has not been delivered or that does not comply with the contract.

The contract may only be terminated in its entirety where its partial performance or the non conformity of the goods delivered with the contract constitutes a fundamental breach of the contract.

### **Section 3**

#### **Penalties for breach by the purchaser**

#### **ARTICLE 256**

Where the purchaser fails to fulfil any of his obligations under the contract of sale, the vendor shall be entitled to :

- exercise the rights provided for in this section;
- claim damages.

#### **ARTICLE 257**

The seller may grant the vendor another time-limit of a reasonable duration to perform his obligations.

The vendor may not, before the expiry of such time limit, invoke any of the measures available to him where there is a breach of the contract unless he has received notification from the purchaser of the latter's unwillingness to perform his obligations within the time limit so granted.

However, the vendor shall not on that account lose the right to claim damages for the purchaser's delay in performing his obligations.

#### **ARTICLE 258**

The purchaser may, even after the date of delivery, cure at his expense any default in his obligations, provided that such cure shall not be unreasonably delayed and shall not cause the vendor either unreasonable inconvenience or uncertainty as to the payment of the purchase price.

However, the vendor shall retain the right to claim damages for any loss suffered.

Where the vendor asks to know whether the purchaser will accept the performance of his obligations within a certain time limit and where the purchaser fails to reply within a reasonable period of time, the vendor may perform his obligations within the time limit specified in his request.

The vendor may not, before the expiry of such time limit, invoke any measure which is incompatible with the performance of the purchaser's obligations.

#### **ARTICLE 259**

The seller shall petition the competent court to cancel the contract:

- 1) where failure by the purchaser to comply with any of his obligations or these provisions constitutes a fundamental breach of the contract; or
- 2) in the case of failure to deliver, where the purchaser does not take delivery of the goods within the additional time limit proposed by the seller.

#### **ARTICLE 260**

Where the goods fail to comply with the contract and whether or not the purchase price has already been paid, the purchaser may reduce the price in proportion to the difference between the effective value of the goods at the time of delivery and the value the goods would have had at such time if they had complied with the contract.

#### **ARTICLE 261**

Where the vendor delivers only part of the goods or where only part of the goods delivered comply with the contract, the provisions of Articles 258 to 260 above shall apply regarding the part that has not been delivered or that does not comply with the contract.

The purchaser shall not declare the contract terminated in its entirety unless its partial performance or the non conformity of the goods delivered with the contract constitutes a fundamental breach of the contract.

#### **ARTICLE 262**

Where the vendor delivers the goods before the date fixed, the purchaser has the option to either accept or to refuse to take delivery.

Where the vendor delivers a quantity higher than the one provided for in the contract, the purchaser may take or refuse to take delivery of the excess quantity.

Where the purchaser takes delivery of the excess or any part thereof, he shall pay for what he takes at the contract price.

### **Section 4 Interest and Damages**

#### **ARTICLE 263**

Where a party fails to pay the contract price or any other sum owed, the other party shall have a right to interest on such sum, calculated on the basis of the legal interest rate applicable in commercial transactions, without prejudice to any damages that he may be entitled to claim for the loss suffered by him.

Interest shall accrue from the date of dispatch of the formal notice addressed to the other party by registered letter with acknowledgement of receipt or by any other means in writing.



#### **ARTICLE 264**

Damages for a breach of the contract by a party shall be equal to the loss suffered or to the profit lost by the other party.

#### **ARTICLE 265**

Where the contract is cancelled and the purchaser has made a purchase to replace the goods or the vendor has resold the goods, the party who claims damages shall obtain the difference between the contract price and the price paid by the purchaser or the resale price, as the case may be, as well as any other damages to which he may be entitled.

#### **ARTICLE 266**

The party relying on a fundamental breach of the contract shall take all reasonable steps, having regard to the circumstances, to minimise loss, including any loss of profit resulting from such breach.

Where he fails to do so, the party in default may ask for a reduction in damages equal to the amount of the loss which could have been avoided.

### **Section 5 Exemption from liability**

#### **ARTICLE 267**

A party shall not be liable for failure to comply with any of his obligations where he proves that such failure was due to circumstances beyond his control such as the act of a third party or an act of God.

#### **ARTICLE 268**

A party shall not be exempt from his liability where his failure to comply is due to an act of a third party mandated by him to perform all or part of the contract.

### **Section 6 Effects of termination of contract**

#### **ARTICLE 269**

The termination of a contract shall release both parties from their obligations save in respect of any damages that may be due. The termination of the contract shall not have any effect on the provisions of the contract which relate to the settlement of disputes or to the rights and obligations of the parties in the event of termination.

#### **ARTICLE 270**

The party who has performed the contract in whole or in part shall claim from the other party restitution of what he has supplied or paid in performance of the contract.

#### **ARTICLE 271**

The purchaser shall not be allowed to terminate the contract or demand delivery of goods in replacement where he cannot return the goods to be replaced in the state in which he received them.

This provision shall not apply where inability to return the goods or to return them in a state almost identical to the one in which the purchaser received them is not due to an act or omission on his part.

**ARTICLE 272**

The purchaser who has lost the right to declare the contract terminated or to demand that the vendor deliver goods in replacement of those he had received by virtue of the preceding article, shall retain the right to rely on all the other remedies to which he is entitled under the contract.

**ARTICLE 273**

Where the vendor is bound to refund the purchase price, he shall also pay interest on the amount thereof as from the due day for payment.

Where the purchaser shall return the goods in whole or in part, he shall also pay the vendor the equivalent of any profit which he has earned from the goods or from a part of the goods.

**Section 7  
Limitation Periods**

**ARTICLE 274**

The limitation period in respect of commercial sales shall be two years.

Such period shall run from the date on which the action may be instituted.

**ARTICLE 275**

An action arising from a breach of contract may be instituted from the date on which such breach occurred.

An action founded on a failure of the goods sold to comply with the contract may be instituted from the date on which the defect is discovered, or ought reasonably to have been discovered by the purchaser, or date when the offer to have the goods replaced was refused by the purchaser.

An action based on a fraudulent misrepresentation made before the contract of sale was entered into or at the time it was entered into, or resulting from subsequent fraudulent acts may be instituted from the date on which the fact was or ought reasonably to have been discovered.

**ARTICLE 276**

Where the seller has given a contractual guarantee, the period of limitation for the actions referred to in Article 275 above shall begin to run from the date of expiry of the contractual guarantee.

**ARTICLE 277**

The period of limitation shall stop running when the creditor does any act which, under the law applicable in the court before which the matter is brought, is considered as an interruption of the computation of time.

**ARTICLE 278**

Where the parties have agreed to submit their dispute to arbitration, the period of limitation shall stop running from the date on which one of the parties institutes the arbitration proceedings.

#### **ARTICLE 279**

In relation to limitation periods, a counterclaim shall be considered as having been instituted on the same date as the action relating to the right to which it is opposed, provided that both the principal action and the counterclaim result from the same contract.

#### **ARTICLE 280**

Proceedings instituted against a debtor shall stop the running of the time limit with regard to a co-debtor who is jointly and severally liable, where the creditor informs the latter in writing of the institution of such proceedings before the expiry of the period of limitation.

Where proceedings are instituted by a sub-purchaser against the purchaser, the period of limitation shall stop running regarding the purchaser's action against the vendor where the purchaser has informed the vendor in writing before the expiry of the said period of the institution of such proceedings.

#### **ARTICLE 281**

Any agreement contrary to the provisions of Articles 275 to 280 above shall be disregarded.

#### **ARTICLE 282**

The expiry of the period of limitation shall not be taken into consideration in any proceedings unless it is invoked by the party concerned.

## **PART IV EFFECTS OF THE CONTRACT**

### **CHAPTER I TRANSFER OF TITLE**

#### **ARTICLE 283**

Unless otherwise agreed between the parties, the transfer of ownership shall take place from the moment the purchaser takes delivery of the goods sold.

#### **ARTICLE 284**

The parties may freely agree to postpone the transfer of ownership to the day of the full payment of the contract price.

Any ownership reserve clause providing for the retention of title shall have no effect between the parties unless the purchaser had knowledge of it from the contract of sale, the order form, or the delivery note no later than on the day such contract, order or note was made.

An ownership reserve clause providing for retention of title shall not be binding on third parties, subject to it being valid, unless it is duly registered in the Trade and Personal Property Rights Register, in accordance with the provisions of Book II of this Uniform Act.



## CHAPTER II TRANSFER OF RISK

### ARTICLE 285

The transfer of ownership shall entail the transfer of risk.

However, the loss or deterioration of goods which occurs after the transfer of risk to the purchaser shall not relieve him of his obligation to pay the purchase price, except where such loss or deterioration is due to an act of the vendor.

### ARTICLE 286

Where the contract of sale involves the carriage of goods, risk shall be transferred to the purchaser as soon as the goods are handed over to the first carrier.

The fact that the vendor is authorised to keep the documents representing the goods shall not affect the transfer of risk.

### ARTICLE 287

In the case of goods sold in the course of transportation, risk shall be transferred to the purchaser from the moment the contract is entered into.

Nevertheless, where at the time the contract of sale the vendor had knowledge or should have had knowledge of the fact that the goods had perished or had deteriorated and has not informed the purchaser of that fact, the loss or deterioration shall be borne by the vendor.

### ARTICLE 288

Where the sale concerns goods that have not yet been identified, the goods shall not be considered as having been placed at the disposal of the purchaser unless they have been clearly identified for the purposes of the contract.

The transfer of risk shall only take place after such identification.

## BOOK VI FINAL PROVISION

### ARTICLE 289

Having deliberated, the Council of Ministers of the States Parties voting in accordance with the provisions of the Treaty of 17 October 1993 relating to the Organisation for the Harmonisation of Business Law in Africa, hereby adopts unanimously this Uniform Act.

This Uniform Act shall be published in the Official Gazette of OHADA and of the States Parties. It shall enter into force on 1 January 1998.

*Done at Cotonou on 17 April 1997*

**UNIFORM ACT RELATING TO  
COMMERCIAL COMPANIES AND  
ECONOMIC INTEREST GROUPS**



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The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA),

Mindful of the Treaty on the Harmonization of Business Law in Africa, in particular Articles 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;

Mindful of the report of the OHADA Permanent Secretariat and the observations of the State Parties;

Mindful of the opinion of the Common Court of Justice and Arbitration dated 7 April 1997;

The State Parties present have deliberated upon and unanimously adopted the Uniform Act set out below:

## **PRELIMINARY CHAPTER SCOPE OF THIS UNIFORM ACT**

IV

### **ARTICLE 1**

Every commercial company, including those in which the State or a corporate person governed by public law is a partner, whose registered office is located on the territory of one of the State Parties to the Treaty on the Harmonization of Business Law in Africa (hereinafter referred to as “State Parties”) shall be subject to the provisions of this Uniform Act.

All economic interest groups shall also be subject to the provisions of this Uniform Act.

Commercial companies and economic interest groups shall likewise be subject to the laws applicable in the States Parties in which their registered office is situated, provided that such laws are not contrary to the provisions of this Uniform Act.

### **ARTICLE 2**

The provisions of this Uniform Act are mandatory, except in cases where the Act explicitly authorizes the sole proprietor or members of a company to substitute contractual provisions between them for those of this Uniform Act or to supplement the provisions of this Uniform Act with their own provisions.

### **ARTICLE 3**

Any persons, whatever their nationality, wishing to engage in a commercial activity in the form of a company on the territory of one of the State Parties, shall choose a form of company which suits the activity envisaged from among those provided for by this Uniform Act.

The persons referred to in the preceding paragraph may also elect, under the conditions provided for by this Uniform Act, to form an economic interest group.

**PART 1**  
**GENERAL PROVISIONS GOVERNING COMMERCIAL**  
**COMPANIES**

**BOOK 1**  
**FORMATION OF A COMMERCIAL COMPANY**

**TITLE 1**  
**DEFINITION OF THE COMPANY**

**ARTICLE 4**

A commercial company shall be formed by two or more persons who agree, by contract, to assign assets in cash or in kind to an activity for the purpose of sharing profits or benefiting from savings that may accrue therefrom. The members of the company shall bear the losses in accordance with the conditions laid down by this Uniform Act.

A commercial company shall be formed in the common interest of the members.

**ARTICLE 5**

A commercial company may also be formed, as provided by this Uniform Act, by a single person, referred to as a «sole proprietor», on the basis of a written document.

**ARTICLE 6**

The commercial nature of a company shall be determined by its form or object.

Private companies, sleeping partnerships, private limited companies and public limited companies are commercial companies by virtue of their form, irrespective of their object.

**TITLE 2**  
**CAPACITY TO BE A MEMBER**

**ARTICLE 7**

Any natural or corporate person not under any prohibition, incapacity or incompatibility as defined especially in the Uniform Act Relating to General Commercial Law may be a member of a commercial company.

**ARTICLE 8**

Minors and legally incapacitated persons may not be members of a company where their liability for the company's debts exceeds their contributions.

**ARTICLE 9**

A husband and wife may not be members of a company in which they shall joint and severally have unlimited liability for the company's debts.

## TITLE 3 ARTICLES OF ASSOCIATION

### CHAPTER 1 FORM OF THE ARTICLES OF ASSOCIATION

#### ARTICLE 10

The Articles of Association shall be established by a notarial deed or by any other instrument that ensures legal validity in the State of the company's registered office. Such instrument, together with a certification of the writing and signatures of all the parties, shall be deposited as originals in a notary's office. They may be amended only by the same procedure.

#### ARTICLE 11

Where the Articles of Association are drawn up in a private document, as many original copies shall be established as shall be needed to deposit one copy in the company's registered office and to fulfil all the required formalities. A copy of the Articles of Association on plain paper shall be given to each member. However, in the case of private companies and sleeping partnerships, one original copy shall be given to each member.

#### ARTICLE 12

The Articles of Association shall either be a contract between members of a company where there are several members, or a unilateral deed of intent, in the case of sole proprietorship.

### CHAPTER 2 CONTENTS OF THE ARTICLES OF ASSOCIATION - MANDATORY INFORMATION

#### ARTICLE 13

The Articles of Association shall contain the following information:

- 1°) the form of the company;
- 2°) the name of the company, followed by its acronym where necessary;
- 3°) the nature and field of the company's activity which constitute its object;
- 4°) the company's registered office;
- 5°) its duration;
- 6°) the identity of contributors in cash and, for each of them, the amount of their contribution and the number and value of the shares handed over in exchange for each contribution;
- 7°) the identity of contributors in kind, the nature and value of the contribution made by each of them, the number and value of the shares handed over in exchange for each contribution;
- 8°) the identity of persons enjoying special benefits and the nature of such benefits;
- 9°) the amount of the registered capital;

- 10°) the number and value of shares issued, stating, where necessary, the various classes of shares;
- 11°) provisions relating to the distribution of profits, the constitution of reserves and the distribution of the bonus after liquidation;
- 12°) the rules governing the functioning of the company.

### **CHAPTER 3 COMPANY NAME**

#### **ARTICLE 14**

Every company shall have a name which shall be mentioned in its Articles of Association.

#### **ARTICLE 15**

Unless otherwise provided for in this Uniform Act, the name of one or more members or former members may be included in the company name.

#### **ARTICLE 16**

A company may not take the name of another company which is already registered in the Trade and Personal Property Rights Register.

#### **ARTICLE 17**

The company name shall appear on all deeds and documents from the company to third parties, especially letters, bills, notices and various publications. It shall be preceded or followed forthwith by an indication of the form of the company, the amount of its registered capital, the address of its registered office and its registration number in the Trade and Personal Property Rights Register.

#### **ARTICLE 18**

The name of the company may be altered in accordance with the conditions laid down by this Uniform Act for the amendment of the Articles of Association of such a company.

### **CHAPTER 4 OBJECT OF THE COMPANY**

#### **ARTICLE 19**

Every company shall have an object which shall constitute the company's activity and which shall be specified and described in the Articles of Association.

#### **ARTICLE 20**

Every company shall have a lawful object.

#### **ARTICLE 21**

Where the company is engaged in a regulated activity, it shall comply with the special regulations governing such activity.

## **ARTICLE 22**

The company's object may be altered under the conditions stipulated in this Uniform Act for amending the Articles of Association for each type of company.

## **CHAPTER 5 REGISTERED OFFICE**

### **ARTICLE 23**

Every company shall have a registered office which shall be indicated in its Articles of Association.

### **ARTICLE 24**

The company shall have its registered office either at its principal place of activity or at the place where its administrative and financial services are concentrated. The choice of location shall be made by the members.

### **ARTICLE 25**

The registered office may not consist solely in a postal address. It shall be identifiable by an address and a sufficiently specific geographical location.

### **ARTICLE 26**

Third parties may rely on the statutory registered office but it may not be relied upon by the company as against them where the real registered office is located elsewhere.

### **ARTICLE 27**

The registered office may be moved under the conditions stipulated in this Uniform Act for amending the Articles of Association for each form of company. However, it may be transferred to a different location in the same town by a simple decision of the company's management or administration.

## **CHAPTER 6 DURATION - EXTENSION**

### **Section 1 Duration**

### **ARTICLE 28**

Every company shall be set up for a duration which shall be indicated in the Articles of Association.

The duration of the company may not exceed ninety-nine years.

### **ARTICLE 29**

Except otherwise provided by this Uniform Act, the existence of a company shall commence on the date on which it is registered in the Trade and Personal Property Rights Register.

### **ARTICLE 30**

The expiry of the term shall entail the automatic dissolution of the company, unless an extension has been decided upon in accordance with the conditions laid down in Articles 32 et seq. of this Uniform Act.

### **ARTICLE 31**

The duration of the company may be altered under the conditions laid down in this Uniform Act for the amendment of the Articles of Association for each form of company.

## **Section 2 Extension**

### **ARTICLE 32**

The existence of a company may be extended one or more times.

### **ARTICLE 33**

The extension of the duration of the company shall be done under the conditions laid down in this Uniform Act for the amendment of the Articles of Association for each form of company.

### **ARTICLE 34**

The extension of the duration of a company shall not entail the creation of a new legal entity.

### **ARTICLE 35**

Members shall be consulted at least one year before the date of expiry of the company to decide whether or not to extend the duration of the company.

### **ARTICLE 36**

Failing this, any member may request the president of the competent court within whose jurisdiction the registered office is located to designate, through summary proceedings, a legal representative to initiate the consultation provided for in the preceding article.

## **CHAPTER 7 CONTRIBUTIONS**

### **Section 1 General provisions**

### **ARTICLE 37**

Each member shall contribute to the capital of the company.

Each member shall owe the company what he has pledged to contribute in cash or in kind.

### **ARTICLE 38**

In return for their contribution, the members shall receive shares issued by the company, as defined in Article 51 of this Uniform Act.

### **ARTICLE 39**

The provisions of this chapter shall apply to contributions made whenever there is an increase in capital during the lifetime of the company.

## **Section 2**

### **Types of contribution**

#### **ARTICLE 40**

Each member may contribute to the company:

- 1°) money, as a cash contribution;
  - 2°) services, as a supply of labour;
  - 3°) rights on movable or immovable, tangible or intangible property, as a non-cash contribution.
- Any other contribution shall be prohibited.

## **Section 3**

### **Realization of cash contributions**

#### **ARTICLE 41**

Contributions in cash shall be made by the member transferring to the company the ownership of the amount of money that he has pledged to contribute.

Unless otherwise provided in this Uniform Act, contributions in cash shall be fully paid up at the time of formation of the company.

#### **ARTICLE 42**

The only cash contributions that shall be considered as fully paid up are those over which the company has acquired ownership and which it has fully and finally received.

#### **ARTICLE 43**

Where there is a delay in payment, the balance due to the company shall automatically bear interest at the official rate from the date payment was due, without prejudice to the payment of damages as the case may be.

#### **ARTICLE 44**

Contributions in cash at the time of an increase in capital of a company may, unless forbidden by the Articles of Association, be made through set-off with an unquestionable, liquid and due claim on the company.

## **Section 4**

### **Realization of Non-cash Contributions**

#### **ARTICLE 45**

Non-cash contributions shall be made by the transfer of real or personal rights in the property contributed and the effective conveyance to the company of the property to which those rights are attached.

Non-cash contributions shall be fully paid up at the time of formation of the company.

#### **ARTICLE 46**

Where the contribution is in the form of property, the contributor shall stand security for the company just as the vendor for the buyer.

#### **ARTICLE 47**

Where the contribution is in the form of leasehold, the contributor shall stand surety for the company just as the lessor for the lessee.

However, where the contribution is in the form of interchangeable goods or any other property which normally needs to be renewed during the existence of the company, the contract shall transfer ownership of the property to the company, on condition that it gives an equal quantity, quality and value in return. In that case, the contributor shall stand surety for the company under the conditions provided in the preceding article.

#### **ARTICLE 48**

Contribution by way of property or of a right subject to publication before it may be relied upon as against third parties may be published before the company is registered. The retroactive effect of this formality can only come into operation from the date the company is registered.

#### **ARTICLE 49**

Members shall evaluate the non-cash contributions.

In the cases provided for by this Uniform Act, such valuation shall be crosschecked by a contributions valuer.

#### **ARTICLE 50**

The Articles of Association shall state the value of non-cash contributions under the conditions laid down in this Uniform Act.

### **CHAPTER 8 COMPANY SHARES**

#### **Section 1 Principle**

#### **ARTICLE 51**

A company shall issue shares in return for its member's contributions. Such shares shall represent the members' rights and shall be referred to as shares in joint-stock companies, and stocks in the other companies.

#### **Section 2 Nature**

#### **ARTICLE 52**

Company shares shall constitute personal property.

#### **Section 3 Rights and obligations attached to shares**

#### **ARTICLE 53**

Company shares shall confer on their holders the following rights and obligations:

1°) a right to a share of the company's profits whenever they are distributed;

- 2°) a right to the company's net assets when shared following the dissolution of the company or where the company's share capital is reduced;
- 3°) where necessary, the obligation to share in the company's losses under the conditions laid down for each form of company;
- 4°) the right to participate in and vote on the collective decisions of the members, except as otherwise provided by this Uniform Act for certain classes of shares.

#### **ARTICLE 54**

Unless otherwise provided in the Articles of Association, the rights and obligations of each member as stipulated in Article 53 of this Uniform Act shall be proportional to the amount of his contributions, whether such contributions were made during the formation of the company or during its lifetime.

However, provisions attributing all of the company's profits to a member, or exonerating a member from all liability for losses, as well as those excluding a member from sharing in the profits or charging all losses to one member shall be void.

#### **ARTICLE 55**

The rights referred to in Article 53 of this Uniform Act shall be exercised under the conditions laid down for each form of company. Such rights may only be suspended or cancelled by express provisions of this Uniform Act.

### **Section 4 Nominal value**

#### **ARTICLE 56**

Shares issued by a company shall have the same face value.

### **Section 5 Negotiability - Transferability**

#### **ARTICLE 57**

Company stocks shall be transferable. Shares shall be transferable or negotiable.

#### **ARTICLE 58**

Public limited companies shall issue negotiable shares.

It shall be prohibited for companies other than those referred to in paragraph one of this article to issue such shares, under penalty of the contracts signed or the shares issued being null and void. It shall also be forbidden for such companies to underwrite the issue of negotiable instruments, under penalty of such underwriting being null and void.

#### **ARTICLE 59**

Where there is provision for a member's rights to be transferred or redeemed by the company, the value of such rights shall be determined, where the parties fail to agree, by an expert designated either by both parties or, failing that, by order of the competent court through summary proceedings.

**Section 6**  
**Sole ownership of shares**

**ARTICLE 60**

In the case of companies in which sole proprietorship is not allowed by this Uniform Act, the ownership of all the shares by a single person shall not entail the automatic dissolution of the company. Any interested party may apply to the president of the competent court for such dissolution where the situation is not regularised within one year. The court may grant the company a maximum period of six months to regularize the situation. The court may not order the dissolution where, on the date of its judgment on the merits of the case, the situation has been regularised.

**CHAPTER 9**  
**REGISTERED CAPITAL**

**Section 1**  
**General provisions**

**ARTICLE 61**

Every company shall have a registered capital which shall be indicated in its Articles of Association, in accordance with the provisions of this Uniform Act.

**ARTICLE 62**

Registered capital shall represent the amount of capital contributions made by the members to the company, plus, where necessary, capitalization of reserves, profits or issue premiums.

**ARTICLE 63**

In return for the contributions, the company shall allot to each contributor, shares of a value equal to the value of his contributions.

In return for the capitalization of reserves, profits and issue premiums, the company shall issue shares or raise the face value of existing shares. These two procedures may be carried out concurrently.

**ARTICLE 64**

Registered capital shall be divided into shares or stocks, depending on the form of the company.

**Section 2**  
**Amount of registered capital**

**ARTICLE 65**

The amount of the registered capital shall be freely determined by the members.

However, this Uniform Act may fix a minimum registered capital according to the form or object of the company.

**ARTICLE 66**

Where the capital of the company being formed is less than the minimum amount fixed by this Uniform Act, the company may not be validly formed.

Where, after being formed, the company's capital drops to an amount below the minimum fixed by this Uniform Act for that form of company, the company shall be dissolved, unless the capital is raised to an amount at least equal to the fixed minimum amount, under the conditions stipulated by this Uniform Act.

### **Section 3 Modification of the capital**

#### **ARTICLE 67**

Registered capital shall be fixed. However, it may be increased or reduced under the conditions laid down by this Uniform Act for the amendment of the Articles of Association of each form of company.

#### **ARTICLE 68**

Registered capital may be increased where new contributions are made to the company or where reserves, profits and issued premiums are capitalized.

#### **ARTICLE 69**

Registered capital may be reduced under the conditions laid down by this Uniform Act, either by refunding part of the members' contributions or by imputing losses to the company.

#### **ARTICLE 70**

Where this Uniform Act authorizes the reduction of capital by the refund of part of the members' contributions, this may be done either by a cash refund or by allotment of assets.

#### **ARTICLE 71**

Reduction of capital shall be subject to the conditions stipulated in Articles 65 and 66 of this Uniform Act.

## **CHAPTER 10 AMENDMENT OF THE ARTICLES OF ASSOCIATION**

#### **ARTICLE 72**

The Articles of Association may be amended under the conditions stipulated by this Uniform Act for each form of company.

It shall be forbidden to increase a member's commitments without his consent.

## **CHAPTER 11 DECLARATION OF REGULARITY AND CONFORMITY OR NOTARIAL STATEMENT OF SUBSCRIPTION AND PAYMENT**

#### **ARTICLE 73**

Founders and first members of the management organs of the company, directors and managing directors shall deposit at the Trade and Personal Property Rights Register a declaration wherein they describe all the actions carried out towards the regular formation of the company and by which they affirm that such formation has been carried out in conformity with this Uniform Act.

This document shall be known as the “Declaration of regularity and conformity”.

Provided that the application for registration of the company in the Trade and Personal Property Rights Register shall be rejected save upon presentation of the said document.

The declaration shall be signed by its authors. However, it may be signed by one of the said persons or several of them provided they are authorised to do so.

#### **ARTICLE 74**

The provisions of the preceding article shall not apply where a notarial statement of subscription and payment has been drawn up and deposited under the conditions stipulated by this Uniform Act and by the Uniform Act relating to General Commercial Law.

### **CHAPTER 12**

#### **NON-COMPLIANCE WITH FORMALITIES - RESPONSIBILITIES**

#### **ARTICLE 75**

Where the Articles of Association do not contain all the information stipulated by this Uniform Act, or where a formality prescribed by this Act for the formation of the company has not been, or has been improperly satisfied, any interested party may apply to the competent court within whose area of jurisdiction the company’s registered office is located for an order directing that the company be formed in full compliance with the law under pain of a periodic pecuniary penalty to be determined by the court while the default continues.

The legal Department may also bring action for the same purpose.

#### **ARTICLE 76**

The provisions of Articles 73 and 74 of this Uniform Act shall apply in the case of amendment of the Articles of Association.

#### **ARTICLE 77**

The action for regularization shall lapse after a period of three years from the date of registration of the company or from the date of publication of the deed amending its Articles of Association.

#### **ARTICLE 78**

Founding members, as well as the first directors, managers, managing directors or other initial members of the management organs of the company, shall be jointly and severally liable for torts arising either from the omission of a mandatory detail in the Articles of Association, or from the improper fulfilment of a prescribed formality in the formation of the company.

#### **ARTICLE 79**

Where the Articles of Association are amended, the members of the management organs, directors or managing directors in office at the time shall incur the same liabilities as those laid down in the preceding article.

#### **ARTICLE 80**

The action in tort provided for in Articles 78 and 79 of this Uniform Act shall lapse after five years from the date of registration of the company or of publication of the act to amend the Articles of Association, as the case may be.

## TITLE 4 PUBLIC CALLS FOR CAPITAL

### CHAPTER 1 SCOPE OF PUBLIC CALLS FOR CAPITAL

#### ARTICLE 81

The following shall be deemed to constitute a public call for capital:

1. Getting the shares of a company to be listed on the Stock Exchange of a State Party, with effect from the date of registration of such shares;
2. Resorting to credit establishments or stock brokers or the use of any form of publicity or canvassing in order to offer any type of shares to the public in a state party;

The distribution of shares to more than one (100) persons shall also constitute a public call for capital.

Provided that in determining this figure, each company or collective body offering transferable securities shall be considered as a single entity.

#### ARTICLE 82

Companies not authorized by this Uniform Act shall be prohibited from making public calls for capital by registering their securities on the stock exchange of a State Party or by offering their shares as part of an issue.

#### ARTICLE 83

The share offer referred to in Article 81 of this Uniform Act shall mean the placement of shares either in the form of an issue or a transfer.

#### ARTICLE 84

A company whose registered office is located in a State Party may offer its shares in one or more other State Parties by making public offers. In such a case, it shall be subject to the provisions of Articles 81 to 96 of this Uniform Act in the State Party of its registered office and in such other State Parties.

Where the public offer of shares is not made by the issuer, the company making the offer shall be subject to the provisions of Articles 81 to 96 of this Uniform Act in the State Party of the issuer and in the other State Parties where the public offer is made.

#### ARTICLE 85

Where a company whose registered office is located in one State Party launches a public issue in another State Party, one or more credit establishments in that other State Party shall guarantee the proper performance of the operation where the total amount of the offer is more than fifty million (50 000 000) CFA francs.

Such a company shall, in any case, be required to have financial backing for the operation from one or more credit establishments in that other State Party.

Where the total amount of the operation exceeds 50,000,000 (fifty million) CFA francs, the company shall designate, from the list of auditors in that other State Party, one or more auditors to verify the financial statements. The auditor(s) shall sign the prospectus provided in Article 86 of this Uniform Act, amended or supplemented, as the case may be, in accordance with the provisions of Article 90 of this Uniform Act.

## CHAPTER 2 PROSPECTUS

### ARTICLE 86

Any company which makes public calls for capital shall, first of all, publish in the State Party of the registered office of the issuer and, where necessary, in every other State Party where the call for capital is launched, a prospectus aimed at informing the public and dealing with the organization, financial situation, activity and prospects of the issuer as well as the rights attached to the securities being offered to the public.

### ARTICLE 87

Where a company makes public calls for capital in a State Party other than that of its registered office, the prospectus presented to the authorities referred to in Article 90 of this Uniform Act shall contain information specific to the market of that State Party.

Such information shall, in particular, deal with the income tax schedule, the establishments which provide financial backing to the issuer in that State Party, and the manner of publication of notices intended for investors.

The prospectus shall contain a detailed presentation of the financial guarantors referred to in Article 85 of this Uniform Act, who, in turn, shall provide the same information as the company whose securities are being offered, with the exception of information relating to the shares to be offered to the public.

### ARTICLE 88

The prospectus need not contain information:

- 1°) which is of little importance and is unlikely to influence the appraisal of the assets, financial performance or prospects of the issuer;
- 2°) the disclosure of which is contrary to public interest;
- 3°) the disclosure of which may cause serious harm to the issuer and where the failure to publish same would not mislead the public;
- 4°) to which the person making the offer does not have access and where such person is not the issuer.

### ARTICLE 89

The prospectus may refer to any other prospectus approved by the authorities referred to in Article 90 of this Uniform Act less than one year before where the said prospectus was drawn up in respect of securities of the same category and contains the latest approved annual financial statements of the issuer and all the information required under Articles 87 and 88 of this Uniform Act.

The said prospectus shall then be supplemented by an operational memorandum comprising:

- 1°) information on the shares offered;
- 2°) any accounting data published after the initial approval;
- 3°) data on new significant events likely to influence the valuation of the shares being offered.

#### **ARTICLE 90**

The draft prospectus shall be submitted for the approval of the stock exchange control authority of the State Party in which the registered office of the issuer is located and, where necessary, where necessary, in the other State Parties in which the public calls for capital are made. Where there is no such authority, it shall be submitted to the minister in charge of finance of the said State Parties for endorsement.

The said authorities shall ensure that the operation does not contain any irregularities and does not entail acts contrary to the interests of investors in the State Parties of the issuer's registered office and, where necessary, in the other State Parties in which the public call is made.

The authorities shall indicate the statements to be corrected or details to be included. They may also request explanations or justification, particularly as concerns the situation, activity and performance of the company. They may request that the auditors carry out further investigations at the expense of the company, or request a review by an independent expert designated with their approval, where they feel the auditors are not diligent enough.

They may request that a warning drafted by them be included in the prospectus. They may also ask for appropriate guarantees in pursuance of Article 85 of this Uniform Act.

The authorities referred to in this article shall grant the approval provided for in paragraph 1 within a period of one month following the date of acknowledgement of receipt of the prospectus. This time limit may be extended to two months where the authorities request further investigations. The acknowledgement of receipt of the prospectus shall be issued on the day the prospectus is received.

Where the stock exchange control authority or, failing this, the minister in charge of finance decides not to grant the approval, the company shall be notified of the reasons therefor within the same time limit.

#### **ARTICLE 91**

Approval shall not be granted upon failure to meet the demands made by the stock exchange control authority or, in the absence of such authority, by the minister in charge of finance of the State Party of the issuer's registered office, and, where applicable, of the other State Parties where public calls for capital are made or where the operation entails acts contrary to the interests of the investors in the State Party of the registered office or, where applicable, of the other State Parties where the public call is made.

#### **ARTICLE 92**

Where important supervening events likely to affect the valuation of the public issue occur between the date of approval and the beginning of the planned operation, the issuer or the initiator of the offer shall draw up an additional updated prospectus which, before circulation,

shall be submitted for approval to the stock exchange control authority or, failing this, to the minister in charge of finance of the State Party of the issuer's registered office and, as the case may be, of the other State Parties in which the public call is launched.

#### **ARTICLE 93**

The prospectus shall be effectively circulated in the following forms in the State Party of the issuer's registered office and, where necessary, in the other State Parties where the public call is made:

- 1°) publication in newspapers empowered to publish legal notices;
- 2°) placement of a brochure at the disposal of any person wishing to consult it at the registered office of the issuer and in the institutions providing financial backing for the securities; a copy of the prospectus shall be sent free of charge to any interested party.

#### **ARTICLE 94**

Advertisements of the operation shall mention the existence of the approved prospectus and how it can be obtained.

#### **ARTICLE 95**

A prospectus shall not be required where:

- 1°) the offer is intended for persons within the framework of their professional activities;
- 2°) the total amount of the offer is less than fifty million (50,000,000) CFA francs;
- 3°) the offer concerns shares or stock of collective bodies investing transferable securities other than closed-end ones;
- 4°) the offer is intended as transferable securities in return for contributions made during a merger or as partial contributions of capital;
- 5°) the issue concerns capital stock allotted freely during the payment of dividend or capitalization of reserves;
- 6°) the transferable securities offered come from the exercise of a right over transferable securities whose issue gave rise to the drawing up of a prospectus;
- 7°) the transferable securities are issued as a substitute for shares in the same company and their issue does not entail an increase of capital by the issuer.

#### **ARTICLE 96**

The provisions of Articles 81 to 96 of this Uniform Act shall apply to any offer of security by public calls for capital, except the offer of securities by each State Party on its territory.

## **TITLE 5**

### **REGISTRATION - LEGAL PERSONALITY**

#### **CHAPTER 1**

##### **GENERAL PROVISIONS**

###### **ARTICLE 97**

With the exception of sleeping partnerships, all companies shall be registered in the Trade and Personal Property Rights Register.

###### **ARTICLE 98**

All companies shall have a legal personality with effect from the date of registration in the Trade and Personal Property Rights Register, except otherwise provided in this Uniform Act.

###### **ARTICLE 99**

Regular transformation of a company from one form of company into another shall not entail the creation of a new legal entity. The same shall apply to an extension of the existence of a company or any other amendments of the Articles of Association.

#### **CHAPTER 2**

##### **COMPANIES UNDER FORMATION AND FULLY FORMED BUT UNREGISTERED COMPANIES**

###### **Section 1**

###### **Definitions**

###### **ARTICLE 100**

A company shall be deemed to be under formation where it has not yet been incorporated.

###### **ARTICLE 101**

A company shall be deemed to be formed from the date of signature of its Articles of Association. Prior to its registration, the company shall not plead its existence or non-existence against third parties. However, third parties may in such case plead the existence of the company.

###### **ARTICLE 102**

All persons who actively participate in transactions leading to the formation of a company shall be deemed to be founders thereof.

Their role shall begin with the first transactions or with the performance of the initial acts for the purpose of setting up the company. It shall end on the date on which the Articles of Association are signed by all the members or the sole proprietor.

###### **ARTICLE 103**

Founders of a company shall have an official address on the territory of one of the State Parties.

Such address shall not consist solely in a post box. It shall be identifiable by an address and a sufficiently specific geographical location.

## **ARTICLE 104**

From the date of signature of the Articles of Association, company executives shall take over from the founders. Company executives shall act on behalf of the company already formed but not yet entered in the Trade and Personal Property Rights Register.

Powers and obligations of company executives shall be defined in accordance with the provisions of this Uniform Act and, where necessary, by the Articles of Association.

## **ARTICLE 105**

Between the date on which a company is formed and that on which it is entered in the Trade and Personal Property Rights Register, relations among the members shall be governed by the Articles of Association and by general principles relating to the law of contracts.

### **Section 2**

#### **Commitments made on behalf the company under formation prior to its incorporation**

## **ARTICLE 106**

Acts done and commitments entered into by the founders on behalf of a company under formation, before it is incorporated, shall be brought to the attention of the members before signature of the Articles of Association where the company does not make a public call for capital, or during the initial meeting of shareholders, where the contrary applies.

Such acts and commitments shall be set out in a statement referred to as “Statement of acts done and commitments made on behalf of the company under formation” which shall specify the nature and extent of the company’s liability should it decide to adopt and make them its own.

## **ARTICLE 107**

In the case of a company formed without a constituent meeting, the statement of acts and commitments referred to in Article 106 above shall be annexed to the Articles of Association. Where the members sign the Articles of Association and the statement, the company shall be deemed to have adopted the contracts and commitments described in the statement with effect from the date the company is entered in the Trade and Personal Property Rights Register.

## **ARTICLE 108**

Acts done and commitments entered into on behalf of the company during its formation may also be adopted by the company after its incorporation provided they are approved at an ordinary meeting of shareholders, under the conditions laid down by this Uniform Act for each form of company, unless otherwise provided for by the Articles of Association. The meeting shall be fully informed of the nature and scope of each of the acts and commitments being proposed for adoption by the company. The persons who signed such acts and commitments shall not vote and their votes shall not be taken into account in determining the quorum and the majority.

## **ARTICLE 109**

In the case of a company formed by a constituent meeting, the adoption of pre-incorporation acts and commitments shall be the subject of a special resolution taken during the constituent meeting, under the conditions laid down by this Uniform Act.

## ARTICLE 110

Acts and commitments adopted by a duly constituted and registered company shall be deemed to have been made by the company from the origin.

Acts and commitments not adopted by the company under the conditions laid down by this Uniform Act shall not be binding on the company and the persons who made them shall have unlimited liability for the obligations they entail.

### Section 3

#### Commitments made on behalf of a fully formed company prior to its registration

## ARTICLE 111

Members may, in the Articles of Association or in a separate deed, as the case may be, authorize one or more company executives to enter into commitments on behalf of the company which, though fully formed, has not yet been entered in the Trade and Personal Property Rights Register.

Registration of the company in the Trade and Personal Property Rights Register shall entail its adoption of such commitments, provided that they are specifically set out and the terms and conditions for their application are spelt out in the authorising instrument.

## ARTICLE 112

Except otherwise provided by the Article of Association, any acts done beyond the scope of the mandate given or which are unrelated to such mandate may be adopted by the company, provided they have been approved by an ordinary meeting of shareholders under the conditions laid down by this Uniform Act for each type of company. The members involved in such acts shall not vote and their votes shall not be taken into account in determining the quorum and the majority.

## ARTICLE 113

The provisions of Article 110 of this Uniform Act shall apply.

## CHAPTER 3 UNREGISTERED COMPANIES

## ARTICLE 114

Notwithstanding the preceding provisions, the members may agree not to register the company which shall then be referred to as a “Sleeping partnership”. It shall not have a legal personality.

Sleeping partnerships shall be governed by the provisions of Articles 854 et seq. of this Uniform Act.

## ARTICLE 115

Where, contrary to the provisions of this Uniform Act, the Articles of Association or the unilateral deed of intent as the case may be, is not in writing thereby making registration impossible, the company shall be referred to as a “de facto company”. It shall not have legal personality.

De facto companies shall be governed by the provisions of Articles 864 et seq. of this Uniform Act.

## **CHAPTER 4 BRANCHES**

### **ARTICLE 116**

A branch shall be a commercial, industrial or service-providing establishment which belongs to a company or a natural person and which has been granted a certain degree of autonomy in its management.

### **ARTICLE 117**

The branch shall not have a separate legal personality distinct from that of the parent company or the natural person who owns it.

Rights and obligations arising from its activities or its existence shall be part of the estate of the company or the natural person who owns it.

### **ARTICLE 118**

The branch may be an establishment of a foreign company or natural person. Subject to international agreements or laws to the contrary, the branch shall be governed by the law of the State Party in which it is located.

### **ARTICLE 119**

The branch shall be registered in the Trade and Personal Property Rights Register in accordance with the provisions organizing the said register.

### **ARTICLE 120**

Where the branch is owned by a foreigner, it shall be attached to a company in existence or to be created, governed by the laws of one of the State Parties not later than two years after the branch is set up, unless this obligation is waived by order of the minister in charge of trade in the State Party in which the branch is located.

## **BOOK 2**

## **FUNCTIONING OF A COMMERCIAL COMPANY**

### **TITLE 1**

### **POWERS OF COMPANY EXECUTIVES**

### **GENERAL PRINCIPLES**

#### **ARTICLE 121**

Officers of the management organs of the company shall, within the limits provided by this Uniform Act for each form of company, have full powers to commit the company with respect to third parties without having to show proof of a special instrument granting such powers. This limitation of their legal powers by the Articles of Association shall not be binding on third parties.

#### **ARTICLE 122**

The company shall be bound by the acts of its managers, directors and administrators which are unrelated to the company's object, unless it can prove that the third party was aware of this fact,

or that, given the circumstances, the third party could not have been unaware of it; publication of the Articles of Association shall not alone suffice to constitute such proof.

#### **ARTICLE 123**

With respect to relations between members and subject to specific legal provisions for each form of company, the Articles of Association may limit the powers of managers, directors and administrators.

Such limitations shall not be binding on third parties acting in good faith.

#### **ARTICLE 124**

The appointment, dismissal or resignation of company executives shall be published in the Trade and Personal Property Rights Register.

IV

## **TITLE 2**

### **COLLECTIVE DECISIONS**

#### **GENERAL PRINCIPLES**

#### **ARTICLE 125**

Except otherwise provided by this Uniform Act, each member shall have a right to participate in taking collective decisions. Any contrary provisions in the Articles of Association shall be disregarded.

#### **ARTICLE 126**

A member may be represented by an authorized person under conditions laid down by this Uniform Act and, where necessary, by the Articles of Association. Except otherwise provided by this Uniform Act, such proxy may be granted only to another member.

This Uniform Act or the Articles of Association may restrict the number of members and the number of votes a proxy may represent.

#### **ARTICLE 127**

Except otherwise provided by the Articles of Association, joint owners of shares or stocks shall be represented by a single authorized person chosen from among the joint owners. Where there is disagreement, a proxy shall on the application of the more diligent joint owner be appointed by the competent court within whose jurisdiction the registered office is located.

#### **ARTICLE 128**

Except otherwise provided by the Articles of Association, where a share or stock is encumbered by usufruct, voting rights shall be exercised by the bare owner, except in the case of decisions on the distribution of profits where the voting rights are reserved for the usufructuary.

#### **ARTICLE 129**

Voting rights of each member shall be proportional to the company shares he holds, unless otherwise provided by this Uniform Act.

#### **ARTICLE 130**

Collective decisions may be annulled for undue use of the majority powers and may commit the members who voted for them vis-à-vis the minority shareholders.

There shall be undue use of the majority powers when the majority shareholders vote in favour of a decision which serves solely their interests, goes contrary to the interests of the minority shareholders, and cannot be justified in terms of the company's interests.

#### **ARTICLE 131**

Minority members may be liable in the event of undue use of minority powers.

There shall be undue use of minority powers where, in voting, minority shareholders object to decisions which are necessary for the company's interests and cannot show any legitimate interest in doing so.

#### **ARTICLE 132**

There shall be two kinds of collective decisions: ordinary decisions and extraordinary decisions. Collective decisions shall be taken in accordance with conditions of form and substance provided for each form of company.

#### **ARTICLE 133**

Under the conditions specifically laid down for each form of company, collective decisions may be reached either at a general meeting or by correspondence.

#### **ARTICLE 134**

Minutes shall be taken in all the meetings of members. The minutes shall indicate the time and place of the meeting, the full names of members present, agenda, documents and reports submitted for discussion, a summary of the discussions, the terms of resolutions put to the vote and the outcome of such voting. The minutes shall be signed under the conditions provided by this Uniform Act for each form of company.

Where consultation is in writing, mention shall be made of that fact in the minutes to which shall be appended the reply of each member and which shall be signed in accordance with the conditions laid down by this Uniform Act for each form of company.

#### **ARTICLE 135**

Except otherwise provided in this Uniform Act, the minutes referred to in Article 134 above shall be entered in a special register numbered and initialled by the competent judicial authority and kept at the registered office.

However, minutes may be recorded in serially numbered loose sheets of paper initialled as provided in the preceding paragraph and bearing the seal of the authority who initialled them. Once a sheet has been used, even partially, it shall be attached to the other used sheets. It shall be prohibited to add, expunge or invert the order of used sheets.

#### **ARTICLE 136**

Minutes shall be filed at the company's registered office. Copies or extracts of minutes of members' meetings shall be duly certified by the company's legal representative, or where there are several, by one of them only.

## **TITLE 3**

# **ANNUAL SUMMARY FINANCIAL STATEMENTS**

## **ALLOCATION OF EARNINGS**

### **CHAPTER 1**

#### **ANNUAL SUMMARY FINANCIAL STATEMENTS**

##### **Section 1**

##### **Principle**

##### **ARTICLE 137**

At the end of each fiscal year, the manager, the board of directors or the managing director, as the case may be, shall draw up a financial statement closing the accounts for the year in accordance with the provisions of the Uniform Act governing the organisation and harmonisation of accounting systems.

##### **Section 2**

##### **Approval of annual summary financial statements**

##### **ARTICLE 138**

The manager, board of directors or the managing director, as the case may be, shall prepare a management report in which he shall describe the situation of the company during the past financial year, prospects for continued company activity, the evolution of the cash situation and the financing plan.

##### **ARTICLE 139**

The following shall be annexed to the annual summary financial statements:

- 1°) a statement on sureties, securities and guarantees given by the company;
- 2°) a statement of the secured debts offered by the company.

##### **ARTICLE 140**

Annual summary financial statements and the management report of public limited companies and, where necessary, of private limited companies shall be forwarded to auditors at least forty-five days before the date of the ordinary general meeting.

These documents shall be presented to the general meeting of the company which shall examine the annual summary financial statements at a session which must hold within six months from the end of the financial year.

##### **ARTICLE 141**

Any changes in the presentation of summary financial statements or in the methods of valuation, depreciation or provision in conformity with accounting rules and regulations shall be indicated in the management report and, where necessary, in the auditor's report.

## CHAPTER 2 RESERVES - DISTRIBUTABLE PROFITS

### ARTICLE 142

The general meeting shall decide on the appropriation of income in compliance with the provisions of the law and of the Articles of Association.

It shall make the necessary allocations for the legal reserve and for statutory reserves.

### ARTICLE 143

The distributable profits shall be the income of the fiscal year, to which shall be added income brought forward less past losses and appropriations for reserves in accordance with the provisions of the law or of the Articles of Association.

The general meeting may, under the conditions set forth in the Articles of Association, decide to distribute all or part of the company's reserve funds, provided such reserves are not classified non-distributable by the law or the Articles of Association. In such case, the general meeting shall specify the reserve items from which funds shall be drawn.

Except in the case of reduction of capital, no distribution of reserves to members may be authorized where the equity capital is or may, following such distribution, become lower than the capital plus the reserves which by law or by virtue of the Articles of Association may not be distributed.

## CHAPTER 3 DIVIDENDS

### ARTICLE 144

After approving the summary financial statements and ascertaining the availability of distributable funds, the general meeting shall also determine:

- appropriations for optional reserves, where necessary;
- the part of the profits to be allotted to shares and to stocks, as the case may be;
- the amount to be carried forward, if any.

The amount of the profits allotted to each share or stock shall be referred to as dividend.

Any dividend distributed in violation of the rules set forth in this article shall be fictitious.

### ARTICLE 145

The Articles of Association may allow the allotment of a first dividend to be paid on company stocks where the general meeting establishes the existence of distributable profits, provided that such profits are sufficient to cover such payments. Dividend shall be calculated as interest on the amount of paid-up shares.

### ARTICLE 146

Conditions for the payment of dividends shall be laid down by the general meeting. The general meeting may delegate such power to the manager, the chairman and managing director, the general manager or the managing director, as the case may be.

Notwithstanding the above provision, the payment of dividend shall be done within a maximum period of nine months following the end of the fiscal year. This deadline may be extended by the president of the competent court.

**CHAPTER 4**  
**DISPUTES BETWEEN MEMBERS OR BETWEEN ONE OR**  
**MORE MEMBERS AND THE COMPANY**

**ARTICLE 147**

Any dispute between members or between one or more members and the company shall be brought before a competent court of law.

**ARTICLE 148**

The dispute may be referred for arbitration either through an arbitration clause, which may be statutory or not, or by compromise.

Where the parties so decide, the arbitrator or the arbitration tribunal, as the case may be, may pass a ruling as conciliator with no option of appeal.

**ARTICLE 149**

Arbitration shall be regulated by the provisions of the Uniform Act on Arbitration.

**TITLE 4**  
**ALARM PROCEDURE**

**CHAPTER 1**  
**ALARM BY THE AUDITOR**

**Section 1**  
**Companies other than public limited companies**

**ARTICLE 150**

In companies other than public limited liability companies, the auditor may, by hand delivered letter against a receipt, or by registered letter with a request for acknowledgement of receipt, ask for explanations from the manager who shall be bound to respond, in accordance with the conditions and within the time limits set forth in the following articles, in respect of any matter likely to jeopardize the continued operation of the company which and the auditor noticed while examining documents forwarded to him or those he had access to in the performance of his duties.

**ARTICLE 151**

The manager shall reply by hand-delivered letter against receipt or by registered mail with a request for acknowledgement of receipt, within one month of receipt of the auditor's request. In his reply, the manager shall give an analysis of the situation and specify, as the case may be, the measures envisaged.

## **ARTICLE 152**

Where there is a failure to comply with Article 151 above, or where, in spite of the decisions taken, the auditor establishes that the continued operation of the company is still in jeopardy, he shall prepare a special report on the situation.

He may request, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, that such special report be circulated to members, or that it be tabled at the next general meeting. In such case, the manager shall circulate the said special report within eight days from the date of receipt of the auditor's request.

### **Section 2** **Public limited companies**

## **ARTICLE 153**

In a public limited company, the auditor may, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, ask for explanations from the chairman of the board of directors, the chairman and managing director or managing director, as the case may be, who shall be bound to reply under the conditions and within the time limits set forth in Article 154 below, on any matter likely to jeopardize the continued operation of the company and which the auditor noticed while examining documents forwarded to him or those to which he had access in the course of performing his duties.

## **ARTICLE 154**

The chairperson of the board of directors, the chairperson and managing director or the managing director, as the case may be, shall reply by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, within one month after receiving the auditor's request. In his reply he shall give an analysis of the situation and specify, where necessary, the measures envisaged.

## **ARTICLE 155**

Where there is no reply or where the reply is unsatisfactory, the auditor shall ask the chairperson of the board of directors or the chairperson and managing director as the case may be, to convene a meeting of the board or the managing director to give an opinion on the issues raised.

The invitation referred to in the preceding paragraph shall be in the form of a hand-delivered letter against a receipt or registered letter with a request for acknowledgement of receipt dispatched within fifteen (15) days after receiving the reply of the chairman of the board of directors, the chairman and managing director, or the managing director, as the case may be, or the observation that there is no reply within the time limits provided in the preceding article.

The chairperson of the board of directors or the chairperson and managing director, as the case may be, shall, within fifteen days from the date of receipt of the auditor's letter, convene the board of directors to decide on the matters raised within one month following receipt of the auditor's letter. The auditor shall be invited to the meeting of the board of directors. Where the company is administered by a managing director, he shall, within the same time limit, invite the auditor to the meeting in which he shall give his opinion on the matters raised.

An extract of the minutes of the board of directors' meeting or of the meeting with the managing director, as the case may be, shall be forwarded to the auditor within one month following the meeting.

## **ARTICLE 156**

Where there is a failure to comply with the provisions of the preceding article, or where, in spite of the decisions taken, the auditor establishes that the continued operation of the company is still in jeopardy, he shall prepare a special report which shall be presented at the next general meeting or, in case of an emergency, at a general meeting of shareholders which the auditor himself shall by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt convene to submit his findings if he fails to obtain the convening of the meeting by the board of directors or the managing director.

Where the auditor convenes such a meeting, he shall prepare the agenda and may, for decisive reasons, choose a place for the meeting other than that provided in the Articles of Association. He shall, in a report presented at the meeting, explain why he convened the meeting.

## **CHAPTER 2 ALARM BY THE MEMBERS**

### **Section 1 Companies other than public limited companies**

## **ARTICLE 157**

In companies other than public limited companies, any member who is not a manager may, twice a fiscal year, send written questions to the manager on any matters likely to jeopardize the continued operation of the company.

The manager shall reply to such questions in writing within one month, in accordance with the preceding paragraph. He shall forward copies of such questions and his reply within the same time limit to the auditor, if there is one.

### **Section 2 Public limited companies**

## **ARTICLE 158**

In a public limited company, any shareholder may, two times per year, question the chairperson of the board of directors, the chairperson and managing director or the managing director, as the case may be, on matters likely to jeopardize the continued operation of the company. The reply shall be forwarded to the auditor.

The chairperson of the board of directors, the chairperson and managing director or the managing director, as the case may be, shall, within one month, reply to the question(s) in writing, in pursuance of the provisions of the preceding paragraph. He shall forward a copy of the question(s) and his reply to the auditor within the same time limit.

## **TITLE 5 EVALUATION OF MANAGEMENT**

## **ARTICLE 159**

One or more members holding at least one-fifth of the company's authorized capital may, either individually or as a group formed in any manner, petition to the president of the competent court

of the registered office of the company to designate one or more experts to make a report on one or more management operations.

#### **ARTICLE 160**

Where such a request is granted, the judge shall determine the scope of the mission and the extent of the powers of the experts. The experts' fees shall be borne by the company. The report shall be forwarded to the applicant and to the management, supervisory and administrative structures of the company.

### **BOOK 3**

## **THE CIVIL LIABILITY OF COMPANY EXECUTIVES**

### **TITLE 1**

## **INDIVIDUAL SUITS**

#### **ARTICLE 161**

Without prejudice to subsequent liability of the company, each company executive shall be individually liable to third parties for torts committed in the performance of his duties.

Where several company executives are involved in the commission of the tort, they shall be jointly and severally liable to third parties. However, as concerns the relations among the executives, the commercial court shall determine the share to be borne by each of them in apportioning damages to be paid.

#### **ARTICLE 162**

An individual suit shall be an action for damages for an injury suffered by a third party or by a member, where the latter suffers injury distinct from that which might be suffered by the company as a result of torts committed individually or collectively by company executives in the performance of their duties.

Such action shall be instituted by the victim of the injury.

#### **ARTICLE 163**

The filing of an individual suit shall not bar a member or members from instituting an action in the interest of the company for damages for injury the company might have suffered.

#### **ARTICLE 164**

The competent court handling such action shall be the one within whose jurisdiction the registered office of the company is located.

Individual suits shall lapse after three years following the commission of the tort, or following its disclosure where the tort was concealed. For felonies, the prescription shall be ten years.

## TITLE 2

### ACTIONS IN THE INTEREST OF THE COMPANY

#### ARTICLE 165

Each company executive shall be individually liable to the company for torts committed in the performance of his duties.

Where several company executives are party to the same torts, the commercial court shall determine the share to be borne by each executive in apportioning damages payable under the conditions provided by this Uniform Act for each form of company.

#### ARTICLE 166

An action is said to be in the interest of the company where it is for damages suffered by the company as a result of a tort committed by a company executive or executives in the performance of their duties.

Such action shall be instituted by the company executives under the conditions provided by this Uniform Act for each form of company.

#### ARTICLE 167

One or more members may institute an action in the interest of the company where the competent bodies fail to react to their formal notice within a time limit of thirty days. The applicants may sue for damages for injury suffered by the company. Where judgment is entered in favour of the company, the court shall award it damages.

#### ARTICLE 168

Any clause in the Articles of Association which subjects the institution of action in the interest of the company to the prior notification or authorization of the general assembly, the company's management, supervisory or administrative authorities, or which prescribes in advance a renunciation of the right to such action shall be void. This provision shall not bar a member or members who have instituted action from coming to an arrangement with the person or persons against whom action has been brought for the purpose of settling the dispute.

#### ARTICLE 169

No decision of the meeting of members, or of the company's management, supervisory or administrative authority may extinguish an action in civil liability brought against company executives for a tort committed in the performance of their duties.

#### ARTICLE 170

The court competent to hear such action shall be the one within whose jurisdiction the registered office of the company is situated. An action in the interest of the company shall be barred after three years following commission of the tort, or following its disclosure where the tort was hidden. For felonies, the prescription shall be ten years.

#### ARTICLE 171

Charges and fees resulting from an action in the interest of the company shall be borne by the company where the action is brought by one or more members.

**ARTICLE 172**

Institution of an action in the interest of the company shall not bar a member from bringing action against the company for damages for an injury he might have personally suffered.

**BOOK 4**  
**LEGAL RELATIONSHIP BETWEEN COMPANIES**

**TITLE 1**  
**CONSORTIUMS**

IV

**ARTICLE 173**

A consortium is a group formed by companies bound to one another by various relations which allow one of them to control the others.

**ARTICLE 174**

To have control over a company shall mean to effectively hold decision-making power within the company.

**ARTICLE 175**

A natural or corporate person shall be deemed to have control over a company where:

- 1°) he holds, directly or indirectly or through an intermediary, more than half of the company's voting rights;
- 2°) he has more than half of the company's voting rights by virtue of an agreement or agreements with other members of the company.

**TITLE 2**  
**INVESTING IN ANOTHER COMPANY**

**ARTICLE 176**

Where a company holds not less than 10% of the capital of another company, the former shall, under this Uniform Act, be deemed to have equity interest in the latter.

**ARTICLE 177**

A public limited company or private limited company shall not hold shares or stocks in a company which holds more than 10% of its capital.

Failing agreement between the companies concerned to regularize the situation, the company with the lower fraction of the capital of the other shall relinquish its shares or stocks. Where both companies hold equal fractions of each other's capital, each company shall reduce its own interest in the other to not more than 10%.

The shares or stocks to be transferred shall lose their voting rights and payment of dividends attached thereto until they have been effectively transferred.

**ARTICLE 178**

Where a company other than a public limited company or a private limited company has amongst its members a public limited company or private limited company with more than 10% of its

capital, the former shall not hold shares and stocks in the latter.

Where the contribution of the public limited company or private limited company in the company is equal to or less than 10%, it shall not hold more than 10% of the capital of the public limited company or private limited company.

In the two cases provided under this article, if a company other than a public limited company or a private limited company already holds shares in the said public limited company or private limited company, it shall relinquish them. The shares or company stocks to be transferred shall lose their voting rights and payment of dividends attached thereto until they are effectively transferred.

### **TITLE 3 PARENT COMPANY AND SUBSIDIARY**

#### **ARTICLE 179**

A company shall be the parent company of another where the former holds more than half the capital of the latter.

The latter shall be the subsidiary of the former.

#### **ARTICLE 180**

A company shall be the joint subsidiary of several parent companies where its capital is owned by the said parent companies which shall:

1° own separately, directly or indirectly through corporate persons, a sufficient proportion of the joint subsidiary company's capital to warrant that no extraordinary decision be taken without their approval;

2° take part in the management of the joint subsidiary company.

## **BOOK 5** **TRANSFORMATION OF A COMMERCIAL COMPANY**

#### **ARTICLE 181**

Transformation of a company shall be an operation whereby the company changes its legal form by decision of its members.

Normal transformation of a company shall not result in the creation of a new corporate person. It shall merely constitute an amendment of the Articles of Association and shall be subject to the same conditions of form and time limits as the company, subject to the provisions below.

Nevertheless, the transformation of a company in which the members' liability is limited to their contributions into one in which their liability is unlimited shall be decided upon unanimously by the members. All provisions to the contrary shall be disregarded.

#### **ARTICLE 182**

The transformation shall take effect from the day the decision to record it is taken. However, it

may only be invoked against third parties after compliance with the publication formalities provided in Article 265 of this Uniform Act.

Transformation shall have no retrospective effect.

#### **ARTICLE 183**

The transformation of the company shall not entail the closing of accounts where it occurs in the course of the fiscal year, unless otherwise decided by the members.

The summary financial statements of the fiscal year during which the transformation took place shall be adopted and approved according to the rules governing the new legal form of the company. The same shall apply to the distribution of profits.

#### **ARTICLE 184**

The decision to transform the company shall put an end to the powers of its administrative or management authorities.

Persons who were members of such organs may claim damages for the transformation, or the cancellation thereof only where such transformation was decided with the sole aim of infringing their rights.

#### **ARTICLE 185**

The management report shall be prepared by the former and actual management authorities, each for its own management period.

#### **ARTICLE 186**

The rights and obligations contracted by the company under its old form shall remain valid under its new form. The same shall apply to guarantees, unless otherwise provided in the instrument providing the guarantees.

In case of transformation of a company in which the members' liability is unlimited into one in which their liability is limited to their shares, creditors whose claims are prior to such transformation shall maintain their rights over the company and the members.

#### **ARTICLE 187**

The transformation of a company shall not terminate the duties of the auditor where the new corporate form requires the appointment of an auditor.

However, where such an appointment is not required, the auditor's duties shall end with the transformation, unless the members decide otherwise.

The auditor whose duties end pursuant to the provisions of paragraph two of this article shall nevertheless report on his activities for the period between the beginning of the fiscal year and the date of cessation of his duties to the meeting of members convened to adjudicate on the accounts of the fiscal year during which the transformation took place.

#### **ARTICLE 188**

Where, after transformation, the company no longer has any of the corporate forms provided in this Uniform Act, it shall lose its legal personality if it engages in any commercial activity.

## **BOOK 6**

### **MERGER – DIVISION - PARTIAL TRANSFER OF ASSETS**

#### **ARTICLE 189**

A merger shall be the operation whereby two companies merge to form a single company either by creating a new company or by one company acquiring the other.

A company, even under liquidation, may be acquired by another company or may participate in the incorporation of a new company through a merger.

A merger shall entail the universal transfer to the acquiring company or the new company, of the assets of the company or companies which cease to exist as a result of the merger.

#### **ARTICLE 190**

A division shall be the operation whereby the assets of a company are shared among several existing or new companies.

A company may transfer its assets through a division to existing or new companies.

A division shall entail the universal transfer to existing or new companies of the assets of the company which ceases to exist as a result thereof.

#### **ARTICLE 191**

A merger or division shall entail the dissolution without liquidation of the disappearing companies, and the universal transfer to the beneficiary companies of their assets in the state in which they are on the date of wrapping up of the operation. The operation shall simultaneously lead to the acquisition by members of the disappearing companies of the status of member in the beneficiary companies under conditions laid down in the merger or scission contract.

The members may eventually receive, in exchange for their contributions, a complementary financial payment which shall not exceed 10% of the exchange value of the shares or stocks allotted them.

However, shares or stocks in the beneficiary company may not be exchanged for the shares or stocks of the disappearing company when such shares or stocks are held either by:

- 1°) the beneficiary company or a person acting in his own name but on behalf of the said company; or
- 2°) the dissolved company or a person acting in his own name but on behalf of the said company.

#### **ARTICLE 192**

A merger or a division shall take effect:

- 1°) in case of the creation of one or more new companies, on the date of registration of the new company or of the last of the companies in the Trade and Personal Property Rights Register; each of the new companies shall be formed according to the rules governing the form of company adopted.
- 2°) in other cases, on the date of the last general meeting which approved the operation, unless

the contract provides that the operation shall take effect on another date, which shall not be later than the closing date of the current fiscal year of the beneficiary company or companies, or earlier than the closing date of the last fiscal year of the company or companies transferring their assets.

#### **ARTICLE 193**

All the companies involved in a merger or a division operation shall prepare a draft merger or division document which shall be adopted by the board of directors, the managing director or the manager(s), as the case may be, of each of the companies involved in the operation.

The said document shall contain the following information:

- 1°) the form, name and registered office of all the participating companies;
- 2°) the reasons and terms of the merger or division;
- 3°) a description and an evaluation of the assets and liabilities to be transferred to the acquiring or new companies;
- 4°) the terms of transfer of the shares or stocks and the date from which such shares or stocks give entitlement to profits, as well as any special conditions relating to such entitlement, and the date from which the operations of the acquired or split company shall be considered completed from the accounting standpoint by the companies receiving the contributions;
- 5°) the dates on which the accounts of the companies concerned which were used to establish the terms of the operation were adopted;
- 6°) the report on the exchange of company entitlements and, where necessary, the amount of the cash adjustment;
- 7°) the projected amount of the merger or division bonus;
- 8°) the rights other than shares, the rights granted to members having special rights, as well as special benefits, where necessary.

#### **ARTICLE 194**

The draft merger or division document shall be deposited at the registry of the commercial court of the registered offices of the said companies and shall be the subject of a notice from each of the companies involved in the operation published in a newspaper empowered to publish legal notices.

Such notice shall contain the following information:

- 1°) for each of the companies involved in the operation, the company name followed, where necessary, by its acronym, the form, registered office address, the amount of registered capital and the registration numbers in the Trade and Personal Property Rights Register;
- 2°) the company name followed, where necessary, by its acronym, the form, registered office address and the amount of the registered capital of the new company or companies which will emerge from the operation or the capital of existing companies;
- 3°) a valuation of the assets and liabilities to be transferred to the acquiring or new companies;

4°) the report on the exchange of company entitlements;

5°) the projected amount of the merger or division bonus.

Deposit of document at the registry and publication provided for in this article shall take place not later than one month prior to the date of the first general meeting convened to decide on the operation.

#### **ARTICLE 195**

The partial transfer of assets shall be an operation whereby a company transfers an autonomous branch of activity to a pre-existing or future company. The company transferring the assets shall not cease to exist as a result thereof. Partial transfer of assets shall be subject to the rules governing scissions.

#### **ARTICLE 196**

Unless otherwise provided for in this Uniform Act, mergers, divisions and partial transfers of assets may take place between companies of different forms.

#### **ARTICLE 197**

Such transactions shall be decided, for each of the companies concerned, under the conditions stipulated for amendment of the Articles of Association and according to the procedures laid down for increase of capital and dissolution of a company.

However, where the proposed transaction leads to an increase in the commitments of the members or shareholders of one or more companies involved, it may only be decided unanimously by the said members or shareholders.

#### **ARTICLE 198**

Under penalty of being declared null and void, the companies taking part in a merger, division or partial transfer of assets shall be required to deposit at the court registry a statement in which they recount all the actions taken towards the conclusion of the transaction and by which they affirm that the transaction was carried out in conformity with this Uniform Act.

#### **ARTICLE 199**

The merger, division and partial transfer of assets may concern companies whose registered office is not located in the territory of one and the same State Party. In such case, each company concerned shall be subject to the provisions of this Uniform Act in the State Party of its registered office.

**BOOK 7**  
**DISSOLUTION - LIQUIDATION OF A COMMERCIAL**  
**COMPANY**

**TITLE 1**  
**DISSOLUTION OF THE COMPANY**

**CHAPTER 1**  
**CAUSES OF DISSOLUTION**

**ARTICLE 200**

A company shall come to an end:

- 1°) on the expiry of the period for which it was formed;
- 2°) on the realization or extinction of its object;
- 3°) on the annulment of the company's Articles of Association;
- 4°) on the decision of the members under the conditions provided for amending the Articles of Association;
- 5°) upon its premature dissolution pronounced by the competent court at the request of a member for justified reasons, particularly in the case of non-performance by a member of his obligations or misunderstanding between members hampering the normal functioning of the company ;
- 6°) through a court judgement ordering the liquidation of the company's assets;
- 7°) for any other reason provided by the Articles of Association.

**CHAPTER 2**  
**EFFECTS OF DISSOLUTION**

**ARTICLE 201**

Dissolution of a company shall have an effect on third parties only with effect from its publication in the Trade and Personal Property Rights Register.

Dissolution of a company with several members shall as of right entail liquidation of the company.

The legal personality of the company shall continue to exist for liquidation purposes until the liquidation procedure is completed.

Dissolution of a company in which all the shares are held by one person shall entail a total transmission of the assets and liabilities of the company to such person without resorting to liquidation. Creditors may object to the liquidation before the competent court within a period of thirty days following its publication. The court shall reject the objection or order the settlement

of debts or the provision of guarantees if the company offers any and if they are deemed sufficient. The transmission of the assets and liabilities and the winding up of the company shall be effective only after the expiry of the time limit for objection or where the objection has been declared inadmissible or if the settlement of debts has been effected or guarantees provided.

#### **ARTICLE 202**

The dissolution shall be published through a notice in a newspaper authorised to publish legal notices of the place of the registered office by depositing the acts or reports deciding or recording the dissolution at the court registry and by an alteration of the entry in the Trade and Personal Property Rights Register.

## **TITLE 2 LIQUIDATION OF A COMMERCIAL COMPANY**

### **CHAPTER 1 GENERAL PROVISIONS**

#### **ARTICLE 203**

The provisions of this chapter shall apply where liquidation of the company is effected out of court in accordance with the Articles of Association.

They shall equally apply where liquidation is ordered by a court decision.

However, they shall not apply where liquidation is effected within the framework of the provisions of the Uniform Act relating to the collective proceedings for the discharge of liabilities.

#### **ARTICLE 204**

The company shall be under liquidation as soon as it is dissolved for any reason whatsoever.

The words “company under liquidation “ as well as the name(s) of the liquidator(s) shall be included in all the acts and documents issued by the company to third parties, in particular on all letters, invoices, notices and various publications.

#### **ARTICLE 205**

The company shall continue to exist as a corporate person for the purpose of liquidation until publication of completion of the liquidation process.

#### **ARTICLE 206**

Where liquidation is decided upon by the members, one or more liquidators shall be appointed:

- 1°) in case of private companies, unanimously by the members;
- 2°) in case of sleeping partnerships, unanimously by the general partners and by the majority capital of the active partners;
- 3°) in case of limited liability companies, by the majority required for the amendment of the Articles of Association;

4°) in case of public limited companies, under the quorum and majority conditions provided for extraordinary general meetings.

#### **ARTICLE 207**

The liquidator may be chosen from among the members or third parties. The liquidator may be a corporate person.

#### **ARTICLE 208**

Where the members are unable to appoint a liquidator, a court may designate one at the request of any interested party as provided for under Articles 226 and 227 of this Uniform Act.

#### **ARTICLE 209**

Except otherwise provided for by the act of appointment, where several liquidators are appointed they may exercise their duties separately.

However, they shall prepare and present a joint report.

#### **ARTICLE 210**

The fees of the liquidator shall be fixed by decision of the members or of the court designating him.

#### **ARTICLE 211**

The liquidator may be dismissed and replaced in accordance with the conditions provided for his appointment.

However, any member may petition to the court for the dismissal of the liquidator where such petition has based on legitimate grounds.

#### **ARTICLE 212**

The act appointing the liquidator shall be published according to the conditions and time limits stipulated in Article 266 of this Uniform Act.

The appointment and dismissal of the liquidator shall be relied upon against third parties only with effect from the date of publication.

Neither the company nor third parties shall rely on any irregularity in the appointment or dismissal of the liquidator to avoid responsibility provided such appointment or dismissal has been duly published.

#### **ARTICLE 213**

Except upon the unanimous consent of the members, the transfer of all or part of the assets of a company under liquidation to a person who has had in the company the capacity of partner in name, active partner, manager, member of the board of directors, managing director or auditor may not take place except with the authorization of the competent court which prior to its authorisation shall hear the liquidator and the auditor.

#### **ARTICLE 214**

It shall be prohibited to transfer all or part of the assets of a company under liquidation to the liquidator, his employees or their spouses, ascendants or descendants.

#### **ARTICLE 215**

The transfer of all the assets of a company or the assignment of the assets to another company, notably through a merger, shall be authorized:

- 1°) in case of private companies, unanimously by the members;
- 2°) in case of sleeping partnerships, unanimously by the general partners and by the majority capital of active partners;
- 3°) in case of limited liability companies, by the majority required to amend the Articles of Association;
- 4°) in case of public limited companies, under the conditions of quorum and majority required for extraordinary general meetings.

#### **ARTICLE 216**

Liquidation shall be completed within a period of three years from the date of dissolution of the company.

Failing this, the Legal Department or any interested party may bring an action before the competent court within whose jurisdiction the registered office of the company is located for the liquidation of the company or, where the liquidation has started, for it to be completed.

#### **ARTICLE 217**

The members shall be convened when the liquidation is complete to take a decision on the final accounts, the discharge of the liquidator in respect of the performance of his duties and of the terms of reference and to record the end of the liquidation.

Failing this, any member may petition the president of the competent court, who shall by summary ruling designate a representative to convene the members.

#### **ARTICLE 218**

Where the meeting to complete liquidation provided for in the preceding article fails to take a decision or where it refuses to approve the liquidator's accounts, the competent court shall, at the request of the liquidator or any interested party, rule on the ending of the liquidation in place of the meeting of members.

In such a case, the liquidator shall file his accounts at the registry of the court in charge of commercial matters where any interested party may examine them and obtain a copy thereof at his expense.

#### **ARTICLE 219**

The final accounts drawn up by the liquidator shall be filed as an annex in the Trade and Personal Property Rights Register at the registry of the Court in charge of commercial matters.

The decision taken in the meeting of members on the liquidation accounts, the discharge of the liquidator in respect of the performance of his duties and on the terms of reference, or failing this, the decision referred to in the preceding article shall be filed as an annexure in the Trade and Personal Property Rights Register.

## **ARTICLE 220**

Upon proof of compliance with the formalities provided for in the preceding article the liquidator shall, within a period of one month from the date of publication of the close of liquidation, apply for the removal of the company from the Trade and Personal Property Rights Register.

## **ARTICLE 221**

The liquidator shall be liable to the company as well as to third parties for the actionable wrongs resulting from any errors made by him in the exercise of his duties.

Any action by the company or an individual against the liquidator shall lapse within a period of three years from the date of commission of the actionable wrong, or, where it was hidden, from the date of its disclosure.

However, where the act amounts to a felony, the action shall lapse within a period of ten years.

## **ARTICLE 222**

Action against members who are not liquidators or against their surviving spouses, next-of-kin or assigns shall lapse within a period of five years from the date of publication of the company's dissolution in the Trade and Personal Property Rights Register.

## **CHAPTER 2**

### **PROVISIONS SPECIFIC TO LIQUIDATION ORDERED BY THE COURT**

## **ARTICLE 223**

In the absence of provisions in the Articles of Association or an express agreement between the parties, the liquidation of the dissolved company shall be carried out in accordance with the provisions of this chapter, without prejudice to the provisions of the preceding chapter.

Furthermore, a competent court may, through summary proceedings order that the liquidation be carried out under the same conditions at the request of:

- 1°) the majority of members in private companies;
- 2°) members representing not less than one-tenth of the capital in the other forms of companies having legal personality;
- 3°) the company's creditors;
- 4°) the representative of the general body of bondholders'.

Members may agree that the provisions of Articles 224 to 241 of this Uniform Act shall be applicable where they decide on voluntary winding up.

## **ARTICLE 224**

The powers of the board of directors, the managing director or the executives shall end with effect from the court decision ordering the liquidation of the company.

## **ARTICLE 225**

The dissolution of the company shall not put an end to the duties of the auditor.

#### **ARTICLE 226**

The court decision ordering the liquidation of the company shall designate one or more liquidators.

#### **ARTICLE 227**

The duration of the liquidator's mandate may not exceed three years, renewable by court decision at the request of the liquidator.

In his application for renewal, the liquidator shall state the reason why the liquidation has not been completed, the measures he intends to take and the time needed to complete the liquidation.

#### **ARTICLE 228**

Within a period of six months from the date of his appointment, the liquidator shall convene a meeting of members where he shall give a report on the assets and liabilities of the company, the conduct of the liquidation and the length of time required to complete the exercise. Where necessary, he shall also seek any authorizations he may need.

The meeting shall take decisions under the conditions of quorum and majority provided for in this Uniform Act, for each form of company, for the amendment of the Articles of Association.

The period within which the liquidator shall draw up his report may, at his request, be extended to twelve months by court decision.

Failing this, the meeting shall be convened by a court-appointed representative at the request of any interested party.

#### **ARTICLE 229**

Where it has been impossible for the general meeting to hold or to reach a decision, the liquidator shall petition to the court for the necessary authorizations to complete the liquidation.

#### **ARTICLE 230**

The liquidator shall represent the company and everything he does in the course of the liquidation shall be binding on the company.

He shall have the widest powers possible to realize the assets, even out of court.

Any restrictions to these powers in the Articles of Association or in the appointment deed shall not be binding on third parties.

#### **ARTICLE 231**

The liquidator shall be authorized to pay creditors and distribute the balance available among the members.

He may not pursue any ongoing affairs or start new ones for the purposes of the liquidation unless he has been so authorized by a court decision.

#### **ARTICLE 232**

Within three months following the close of each fiscal year, the liquidator shall draw up annual summary financial statements from the inventory made of various components of the assets and liabilities existing on that date and a written report in which he shall give an account of the liquidation exercise during the just ended fiscal year.

### **ARTICLE 233**

Except in the case of a waiver granted by the president of the competent court through summary proceedings, the liquidator shall in accordance with the procedure laid down in the Articles of Association, at least once a year and within a period of six months following the close of the fiscal year, convene a meeting of the members which shall decide on the annual summary financial statements, grant the necessary authorizations and, as the case may be, renew the mandate of the auditor.

Where the meeting does not take place, the written report of the liquidator shall be deposited at the registry in charge of commercial matters.

### **ARTICLE 234**

During the liquidation period, the members may receive the company documents under the same conditions as before.

### **ARTICLE 235**

The decisions referred to in Article 233 of this Uniform Act shall be taken:

- 1°) in case of private companies, unanimously by the members;
- 2°) in case of sleeping partnerships, unanimously by the general partners and by the majority capital of active partners;
- 3°) in case of limited liability companies, by the majority required to amend the Articles of Association; 4°) in case of public limited companies, under the conditions of quorum and majority required for extraordinary general meetings.

Where the required majority cannot be obtained, the president of the competent court shall take a decision through summary proceedings at the request of the liquidator or any interested party.

Where the decision entails amendment of the Articles of Association, it shall be taken under the conditions laid down by this Uniform Act for each form of company.

Members who are liquidators shall take part in the vote.

### **ARTICLE 236**

Where the company continues in business, the liquidator shall convene a meeting of members under the conditions provided for in Article 233 of this Uniform Act. Failing this, any interested party may request the convening of the meeting by the auditor or a representative designated by the president of the competent court through summary proceedings.

### **ARTICLE 237**

Unless otherwise provided in the Articles of Association, the distribution of shareholders' equity subsisting after reimbursement of the face value of shares or company stocks shall be done among members in the same proportions as their shares in the registered capital.

### **ARTICLE 238**

Any decision to distribute funds shall be published in the newspaper empowered to publish legal notices in which the publication provided under Article 266 of this Uniform Act was made. The decision shall be notified individually to the holders of registered shares.

#### **ARTICLE 239**

The sums allocated for distribution among the members and creditors shall be deposited within a period of fifteen days following the decision to distribute the funds, in an account opened in a bank domiciled in the State Party of the registered office in the name of the company in liquidation.

Where there are many liquidators, the sums may be signed out by one liquidator on his responsibility.

#### **ARTICLE 240**

Where the sums allotted to the creditors or members have not been paid out, they shall be deposited upon the expiry of a period of one year following the end of the liquidation in a receiver's account opened in the Public Treasury.

#### **ARTICLE 241**

The liquidator shall, subject to the rights of the creditors, decide on whether the available funds can be distributed in the course of the liquidation.

Where formal notice to the liquidator to distribute the funds remains unheeded, any interested party may apply to the president of the competent court to rule through summary proceedings on the advisability of distribution of funds in the course of the liquidation.

### **BOOK 8** **NULLITY OF A COMPANY AND OF THE ACTS OF A** **COMPANY**

#### **ARTICLE 242**

Nullity of a company or of all acts, decisions or deliberations amending the Articles of Association may only result from an express provision of this Uniform Act or from the laws governing the nullity of contracts in general and the Articles of Association of companies in particular.

Incomplete statement of the information which should be included in the Articles of Association shall not cause the nullity of the company.

#### **ARTICLE 243**

Nullity of limited liability companies and public limited companies may not arise from lack of consent or from incapacity of a member, unless such incapacity affects all the founding members.

#### **ARTICLE 244**

Nullity of all acts, decisions or deliberations not amending the company's Articles of Association may only arise from a mandatory provision of this Uniform Act, the laws governing contracts or the company's Articles of Association.

#### **ARTICLE 245**

In sleeping partnerships or private companies, compliance with the formalities of publication shall be compulsory under penalty of nullity of the company, acts, decisions or deliberations, as

the case may be, with no possibility for the members and the company to rely on the cause of the nullity as against third parties.

However, the court shall have the option not to pronounce the nullity of the company where no proof of fraud.

#### **ARTICLE 246**

An action for nullity shall be extinguished where the cause of nullity has ceased to exist on the day the court gives a ruling on the merits of the case at first instance, unless such nullity is based on the unlawfully nature of the company's object.

#### **ARTICLE 247**

The court before which an action for nullity is brought may, on its own motion, fix a time limit for the nullity to be cured. It may not pronounce the nullity less than two months after the date on which the suit is filed.

Wherefore the purpose of curing a nullity, a meeting has to be convened and where the normal convening of such meeting is justified, the court shall, by judgment, grant the time needed for the members to take a decision.

Where, on the expiry of the time limit provided for under the preceding paragraphs, no decision has been taken, the court shall give a ruling on the application of the more diligent party.

#### **ARTICLE 248**

In case of nullity of the company or its acts, decisions or deliberations based on lack of consent or incapacity of a member and where the nullity may be regularized, any person having an interest therein may give formal notice to the legally incapable member or to the one whose consent has been vitiated to regularize or take action for annulment within a time limit of six months under penalty of forfeiture.

The formal notification shall be made through an extra-judicial act, by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt. Notice thereof shall be given to the company.

#### **ARTICLE 249**

The company or a member thereof may submit to the court before which the action is brought within the time limit laid down in the preceding article any measure likely to obviate the applicant's interest, notably by the redemption of its or his corporate rights.

In such case, the court may either pronounce the annulment or make the proposed measures obligatory where they were previously adopted by the company under the conditions laid down for amendment of the Articles of Association.

The member whose rights are the subject of redemption shall not take part in the vote.

#### **ARTICLE 250**

Where annulment of the acts, decisions or deliberations of the company is based on the breach of regulations governing publication, any person interested in regularization may, by extra-judicial act, by hand-delivered letter against a receipt or by registered letter with a request for

acknowledgement of receipt, give notice to the company to regularize within a period of thirty days following such notice.

Failing regularization within the time limit, any interested party may apply to the president of the competent court through summary proceedings to designate an agent to comply with the formality.

#### **ARTICLE 251**

Action for nullity of the company shall lapse after three years following registration of the company or publication of the instrument amending its Articles of Association unless the nullity is based on the illegality of the company's object, subject to the forfeiture referred to in Article 248 of this Uniform Act.

An action for annulment of the acts, decisions or deliberations of the company shall be barred after three years with effect from the day on which the cause of the nullity arose, except where the nullity is based on the illegality of the object of the company and subject to the forfeiture referred to in Article 248 of this Uniform Act.

However, action for annulment of a merger or a scission shall lapse after six months from the date of the last entry in the Trade and Personal Property Rights Register necessitated by the merger or division transaction.

#### **ARTICLE 252**

Opposition by third party to the decisions pronouncing the nullity of a company shall only be entertained within a period of six months following publication of the said decisions in a newspaper empowered to publish legal notices at the seat of the court.

#### **ARTICLE 253**

Where nullity of the company is pronounced, it shall put an end to the execution of the contract but shall have no retrospective effect. The company shall be dissolved forthwith and in the case of companies with several members, liquidation shall follow.

#### **ARTICLE 254**

The decision pronouncing the annulment of a merger or a division shall be published within one month from the day the decision became final.

It shall have no effect on obligations on or in respect of the companies to which the asset(s) are transferred between the date of entry into force of the merger or division and the date of publication of the decision pronouncing the annulment.

In case of a merger, the companies which took part in the transaction shall be jointly and severally liable for the execution of the obligations mentioned in the preceding paragraph to be borne by the acquiring company.

The same shall apply, in case of a division, to the company being split, for the obligations of the companies to which the assets are transferred.

Each of the companies to which the assets are transferred shall be liable for the obligations to be borne by it between the date of entry into force of the division and the date of publication of the decision pronouncing the annulment.

#### **ARTICLE 255**

Neither the company nor its members may rely on a nullity as against third parties acting in good faith.

However, nullity based on lack of consent or incapacity may be relied on, even against a third party acting in good faith, by a legally incapacitated person or his legal representative or by the person whose consent was vitiated.

#### **ARTICLE 256**

The members and company executives to whom the nullity is attributed may be declared jointly and severally liable for any damage suffered by third parties as a result of nullity of the company.

The action in vicarious liability based on the nullity of the company or of the acts and deliberations subsequent to its formation shall be barred at the end of three years from the day the annulment decision became final.

The removal of the cause of the nullity shall not be a bar to a civil action claiming damages caused by the defect in the company, the acts or deliberations. Such action shall lapse three years after the date on which the cause of the nullity was removed.

### **BOOK 9**

## **FORMALITIES - PUBLICATION**

### **TITLE 1**

## **GENERAL PROVISIONS**

#### **ARTICLE 257**

The following shall be empowered to publish announcements:

- on the one hand, the Official Gazette and newspapers empowered by the competent authorities to publish them;
- on the other hand, national news dailies in the State Party of the registered office of the company which show proof of effective sales through subscriptions, depositaries or vendors, provided further that :
  - 1°) they have been appearing for more than six months;
  - 2°) they are distributed nationwide.

#### **ARTICLE 258**

Publication through the deposit of deeds or other documents shall be done at the registry of the Court with jurisdiction in commercial matters at the place of the registered office of the company.

#### **ARTICLE 259**

Publication formalities shall be carried out at the instance and on the responsibility of the legal representatives of each company.

Where the publication formality not concerning the formation of a company or the amendment of its Articles of Association has been omitted or has been improperly done and the company has not regularized the situation within a period of one month from the date of formal notice addressed to it, any interested party may apply to the president of the competent court to designate through summary proceedings an agent to carry out the publication formality.

#### **ARTICLE 260**

In all cases where this Uniform Act provides that the decision shall be by order of the president of the competent court through summary proceedings, a copy of the said order shall be deposited at the court registry and appended to the company's file and entered in the Trade and Personal Property Rights Register.

## **TITLE 2**

### **FORMALITIES FOR THE FORMATION OF A COMPANY**

#### **ARTICLE 261**

Where the formalities for the formation of a company have been accomplished within a period of fifteen days following registration, a notice shall be inserted in a newspaper empowered to publish legal notices in the State Party of the registered office of the company.

#### **ARTICLE 262**

The notice, signed by the notary who received the company's Articles of Association or by the founder(s) shall include the following information:

- 1°) the name of the company, followed by its acronym where applicable;
- 2°) the form of the company;
- 3°) the amount of registered capital;
- 4°) the address of the registered office;
- 5°) a summary of the company's object;
- 6°) the duration of the company;
- 7°) the amount of cash contributions;
- 8°) a brief description and valuation of non-cash contributions;
- 9°) the usual full names and addresses of the members with unlimited liability for the company's debts;
- 10°) the full names and addresses of the first executives and the first auditors;
- 11°) the references of the deposit at the court registry of the incorporation documents;
- 12°) the references of the registration in the Trade and Personal Property Rights Register;
- 13°) where necessary, the effective or proposed date of commencement of business.

For public limited companies, the notice shall also include:

- 1°) the number and face value of shares issued for cash;
- 2°) the number and face value of shares allotted in remuneration of each non-cash contribution;
- 3°) the amount of the paid-up capital, where the capital is not fully paid up;
- 4°) the provisions of the Articles of Association relating to the building up of reserves and the distribution of profit and bonus after liquidation;
- 5°) any special benefits provided for;
- 6°) the conditions of admission to shareholders' meetings and of the exercise of voting rights, in particular conditions relating to the granting of double voting rights;
- 7°) where applicable, the existence of provisions as the case may be, the existence of provisions relating to the approval of transferees of shares and the designation of the authority empowered to rule on applications for approval.

### **TITLE 3**

## **FORMALITIES FOR THE AMENDMENT OF THE ARTICLES OF ASSOCIATION**

### **ARTICLE 263**

Where one of the details of the notice provided for in Article 262 of this Uniform Act is rendered null and void following an amendment of the Articles of Association or of all the acts, deliberations or decisions of the meetings of the company or of its organs, the amendment shall be published in the form of a notice in a newspaper empowered to publish legal notices in the State Party of the registered office of the company.

The said notice, signed by the notary who received or drafted the instrument amending the Articles of Association or by the sole proprietor or the members, shall include the following:

- 1°) the name of the company, followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the amount of registered capital;
- 4°) the address of its registered office;
- 5°) the registration number in the Trade and Personal Property Rights Register;
- 6°) the title, date, number of issue and place of publication of the newspaper in which the notices provided for in the two preceding articles were published;
- 7°) an indication of the amendments made.

### **ARTICLE 264**

In case of increase or reduction of capital, apart from the publication referred to in Article 263 of this Uniform Act, the following formalities shall be complied with:

- 1°) depositing at the registry of the court having jurisdiction in commercial matters situated

where the registered office is located, of a certified true copy of the proceedings of the meeting which decided on or authorized the increase or reduction of capital, within one month of the holding of the said meeting;

2°) depositing, as the case may be of the decision of the board of directors, the managing director or the manager who effected the increase of capital;

3°) depositing at the court registry of a certified true copy of the notarial statement of subscription and payment appended to the Trade and Personal Property Credit Registry.

## **TITLE 4**

### **FORMALITIES FOR THE TRANSFORMATION OF A COMPANY**

IV

#### **ARTICLE 265**

Where a transformation decision is taken:

1°) it shall be published in a newspaper empowered to publish legal notices in the State Party of the registered office and, as the case may be, in the State Parties where a public call for capital is made;

2°) two copies of the minutes of the meeting which decided on the transformation and of the decision to appoint the members of the new organs of the company shall be deposited at the registry of the court in charge of commercial matters at the registered office of the State Party;

3°) the amendments shall be entered in the Trade and Personal Property Rights Register.

The new Articles of Association, the declaration of regularity and conformity and, as the case may be, two copies of the report of the auditor responsible for assessing the value of the company's assets shall equally be deposited at the court registry.

Notice of the transformation shall be deposited at the office in charge of mortgages where the company owns landed property falling within the category of real estate in respect of which all transactions have to be published.

## **TITLE 5**

### **FORMALITIES FOR THE LIQUIDATION OF A COMPANY**

#### **ARTICLE 266**

The instrument appointing the liquidators, whatever its form, shall be published within one month from the date of the appointment in a newspaper empowered to publish legal notices in the State Party of the registered office.

It shall include the following information:

1°) the name of the company and, where necessary, its acronym;

2°) the form of the company, followed by the words "company in liquidation";

- 3°) the amount of registered capital;
- 4°) the address of the registered office;
- 5°) the registration number in Trade and Personal Property Right Register;
- 6°) the cause of liquidation;
- 7°) the usual full names and address(es) of the liquidator(s);
- 8°) where necessary, provisions relating to the limitations to their powers;
- 9°) the place where correspondence should be sent and the place where acts and other documents concerning the liquidation should be notified;
- 10°) the court in charge of commercial matters whose registry shall be the depositary of the acts and documents relating to the liquidation which shall be filed as annexes in the Trade and Personal Property Rights Registry.

At the instance of the liquidator, the same details shall be brought to the notice of holders of registered shares and bonds by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

#### **ARTICLE 267**

During the liquidation of the company, the liquidator shall be responsible for complying with publication formalities incumbent on the legal representatives of the company.

#### **ARTICLE 268**

The notice of end of liquidation, signed by the liquidator, shall be published at the instance of the liquidator in the newspaper wherein his appointment was published or, failing this, in a newspaper empowered to publish legal notices.

It shall include the information referred to in paragraphs (1), (2), (3), (4), (5) and (7) of Article 266 of this Uniform Act as well as :

- 1°) the date and place of the session of the final meeting, where the liquidation accounts were approved by it or the date of the decision of the competent court sitting and ruling in place of the meeting, as well as an indication of the court which pronounced it ;
- 2°) an indication of the registry of the court in charge of commercial matters where the liquidators' accounts are deposited.

## **TITLE 6 SPECIAL FORMALITIES APPLICABLE TO PUBLIC LIMITED COMPANIES**

#### **ARTICLE 269**

Public limited companies shall within one month following approval by the general meeting of shareholders, deposit at the registry of the court as an annex to the Trade and Personal Property Rights Register, the summary financial statements, consisting of the balance-sheet, the statement

of income, the statement showing the source and expenditure of funds and the annexed statement of the just-ended financial year.

Where approval of these documents is refused, a copy of the decision of the meeting shall be deposited within the same time limit.

## **PART 2**

# **SPECIAL PROVISIONS RELATING TO COMMERCIAL COMPANIES**

## **BOOK 1**

### **PRIVATE COMPANIES**

## **TITLE 1**

### **GENERAL PROVISIONS**

#### **ARTICLE 270**

A private company shall be a company in which all the members are traders and have unlimited liability, for the company's debts.

#### **ARTICLE 271**

The company's creditors may only bring an action against a member for the payment of private company's debts after the expiry of a period of sixty (60) days where such claim has unsuccessfully been notified the company through an extra-judicial act.

This time limit may be extended by order of the president of the competent court through summary proceedings without such extension exceeding 30 days.

#### **ARTICLE 272**

The private company shall be known by a company name which shall be immediately preceded or followed by the word "Private Company" or by the abbreviation "P.C.", written in bold characters.

#### **ARTICLE 273**

The registered capital shall be broken down into shares of the same nominal value.

#### **ARTICLE 274**

The private company shares may be transferred only with the unanimous consent of the partners.

Any provision to the contrary shall be disregarded.

Where the members fail to reach unanimity, the transfer shall not take place, but the company's Articles of Association may make provision for a redemption procedure to enable the transferring member to withdraw.

## **ARTICLE 275**

The transfer of shares shall be evidenced in writing.

It may be relied upon as against the company only after the fulfilment of one of the following formalities:

- 1°) notification to the company of the transfer by means of a bailiff's act;
- 2°) acceptance of the transfer by the company in a notarial deed;
- 3°) deposit of the original of the transfer deed at the registered office against issuance by the manager of an attestation of deposit.

It shall not be binding on a third party except after compliance with the above formalities and after publication by way of an annex deposit in the Trade and Personal Property Rights Register.

## **TITLE 2 MANAGEMENT**

### **CHAPTER 1 APPOINTMENT OF MANAGER**

## **ARTICLE 276**

The Articles of Association shall organize the management of the company.

They may appoint one or more managers who may be members or not, natural or corporate persons, or provide for such appointment in a subsequent instrument.

Where the manager is a corporate person, its officers shall be subject to the same conditions and obligations and shall incur the same civil and criminal liability as if they were managers on their own account, notwithstanding the joint and several liability of the corporate person they are managing.

Where the management is not organized by the Articles of Association, all the members shall be deemed to be managers.

### **CHAPTER 2 POWERS OF THE MANAGER**

## **ARTICLE 277**

Where the powers of the manager are not defined by the Articles of Associations, the manager may, in his relations with members, perform all acts of management in the company's interest. Where there are several managers, each shall have the same powers as if he were the sole manager of the company, subject to the right of each of them to object to any transaction before it is concluded.

In his relations with third parties, the manager shall commit the company by acts falling within the company's objects.

Where are several managers, each one of them shall have the same powers as if he were the sole manager of the company.

Any objection made by a manager to the action of another manager shall have no effect with respect to third parties, unless it is established that they were aware of such objection.

The provisions of the Articles of Association limiting the powers of managers resulting from this article shall not be binding on third parties.

### **CHAPTER 3 REMUNERATION OF THE MANAGER**

#### **ARTICLE 278**

Except otherwise provided by the Articles of Association or by a resolution of the members, the manager's remuneration shall be determined by the majority in number and capital of the members.

Where the manager whose remuneration is being determined is also a member, the decision shall be taken by the majority in number and capital of the other members.

### **CHAPTER 4 REMOVAL OF THE MANAGER**

#### **ARTICLE 279**

Where all the members are managers or where a member is appointed manager by the Articles of Association, the removal of one of them shall only be by unanimous decision of the other members.

The removal shall lead to the dissolution of the company, unless its continuation in business is provided for in the Articles of Association or the decision of the other members was not unanimous.

#### **ARTICLE 280**

The managing member removed may decide to withdraw from the company by applying for the refund of his dues the value of which, failing agreement between the parties, shall be determined by an expert appointed by the competent court through summary proceedings.

A manager who is not appointed by the Articles of Association, whether or not he be a member, may be removed by decision of the majority in number and in capital of the other members.

Where the manager whose removal is submitted to the vote of members is himself a member, the decision shall be taken by the majority in number and capital of the other members.

#### **ARTICLE 281**

Where the manager is removed without just cause, the removal may give rise to an award of damages

#### **ARTICLE 282**

Any provision contrary to the two preceding articles shall be disregarded.

## **TITLE 3 COLLECTIVE DECISIONS**

### **ARTICLE 283**

Any decision not falling within the powers of the managers shall be taken unanimously by the members.

However, the Articles of Association may provide that certain decisions shall be taken by a majority which they shall determine.

### **ARTICLE 284**

Collective decisions shall be taken at a general meeting or by written consultation where a general meeting is not requested by one of the members.

### **ARTICLE 285**

The Articles of Association shall define the rules relating to the consultation procedure, quorums and majorities.

### **ARTICLE 286**

Where decisions are taken in a general meeting, such general meeting shall be convened by the manager(s) at least fifteen days before the meeting by hand-delivered letter against a receipt or by registered letter with request for acknowledgement of receipt.

The convening notice shall indicate the date, venue and agenda of the meeting.

Any improperly convened meeting may be annulled. However, the action for annulment shall be inadmissible where all the members were present or represented.

### **ARTICLE 287**

The minutes shall be signed by each of the members present.

Where consultation is in writing, this shall be mentioned in the minutes which shall be signed by the managers and to which shall be attached the response of each member.

## **TITLE 4 ANNUAL GENERAL MEETING**

### **ARTICLE 288**

Each year, within a period of six months following the close of the fiscal year, an annual general meeting shall be held during which the management report, the inventory and the summary financial statements drawn up by the managers shall be submitted to the meeting of members for approval.

To this end, the documents referred to in the preceding paragraph, the proposed draft resolutions and, where applicable, the auditor's report shall be sent to the members at least fifteen days before the date of the meeting. Any decision taken in violation of the provisions of this paragraph may be annulled.

The annual general meeting shall not validly hold unless a majority of the members representing half of the registered capital are present. It shall be presided over by the member who himself has or as a representative holds the greatest number of membership shares.

Any provision contrary to this article shall be disregarded.

## **TITLE 5 CONTROL BY MEMBERS**

### **ARTICLE 289**

Notwithstanding the above right of communication in respect of the annual general meeting, the floor members shall have the right to consult at the registered office, twice a year, all books and accounting documents as well as the minutes of meetings and collective decisions. They may obtain copies thereof at their expense.

They shall inform the managers of their intention to exercise this right at least fifteen days in advance by a hand-delivered letter against a receipt or by registered letter with request for acknowledgement of receipt, by telex or telefax.

They shall have the right to seek the assistance of a professional accountant or an auditor at their expense.

## **TITLE 6 TERMINATION OF A PRIVATE COMPANY**

### **ARTICLE 290**

A private company shall be wound up upon the death of one member. However, the Articles of Association may provide that the private company shall continue either among surviving members or among surviving partners and the rightful claimants or successors of the deceased member with or without the approval of the surviving members.

Where it is provided that the private company shall continue only among surviving members, or where the latter fail to accept the rightful claimants or successors of the deceased member, or where they accept only some of them, the surviving members shall redeem from the rightful claimants or successors of the deceased member, or from those who were not approved, their membership shares.

Where the company continues in business and one or more of the heirs or successors of the deceased member are dependent minors, the latter's liability for the company's debts shall not exceed the value of their inherited shares.

Moreover, the company shall, within one year of the death, be transformed into a sleeping partnership in which the minor will become a sleeping partner. Otherwise the private company shall be dissolved.

### **ARTICLE 291**

The private company shall also be dissolved when judgment to liquidate property, declare bankruptcy, or forbid the exercise of a commercial activity has been passed in respect of a

member, unless the company's Articles of Association provide for continuation or the other members unanimously decide in favour of continuation.

#### **ARTICLE 292**

In case of refusal to approve the rightful claimants or successors or of the withdrawal of a member, the value of membership entitlements to be refunded to those concerned shall be fixed in accordance with the provisions of Article 59 of this Uniform Act.

In the cases provided for in the preceding paragraph where the members have to redeem the membership shares, the liability of members shall be joint and several and unlimited.

## **IV**

### **BOOK 2 SLEEPING PARTNERSHIP**

#### **TITLE 1 GENERAL PROVISIONS**

##### **ARTICLE 293**

A sleeping partnership is one in which the capital is made up of shares and in which one or more partners, known as "active partners", whose liability for the company's debts is unlimited, joint and several coexist with one or more partners known as "sleeping partners" whose liable for the company's debts is limited by shares.

##### **ARTICLE 294**

A sleeping partnership shall be referred to by a name which shall be immediately preceded or followed by the words "sleeping partnership" or by the abbreviation "S.P."

The name of a sleeping partner shall under no circumstances be included in the partnership name, otherwise the latter shall be liable for the debts of the partnership without limit.

##### **ARTICLE 295**

The Articles of Association of the sleeping partnership shall include the following information:

- 1°) the amount or value of all the partners' contributions;
- 2°) the fraction of this amount or value belonging to each active or sleeping partner;
- 3°) the overall share of the active partners and the share of each sleeping partner in the profit-sharing or in the bonus after liquidation.

##### **ARTICLE 296**

Partnership shares may be transferred only with the consent of all the partners.

However, the Articles of Association may stipulate:

- 1°) that the shares held by the sleeping partners shall freely be transferable between partners;
- 2°) that the shares held by sleeping partners may be transferred to third parties outside the

sleeping partnership with the consent of all the active partners and by a majority in number and capital of the sleeping partners;

3°) that an active partner may transfer part of his shares to a sleeping partner or to a third party outside the partnership with the consent of all the active partners and the majority in number and capital of the sleeping partners.

#### **ARTICLE 297**

The transfer of shares shall be recorded in a written document.

It may be binding on the company only after any one of the following formalities has been fulfilled:

1°) notification to the company of the transfer by means of a bailiff's act;

2°) acceptance of the transfer by the company in a notarial deed;

3°) deposit of the original deed of transfer at the registered office against an attestation of deposit issued by the manager.

The transfer of shares may be binding on third parties only after the fulfilment any one of the above formalities and after publication by entry in the Trade and Personal Property Rights Register.

## **TITLE 2 MANAGEMENT**

#### **ARTICLE 298**

A sleeping partnership shall be managed by all the active partners except otherwise provided by the Articles of Association which may appoint one or more managers from among the active partners, or provide for the appointment of such manager(s) by a subsequent instrument, under the same conditions and with the same powers as in a partnership.

#### **ARTICLE 299**

A sleeping partner or sleeping partners may not perform any act of external management, even by virtue of a power of attorney.

#### **ARTICLE 300**

In the event of violation of the prohibition mentioned in the preceding article, the liability of the sleeping partner(s) shall, be unlimited, joint and several with that of the active partners for the company's debts and commitments resulting from any acts of management performed by them.

Depending on the number and gravity of these acts, they may be liable for all commitments of the company or only for some of them.

#### **ARTICLE 301**

Opinions and advice as well as acts of control and supervision shall not commit the sleeping partners.

## **TITLE 3 COLLECTIVE DECISIONS**

### **ARTICLE 302**

All decisions beyond the powers of the managers shall be taken collectively by the partners.

The Articles of Association shall make provision for the taking of collective decisions by the partners with respect to the consultation procedure either in general meetings or by written consultation as well as in respect of quorums and majorities.

However, the meeting of all the partners shall hold as of right where requested by an active partner or by one-quarter, in number and capital, of the sleeping partners.

### **ARTICLE 303**

Where decisions are taken in a general meeting, the said meeting shall be convened by the manager or one of the managers at least fifteen days before the meeting is held, by hand-delivered letter against a receipt or by registered letter with request for acknowledgement of receipt, by telex or by telefax.

The convening notice shall indicate the date, venue and agenda of the meeting.

Any general meeting convened improperly may be annulled. However, the action for annulment shall be inadmissible where all the partners were present or represented.

### **ARTICLE 304**

The minutes shall be signed by each of the partners present.

In the event of written consultation, mention thereof shall be made in the minutes signed by the managers to which shall be attached the response of each partner.

### **ARTICLE 305**

Any amendments to the Articles of Association may be decided with the consent of all the active partners and the majority in number and capital of the sleeping partners.

Any provision stipulating stricter majority conditions shall be disregarded.

## **TITLE 4 ANNUAL GENERAL MEETING**

### **ARTICLE 306**

Each year, within six months following the close of the fiscal year, an annual general meeting shall be held during which the management report, the inventory and the summary financial statements drawn up by the managers shall be submitted to the meeting of partners for approval.

To this end, the documents referred to above, the proposed draft resolutions and, where need be, the auditor's report, shall be forwarded to the partners at least fifteen days before the meeting. Any meeting which holds in violation of the provisions of this article may be annulled.

The annual general meeting shall validly hold only where it is attended by a majority of the partners representing half of the registered capital. It shall be presided over by the member who himself has or as a representative holds the greatest number of partnership shares.

Any provision contrary to the provisions of this article shall be disregarded.

## **TITLE 5 CONTROL BY PARTNERS**

### **ARTICLE 307**

Sleeping partners and active partners who are not managers shall have the right, twice a year, of access to the company's books and documents and to ask questions in writing on the management of the partnership. Answers to the questions shall also be in writing.

IV

## **TITLE 6 DISSOLUTION OF THE SLEEPING PARTNERSHIP**

### **ARTICLE 308**

The sleeping partnership shall continue in business in spite of the death of a sleeping partner. Where there is provision that despite the death of one of the active partners, the company shall continue with his rightful heirs, the latter shall become sleeping partners where they are dependent minors.

Where the deceased partner was the sole active partner and where his rightful heirs are dependent minors, he shall be replaced with a new active partner or the company shall be transformed within one year with effect from his death.

Failing this, the company shall be dissolved as of right upon the expiry of the period mentioned in the preceding paragraph.

**BOOK 3**  
**PRIVATE LIMITED COMPANY**

**TITLE 1**  
**FORMATION OF A PRIVATE LIMITED COMPANY**

**CHAPTER 1**  
**DEFINITION OF A PRIVATE LIMITED COMPANY**

**ARTICLE 309**

A private limited company shall be a company in which the members are liable for the company's debts up to the limit of their contributions and their rights are represented by company shares.

It may be formed by a natural or corporate person, or by two or more natural or corporate persons.

**ARTICLE 310**

It shall be referred to by a company name which must be immediately preceded or followed by the words "private limited company" or the abbreviation "plc" written in bold characters.

**CHAPTER 2**  
**SUBSTANTIVE CONDITIONS**

**Section 1**  
**Registered capital**

**ARTICLE 311**

The registered capital of a private limited company shall be at least one million (1 000 000) CFA francs. It shall be divided into equal shares whose face value may not be less than five thousand (5 000) CFA francs.

**Section 2**  
**Valuation of non-cash contributions**

**ARTICLE 312**

The Articles of Association shall contain the valuation of each non-cash contribution and a stipulation of special benefits.

The valuation shall be carried out by a non-cash contribution valuer where the value of the contribution or the benefits in question, or the value of the overall contributions or benefits in question is more than five million (5 000 000) CFA francs.

The valuer who shall be chosen from a list of non-cash contributions valuers following the procedure laid down in Article 694 et seq. of this Uniform Act, shall be unanimously designated by the future members or, failing this, by the president of the competent court, on the application of all or one of the company's founders.

The valuer shall draw up a report to be attached to the Articles of Association.

In the absence of a valuation made by a non-cash contribution valuer or where such valuation is disregarded, the liability of members shall be unlimited, joint and several for the valuation made of the non-cash contributions and the special benefits stipulated for a period of five years.

The obligation to provide guarantees shall concern only the value of non-cash contributions at the time the capital is being constituted or increased and not the maintenance of the said value.

### **Section 3**

#### **Deposit and release of funds**

#### **ARTICLE 313**

Funds derived from the payment for shares shall be immediately deposited by the founder, against a receipt, in a bank account opened in the name of the company being formed or in a notary's office.

#### **ARTICLE 314**

The payment and deposit of funds shall be recorded by a notary within the jurisdiction of the court of the registered office by means of a notarized statement of subscription and payment indicating the list of subscribers with their full names and address for service, for natural persons, and company name, legal status and registered office, for corporate persons, as well as the banks of those concerned, and where necessary, the amounts paid by each of them.

The funds thus deposited shall be unavailable until the day of registration of the company in the Trade and Personal Property Rights Register. With effect from that day, they shall be put at the disposal of the managers duly appointed by the Articles of Association or by a subsequent instrument.

In the case where the company is not registered in the Trade and Personal Property Rights Register within a period of six months from the initial deposit of the funds at the bank or at a notary's office, the investors may either individually or collectively through an agent, request the president of the competent court to authorize withdrawal of the amount of their contributions.

### **CHAPTER 3**

#### **CONDITIONS OF FORM**

#### **ARTICLE 315**

The partner(s) shall, under penalty of annulment of the company, participate in drawing up of the Memorandum of Association in person or through their authorized agent with special powers.

#### **ARTICLE 316**

The initial managers and the partners responsible for the nullity of the company shall be jointly and severally liable towards the other partners and third parties for the damage resulting from the nullity.

The action in liability shall be barred at the end of three years with effect from the date when the annulment decision became final.

## **TITLE 2 FUNCTIONING OF A PRIVATE LIMITED COMPANY**

### **CHAPTER 1 TRANSACTIONS RELATING TO COMPANY SHARES**

#### **Section 1 Transfer of company shares**

##### **Sub-section 1 Share transfers inter vivos**

##### **Paragraph 1 Form of transfer**

#### **ARTICLE 317**

The transfer of company shares inter vivos shall be evidenced by a written document.

Such transfer may be binding on the company only after compliance with one of the following formalities:

- 1°) notification of the transfer to the company by extra-judicial act;
- 2°) acceptance of the transfer by the company in a notarial deed;
- 3°) deposit of an original copy of the transfer agreement at the company's registered office against an attestation of deposit issued by the manager.

The transfer shall be binding on third parties only after compliance with one of the above formalities, amendment of the Articles of Association and publication in the Trade and Personal Property

Rights Register.

##### **Paragraph 2 Terms of transfer**

##### **Sub-paragraph 1 Transfer between members**

#### **ARTICLE 318**

The Articles of Association shall freely define the conditions for the transfer of company shares between members. Failing this, share transfers between members shall be free.

The Articles of Association may also define the conditions for the transfer of company shares between spouses, ascendants and descendants. Failing this, shares shall be freely transferable between the persons concerned.

**Sub-paragraph 2**  
**Transfer to third parties**

**ARTICLE 319**

The Articles of Association shall freely define the conditions for the transfer of company shares against payment to third parties who are non-members of the company. Failing this, the transfer shall be possible only with the consent of the majority of non-transferor members holding three-quarters of the company shares, excluding the shares of the transferor member.

The transferor member shall notify the company and each of the other members of his plan to transfer shares.

Where the company does not make known its decision within a period of three months from the date of the last of the notifications provided for in the above paragraph, consent to the transfer shall be deemed to be granted.

Where the company refuses to consent to the transfer, the liability of members shall be unlimited, joint and several, within a period of three months following notification of the refusal to the transferor member, to acquire the shares at a price which, failing an agreement between the parties, shall be fixed by an expert appointed by the president of the competent court at the request of the most diligent party.

The three-month period stipulated above may be extended once only by order of the president of the competent court, provided that such an extension shall not exceed twenty days. In such case, the sums due shall bear interest at the official rate.

The company may also, with the consent of the transferor member, decide within the same time limit to reduce the amount of the registered capital by the face value of the shares of the said member and buy back such shares at a price fixed by mutual agreement between the parties or determined as provided for in paragraph 4 of this article.

**ARTICLE 320**

Where, upon expiry of the time limit set in the preceding article, none of the solutions provided for in paragraphs 4 and 5 of the said article are implemented, the transferor member may freely carry out the transfer initially planned or, where he deems it preferable, abandon the transfer and keep his shares.

**Sub-section 2**  
**Transfer due to death**

**ARTICLE 321**

The Articles of Association may provide that in case of the death of a member, one or more of heirs or a successor may become members only after they have been accepted under the conditions laid down by the Articles of Association.

Under penalty of nullity of such provision, the time limit granted the company for such acceptance shall not be longer than that provided for in Articles 319 and 320 of this Uniform Act and the required majority may not be more than the one provided for in Article 319.

The acceptance decision shall be notified to each of the interested heirs or successor concerned by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

In case of non-acceptance, the provisions of Articles 318 and 319 of this Uniform Act shall apply and where no solution provided for under this article is implemented within the prescribed time

limits, the acceptance shall be deemed to be granted. The same shall apply where no notification has been sent to the persons concerned.

**Section 2**  
**Pledge of company shares**

**ARTICLE 322**

Where the company consents to a plan to pledge company shares under the conditions governing the transfer of shares to third parties, such consent shall imply the acceptance of the transferee in case of the compulsory liquidation of regularly pledged company shares, unless the company prefers, after the transfer, to immediately redeem the said shares in order to reduce its capital.

In order to implement the provisions of the above paragraph and for the pledge to be binding on third parties, the pledging of shares may be established by notarial deed or by private deed notified to the company and published in the Trade and Personal Property Rights Register.

**CHAPTER 2**  
**MANAGEMENT**

**Section 1**  
**Organization of management**

**Sub-section 1**  
**Appointment of managers**

**ARTICLE 323**

A private limited company shall be managed by one or more natural persons, irrespective of whether they are members of the company or not.

They shall be appointed by the members in the Articles of Association or in a subsequent instrument. In the latter case, unless a provision in the Articles of Association requires a bigger majority, the decision shall be taken by a majority of the members holding more than half of the registered capital.

**Sub-section 2**  
**Term of office**

**ARTICLE 324**

In the absence of provisions in the Articles of Association, the manager(s) shall be appointed for four years. Their term of office shall be renewable.

**Sub-section 3**  
**Remuneration**

**ARTICLE 325**

The duties of manager shall be gratuitous or shall be remunerated under the conditions laid down in the Articles of Association or in a collective decision of the members.

The determination of the remuneration shall not be subject to the scheme of regulated agreements provided for in Articles 350 et seq. of this Uniform Act.

**Sub-section 4**  
**Removal from office**

**ARTICLE 326**

Whether appointed in the Article of Association or not, a Manager may be removed from office by a decision of the members representing more than half of the company shares. Any provisions to the contrary shall be void. Where such removal from office is unjustified, it may give rise to the payment of damages.

Furthermore, the manager may at the instance of any member and upon good cause shown, be removed from office by the court in charge of commercial matters within whose jurisdiction the company's registered office is situated .

**Sub-section 5**  
**Resignation**

**ARTICLE 327**

The manager(s) may freely resign. However, where such resignation is not justified, the company may bring legal action for the reparation of the damage suffered therefrom.

**Section 2**  
**Powers of managers**

**ARTICLE 328**

In relations between members and where the Articles of Association do not define the duties of the manager, the latter may perform all managerial acts in the interest of the company.

Where there are several managers, they shall separately hold the powers provided for in this article, save the right for each of them to object to a transaction before it is concluded.

The objection by one manager to the acts of another manager shall have no effect on third parties, unless it is established that they had knowledge thereof.

**ARTICLE 329**

In his relations with third parties, the manager shall be vested with the widest powers to act in all circumstances on behalf of the company, subject to the powers which this Uniform Act expressly confers on members.

The company shall be bound, even by those acts of the manager which do not fall within the scope of the company's objects, unless it can prove that the third party knew that the acts were not within the scope of such objects or that he could not have been unaware of the fact in the circumstances, with the understanding that the mere publication of the Articles of Association shall not constitute such proof.

The provisions in the Articles of Association limiting the powers of managers which result from this article shall not be binding on third parties.

**Section 3**  
**Liability of managers**

**ARTICLE 330**

The managers shall be liable, severally or jointly and severally, as the case may be, to the company or third parties for violations of legal or statutory provisions applicable to private limited companies, or for violations of the Articles of Association, or for mistakes made during their management.

Where several managers jointly took part in the same acts, the court in charge of commercial matters shall determine the contribution of each in the reparation of the damage.

**ARTICLE 331**

Apart from legal action for damages suffered by individuals, members representing one-quarter of the members and one-quarter of company shares may, individually or as a group, bring an action on behalf of company against the manager.

The plaintiffs shall be empowered to seek redress for all the damage suffered by the company for which as the case may be, reparation may be awarded.

Any clause in the Articles of Association subjecting action in the company's interest to the prior opinion or authorization of the general meeting or which entails renunciation of such action in advance shall be void.

No decision of the general meeting shall have the effect of extinguishing an action in liability brought against managers for a tort committed in the cause of the performance of their duties.

**ARTICLE 332**

The civil claim provided for in the two preceding articles shall be barred after a period of three years from the date of commission of the tort or, where it was concealed, from the date of disclosure thereof.

However, where the act amounts to a felony, action shall be barred after a period of ten years.

**CHAPTER 3**  
**COLLECTIVE DECISIONS OF THE MEMBERS**

**Section 1**  
**Organization of collective decisions**

**Sub-section 1**  
**General principles**

**Paragraph 1**  
**Conditions**

**ARTICLE 333**

Collective decisions shall be taken at general meetings.

However, the Articles of Association may provide that all or some decisions shall be taken by consulting the members in writing, except in the case of the annual general meeting.

**Paragraph 2**  
**Representation of the members**

**ARTICLE 334**

Each member shall have the right to participate in decision-making and shall have a number of votes equal to the number of company shares that he holds. Where there is a sole proprietor, he alone shall take decisions falling within the competence of the general meeting.

A member may be represented by a spouse, unless the company is a partnership comprising the two spouses.

Except where there are only two members, one member may be represented by the other member. He may be represented by another person only where this is allowed by the Articles of Association.

**ARTICLE 335**

The authority given to another member or to a third party shall be valid for only one meeting or for several successive meetings having the same agenda.

**ARTICLE 336**

A member may not vote through a proxy for part of his shares and in person for the other part.

All provisions contrary to the provisions of Articles 334 and 335 of this Uniform Act and to those of this article shall be disregarded.

**Sub-section 2**  
**Convening of general meetings**

**Paragraph 1**  
**Right to convene meetings**

**ARTICLE 337**

Members shall be convened to meetings by the manager or, failing this, by the auditor where there is one.

One or more members holding half of the company's shares, or one-quarter of the company's shares, where they represent at least one-quarter of the members, may request the convening of a meeting.

Furthermore, any member may apply to the court for the designation of an authorized agent responsible for convening a meeting and drawing up its agenda.

**Paragraph 2**  
**Conditions for convening of meetings**

**ARTICLE 338**

Members shall be convened at least fifteen days before the general meeting by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

Under penalty of nullity, the letter of invitation shall indicate the agenda.

In the case where the holding of the general meeting is requested by the members, the manager shall convene the meeting with an agenda proposed by the requesting members.

The members who shall be convened under the conditions and within the time limits provided for in the first paragraph of this article shall be put in a situation where they can exercise the right of communication provided for in Article 345 of this Uniform Act.

**Paragraph 3**  
**Sanctions for improper convening of meetings**

**ARTICLE 339**

Any meeting convened improperly may be annulled. However, the action for annulment shall be inadmissible where all the members were present or represented.

**Sub-section 3**  
**Consultations in writing**

**ARTICLE 340**

Where consultations is in writing, the text of the proposed draft resolutions as well as the documents necessary for the information of the members shall be forwarded to each of them under the same conditions as those provided for in Article 338, paragraph 1 of this Uniform Act.

The members shall have a minimum period of fifteen days from the date of reception of the draft resolutions to express their opinion.

**Sub-section 4**  
**Chairing meetings**

**ARTICLE 341**

The general meeting of members shall be chaired by the manager or one of the managers. Where none of the managers is a member, the meeting shall be chaired by a member, present and consenting, who holds the majority of company shares and, in case of equality, by the eldest member.

**Sub-section 5**  
**Minutes of meetings**

**ARTICLE 342**

The deliberations of general meetings shall be recorded in the minutes indicating the time and venue of the meeting, the full names of the members present, the documents and reports presented for discussion, a summary of the proceedings, the text of the resolutions put to the vote and the result of the vote.

The minutes shall be signed by each of the members present.

In case of consultation in writing, mention shall be made thereof in the minutes which shall be signed by the manager or managers and to which shall be annexed the response of each of the members.

**ARTICLE 343**

Copies or extracts of the minutes of the members' deliberations shall be validly certified by a single manager.

**Section 2**  
**Members' rights**

**Sub-section 1**  
**Principle**

**ARTICLE 344**

The members shall have the right to be permanently informed on the affairs of the company. Prior to the holding of general meetings, they shall have the right to be served with company documents.

**Sub-section 2**  
**The right to be served company documents**

**ARTICLE 345**

With regard to the annual general meeting, the right to be served company documents shall concern the summary financial statements of the fiscal year and the management report prepared by the manager, the text of the proposed resolutions and, where necessary, the auditor's general report as well as the auditor's special report relating to agreements signed between the company and a manager or member.

The right to be served documents shall be exercised during the fifteen days preceding the holding of the general meeting.

From the date of service of the above documents, any member shall have the right to ask in writing questions which the manager shall be bound to answer during the general meeting.

With regard to meetings other than the annual general meeting, the right to be served shall concern the text of the proposed resolutions, the manager's report and, where necessary, the auditor's report.

All decisions taken in violation of the provisions of this article may be annulled.

A member may, at any time, also obtain copies of the documents listed in paragraph one of this article for the last fiscal years. Similarly, any member who is not a manager may, twice in a fiscal year, ask questions in writing to the manager on any act likely to undermine the continuity of the company. The manager's answer shall be forwarded to the auditor.

Any clause contrary to the provisions of this article shall be disregarded.

**Sub-section 3**  
**Right to dividend**

**ARTICLE 346**

Distribution of profit shall be done in accordance with the Articles of Association, subject to the mandatory provisions common to all companies.

Under penalty of annulment of all decisions to the contrary, at least one-tenth of the profits of the fiscal year from which have been deducted past losses, where necessary, shall be deposited in a reserve fund known as "legal reserve". This appropriation shall cease to be obligatory when the reserve attains one-fifth of the registered capital of the company.

Dividends not corresponding to real profits distributed to members may be recovered from them. The action for recovery shall be barred at the end of a period of three years from the date of commencement of distribution of the dividends.

**Section 3**  
**Ordinary collective decisions**

**ARTICLE 347**

Ordinary collective decisions shall be those taken to review the summary financial statements of the previous fiscal year, to authorize management to carry out the transactions for which the Articles of Association provided for prior approval by the members, to appoint or replace managers and, where necessary, the auditor, to approve agreements between the company and one of its managers or members and, in general, to decide on all matters that do not entail amendment of the Articles of Association.

Where the company is a sole proprietorship, the provisions of Articles 558 to 561 of the Uniform Act, excluding those of the second paragraphs of Articles 558 and 559 below, shall apply. The provisions of this Chapter which are not contrary hereto shall also apply.

**Sub-section 1**  
**The ordinary annual general meeting**

**Paragraph 1**  
**Periodicity**

**ARTICLE 348**

The ordinary annual general meeting shall hold within six months from the close of the fiscal year. The managers may apply to the president of the competent court for this time limit to be extended.

**Paragraph 2**  
**Rules governing voting by the members**

**ARTICLE 349**

In ordinary meetings or in ordinary written consultations, decisions shall be adopted by one or more members representing more than half of the capital.

Failure to attain this majority, and except otherwise stipulated by the Articles of Association, the members shall once more be convened or consulted, as the case may be, and decisions shall be taken by a majority vote irrespective of the proportion of the capital represented.

However, in all cases, managers may not be removed except by an absolute majority.

**Sub-section 2**  
**Agreements between the company and one of its managers**

**Paragraph 1**  
**Regulated agreements**

**ARTICLE 350**

The ordinary general meeting shall decide on agreements concluded directly or through a third party between the company and one of its managers or members.

To this end, the manager(s) or the auditor, where there is one, shall present a report on the agreements concluded directly or through a third party between the company and one of its managers or members to the ordinary annual general meeting or attach the said report to documents sent to members.

The same shall apply to:

- agreements concluded with a sole proprietorship where the proprietor is simultaneously manager and shareholder in the private limited company;
- agreements concluded with a company in which one shareholder with unlimited liability, a manager, director, general manager or secretary general is also a manager or member of the private limited company.

**ARTICLE 351**

Where there is an auditor, the manager shall notify him of the agreements referred to in the preceding article within a period of one month from the date of conclusion of the said agreements.

Where the implementation of agreements concluded during previous fiscal years has been carried over to the last fiscal year, the auditor shall be informed of the situation within a period of one month following the close of the fiscal year.

**ARTICLE 352**

Authorization shall not be needed from the ordinary general meeting where the agreements concern routine transactions concluded under normal conditions.

Normal conditions shall mean the conditions that the company in question applies for similar agreements or, or as the case may be, those applied by companies in the same sector carried out by a company as part of its activities.

Normal conditions shall mean the conditions that the company in question applies for similar agreements or, possibly, those applied by companies in the same sector.

**ARTICLE 353**

The report presented by the manager or the auditor, where there is one, shall include:

- 1°) a list of the agreements submitted for the approval of the meeting;
- 2°) the identity of the parties to the agreement and the names of the managers or members concerned;
- 3°) the nature and subject matter of the agreements;

4°) the main terms of these agreements, particularly the prices or rates applicable, the discounts and commissions allowed, the deadlines for payment granted, the stipulated interest rates, guarantees given and, as the case may be, all other information that may enlighten the members on the need to conclude the agreements examined;

5°) the volume of materials supplied, services provided or amounts of payments made or received during previous fiscal years and carried over to the last fiscal year.

#### **ARTICLE 354**

The ordinary general meeting shall decide on the agreements as provided for under Articles 348 and 349 of this Uniform Act.

The member concerned shall not take part in the voting during the deliberations on the agreement, and his vote shall not count in determining the majority.

#### **ARTICLE 355**

The agreements not approved by the general meeting shall nonetheless have effect. It shall be the responsibility of the contracting manager or member, individually or jointly, as the case may be, to bear the consequences of the agreement which may be detrimental to the company.

An action for damages shall be instituted within three years from the date of conclusion of the agreement or, where it has been concealed, from its disclosure.

Where the company is a sole proprietorship and the agreement has been concluded with the sole proprietor, this fact shall merely be entered in the record of deliberations.

### **Paragraph 2 Prohibited agreements**

#### **ARTICLE 356**

It shall be prohibited, under penalty of nullity of the contract, for natural persons who are managers or members, under any form whatsoever, to contract loans from the company, obtain an overdraft on a current account or otherwise from the company or make the company endorse or guarantee their commitments towards third parties.

This prohibition shall also apply to spouses, ascendants and descendants of the persons referred to in the first paragraph of this article, including any intermediary through whom these persons act.

### **Section 4 Extraordinary collective decisions**

#### **ARTICLE 357**

Extraordinary collective decisions shall have as subject matter the amendment of the Articles of Association.

Where the company is a sole proprietorship, the provisions of Articles 558 to 561 of this Uniform Act shall apply, save those of the second paragraphs of Articles 558 and 559. The provisions of this chapter which are not contrary hereto shall also apply.

**Sub-section 1**  
**General rules relating to voting by members**

**Paragraph 1**  
**Principle**

**ARTICLE 358**

Amendments to the Articles of Association shall be decided by members representing at least three-quarters of the registered capital. Any clause contrary hereto shall be disregarded.

**Paragraph 2**  
**Exceptions**

**ARTICLE 359**

A unanimous decision shall be required in the following cases:

- 1°) increasing the commitments of members;
- 2°) transforming the company into a private company;
- 3°) transferring the company's registered office to a State other than a State Party.

**Sub-section 2**  
**Decisions relating to a variation of capital**

**Paragraph 1**  
**Increase of capital**

**ARTICLE 360**

Notwithstanding the provisions of Article 358 of this Uniform Act, the decision to increase capital through the capitalization of profits or reserves shall be taken by the members controlling at least half of the share capital

**ARTICLE 361**

Where the capital is increased by shares issued for cash, the funds derived from the subscription shall be deposited at the bank or at a notary's office in conformity with the provisions applicable during the formation of a company.

The funds derived from the issue may be made available to the manager where he gives the depositary bank or notary a certificate from the Trade and Personal Property Rights Register showing that the modification following the increase of capital has been recorded.

**ARTICLE 362**

Where the increase in capital has not been effected within six months from the initial deposit of funds derived from the issues, any subscriber may apply to the president of the competent court for authorization to withdraw the funds either personally or through an agent representing the subscribers collectively for refund to the subscribers.

**ARTICLE 363**

Where the increase of capital has been effected either partially or wholly by noncash contributions, the members shall designate a shares valuer where the value of each contribution

or each special benefit received, or the value of total contributions or total special benefits exceeds five million (5 000 000) CFA francs.

The shares valuer shall be designated under the same conditions as for the formation of the company.

The shares valuer may also be appointed by the president of the competent court at the request of any member, irrespective of the number of shares the said member controls.

He shall draw up a report on the assessment of the assets and special benefits as was made by the contributor and the company. The report shall be submitted to the meeting charged with deciding on the increase of capital.

#### **ARTICLE 364**

The noncash contributor shall not take part in the vote to decide the approval of his contribution. His shares shall not be taken into account for the determination of the quorum or the majority.

#### **ARTICLE 365**

In the absence of an assessment made by a shares valuer or where such assessment is disregarded, the members shall be liable under the conditions laid down in Article 312 of this Uniform Act.

However, the meeting shall not reduce the value of contributions or of special benefits except by unanimous decision of the subscribers and with the express consent of the contributor or the beneficiary mentioned in the minutes. Failing this, there shall be no increase of capital.

### **Paragraph 2 Reduction of capital**

#### **ARTICLE 366**

In no case shall the reduction of capital affect the equality between members.

#### **ARTICLE 367**

Capital reduction may be achieved by reducing the face value of shares or by reducing the number of shares.

Where there is an auditor, he shall be informed of the intended reduction of capital within thirty days prior to the holding of the extraordinary general meeting.

He shall present his appraisal of the causes and conditions of the reduction to the meeting.

In the case of written consultation, the intended reduction of capital shall be notified to the members under the same conditions as those laid down in Article 340 above.

It shall be forbidden for the company to purchase its own shares.

However, the meeting which decided the reduction of capital not arising from losses may authorize the manager to purchase a specific number of shares to cancel them.

#### **ARTICLE 368**

The reduction shall not have the effect of reducing capital below the legal minimum, unless the same meeting decides to make a corresponding increase in capital to raise it to at least the legal level.

## **ARTICLE 369**

In the event of a violation of the provisions of Article 368 of this Uniform Act, any interested party may, after giving the company's representatives formal notice to redress the situation, institute action for the company to be wound up.

The action shall be extinguished where the grounds for winding up cease to exist by the date the court is to rule on the merits of the case.

## **ARTICLE 370**

Where the meeting approves a reduction of capital not arising from losses, creditors with claims dating before the time the minutes of the deliberations were deposited at the Trade and Personal Property Rights Register may object to the reduction of capital within a period of one month with effect from the date of deposit.

The objection shall be notified to the company by an extra-judicial act. The president of the court may dismiss the objection or order the claims to be reimbursed, or the guarantees to be provided, where the company offers any and they are deemed adequate.

The capital reduction operations may not begin during the period of time allowed for objection.

### **Paragraph 3 Variation of shareholders' equity**

## **ARTICLE 371**

Should the losses recorded in the summary financial statements cause the shareholders' equity in the company to fall below half of the registered capital, the manager or the auditor, as the case may be, shall, within a period of four months following the approval of the accounts that revealed the losses, consult the members on the advisability of calling for a premature winding up of the company.

## **ARTICLE 372**

Where the company is not wound up, it shall, within a period of two years following the close of the fiscal year showing a deficit, re-constitute its shareholders' equity up to a level where it is at least half of the registered capital.

Failing this, it shall reduce its capital by an amount at least equal to the amount of losses which could not be charged to the reserves, provided that the reduction of capital shall not result in reducing the capital below the legal level.

## **ARTICLE 373**

Where the managers or the auditor cannot cause a decision to be taken, or where the members cannot validly deliberate, any interested party may petition the competent court to pronounce the dissolution of the company.

The same shall apply where the shareholders' equity is not reconstituted within the prescribed time limit.

The action shall be extinguished where the grounds for winding up the company have ceased to exist by the date the competent court is to rule on the merits of the case.

**Sub-section 3**  
**Transformation of the company**

**ARTICLE 374**

A private limited company may be transformed into another type of company.

The transformation shall not give rise to a new corporate person.

The private limited company may not be effectively transformed unless, at the time of the proposed transformation it has shareholders' equity at least equal to its registered capital and it has drawn up the balance-sheets for its first two fiscal years and these have been approved by the members.

**ARTICLE 375**

The company may not be transformed unless on the basis of an auditor's report certifying, under his responsibility, that the conditions laid down in Article 374 of this Uniform Act have been fulfilled.

Where there is no auditor, the manager shall choose one under the conditions laid down in Articles 694 et seq. of this Uniform Act.

Any transformation carried out contrary to these provisions shall be null and void.

**CHAPTER 4**  
**AUDIT OF THE COMPANY**

**Section 1**  
**Appointment of an auditor**

**Sub-section 1**  
**Companies concerned**

**ARTICLE 376**

Private limited companies whose registered capital exceeds ten million (10 000 000) CFA francs or which fulfil either of the following two conditions:

(1) the annual turnover exceeds two hundred and fifty million (250 000 000) CFA francs or

(2) the permanent staff exceeds 50 persons,

shall be required to designate at least one auditor.

For other private limited companies which do not fulfil these criteria, the appointment of an auditor shall be optional. However, one or more members controlling at least one-tenth (1/10) of the registered capital may apply to the court for the appointment of an auditor.

**Sub-section 2**  
**The auditor**

**ARTICLE 377**

The auditor shall be chosen under the conditions laid down in Articles 694 et seq. of this Uniform Act.

**Sub-section 3  
Incompatibilities**

**ARTICLE 378**

The following persons may not be appointed auditor:

- 1°) managers and their spouses;
- 2°) noncash contributors and persons having special benefits ;
- 3°) persons receiving from the company or from its managers periodic payments of any type, as well as their spouses.

**Sub-section 4  
Term of office of the auditor**

**ARTICLE 379**

The auditor shall be appointed for three fiscal years by one or several members controlling more than half of the registered capital.

Where this majority is not obtained and unless otherwise stipulated by the Articles of Association, the auditor shall be chosen by a majority vote, irrespective the share capital represented.

**SUB-SECTION 5  
PENALTIES ATTENDANT ON APPOINTMENT OR WORKING  
CONDITIONS**

**ARTICLE 380**

Deliberations conducted without the due appointment of an auditor or on the report of an auditor who has been appointed or has remained in office contrary to the provisions of Article 379 of this Uniform Act shall be null and void.

Action for annulment shall be extinguished where the deliberations have been formally approved by a meeting upon the report of a duly appointed auditor.

**Section 2  
Conditions governing the performance of the duties of auditor**

**ARTICLE 381**

The provisions relating to the powers, duties, obligations, liability, dismissal and remuneration of the auditor shall be spelt out in a specific instrument governing the profession of auditor.

### **TITLE 3 MERGER - DIVISION**

#### **ARTICLE 382**

The provisions of Articles 672, 676, 679, 688 and 689 of this Uniform Act shall apply to mergers or divisions of private limited companies for the benefit of the same type of companies.

Where the operation results in contributions to existing private limited companies, the provisions of Article 676 of this Uniform Act shall also apply.

#### **ARTICLE 383**

Where the merger is realized by contributions to a new private limited company, the new company may be formed with the contributions of the merging companies alone.

Where the division involves contributions to new private limited companies, the new companies may be incorporated with the contributions of the divided company alone. In this case, and where the shares of each of the new companies are distributed to the members of the divided company proportionately to their shares in the said company, there shall be no need for the report referred to in Article 672 of this Uniform Act to be drawn up.

In the cases provided for in the two preceding paragraphs, the members of the disappearing companies may act as of right as founders of the new companies and shall proceed in accordance with the provisions of this Book.

### **TITLE 4 DISSOLUTION OF A PRIVATE LIMITED COMPANY**

#### **ARTICLE 384**

A private limited company may be dissolved for the same reasons applicable to all companies.

A private limited company shall not be dissolved where one of the members has been banned, is bankrupt or incapacitated.

Unless otherwise stipulated by the Articles of Association, it shall not be dissolved following the death of a member.

**BOOK 4**  
**PUBLIC LIMITED COMPANY**

**TITLE 1**  
**GENERAL PROVISIONS**

**SUB-TITLE 1**  
**FORMATION OF A PUBLIC LIMITED COMPANY**

**CHAPTER 1**  
**GENERAL**

**Section 1**  
**Definition**

IV

**ARTICLE 385**

A public limited company shall be a company in which the liability of each shareholder for the debts of the company is limited to the amount of shares he has taken and his rights are represented by shares.

A public limited company may have only a single shareholder.

**ARTICLE 386**

A public limited company shall be known by a company name which shall immediately be preceded or followed in legible characters by the words: “public limited company” or the abbreviation: “plc” and the method of administration of the company as provided for in Article 414 below.

**Section 2**  
**Authorized capital**

**ARTICLE 387**

The minimum authorized capital shall be fixed at ten million (10,000,000) CFA francs. It shall be divided into shares of a face value of not less than ten thousand (10,000) CFA francs.

**ARTICLE 388**

The capital of a public limited company shall be fully subscribed before the date of signature of its Articles of Association or holding of the constituent general meeting.

**ARTICLE 389**

At least one quarter of the face value of shares representing cash contributions shall be paid up during capital subscription.

The rest shall be paid up within a period of not more than three years from the date of registration of the company in the Trade and Personal Property Rights Register, in accordance with the terms and conditions laid down by the Articles of Association or by a decision of the board of directors or of the managing director.

Shares representing cash contributions which have not been fully paid up shall be registered shares.

As long as the capital is not fully paid up, the company may neither increase its capital, unless such increase of capital is by noncash contributions, nor issue bonds.

## **CHAPTER 2**

### **FORMATION WITHOUT NONCASH CONTRIBUTION AND WITHOUT STIPULATION OF SPECIAL BENEFITS**

#### **Section 1**

#### **Preparation of allotment letters**

IV

#### **ARTICLE 390**

Subscription for shares representing cash contributions shall be established by an allotment letter prepared by the founders of the company or by one of them and dated and signed by the subscriber or by his authorized agent who shall write out entirely in letters the number of shares subscribed.

#### **ARTICLE 391**

The allotment letter shall be prepared in two original copies, one of which shall be for the company being formed and the other for the notary responsible for drawing up the statement of subscription and payment.

#### **ARTICLE 392**

The allotment letter shall set out:

- 1°) the name of the company to be formed followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the amount of the authorized capital to be subscribed, stating the share of capital represented by noncash contributions and the share to be subscribed in cash;
- 4°) the address of the registered office;
- 5°) the number of shares issued and their face value, indicating, where necessary, the various categories of shares created;
- 6°) the terms and conditions of issue of shares subscribed in cash;
- 7°) the name or business name and address of the subscriber and the number of shares subscribed and the payments made;
- 8°) the indication of the depositary in charge of keeping the funds until the company is registered in the Trade and Personal Property Rights Register;
- 9°) the indication of the notary in charge of drawing up the statement of subscription and payment;
- 10°) the indication of handing over to the subscriber of a copy of the allotment letter.

## Section 2

### Deposit of funds and notarial statement of subscription and payment

#### ARTICLE 393

Funds derived from subscription for shares issued for cash shall be deposited by the persons who received them, on behalf of the company being formed, either with a notary or in a special account opened in the name of the company at a bank domiciled in the State Party of the registered office of the company being formed.

The funds shall be deposited within eight days following the receipt thereof.

The depositor shall hand over to the bank, at the time of depositing the funds, a list showing the identity of the subscribers and indicating, for each of them, the amount of money paid.

The depositary shall be bound, until the funds are withdrawn, to communicate the list referred to in paragraph 3 above to every subscriber who, after showing proof of his subscription, so requests. The applicant may study the list and obtain a copy thereof at his expense.

The depositary shall issue the depositor a certificate attesting the deposit of the funds.

#### ARTICLE 394

On presentation of allotment letters and, where necessary, a certificate issued by the depositary attesting the deposit of funds, the notary shall state in the act he shall draw up, referred to “notarial statement of subscription and payment,” that the amount of subscriptions declared corresponds to the amount appearing on the allotment letters and that the amount paid corresponds to the total sums of money deposited in his chambers or, where necessary, appearing on the certificate referred to above. The certificate issued by the depositary shall be annexed to the notarial statement of subscription and payment.

The notary shall make the statement available to subscribers who may examine it and obtain a copy thereof in his chambers.

## Section 3

### Drawing up of the Articles of Association

#### ARTICLE 395

The Articles of Association shall be drawn up in accordance with the provisions of Article 10 of this Uniform Act.

#### ARTICLE 396

The Articles of Association shall be signed by all the subscribers personally or by an authorized agent specially empowered for the purpose, after the statement of subscription and payment has been drawn up.

#### ARTICLE 397

The Articles of Association shall contain the information provided for in Article 13, with the exception of item 6, above. They shall, in addition, mention:

1°) the chosen method of administration and management;

- 2°) as the case may be, either the full names, address, profession and nationality of natural persons who are members of the first board of directors of the company or permanent representatives of corporate persons that are members of the board of directors, or the full names, address, profession and nationality of the managing director and of the first auditor and his alternate;
- 3°) the business name, the amount of capital and the form of corporate persons that are members of the board of directors;
- 4°) the form of shares issued;
- 5°) provisions relating to the composition, functioning and powers of the organs of the company;
- 6°) where necessary, restrictions to the free negotiability and to the free transfer of shares, as well as the terms of approval and pre-emption of shares.

#### **Section 4**

#### **Withdrawal of funds**

#### **ARTICLE 398**

The withdrawal of funds derived from subscriptions in cash may take place only after registration of the company in the Trade and Personal Property Rights Register.

Withdrawal shall be done, depending on the case, by the chairman and managing director, the general manager or the managing director, on presentation to the depositary of the certificate issued by the court Registry attesting the registration of the company in the Trade and Personal Property Rights Register.

Any subscriber may, six months after payment of funds, bring an action before the president of the competent court sitting in chambers for the appointment of an agent responsible for withdrawing the funds to give back to the subscribers, subject to the deduction of his distribution costs where, on that date, the company is not registered.

### **CHAPTER 3**

### **FORMATION WITH NON-CASH CONTRIBUTION AND/OR STIPULATION OF SPECIAL BENEFITS**

#### **Section 1**

#### **Principle**

#### **ARTICLE 399**

The formation of public limited companies shall, in addition to the provisions of the preceding chapter which are not to the contrary, be subject to the provisions of this chapter in case of non-cash contribution and/or stipulation of special benefits.

#### **Section 2**

#### **Intervention of shares valuer**

#### **ARTICLE 400**

Noncash contribution and/or special benefits shall be evaluated by a shares valuer.

The shares valuer, who shall be chosen from the list of auditors according to the procedure laid down in Articles 694 et seq. of this Uniform Act, shall be designated unanimously by the future

members of the company or, failing this, by the president of the competent court, at the request of the founders of the company or of one of them.

#### **ARTICLE 401**

The shares valuer shall be responsible for drawing up a report describing each of the contributions and/or special benefits, showing their value, stating the method of valuation chosen and the reasons for the choice, and asserting that the value of the contributions and/or special benefits corresponds to at least the face value of the shares to be issued.

#### **ARTICLE 402**

The shares valuer shall, in carrying out his task, enlist the assistance of one or more experts of his choice. The fees of these experts shall be borne by the company, unless otherwise provided for in the Articles of Association.

#### **ARTICLE 403**

The report of the shares valuer shall be deposited at the address of the registered office at least three days before the date of the constituent general meeting.

It shall be made available to the subscribers who may examine it or obtain a complete or partial copy thereof at their expense.

### **Section 3 Constituent general meeting**

#### **ARTICLE 404**

The constituent general meeting shall be convened by the founders after the notarial statement of subscription and payment of funds has been drawn up.

Notice of the meeting shall be by hand delivered letter against acknowledgement of receipt or by registered letter with request for advice of delivery, indicating the agenda, venue, date and time of the meeting.

Notice of the meeting shall be addressed to each subscriber at least fifteen days before the date of the meeting.

#### **ARTICLE 405**

The proceedings of the meeting shall only be valid where the subscribers present or represented hold at least half of the shares issued. Where the quorum is not met, a second invitation shall be addressed to the subscribers no later than six days before the date fixed for the meeting.

On the second invitation, the proceedings of the meeting shall be valid only where the subscribers present or represented hold at least one quarter of the shares issued. Where this latter quorum is not met, the meeting shall be held within two months from the date fixed in the second invitation. The subscribers shall be convened at least six days before the date of the meeting.

On the third invitation, the proceedings of the meeting shall be valid only where the quorum conditions referred to in the second paragraph above are met.

#### **ARTICLE 406**

Decisions of the meeting shall be taken by a two-thirds majority of the votes of the subscribers present or represented, subject to the provisions of Articles 409 and 410 paragraph 2 of this Uniform Act.

Blank votes shall not be taken into consideration in computing the majority.

#### **ARTICLE 407**

The holding of the meeting shall be subject to the provisions of Article 529 et seq. of this Uniform Act that are not contrary hereto, in particular as concerns the constitution of its bureau and the rules of representation and participation in the meeting.

It shall be presided over by the shareholder with the highest number of shares or, failing this, by the oldest shareholder.

#### **ARTICLE 408**

Each non-cash contribution and each special benefit shall be the object of a special vote by the meeting.

The meeting shall approve or disapprove the shares valuer's report on the valuation of non-cash contributions and the grant of special benefits.

The shares of the contributor or of the beneficiary of special benefits, even where he is also a cash subscriber, shall not be taken into account when computing the quorum and the majority and the contributor or the beneficiary of special benefits shall not vote either by himself or as authorized agent.

#### **ARTICLE 409**

The meeting shall reduce the value of noncash contributions or of special benefits only unanimously by the subscribers and with the express consent of the contributor or the beneficiary.

The consent of the contributor or of the beneficiary shall be mentioned in the minutes where the value given the goods contributed or the special benefits provided for is different from the value adopted by the shares valuer. The shareholders and the directors or the managing director, as the case may be, shall be jointly liable vis-à-vis third parties for a period of five years for the value given the contributions and/or the special benefits.

#### **ARTICLE 410**

Furthermore, the constituent general meeting shall:

- 1°) ascertain that the capital is fully subscribed and that the shares are paid up under the conditions laid down in Articles 388 and 389 of this Uniform Act;
- 2°) adopt the Articles of Association of the company which it shall amend only unanimously by all the subscribers;
- 3°) appoint the first directors or managing director, as the case may be, as well as the first auditor;
- 4°) take a decision on the acts done on behalf of the company being formed, in accordance with the provisions of Article 106 of this Uniform Act, upon a report drawn up by the founders;

5°) give, where necessary, authority to one or more members of the board of directors or to the managing director, as the case may be, to enter into commitments on behalf of the company before its registration in the Trade and Personal Property Rights Register, under the conditions laid down in Article 111 of this Uniform Act.

#### **ARTICLE 411**

The minutes of the meeting shall indicate the date and venue of the meeting, the type of meeting, the method of convening it, the agenda, the quorum, the resolutions put to vote and, where necessary, the quorum and voting conditions for each resolution and the result of voting for each of them.

The minutes shall be signed, as the case may be, by the session chairperson and by one other member, or by the sole member, and shall be filed at the registered office, together with the attendance sheet and its annexures.

They shall indicate, where necessary, the acceptance of their appointments by the first members of the board of directors or by the managing director, as the case may be, as well as by the first auditor.

#### **ARTICLE 412**

Any constituent general meeting irregularly convened shall be annulled under the conditions laid down in Articles 242 et seq. of this Uniform Act.

However, no action for annulment of the meeting shall be admissible where all the shareholders were present or represented.

#### **ARTICLE 413**

The founders of the company responsible for the annulment of the constituent general meeting and the directors or the managing director, as the case may be, in office at the time when the annulment was pronounced may be declared jointly liable for damage suffered by third parties as a result of the nullity of the company.

## **SUB-TITLE 2 ADMINISTRATION AND MANAGEMENT OF A PUBLIC LIMITED COMPANY**

### **CHAPTER 1 GENERAL PROVISIONS**

#### **ARTICLE 414**

The method of administration of each public limited company shall be clearly defined by its Articles of Association which shall choose between:

- a public limited company with a board of directors; or
- a public limited company with a managing director.

A public limited company may, while in existence, change its method of administration and management at any time.

The decision shall be taken by an extraordinary general meeting of shareholders which shall amend the Articles of Association accordingly.

The amendments shall be entered in the Trade and Personal Property Rights Register.

## **CHAPTER 2**

### **PUBLIC LIMITED COMPANY WITH BOARD OF DIRECTORS**

#### **ARTICLE 415**

A public limited company with a board of directors shall be managed either by a chairperson and managing director or by a chairperson of the board of directors and a general manager.

#### **Section 1**

##### **Board of directors**

#### **Sub-Section 1**

##### **Composition of the board of directors**

#### **Paragraph 1**

##### **Number and appointment of directors**

#### **ARTICLE 416**

A public limited company may be administered by a board of directors comprising not less than three and not more than twelve members.

#### **ARTICLE 417**

Not more than one-third of the members of the board shall be non shareholders of the company.

Directors who are not shareholders of the company shall be subject to the provisions of Articles 416 to 434 of this Uniform Act.

#### **ARTICLE 418**

The number of directors of a public limited company may be temporarily exceeded, in case of a merger with one or more companies, by up to the total number of directors who have been in office for more than six months in the companies merged; the number of directors shall however not exceed twenty-four.

Directors who are dead, dismissed or who have resigned may not be replaced and new directors may not be appointed, save during a new merger and as long as the number of directors in office has not been reduced to twelve.

#### **ARTICLE 419**

The first directors shall be designated by the Articles of Association or, where necessary, by the constituent general meeting.

While the company is in existence the directors shall be nominated by the ordinary general meeting.

However, in case of a merger, an extraordinary general meeting may appoint new directors.

Any appointment in violation of the provisions of this article shall be null and void.

**Paragraph 2**  
**Term of office of directors**

**ARTICLE 420**

The term of office of directors shall be freely fixed by the Articles of Association, but shall not exceed six years in case of appointment while the company is in existence and two years in case of nomination by the Articles of Association or by the constituent general meeting.

**Paragraph 3**  
**Nomination of the permanent representative of a corporate person that is member of the board of directors and his term of office**

**ARTICLE 421**

A corporate person may be appointed director. It shall, on its appointment, nominate, by hand-delivered letter with acknowledgement of receipt or by registered letter with acknowledgement of receipt addressed to the company, a permanent representative for its term of office. Although the permanent representative so nominated is not personally a director of the company, he shall be subject to the same conditions and obligations and shall incur the same civil and criminal liabilities as if he were director in his own name, without prejudice to the joint and several liability of the corporate person he represents.

A permanent representative may or may not be a shareholder of the company.

**ARTICLE 422**

The permanent representative shall perform his duties during the term of office of the corporate person he represents.

The corporate person shall, each time its term of office is renewed, state whether it maintains the same physical person as its permanent representative or nominate, on the spot, another permanent representative.

**ARTICLE 423**

Where a corporate person terminates the appointment of its permanent representative, it shall be bound to immediately notify the company, by hand-delivered letter with acknowledgement of receipt or by registered letter with acknowledgement of receipt delivery, of such termination as well as of the identity of its new permanent representative.

The same shall apply in the event of death or resignation of the permanent representative or for any reason that may prevent him from performing his duties.

**Paragraph 4**  
**Elections**

**ARTICLE 424**

The conditions for the election of directors shall be freely laid down in the Articles of Association which may provide for the distribution of the seats according to the categories of shares. However, and subject to the provisions of this Uniform Act, such distribution shall neither deprive the shareholders of their eligibility to the board of directors nor a category of shares of its representation on the board.

The directors shall be eligible for re-election unless otherwise provided for in the Articles of Association.

Any appointment made in violation of the provisions of this article shall be null and void.

#### **ARTICLE 425**

A natural person who is director in his own name or permanent representative of a corporate person that is director shall not at the same time be a member of more than five boards of directors of public limited companies having their registered office on the territory of the same State Party.

Any natural person who, on taking up a new term of office, violates the provisions of the preceding paragraph shall, within a period of three months following his appointment, resign from one of the boards of directors.

At the expiry of this deadline, he shall be deemed to have given up the new term of office and shall refund all remuneration received in whatever form, without the validity of proceedings in which he took part being opened to question.

#### **ARTICLE 426**

Unless otherwise provided for in the Articles of Association, a worker of a company may be appointed director where his contract of employment corresponds to an effective job. Likewise, a director may conclude a contract of employment with the company where such contract corresponds to an effective job. In this case, the contract shall be subject to the provisions of Articles 438 et seq. of this Uniform Act

#### **ARTICLE 427**

The appointment of directors shall be registered in the Trade and Personal Property Rights Register.

The nomination of a permanent representative shall be subject to the same registration formalities as if he were a director in his own name.

#### **ARTICLE 428**

Decisions taken by an irregularly constituted board of directors shall be null and void. They shall be disposed of in accordance with the provisions of Articles 242 et seq. of this Uniform Act.

### **Paragraph 5 Vacancy on the board of directors**

#### **ARTICLE 429**

In the event of one or more vacancies on the board of directors due to death or resignation, the board may co-opt, between two meetings, new directors.

Where the number of directors is below the statutory minimum or where the number of directors who are shareholders of the company is less than two-thirds of the members of the board, the board of directors shall, within a period of three months following the vacancy, appoint new

directors to complete the number. Decisions taken by the board during this period shall be valid.

Where the number of directors falls below the legal minimum, the remaining directors shall immediately convene an ordinary general meeting to complete the number of members of the board of directors.

Where the board fails to make the required appointments, or to convene a general meeting for this purpose, any party concerned may, by petition addressed to the president of the competent court, request the nomination of an agent charged with convening an ordinary general meeting to make the appointments provided for in this article or to ratify them.

The vacancy and appointments of new directors shall only take effect after the session of the board of directors held for this purpose.

Appointments by the board of directors of new directors shall be submitted to the very next ordinary general meeting for ratification.

Where the ordinary general meeting refuses to ratify the new appointments, the decisions of the board of directors shall nevertheless be valid and shall have all their effects with respect to third parties.

### **Paragraph 6 Remuneration**

#### **ARTICLE 430**

The directors may not, apart from the sums of money paid them under a contract of employment, receive, for their duties, any remuneration, whether or not permanent, other than those referred to in Articles 431 and 432 of this Uniform Act.

The provisions of this article shall not apply to dividends that are regularly shared among shareholders.

Any statutory clause to the contrary shall be considered void. Likewise, any decision to the contrary shall be void.

#### **ARTICLE 431**

The ordinary general meeting may grant the directors, as remuneration for their activities, a fixed annual duty allowance which it shall freely determine.

Directors who are shareholders shall take part in voting by the meeting and their shares shall be taken into account in computing the quorum and the majority.

Unless otherwise provided for in the Articles of Association, the board of directors shall freely share the duty allowances among its members.

#### **ARTICLE 432**

The board of directors may also grant its members special remuneration for missions and tasks entrusted to them, or authorize the reimbursement of travel and subsistence costs and expenses incurred in the interest of the company, subject to the provisions of Articles 438 et seq. of this Uniform Act.

Such remuneration and costs shall be the object of a special report of the auditor to the meeting.

**Paragraph 7**  
**End of the duties of director**

**ARTICLE 433**

Save in the case of resignation, dismissal or death, the duties of the directors shall end at the close of the ordinary general meeting held in the year during which their term of office expires to adjudicate upon the accounts of the fiscal year.

The directors may be dismissed at any time by the ordinary general meeting.

**ARTICLE 434**

The resignation or dismissal of a director shall be entered in the Trade and Personal Property Rights Register.

**Sub-section 2**  
**Powers of the board of directors**

**Paragraph 1**  
**Scope**

**ARTICLE 435**

The board of directors shall have the widest powers to act in all circumstances on behalf of the company.

It shall exercise its powers within the limits of the objects of the company and subject to those expressly conferred by this Uniform Act to meetings of shareholders.

The board of directors shall, in particular:

- 1° define the company's objectives and guidelines for its administration;
- 2° control, on a permanent basis, the management of the chairperson and managing director or of the general manager, depending on the method of management adopted;
- 3° adopt the accounts of each fiscal year.

The provisions of the Articles of Association or the decisions of the general meeting restricting the powers of the board of directors shall not be binding on third parties.

**ARTICLE 436**

The decisions of the board of directors, including those that do not relate to the objects of the company, shall be binding on the company in its relations with third parties, under the conditions and within the limits stipulated in Article 122 of this Uniform Act.

**ARTICLE 437**

The board of directors may entrust to one or more of its members any special tasks for one or more specific objects.

**Paragraph 2**  
**Regulated agreements**

**ARTICLE 438**

All agreements between a public limited company and any of its directors, general managers or assistant general managers shall be subject to the prior authorization of the board of directors.

The same shall apply to agreements indirectly involving a director or general manager or assistant general manager, or in which he deals with the company through a third party.

Agreements between a company and an enterprise or a corporate body shall also be subject to the prior authorization of the board of directors where one of the directors or a general manager or an assistant general manager of the company is owner of the enterprise or a member with unlimited liability, manager, director, managing director, assistant managing director, general manager or assistant general manager of the contracting corporate person.

**ARTICLE 439**

Authorization shall not be necessary where the agreements concern ordinary transactions concluded under normal conditions.

Ordinary transactions shall be transactions habitually carried out by a company as part of its activities.

Normal conditions shall be conditions that are applied, for similar agreements, not only by the company in question, but also by the other companies in the same sector of activity.

**ARTICLE 440**

The director concerned shall be bound to inform the board of directors as soon as he is aware of an agreement subject to authorization. He shall not take part in voting on the authorization applied for.

The chairperson of the board of directors or the chairperson and managing director shall inform the auditor, within one month following their conclusion, of all agreements authorized by the board of directors and shall submit them for the approval of the ordinary general meeting adjudicating on the accounts of the past fiscal year.

The auditor shall submit a special report on these agreements to the ordinary general meeting which shall give a decision on the report and approve or disapprove the agreements authorized.

The report shall contain a list of agreements submitted for the approval of the ordinary general meeting, the name of the directors concerned, the nature and object of the agreements, their essential terms notably an indication of the price or rates in force, rebates or commissions granted, securities provided and, where necessary, any other information that would enable shareholders assess the interest in concluding the agreements examined. It shall also make mention of the quantity of supplies delivered and services rendered, as well as the sums of money paid or received during the fiscal year in implementation of the agreements referred to in the third paragraph of this article.

The party concerned shall not take part in voting and his shares shall not be taken into consideration when computing the quorum and the majority.

Where the implementation of the agreements concluded and authorized during preceding fiscal years is continued during the last fiscal year, the auditor shall be informed of such situation within one month following the close of the fiscal year.

#### **ARTICLE 441**

The auditor shall be responsible for ensuring compliance with the provisions of Articles 438 to 448 of this Uniform Act and shall denounce any violation thereof in his report to the general meeting.

#### **ARTICLE 442**

The auditor shall prepare and submit the special report provided for by Articles 438 and 448 of this Uniform Act to the registered office of the company no later than fifteen days before the session of the ordinary general meeting.

#### **ARTICLE 443**

Agreements approved or disapproved by the ordinary general meeting shall have their effects with respect to co-contractors and third parties except where such agreements are cancelled for fraud.

However and even where there is no fraud, the adverse consequences on the company of agreements disapproved by the general meeting may be borne by the director concerned and, eventually, by the other members of the board of directors.

#### **ARTICLE 444**

Without prejudice to the liability of the director concerned, the agreements referred to in Article 438 of this Uniform Act which are concluded without the prior authorization of the board of directors shall be annulled where they have had adverse consequences on the company.

#### **ARTICLE 445**

Action for annulment shall lapse after three years following the date of conclusion of the agreement. However, where the agreement had been concealed, the time limit shall start running from the day the agreement was disclosed.

#### **ARTICLE 446**

Action for annulment may be instituted by the authorities of the company or by any shareholder acting individually.

#### **ARTICLE 447**

The annulment may be avoided by a special vote of the ordinary general meeting upon a special report by the auditor stating the reasons why the authorization procedure was not followed.

The director or the general manager concerned shall not take part in the voting and his shares shall not be taken into consideration in computing the quorum and the majority.

## ARTICLE 448

The provisions of Articles 438 to 448 of this Uniform Act shall be applicable to the general manager and the assistant general manager.

### Paragraph 3 Securities, sureties and guarantees

## ARTICLE 449

Securities, sureties, guarantees, and earliest demand guarantees provided by the company for commitments made by third parties shall be the subject of prior authorization of the board of directors.

The board of directors may authorize the chairperson managing director or the general manager, as the case may be, to provide securities, sureties, guarantees, or earliest demand guarantees for a total amount to be fixed by the board.

The authorization may also fix, for every commitment an amount above which security, surety, guarantee, or earliest demand guarantees of the company may not be provided.

Where a commitment exceeds either of the amounts so fixed, the authorization of the board of directors shall be required in each case.

The duration of the authorization provided for in the preceding paragraph shall not be more than one year no matter the duration of the commitments for which security, surety or guarantee has been provided.

Notwithstanding the provisions of the preceding paragraphs, the chairperson managing director or the general manager, as the case may be, may be authorized to provide, with respect to tax and customs services, securities, sureties, guarantees or earliest demand guarantees of an unlimited amount on behalf of the company.

The chairperson and managing director or the general manager, according to the circumstances, may delegate his powers in pursuance of the preceding paragraphs.

Where the securities, sureties, guarantees, or earliest demand guarantees have been provided for a total amount exceeding the maximum fixed for the current period, it shall not affect third parties who are unaware of this fact unless the amount of the commitment in question alone exceeds one of the maximum fixed by decision of the board of directors taken in pursuance of the provisions of this article.

### Paragraph 4 Prohibited agreements

## ARTICLE 450

Directors, general managers and assistant general managers, as well as their spouses, ascendants or descendants whether acting personally or through third parties shall, under pain of nullity of the agreement be prohibited from contracting, in any form whatsoever, loans from the company, to have the company grant them a current account overdraft or otherwise, to have it provide security or guarantee for their commitments towards third parties.

This prohibition shall not apply to corporate persons that are members of the board of directors. However, their permanent representative, when acting in his personal interest, shall also be subject to the prohibitions of the first paragraph of this article.

Where the company runs a banking or financial institution, such prohibition shall not apply to ordinary transactions concluded under normal terms.

**Paragraph 5**  
**Other powers of the board of directors**

**ARTICLE 451**

The board of directors may decide to transfer the registered office of the company to a different place within the territory of the same State Party and amend the Articles of Association accordingly, subject to ratification of the decision by the very next ordinary general meeting. Such decision shall entail powers to amend the Articles of Association. The registration formalities referred to in Articles 263 and 264 of this Uniform Act shall be applicable to the decision.

Where the transfer of the registered office is not ratified by the general meeting, the decision of the board of directors shall be void. New publicity formalities shall therefore be performed in order to inform third parties of the return to the former registered office.

**ARTICLE 452**

The board of directors shall adopt the summary financial statements and the progress report of the company which shall be submitted to the ordinary general meeting for approval.

**Sub-section 3**  
**Functioning of the board of directors**

**Paragraph 1**  
**Convening and proceedings of the board of directors**

**ARTICLE 453**

The Articles of Association shall, subject to the provisions of this Uniform Act, lay down the rules governing the convening and the proceedings of the board of directors.

The board of directors shall, on the invitation of its chairperson, meet as often as possible.

However, where the board of directors has not met for more than two months, it may be convened by at least one third of its members who shall indicate the session's agenda.

The proceedings of the board of directors shall only be valid if all its members were duly invited to the meeting.

**ARTICLE 454**

The proceedings of the board of directors shall be valid only where at least half of its members are present. Any clause to the contrary shall be void.

Decisions of the board of directors shall be taken by a majority of the members present or represented, unless the Articles of Association provide for a higher majority. In case of a tie, the chairperson of the session shall have the casting vote, unless otherwise provided for in the Articles of Association.

Any decision taken in violation of the provisions of this article shall be null and void.

#### **ARTICLE 455**

Directors as well as any person invited to take part in meetings of the board of directors shall be bound by secrecy regarding information of a confidential nature considered as such by the chairperson of the session.

#### **ARTICLE 456**

Except where there is a clause to the contrary in the Articles of Association, a director may give, by letter, telex or telefax, a power of attorney to another director to represent him at a session of the board of directors.

Each director shall have, during the same session, only one single power of attorney.

The provisions of this article shall be applicable to permanent representatives of corporate persons.

#### **ARTICLE 457**

Sessions of the board of directors shall be presided over by the chairperson of the board of directors.

Where the chairperson of the board of directors is unable to attend, sessions of the board shall be chaired by the director with the highest number of shares or, in case of equality, by the oldest director, unless otherwise provided for by the Articles of Association.

### **Paragraph 2 Report of the board of directors**

#### **ARTICLE 458**

Minutes of the proceedings of the board of directors shall be entered in a special register kept at the registered office of the company. It shall be numbered and initialled by the judge of the competent court.

However, minutes may be taken on loose-leaves which shall be numbered serially, initialled under the conditions laid down in the preceding paragraph and stamped by the authority that initialled them. Once a leaf has been filled, even partially, it shall be attached to the previously used leaves.

Any addition, removal, substitution or inversion of leaves is prohibited.

The minutes shall mention the date and venue of the board meeting and shall indicate the name of the directors present, represented or absent and not represented.

They shall equally mention the presence or absence of persons invited to the meeting of the board of directors by virtue of a legal provision and the presence of any other person who attended all or part of the meeting.

#### **ARTICLE 459**

Minutes of the board of directors shall be certified as true by the chairperson of the session and by at least one director.

Where the chairperson of the session is unable to attend, they shall be signed by at least two directors.

**ARTICLE 460**

Copies of or extracts from minutes of the board of directors shall be validly certified by the chairperson of the board, the general manager or, failing this, by an attorney-in-fact duly appointed to do so.

Where the company is being wound up, the copies of or extracts from the minutes shall be validly certified by the liquidator.

**ARTICLE 461**

Until the contrary is proved, minutes of the deliberations of the board of directors shall be presumed valid.

The production of a copy of or an extract from these minutes shall be sufficient proof of the number of directors in office as well as their presence or their representation at a session of the board of directors.

**Section 2**

**Chairperson Managing Director**

**Paragraph 1**

**Appointment and term of office**

**ARTICLE 462**

The board of directors shall appoint a Chairperson Managing Director from among its members.

Under penalty of the appointment being declared null, the Chairperson Managing Director shall be a natural person.

**ARTICLE 463**

The term of office of the Chairperson Managing Director shall not exceed his term of office as director.

The Chairperson Managing Director's mandate shall be renewable.

**ARTICLE 464**

No person shall hold simultaneously more than three offices as Chairperson Managing Director of public limited companies having their registered office on the territory of the same State Party.

Likewise, a term of office as Chairperson Managing Director shall not be held concurrently with more than two appointments as Managing Director or General Manager of public limited companies having their registered office on the territory of the same State Party.

The provisions of paragraphs 2 and 3 of Article 425 of this Uniform Act relating to the plurality of offices as director shall be applicable to the Chairperson Managing Director.

**Paragraph 2**

**Duties and remuneration of the Chairperson Managing Director**

**ARTICLE 465** The Chairperson Managing Director shall chair the meetings of the board of directors and the general meetings of shareholders.

He shall ensure the general management of the company and represent same in its relations with third parties.

He shall, for the performance of his duties, be given the widest possible powers which he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on the general meetings or specially reserved for the board of directors by the laws and regulations in force.

The company shall, in its relations with third parties, be bound even by the acts of the Chairperson Managing Director which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the decisions of general meetings or of the board of directors restricting the powers of the Chairperson Managing Director shall not be binding on third parties acting in good faith.

#### **ARTICLE 466**

The Chairperson Managing Director may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

#### **ARTICLE 467**

The terms and amount of remuneration of the Chairperson Managing Director shall be determined by the board of directors under the conditions laid down in Article 430 of this Uniform Act.

Non-cash benefits granted him, where necessary, shall be fixed in the same manner as his remuneration.

The chairperson Managing Director shall receive no other remuneration from the company.

### **Paragraph 3**

#### **Impediment and dismissal of the Chairperson Managing Director**

#### **ARTICLE 468**

Where the Chairperson Managing Director is temporarily prevented from attending to his duties, the board of directors may delegate the duties of Chairperson Managing Director to another director.

In the case of death, resignation or dismissal of the Chairperson Managing Director, the board shall appoint a new Chairperson Managing Director or delegate the duties of Chairperson managing Director to a director.

#### **ARTICLE 469**

The Chairperson Managing Director may be dismissed at any time by the board of directors.

### **Paragraph 4**

#### **Assistant Managing Director**

#### **ARTICLE 470**

The board of directors may, on the proposal of the Chairperson Managing Director, appoint one or more natural persons as Assistant Managing Director to assist the Chairperson Managing Director.

#### **ARTICLE 471**

The board of directors shall freely fix the term of office of the Assistant Managing Director. Where he is a director, his term of office shall not exceed his term of office as director.

The mandate of the assistant managing director shall be renewable.

#### **ARTICLE 472**

The board of directors shall, in agreement with the chairperson managing director, determine the scope of powers to be delegated to the Assistant Managing Director.

The assistant managing director shall, in his relations with third parties, have the same powers as those of the Chairperson Managing Director. He shall commit the company by his acts, including those which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the decisions of the board of directors or of general meetings restricting the powers of the Assistant Managing Director shall not be binding on third parties.

#### **ARTICLE 473**

The assistant managing director may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

#### **ARTICLE 474**

The terms and the amount of the remuneration of the Assistant Managing Director shall be determined by the board of directors which appoints him.

#### **ARTICLE 475**

The board of directors may, in agreement with the Chairperson Managing Director, dismiss the Assistant Managing Director at any time.

#### **ARTICLE 476**

The appointment of the Assistant Managing Director shall normally end at the expiry of his term of office.

However, in the case of death, resignation or dismissal of the Chairperson Managing Director, the Assistant Managing Director shall stay in office until a new Chairperson Managing Director is appointed, except otherwise decided by the board of directors.

### **Section 3**

#### **Chairperson of the board of directors and general manager**

##### **Sub-Section 1**

#### **Chairperson of the board of directors**

##### **Paragraph 1**

#### **Appointment and term of office of the chairperson of the board of directors**

#### **ARTICLE 477**

The board of directors shall appoint a chairperson from among its members. He shall be a natural person.

#### **ARTICLE 478**

The mandate of the chairperson of the board of directors shall not exceed his term of office as director.

The term of office of the chairperson of the board of directors shall be renewable.

#### **ARTICLE 479**

No person shall hold simultaneously more than three offices as chairperson of the board of directors of public limited liability companies having their registered office on the territory of the same State Party.

In like manner, a term of office as chairperson of the board of directors shall not be held concurrently with more than two appointments as managing director or General Manager of public limited companies having their registered office on the territory of the same State Party.

The provisions of paragraphs two and three of Article 425 of this Uniform Act relating to the plurality of offices as director shall be applicable to the chairperson of the board of directors.

#### **Paragraph 2**

#### **Duties and remuneration of the chairperson of the board of directors**

#### **ARTICLE 480**

The chairperson of the board of directors shall preside over the meetings of the board of directors and the general meetings of shareholders.

He shall ensure that the board of directors assures control of the management of the company entrusted to the general manager. The chairperson of the board of directors shall, at any period of the year, carry out the verifications that he deems necessary and may request all the documents that he considers relevant for the accomplishment of his mission to be submitted to him.

#### **ARTICLE 481**

The chairperson of the board of directors may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

#### **ARTICLE 482**

The board of directors shall determine the terms and amount of remuneration of its chairperson, under the conditions laid down in Article 430 of this Uniform Act.

Benefits in kind granted him, where necessary, shall be fixed in like manner as his remuneration.

#### **Paragraph 3**

#### **Impediment and dismissal of the chairperson of the board of directors**

#### **ARTICLE 483**

Where the chairperson is temporarily prevented from attending to his duties, the board of directors may delegate the duties of chairperson to one of its members.

In the case of death, resignation or dismissal of the chairperson, the board of directors shall appoint a new chairperson or delegate the duties of chairperson to a director.

**ARTICLE 484**

The board of directors may dismiss its chairperson at any time. Any provision to the contrary shall be void.

**Sub-section 2  
General Manager**

**Paragraph 1  
Appointment and term of office of the general manager**

**ARTICLE 485**

The board of directors shall appoint, from among its members or outside, a General Manager who shall be a natural person.

The board of directors may, on the proposal of the General Manager, appoint one or more natural persons to assist the General Manager in the capacity of assistant general manager, under the conditions laid down in Articles 471 to 476 of this Uniform Act.

**ARTICLE 486**

The board of directors shall freely fix the term of office of the general manager.

The General Manager's mandate shall be renewable.

**Paragraph 2  
Duties and remuneration of the General Manager**

**ARTICLE 487**

The General Manager shall ensure the general management of the company. He shall represent the company in its relations with third parties.

He shall, for the performance of his duties, be given the widest possible powers which he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on the general meetings or specially reserved for the board of directors by the laws and regulations in force.

**ARTICLE 488**

The company shall, in its relations with third parties, be bound by even the acts of the General Manager which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association, the resolutions of general meetings or of the board of directors restricting the powers of the general manager shall not be binding on third parties acting in good faith.

**ARTICLE 489**

The general manager may be bound to the company by a contract of employment concluded under the conditions laid down in Article 426 of this Uniform Act.

#### **ARTICLE 490**

The terms and the amount of the remuneration of the general manager shall be determined by the board of directors which appoints him.

Benefits in kind granted him, where necessary, shall be fixed in the like manner as his remuneration.

#### **Paragraph 3 Impediment and dismissal of the General Manager**

#### **ARTICLE 491**

Where the General Manager is temporarily or permanently prevented from attending to his duties, the board of directors shall immediately replace him by appointing, on the proposal of its chairperson, a new general manager.

#### **ARTICLE 492**

The general manager may be dismissed at any time by the board of directors.

#### **ARTICLE 493**

Except in the case of death, resignation or dismissal, the appointment of the General Manager shall normally end at the expiry of his term of office.

### **CHAPTER 3 PUBLIC LIMITED COMPANY WITH MANAGING DIRECTOR**

#### **Section 1 General provisions**

#### **ARTICLE 494**

Public limited liability companies with not more than three shareholders may not have a board of directors and may appoint a managing director who shall be responsible for administering and managing the company. In this case, the provisions of the first paragraph of Article 417 shall not apply.

#### **Section 2 Appointment and duration of mandate of the Managing Director**

#### **ARTICLE 495**

The first Managing Director shall be designated by the Articles of Association or appointed by the constituent general meeting.

Where the company is in existence, the Managing Director shall be appointed by the ordinary general meeting. He shall be chosen from among the shareholders or outside.

#### **ARTICLE 496**

The term of office of the Managing Director shall be freely determined by Articles of Association. It shall not be more than six years in the case of appointment while the company is in existence and two years in the case of designation by the Articles of Association or appointment by the constituent general meeting. His mandate shall be renewable.

#### **ARTICLE 497**

No person shall hold simultaneously more than three offices as Managing Director of public limited companies having their registered office on the territory of the same State Party.

In like manner, a term of office as Managing Director shall not be held concurrently with more than two appointments as Chairperson Managing Director or General Manager of public limited companies having their registered office on the territory of the same State Party.

A director who, on appointment to a new office, violates the provisions of the first and second paragraphs of this article shall, within three months of his appointment, resign from one of his offices.

He shall, at the expiry of this deadline, be deemed to have resigned from his new office and shall refund all remuneration received, in any form whatsoever, without the validity of decisions taken by him being opened to question as a result thereof.

#### **Section 3**

#### **Duties and remuneration of the Managing Director**

#### **ARTICLE 498**

The Managing Director shall be responsible for ensuring the administration and general management of the company. He shall represent the company in its relations with third parties.

He shall convene and preside over general meetings of shareholders.

He shall be given the widest possible powers to act in all circumstances on behalf of the company, which powers he shall exercise within the limits of the objects of the company and subject to the powers expressly conferred on general meetings of shareholders by this Uniform Act and, where appropriate, by the Articles of Association.

The company shall, in its relations with third parties, be bound even by the acts of the Managing Director which do not fall within the scope of the objects of the company, under the conditions and within the limits laid down in Article 122 of this Uniform Act.

The provisions of the Articles of Association or the resolutions of the general meeting of shareholders restricting the powers of the Managing Director shall not be binding on third parties acting in good faith.

#### **ARTICLE 499**

The managing director may be bound to the company by a contract of employment, on condition that such contract corresponds to an effective job.

The contract of employment shall be subject to prior authorization by the general meeting of shareholders.

#### **ARTICLE 500**

The Managing Director shall not, apart from the sums of money paid him under a contract of employment, receive any remuneration, be it permanent or otherwise, other than that referred to in Article 501 of this Uniform Act.

Any statutory clause to the contrary shall be void. In like manner, any decision to the contrary taken by the general meeting of shareholders shall be null and void.

#### **ARTICLE 501**

The ordinary general meeting of shareholders may grant the managing director a fixed annual duty allowance as remuneration for his activities.

The meeting may also grant the Managing Director special remuneration for missions and tasks entrusted to him, or authorize the reimbursement of travel and subsistence costs and expenses incurred in the interest of the company.

Benefits in kind granted him, where necessary, shall be fixed in like manner as his remuneration.

### **SECTION 4 REGULATED AGREEMENTS**

#### **ARTICLE 502**

The Managing Director shall submit to the ordinary general meeting of shareholders adjudicating on the summary financial statements of the past fiscal year a report on the agreements he has concluded with the company, directly or indirectly, or through third parties and on the agreements signed with a corporate person of which he is the owner, a member with unlimited liability or, in general, the manager.

The provisions of this article shall not be applicable to agreements relating to ordinary transactions concluded under normal terms as described in Article 439 above.

#### **ARTICLE 503**

The Managing Director shall inform the auditor of the said agreements within a period of one month following the conclusion thereof and, in any case, no later than fifteen days before the date of the annual ordinary general meeting of shareholders.

The auditor shall submit a report on these agreements to the ordinary general meeting of shareholders.

The report shall contain the number of agreements submitted for the approval of the meeting, state the type of agreements, mention the products or services that are the subject of the agreements, their essential terms, in particular an indication of the prices and rates imposed, rebates or commissions granted, securities given and, where appropriate, all other information that would enable the shareholders to evaluate the interest in concluding the agreements.

#### **ARTICLE 504**

Agreements approved or disapproved by the general meeting shall have all their effects with regard to co-contractors and third parties.

However, any adverse consequences of agreements on the company which have been disapproved by the general meeting may be borne by the managing director.

#### **ARTICLE 505**

The provisions of Articles 502 and 503 of this Uniform Act shall not apply where the Managing Director is the sole shareholder of the public limited company.

The provisions of Articles 502 to 504 of his Uniform Act shall be applicable to the Managing Director and the assistant managing director.

**Section 5**  
**Securities, sureties and guarantees**

**ARTICLE 506**

Securities, sureties, guarantees or guarantees at earliest demand provided by the Managing Director or by the assistant managing director shall be binding on the company only where they were authorized in advance by the ordinary general meeting of shareholders either as a general or special measure.

However, such restriction shall not apply to securities, sureties and guarantees provided by the managing director or by the assistant managing director acting on behalf of the company, to customs and taxation services.

**Section 6**  
**Prohibited agreements**

**ARTICLE 507**

The managing director or the assistant managing director, as well as their spouses, ascendants, descendants and whether acting personally or through third parties shall, under pain of the agreement being declared null and void, be prohibited from contracting, in any form whatsoever, loans from the company, from having the company grant them a current account overdraft or otherwise, as well as to have it provide security or guarantee for their commitments towards third parties.

However, where the company is a banking or financial institution it may grant its managing director or its assistant managing director, in whatever form, a loan, a current account overdraft or any other form of guarantee where the agreements relate to ordinary transactions concluded under normal conditions.

**Section 7**  
**Impediment and dismissal of the Managing Director**

**ARTICLE 508**

Where the Managing Director is temporarily prevented from attending to his duties, the said duties shall be performed temporarily by the assistant managing director. Where an assistant managing director has not been appointed, the duties of the managing director shall be performed temporarily by any person that the ordinary general meeting of shareholders deems appropriate to appoint.

In the case of death or resignation of the Managing Director, his duties shall be performed by the assistant managing director until the appointment of a new managing director by the very next ordinary general meeting of shareholders.

**ARTICLE 509**

The Managing Director may be dismissed at any time by the general meeting of shareholders. Any clause to the contrary shall be disregarded.

**Section 8**  
**Assistant managing director**

**ARTICLE 510**

The general meeting of shareholders may, on the proposal of the Managing Director, appoint one or more natural persons to assist the managing director as assistant managing director.

**ARTICLE 511**

The meeting shall freely fix the term of office of the assistant managing director.

The mandate of the assistant managing director shall be renewable.

**ARTICLE 512**

The general meeting of shareholders shall, in agreement with the Managing Director, determine the powers to be delegated to the assistant managing director.

Statutory clauses or decisions of the general meeting of shareholders restricting the powers of the assistant managing director shall not be binding on third parties.

**ARTICLE 513**

The assistant managing director may be bound to the company by a contract of employment, on condition that such employment is effective.

The contract of employment shall be submitted to the ordinary general meeting of shareholders for prior authorization.

**ARTICLE 514**

The terms and amount of the remuneration of the assistant managing director as well as the benefits in kind to be granted him shall be determined by the ordinary general meeting of shareholders.

**ARTICLE 515**

The ordinary general meeting of shareholders may, on the proposal of the Managing Director, dismiss the assistant managing director at any time.

**SUB-TITLE 3**  
**GENERAL MEETINGS**

**CHAPTER 1**  
**RULES COMMON TO ALL MEETINGS OF SHAREHOLDERS**

**Section 1**  
**Convening of the meeting**

**ARTICLE 516**

The meeting of shareholders shall be convened by the board of directors or by the Managing Director, as the case may be.

Failing this, it may be convened:

- 1°) by the auditor, after he has, in vain, requested the board of directors or the Managing Director, as the case may be, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception, to convene the meeting. Where the auditor convenes a meeting, he shall determine the agenda and may, for vital reasons, choose a venue for the meeting other than the one, if any, provided for by the Articles of Association. He shall state the reasons for the invitation in a report read to the meeting;
- 2°) by an agent appointed by the president of the competent court in a summary judgment, at the request of either any party concerned in the case of an emergency, or of one or more shareholders representing at least one-tenth of the company's capital in the case of a general meeting, or one-tenth of the shares of the category concerned in the case of a special meeting;
- 3°) by the liquidator.

#### **ARTICLE 517**

Except otherwise provided for in the Articles of Association, meetings of shareholders shall be held at the registered office of the company or at any other place on the territory of the State Party of the registered office.

#### **ARTICLE 518**

Subject to the provisions of this article, the Articles of Association of the company shall lay down the rules of convening meetings of shareholders.

Meetings shall be called by a convening notice which shall be inserted in a newspaper empowered to publish legal notices.

Where all the shares are registered, the publication provided for in the preceding paragraph may be replaced by an invitation, at the expense of the company, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception. The invitation shall include the agenda of the meeting.

Shareholders shall receive or be informed of the invitation no later than fifteen days before the date of the meeting in the case of a first invitation and, where necessary, no later than six days before the date of the meeting for subsequent invitations.

Where the meeting is convened by an agent appointed by the court, the judge may fix a different deadline.

#### **ARTICLE 519**

The convening notice shall indicate the name of the company followed, where appropriate, by its acronym, form and authorized capital, the address of its registered office, its registration number in the Trade and Personal Property Rights Register, the day, time and venue of the meeting, as well as the nature (ordinary, extraordinary or special) and the agenda of the meeting.

The notice shall, where necessary, indicate where bearer shares or the certificate of deposit of the said shares are to be deposited in order to give entitlement to participate in the meeting, as well as the date on which such deposit shall be effected.

Co-owners of joint shares, legal owners and beneficiaries of shares shall be convened according to the forms mentioned above.

Any meeting irregularly convened may be cancelled. However, action for cancellation instituted under the conditions laid down in Article 246 of this Uniform Act shall not be admissible where all the shareholders were present or represented.

#### **ARTICLE 520**

The agenda of the meeting shall be prepared by the party convening the meeting.

However, where the meeting is convened by an agent appointed by the court, the agenda shall be prepared by the president of the competent court that appointed him.

Also, one or more shareholders may request the inclusion of a draft resolution in the agenda of the general meeting of shareholders where they represent:

- 1°) 5% of the company's capital, where such capital is less than one thousand million (1,000,000,000) CFA francs;
- 2°) 3% of the company's capital, where such capital is between one thousand million (1,000,000,000) and two thousand million (2,000,000,000) CFA francs.
- 3°) 0.5% of the capital, where the capital is more than two thousand million (2,000,000,000) CFA francs.

The request shall include:

- 1°) the draft resolution together with a short explanatory statement;
- 2°) proof of ownership or representation of the percentage of capital stipulated in this article;
- 3°) where the draft resolution concerns the presentation of a candidate for the post of director or managing director, the information stipulated in Article 523 of this Uniform Act.

#### **ARTICLE 521**

Draft resolutions shall be addressed to the registered office of the company by hand-delivered letter with acknowledgement of receipt, by registered letter with notification of reception, by telex or by telefax at least ten days before the date of the general meeting for them to be put to the vote by the meeting.

The proceedings of the general meeting shall be null and void where the draft resolutions forwarded in accordance with the provisions of this article are not put to the vote by the meeting.

#### **ARTICLE 522**

The general meeting of shareholders shall not consider an issue not included in its agenda.

However, it may, during an ordinary session, dismiss one or more members of the board of directors or, where necessary, the managing director or the assistant managing director and replace them.

#### **ARTICLE 523**

Where the agenda of the general meeting of shareholders concerns the presentation of candidates for the post of director or Managing Director, as the case may be, mention shall be made of their identity, their professional profile and their professional activities during the past five years.

## ARTICLE 524

The agenda of the meeting shall not be amended on the second invitation or, where necessary, for extraordinary general meetings, on the third invitation.

### Section 2

#### Right to consult and to obtain copies of documents

## ARTICLE 525

Concerning the annual ordinary general meeting, every shareholder shall have the right by himself or through the agent designated to represent him at the meeting, to examine at the registered office:

- 1°) the inventory, summary financial statement and the list of directors of the company where a board of directors has been put in place;
- 2°) reports of the auditor and of the board of directors or the managing director submitted to the meeting;
- 3°) where necessary, the explanatory statement of resolutions proposed, as well as information concerning candidates for the board of directors or for the post of managing director;
- 4°) the list of shareholders;
- 5°) the sum total, certified by the auditor, of remuneration paid to the ten or five best remunerated managers and workers, depending on whether or not the company employs more than two hundred workers.

Except for the inventory, the shareholder's right to examine the documents referred to above shall entail the right to have copies of the documents at his expense. The right to examine the said documents shall be exercised within fifteen days preceding the date of the meeting.

With regard to meetings other than the annual ordinary general meeting, the right to examine documents shall concern the text of resolutions proposed, the report of the board of directors or of the managing director, as the case may be, and, where necessary, the report of the auditor or the liquidator.

## ARTICLE 526

In addition, every shareholder may at any time consult and obtain a copy of:

- 1°) the company's documents referred to in the preceding article concerning the last three fiscal years;
- 2°) minutes and attendance lists of meetings held during the last three years;
- 3°) any other documents, where the Articles of Association so provide.

Likewise, every member of the company may, twice every fiscal year, forward written questions to the Chairperson Managing Director, the General Manager or the Managing Director on all issues likely to undermine the running of the company.

The answer to these questions shall be communicated to the auditor.

#### **ARTICLE 527**

The right to consult and to obtain copies of documents provided for in Articles 525 and 526 of this Uniform Act shall also be exercised by each of the co-owners of joint shares and the legal owner and beneficiary of shares.

#### **ARTICLE 528**

Where the company refuses to communicate all or part of the documents referred to in Articles 525 and 526 of this Uniform Act, the president of the competent court shall, upon an action instituted by the shareholder, give a summary judgment on such refusal.

The president of the competent court may order the company, under financial compulsion, to communicate the documents to the shareholder, under the conditions laid down in Articles 525 and 526 of this Uniform Act.

### **Section 3 Holding of the general meeting**

#### **ARTICLE 529**

The general meeting of shareholders shall be presided over as the case may be, by the Chairperson Managing Director, the chairman of the board of directors or the Managing Director or, in their absence and unless there be a statutory provision to the contrary, by the member having or representing the highest number of shares or, in the case of equality, by the oldest member.

#### **ARTICLE 530**

The two shareholders representing the highest number of shares by themselves or as agents shall be appointed scrutineers, subject to their acceptance.

#### **ARTICLE 531**

A secretary shall be appointed by the meeting to take down the minutes of the proceedings. He may be chosen from among members who are not shareholders.

#### **ARTICLE 532**

An attendance list of each meeting shall be kept. It shall contain the following information:

- 1°) the full names and address of each shareholder present or represented, the number of shares that he holds as well as the number of votes attached to the shares;
- 2°) the full names and address of each authorized agent, the number of shares that he represents as well as the number of votes attached to the shares;

#### **ARTICLE 533**

The attendance list shall be signed by the shareholders present and by the agents at the beginning of the session. Powers of attorney shall be annexed to the attendance list at the end of the meeting.

#### **ARTICLE 534**

The scrutineers shall be responsible for certifying the attendance list.

#### **ARTICLE 535**

The minutes of the proceedings of the meeting shall mention the date and venue of the meeting, the nature of the meeting, the method of convening it, the agenda, the composition of the bureau, the quorum, the text of the resolutions put to the vote by the meeting and the result of voting for each resolution, the documents and reports presented to the meeting and a summary of the proceedings.

The minutes shall be signed by the members of the bureau and kept at the registered office together with the attendance list and its annexures, in accordance with the provisions of Article 135 of this Uniform Act.

#### **ARTICLE 536**

The copies of or extracts from minutes of meetings shall be validly certified, according to the circumstances, by the Chairperson Managing Director, by the chairperson of the board of directors, by the Managing Director or by any other person duly authorized to do so.

In the case of liquidation, they shall be certified by one liquidator only.

#### **ARTICLE 537**

The following may attend general meetings:

- the shareholders or their representatives, under the conditions laid down in this Uniform Act or in accordance with the provisions of the Articles of Association;
- any person authorized to attend by a legal provision or by a provision of the Articles of Association of the company.

Persons who are not members of the company may also attend general meetings where they are authorized to do so by the president of the competent court, by decision of the bureau of the general meeting or by the general meeting itself.

### **Section 4**

#### **Representation of shareholders and voting rights**

#### **ARTICLE 538**

Any shareholder may be represented by an attorney of his choice.

Any shareholder may receive powers from other shareholders to represent them at a general meeting, without any restriction other than those resulting from legal or statutory provisions fixing the number of votes that the same person may have in his own name and as agent.

The power of attorney shall bear:

- 1°) the full names and address as well as the number of shares and the agent's voting rights;
- 2°) an indication of the type of meeting for which the power of attorney is given;
- 3°) the signature of the agent preceded by the indication "Good for power of attorney" and the date of the power of attorney.

The power of attorney shall be given for one meeting only. It may however be given for two meetings, one ordinary and the other extraordinary, held on the same day or within a period of seven days.

A power of attorney given for a meeting shall be valid for successive meetings convened with the same agenda.

Clauses contrary to the provisions of the preceding paragraphs shall be disregarded.

#### **ARTICLE 539**

Directors who are not shareholders may attend all meetings of shareholders in an advisory capacity.

#### **ARTICLE 540**

Voting rights attached to a secured share shall be exercised by the owner of the share. A mortgagee shall, at the request of his debtor and at the latter's expense, deposit the shares he holds as security where they are bearer shares.

The depositing of the shares shall be carried out under the conditions laid down in Article 541 of this Uniform Act.

#### **ARTICLE 541**

The right to attend meetings may be subject to the prior entry of shareholders in the company's register of shares, to the depositing of bearer shares at a place specified by the convening notice or to the production of a certificate of deposit of bearer shares issued by the banking or financial institution that is depositary of the said shares.

The registration of shareholders, depositing of shares or the production of a certificate of deposit shall be done no later than five days before the holding of the general meeting.

#### **ARTICLE 542**

Shares redeemed by the company in accordance with the provisions of Articles 639 et seq. of this Uniform Act shall have no voting rights attached to them. They shall not be taken into account when calculating the quorum.

#### **ARTICLE 543**

Voting rights attached to capital shares or dividend shares shall be proportional to the percentage of the capital that they represent and each share shall give a right to one vote.

However, the Articles of Association may restrict the number of votes which each shareholder shall have in the meetings, provided that such restriction is imposed on all the shares without distinction of category.

#### **ARTICLE 544**

The Articles of Association or a subsequent meeting may grant all fully paid-up shares, which have been entered in the registered shares register for at least two years in the name of a shareholder, voting rights twice those granted to the other shares, considering the quota of the registered capital that they represent.

Furthermore, in the case of an increase of capital by the incorporation of reserves, profits or issue premiums, double voting rights may be granted to registered shares given free of charge as soon as they are issued to a shareholder in proportion to the old shares for which he enjoyed such voting rights.

#### **ARTICLE 545**

Any share converted into a bearer share or transferred as property shall lose the double voting rights that may be attached to it.

However, transfer as a result of succession, dissolution of the joint estate of husband and wife or disposition inter vivos in favour of one spouse or a relative within the degree of succession shall have no effect on the acquired rights.

A merger of the company shall have no effect on double voting rights which may be exercised within the acquiring company where its Articles of Association so provide.

## **CHAPTER 2 ORDINARY GENERAL MEETING**

### **Section 1 Powers**

#### **ARTICLE 546**

The ordinary general meeting of shareholders shall take all decisions apart from those that are expressly reserved by Article 551 of this Uniform Act for extraordinary general meeting of shareholders and by Article 555 of this Uniform Act for special meetings of shareholders.

It shall in particular be empowered to:

- 1°) adjudicate on summary financial statements of the fiscal year;
- 2°) decide on the allocation of income; under penalty of any decision to the contrary being declared null and void, an allowance equal to at least one-tenth of the fiscal year's profits after deduction, where necessary, of previous losses, shall be allocated for the formation of a reserve fund referred to as "legal reserve". Such allowance shall no longer be compulsory where the reserve fund amounts to one-fifth of the company's registered capital;
- 3°) appoint the members of the board of directors or the Managing Director and, where necessary, the assistant managing director, as well as the auditor;
- 4°) approve or refuse to approve agreements concluded between the company's managers and the company;
- 5°) issue bonds;
- 6°) approve the auditor's report provided for by Article 547 of this Uniform Act.

#### **ARTICLE 547**

Where the company buys, within a period of two years following its registration, property belonging to a shareholder at a cost of not less than 5,000,000 (five million) CFA francs, the auditor shall, at the request of the Chairperson Managing Director, the chairperson of the board

of directors or the Managing Director, according to the circumstances, draw up a report on the value of the property. The report shall be submitted to the very next ordinary general meeting for approval.

The report shall describe the property to be bought, indicate the criteria used in fixing the price and assess the relevance of such criteria.

The auditor shall draw up the report and deposit same at the registered office of the company at least fifteen days before the date of the ordinary general meeting.

The general meeting shall take a decision on the evaluation of the property under penalty of the sale being declared null and void. The seller shall not take part either personally or as an agent in the vote of the resolution on the sale, and his shares shall not be taken into account in calculating the quorum and the majority.

## **Section 2**

### **Meeting, quorum and majority**

#### **ARTICLE 548**

The ordinary general meeting of shareholders shall hold at least once a year within a period of six months following the close of the fiscal year, subject to the extension of this deadline by a court decision.

The Articles of Association may require a minimum number of shares, which shall not be more than ten, for a right to attend ordinary general meetings.

Several shareholders may come together to obtain the minimum number of shares provided for by the Articles of Association and be represented by one of them.

#### **ARTICLE 549**

The proceedings of the ordinary general meeting shall be valid on the first invitation only where the shareholders present or represented hold at least one quarter of the company's shares with voting rights.

On the second invitation, no quorum shall be required.

#### **ARTICLE 550**

Decisions of the ordinary general meeting shall be taken by a majority of the votes cast. In the case of voting, blank votes shall not be taken into account.

## **CHAPTER 3**

### **EXTRAORDINARY GENERAL MEETING**

#### **Section 1**

##### **Powers**

#### **ARTICLE 551**

The extraordinary general meeting of shareholders shall alone be empowered to amend all the provisions of the Articles of Association of the company.

Any clause to the contrary shall be disregarded.

The extraordinary general meeting shall also be empowered to:

- 1° authorize mergers, scissions, transformations and partial contributions of assets;
- 2° transfer the registered office to any other town of the State Party where it is located or to the territory of another State Party;
- 3° winding up the company prematurely or extend the duration of its existence.

However, the extraordinary general meeting may increase the commitments of shareholders above their contributions only with the consent of each shareholder.

IV

## **Section 2**

### **Meeting, quorum and majority**

#### **ARTICLE 552**

Any shareholder may attend extraordinary general meetings without limitation of votes.

Any clause to the contrary shall be disregarded.

#### **ARTICLE 553**

The proceedings of an extraordinary general meeting shall be valid only where the shareholders present or represented hold at least half of the company's shares, on the first invitation and one quarter of the shares, on the second invitation.

Where the quorum is not met, the meeting may be convened a third time within a period of not more than two months from the date fixed by the second invitation. The quorum shall remain fixed at one quarter of the shares.

#### **ARTICLE 554**

Decisions of the extraordinary general meeting shall be taken by a two-thirds majority of the votes cast.

Where there is voting, blank votes shall not be taken into account

The decision to transfer the registered office of the company to the territory of another State Party shall be taken unanimously by the members present or represented.

## **CHAPTER 4**

### **SPECIAL MEETING**

#### **Section 1**

##### **Powers**

#### **ARTICLE 555**

The special meeting shall bring together holders of shares of a given category.

The special meeting shall approve or disapprove the decision of general meetings where such decisions modify the rights of its members.

The decision of a general meeting to modify the rights relating to a category of shares shall be final only after approval by the special meeting of shareholders of that category of shares.

**Section 2**  
**Meeting, quorum and majority**

**ARTICLE 556**

The proceedings of a special meeting shall be valid only where the shareholders present or represented hold at least half of the company's shares, on the first invitation, and one quarter of the shares, on the second invitation.

Where the last quorum is not met, the meeting shall hold within a period of two months from the date fixed by the second invitation. The quorum shall remain fixed at one quarter of shareholders present or represented holding at least one quarter of the company's shares.

**ARTICLE 557**

Decisions of the special meeting shall be taken by a two-thirds majority of the votes cast.

Blank votes shall not be taken into account.

**CHAPTER 5**  
**SPECIAL CASE OF A PUBLIC LIMITED COMPANY WITH A SOLE  
SHAREHOLDER**

**ARTICLE 558**

Where a public limited company has only one shareholder, the resolutions to be taken at a meeting, be they resolutions falling within the jurisdiction of the extraordinary general meeting or those falling within the jurisdiction of the ordinary general meeting, shall be taken by that shareholder.

The provisions of Articles 516 to 577 of this Uniform Act that are not contrary to the provisions of this article shall apply.

**ARTICLE 559**

The sole shareholder shall, within a period of six months following the close of the fiscal year, take all the resolutions falling within the jurisdiction of the annual ordinary general meeting.

Resolutions shall be taken upon the reports of the managing director and of the auditor who attend general meetings in accordance with the provisions of Article 721 of this Uniform Act.

**ARTICLE 560**

Resolutions taken by the single shareholder shall be in the form of minutes which shall be filed in the records of the company.

**ARTICLE 561**

All resolutions taken by the single shareholder which would have been published in a newspaper carrying legal notices if they had been taken by a general meeting shall be published in the same manner.

**SUB-TITLE 4  
VARIATION OF CAPITAL**

**CHAPTER 1  
GENERAL PROVISIONS**

**Section 1  
Conditions for increase of capital**

**ARTICLE 562**

Registered capital of a company shall be increased either by issuing new shares or by increasing the face value of existing shares.

New shares shall be paid up either in cash, or by set-off with certain, liquid and due claims on the company, or incorporation of reserves, profits or issue premiums, or by non-cash contributions.

The increase of capital by raising the face value of shares shall be ordered only with the unanimous consent of shareholders, save where it is made by incorporation of reserves, profits or issue premiums.

**ARTICLE 563**

The new shares shall be issued either at their face value or at such value plus an issue premium.

**ARTICLE 564**

Only the extraordinary general meeting shall be competent to decide or, where necessary, authorize an increase of capital upon a report of the board of directors or of the managing director, as the case may be, and upon a report of the auditor.

**ARTICLE 565**

Where an increase of capital is made by incorporation of reserves, profits or issue premiums, the general meeting shall reach a decision under the quorum and majority conditions laid down in Articles 549 and 550 of this Uniform Act concerning ordinary general meetings.

**ARTICLE 566**

The right to bonus shares as well as rights equivalent to fractional shares that shareholders may claim due to an increase of capital by incorporation of reserves, profits or issue premiums shall be negotiable and transferable.

However, the extraordinary general meeting may, under the quorum and majority conditions laid down in Article 565 of this Uniform Act, expressly order that rights equivalent to fractional shares shall not be negotiable and that the corresponding shares shall be sold.

Proceeds of the sale shall be allocated to the holders of the fractional shares no later than thirty days after the date of entry against their name of the whole number of shares allotted.

**ARTICLE 567**

The general meeting may authorize the board of directors or the Managing Director, as the case may be, to determine the terms of sale of rights equivalent to fractional shares.

#### **ARTICLE 568**

The general meeting may to the board of directors or to the Managing Director, as the case may be, the necessary powers to increase the capital one or more times, to lay down all or part of the conditions for such increase and ensure that it is effected and to amend the Articles of Association accordingly.

#### **ARTICLE 569**

Any clause to the contrary granting the board of directors or the managing director, as the case may be, the power to order an increase of capital shall be void.

#### **ARTICLE 570**

The report of the board of directors or of the managing director, as the case may be, shall contain all relevant information on the reasons for the proposed increase of capital and on the situation of the company since the beginning of the current fiscal year and, where the ordinary general meeting which is to adjudicate on the accounts of the company has not yet held, during the previous fiscal year.

#### **ARTICLE 571**

Increase of capital shall be effected within a period of three years following the general meeting that ordered or authorized it.

Increase of capital shall be deemed effected from the day the notarial statement of subscription and payment is drawn up.

#### **ARTICLE 572**

The capital shall be fully paid up before any issue of new shares to be paid up in cash, under penalty of the operation being declared null and void.

### **Section 2 Pre-emptive right of subscription**

#### **ARTICLE 573**

Shares shall carry a pre-emptive right of subscription for increases of capital.

Shareholders shall, proportionately to the number of their shares, have a pre-emptive right of subscription for shares issued for cash for an increase of capital. This right shall be irreducible.

Any clause to the contrary shall be disregarded.

#### **ARTICLE 574**

During subscription, a pre-emptive right of subscription shall be negotiable where it is detached from the shares which are themselves negotiable.

Otherwise, such right shall be transferable under the same conditions as for the share.

#### **ARTICLE 575**

Shareholders shall, where the general meeting so expressly decides, also have a pre-emptive right to apply for excess new shares for which they would not have applied as of right.

**ARTICLE 576**

Excess shares shall be allotted to shareholders who subscribed for a number of shares higher than the number of new shares they would have subscribed for as of right. In any case they shall not be allotted more shares than they applied for.

**ARTICLE 577**

The period of time allowed shareholders to exercise their pre-emptive right of subscription shall not be less than twenty days. Time shall start running from the date of commencement of subscription.

**ARTICLE 578**

The abovementioned period shall end as soon as all applications as of right for new shares and, where necessary, applications for excess shares have been filed or as soon as the increase of capital has been fully subscribed after renunciation of their right of subscription by the shareholders who have not subscribed for shares.

**ARTICLE 579**

Where applications as of right for new shares and, where necessary, applications for excess shares have not covered the total increase of capital:

- 1°) the amount of the capital increase may be limited to the amount of subscriptions made provided that such amount is at least three quarters(3/4) of the increase provided by the general meeting which ordered or authorized the increase of capital and that such option was expressly provided for by the meeting during the issue;
- 2°) the shares not subscribed may be freely allotted, in whole or in part, unless otherwise decided by the meeting;
- 3°) the shares not subscribed for may be offered to the public in whole or in part where the meeting expressly provides for such possibility.

**ARTICLE 580**

The board of directors or the managing director, as the case may be, may use, in the order which it shall determine, the options provided for in Article 579 of this Uniform Act or some of them only.

Increase of capital shall not be made where, after exercising these options, the amount of subscriptions received does not cover the totality of the increase of capital or, in the case provided for in paragraph 1) of Article 579 of this Uniform Act, three quarters (3/4) of such increase.

However, the board of directors or the Managing Director, as the case may be, may on their own initiative and in all the cases, limit the increase of capital to the amount reached where the shares subscribed represent 97% of the increase of capital.

Any decision of the board of directors to the contrary shall be disregarded.

**Paragraph 1  
Usufruct**

**ARTICLE 581**

Where the old shares have a usufruct attached to them, the usufructuary and the bare owner of the shares may freely determine the conditions for the exercise of the pre-emptive right of subscription for and allotment of the new shares.

Where the parties fail to reach an agreement, the provisions of Articles 582 to 585 of this Uniform Act shall apply.

These provisions shall also apply, where the parties fail to act, in the case of allotment of bonus share.

#### **ARTICLE 582**

The bare owner shall be entitled to the pre-emptive right of subscription attached to the old shares.

Where the bare owner sells his rights of subscription, the proceeds of the sale or the property acquired as a result of the re-investment of such money shall be subject to the usufruct.

#### **ARTICLE 583**

Where the bare owner fails to exercise his pre-emptive right of subscription, the usufructuary may take his place and subscribe for the new shares or sell the rights of subscription.

Where the usufructuary sells the rights of subscription, the bare owner may demand that the proceeds of the sale be re-invested. The property so acquired shall be subject to the usufruct.

#### **ARTICLE 584**

The bare owner of shares shall, vis-à-vis the usufructuary, be considered as having failed to exercise the pre-emptive right of subscription for the new shares issued by the company where he has neither subscribed for new shares nor sold the rights of subscription at least eight days before the expiry of the deadline for subscription accorded to shareholders.

#### **ARTICLE 585**

The new shares shall belong to the bare owner for ownership without usufruct and to the usufructuary for the usufruct. However, in case of payment of funds by the bare owner or the usufructuary to make or complete a subscription, the new shares shall belong to the bare owner and to the usufructuary only up to the amount of the rights of subscription; the excess of the new shares shall belong, as freehold, to the party who paid the funds.

### **Paragraph 2 Withdrawal of pre-emptive right of subscription**

#### **ARTICLE 586**

The general meeting which orders or authorizes an increase of capital may withdraw the pre-emptive right of subscription of one or more usufructuaries designated by name for all of the increase of capital or for one or more portions of such increase.

#### **ARTICLE 587**

The usufructuaries, where they are shareholders, shall not take part in the vote neither by themselves nor as agents and their shares shall not be taken into consideration when calculating the quorum and the majority.

### Section 3 Issue price and report

#### ARTICLE 588

The price of issue of new shares or the conditions governing the determination of such price shall be laid down by the extraordinary general meeting upon the report of the board of directors or the managing director as the case may be, and that of the auditor.

#### ARTICLE 589

The report of the board of directors or by the Managing Director provided for in Article 588 of this Uniform Act shall specify:

- 1°) the maximum amount of and the reasons for the proposed increase of capital;
- 2°) the reasons for the proposal to withdraw the pre-emptive right of subscription;
- 3°) the full names of persons allotted new shares, the number of shares allotted to each of them and the issue price together with the reason therefor.

#### ARTICLE 590

Where all the conditions of increase of capital are determined by the meeting, the report referred to in Article 588 of this Uniform Act shall also mention the impact of the proposed issue on the situation of shareholders, in particular as concerns their share of the shareholders' equity at the close of the last fiscal year.

Where the close of the fiscal year precedes the planned operation by more than six months, such impact shall be appraised upon the production of a mid-term financial report on the last six months prepared using the same methods and in the same form as the annual balance-sheet.

#### ARTICLE 591

The auditor shall express his opinion on the proposal to withdraw the pre-emptive right of subscription, on the choice of data for calculating the issue price and on its amount, as well as on the impact of the issue on the situation of shareholders in relation to the company's equity.

He shall verify and certify the accuracy of data from the company's accounts on which his opinion is based.

#### ARTICLE 592

Where the general meeting has delegated its powers under the conditions stipulated in Article 568 of this Uniform Act, the board of directors or the Managing Director, as the case may be, shall draw up, when exercising their powers, an additional report describing the final conditions of the operation defined in accordance with the powers conferred by the meeting. The report shall also comprise the data provided for in Article 589 of this Uniform Act.

The auditor shall verify in particular that the conditions of the operation are in conformity with the powers conferred by the meeting and the information provided to the latter. He shall also express his opinion on the choice of information for the calculation of the issue price and on the final amount of the price, as well as on the impact of the issue on the financial situation of the shareholder in particular as concerns his share of the company's equity capital at the close of the last fiscal year.

These additional reports shall forthwith be placed at the disposal of shareholders at the registered office within fifteen days following the date of the board of directors' meeting or the decision of the Managing Director and notified on them at the very next meeting.

#### **Section 4**

### **Renunciation of the pre-emptive right of subscription**

#### **ARTICLE 593**

Shareholders may individually renounce their pre-emptive right of subscription in favour of designated persons. They may also renounce such right without mentioning any beneficiaries.

#### **ARTICLE 594**

A shareholder who renounces his pre-emptive right of subscription shall inform the company by hand-delivered letter against acknowledgement of receipt or by registered letter with notification of reception before the expiry of the period of subscription.

#### **ARTICLE 595**

Renunciation without indication of beneficiaries shall be accompanied, as concerns bearer shares, by corresponding coupons or a certificate issued by the depository of the shares establishing the shareholder's renunciation of his right.

Renunciation in favour of designated beneficiaries shall be accompanied by the acceptance of the said beneficiaries.

#### **ARTICLE 596**

New shares renounced by a shareholder without indication of beneficiaries may be subscribed for as excess shares under the conditions laid down in Article 576 of this Uniform Act or, where necessary, allotted to the shareholders or offered to the public under the conditions laid down in Article 579 of this Uniform Act.

However, where such renunciation has been notified to the company no later than on the date of the decision to increase the capital, the corresponding shares shall be placed at the disposal of other shareholders to enable them to apply as of right for new shares and, where necessary, for excess shares.

#### **ARTICLE 597**

Where the shareholder renounces to subscribe for the increase of capital in favour of designated persons, his rights of subscription for new shares and, where necessary, for excess shares shall be transferred to the latter.

#### **Section 5**

### **Publicity prior to subscription**

#### **ARTICLE 598**

Shareholders shall be informed about the issue of new shares and the conditions of subscription therefor by a notice containing inter alia the following information:

- 1°) the company name and, where necessary, its acronym;
- 2°) the form of the company;
- 3°) the amount of the registered capital;
- 4°) the registered office address;
- 5°) the registration number of the company in the Trade and Personal Property Rights Register;
- 6°) the number and the face value of the shares and the amount of increase of capital;
- 7°) the price of issue of the shares to be subscribed for and the global amount of the issue premium, where necessary;
- 8°) the place and dates of commencement and close of subscription;
- 9°) the existence, for shareholders, of a pre-emptive right of subscription;
- 10°) the sum of money immediately payable per subscribed share;
- 11°) mention of the bank or the notary to receive the funds;
- 12°) where necessary, a brief description of the valuation and the method of remuneration of noncash contributions to the increase of capital, with an indication of the provisional nature of such valuation and method of remuneration.

**ARTICLE 599**

Shareholders shall be informed of the notice provided for in Article 598 by hand-delivered letter against acknowledgement of receipt or by registered letter with notification of reception at least six days before the date of subscription begins at the instance, as the case may be, of agents of the board of directors, the managing director or any other person authorized to do so.

**ARTICLE 600**

Where the general meeting has decided to abolish shareholders' pre-emptive right of subscription, the provisions of Article 598 of this Uniform Act shall not apply.

**Section 6**

**Preparation of allotment letter**

**ARTICLE 601**

A subscription contract shall be established by an allotment letter prepared in two copies, one of which shall be for the company and the other for the notary responsible for drawing up the statement of subscription and payment.

**ARTICLE 602**

The allotment letter shall be dated and signed by the subscriber or his authorized agent who shall write out entirely in letters the number of shares subscribed. A copy of the allotment letter written out on a loose-leaf shall be handed over to him.

**ARTICLE 603**

The allotment letter shall set out:

- 1°) the name of the company followed, where necessary, by its acronym;
- 2°) the form of the company;

- 3°) the amount of the authorized capital;
- 4°) the address of the registered office;
- 5°) the registration number of the company in the Trade and Personal Property Rights Register;
- 6°) the amount and conditions of increase of capital; the face value of shares and the issue price;
- 7°) where necessary, the amount to be subscribed for shares issued for cash and the amount paid up by noncash contributions;
- 8°) the full names or company name and address of the person receiving the funds;
- 9°) the full names and address of the subscriber and the number of shares subscribed;
- 10°) an indication of the bank or the notary responsible for receiving the funds;
- 11°) mention of the notary responsible for drawing up the statement of subscription and payment;
- 12°) mention of handing over to the subscriber a copy of the allotment letter.

### **Section 7** **Paying up of shares**

#### **ARTICLE 604**

At least a quarter of the face value of shares subscribed to in cash and, where necessary, the full issue premiums shall be compulsorily paid up during subscription.

#### **ARTICLE 605**

The rest shall be paid up in one or more instalments on demand by the board of directors or the Managing Director, as the case may be, within a period of three years from the day of increase of capital.

#### **ARTICLE 606**

Shares subscribed to in cash which entail both payments in cash and incorporation of reserves, profits or issue premiums shall be fully paid up during subscription.

#### **ARTICLE 607**

Funds derived from subscription for shares issued for cash shall be deposited by the company executives, on behalf of the company, with a bank domiciled in the State Party of the registered office or with a notary.

The funds shall be deposited within eight days following the receipt thereof.

#### **ARTICLE 608**

The depositor shall hand over to the bank or, where necessary, to the notary, at the time of depositing the funds, a list showing the identity of the subscribers and indicating, for each of them, the amount of money paid.

#### **ARTICLE 609**

The depositary shall be bound, until the funds are withdrawn, to communicate the said list to any subscriber who, after showing proof of his subscription so requests.

The applicant may examine the list and obtain, at his expense, a copy thereof.

#### **ARTICLE 610**

The depository shall issue the depositor a certificate attesting the deposit of funds.

#### **ARTICLE 611**

Where shares are paid up by set-off of claims on the company, such claims shall be the object of a statement of accounts prepared, as the case may be, by the board of directors or by the managing director and certified as true by the auditor.

### **Section 8**

#### **Notarial statement of subscription and payment**

#### **ARTICLE 612**

Subscriptions and payments shall be established in a statement by the managers of the company made in a document certified by a notary referred to as “notarial statement of subscription and payment”.

#### **ARTICLE 613**

On presentation of allotment letters and, where necessary, a certificate issued by the depository attesting the deposit of funds, the notary shall state in the act he draws up that the amount for subscriptions declared corresponds to the amount appearing on the allotment letters and that the amount of payments declared by the company executives corresponds to the amount of money deposited with him or, where necessary, appearing on the certificate referred to above. The certificate issued by the depository shall be annexed to the notarial statement of subscription and payment.

The notary shall draw up the statement available to subscribers who may examine it and obtain a copy thereof in his office.

#### **ARTICLE 614**

Where the increase of capital is made by set-off with certain, liquid and due claims, the notary shall ascertain that the shares issued for cash have been paid up on presentation of the statement of accounts certified by the auditor referred to in Article 611 of this Uniform Act. The statement shall be annexed to the notarial statement of subscription and payment.

### **Section 9**

#### **Withdrawal of funds**

#### **ARTICLE 615**

The withdrawal of funds derived from subscription in cash may take place only after the increase of capital has been effected.

Withdrawal shall be made by an authorized agent of the company on presentation to the depository of the notarial statement of subscription and payment.

#### **ARTICLE 616**

The increase of capital by issue of shares to be paid up in cash shall be considered effected on the date the notarial statement of subscription and payment is drawn up.

#### **ARTICLE 617**

Any subscriber may, six months after the payment of funds, bring an action before the president of the competent court for a summary judgment for the appointment of an agent responsible for withdrawing the funds to refund to the subscribers, subject to the deduction of his distribution costs where, on that date, the increase of capital has not been effected.

#### **ARTICLE 618**

The increase of capital shall be published under the conditions laid down in Article 264 of this Uniform Act.

### **CHAPTER 2**

## **SPECIAL PROVISIONS RELATING TO INCREASE OF CAPITAL BY NON-CASH CONTRIBUTIONS AND/OR BY SPECIAL BENEFITS**

#### **ARTICLE 619**

Non-cash contributions and/or special benefits shall be evaluated by a shares valuer appointed by the president of the competent court of the place of the registered office at the request of, as the case may be, the board of directors or the managing director.

#### **ARTICLE 620**

The shares auditor shall be subject to the incompatibilities provided for in Articles 697 and 698 of this Uniform Act. He may be the auditor of the company.

#### **ARTICLE 621**

The shares valuer shall be responsible for assessing the value of non-cash contributions and special benefits.

He may be assisted in the performance of his task by one or more experts of his choice.

The experts' fees shall be borne by the company.

#### **ARTICLE 622**

The report of the shares valuer shall be deposited at least eight days before the date of the extraordinary general meeting at the registered office and shall be made available to shareholders who may study it and obtain, at their expense, a complete or partial copy thereof.

It shall also be deposited, within the same time limit, at the registry of the court in charge of commercial matters of the place of the registered office.

#### **ARTICLE 623**

The shares of the contributor or the beneficiary shall not be taken into account in the calculation of the quorum and the majority when the extraordinary general meeting is reaching a decision on the approval of a non-cash contribution or the grant of a special benefit.

The contributor or the beneficiary shall not be entitled to vote either by himself or as an agent.

#### **ARTICLE 624**

Where the meeting approves the valuation of contributions and the grant of special benefits, it shall ascertain that the increase of capital has been effected.

**ARTICLE 625**

Where the meeting reduces the valuation of contributions or the amount paid as special benefits, the express approval of the modifications by the contributors, the beneficiaries or their agents duly authorized to do so shall be necessary.

Failing this, the increase of capital shall not be effected.

**ARTICLE 626**

Initial shares shall be fully paid up as soon as they are issued.

**CHAPTER 3  
REDUCTION OF CAPITAL**

**ARTICLE 627**

The registered capital of a company shall be reduced by decreasing either the face value or the number of shares.

**ARTICLE 628**

The reduction of capital shall be authorized or ordered by the extraordinary general meeting which may delegate all the necessary powers to the board of directors or the managing director, as the case may be, to effect the reduction.

The meeting shall, under no circumstances, undermine the equality of shareholders, except with the express consent of the disadvantaged shareholders.

**ARTICLE 629**

The draft instrument on the reduction of capital shall be communicated to the auditor at least forty-five days before the date of the extraordinary general meeting which shall order or authorize the reduction of capital.

**ARTICLE 630**

The auditor shall table before the extraordinary general meeting a report in which he shall set out his assessment of the reasons for and condition of the reduction of capital.

**ARTICLE 631**

Where the board of directors or the managing director, as the case may be, carries out the reduction of capital upon delegation of powers by the general meeting, he shall draw up a report thereon which shall be subject to publicity and shall amend the Articles of Association of the company accordingly.

**ARTICLE 632**

The creditors of the company may not object to the reduction of capital where it is justified by losses.

**ARTICLE 633**

Creditors of the company with claim prior to the depositing with the registry of the court in charge of commercial matters the minutes of the proceedings of the general meeting which ordered or authorized the reduction of capital as well as debenture holders, may object to the reduction of the capital of the company where such reduction is not justified by losses.

#### **ARTICLE 634**

The time limit for the filing of opposition by creditors to the reduction of capital shall be thirty days from the date of depositing with the registry of the minutes of the proceedings of the general meeting which ordered or authorized the reduction of capital.

#### **ARTICLE 635**

The opposition shall be by way of an extrajudicial act and shall be filed before the competent court for a summary judgment.

#### **ARTICLE 636**

The capital reduction operations may not commence within the time-limit allowed for opposition, or as the case may be, before a judgement is given on the opposition at first instance.

#### **ARTICLE 637**

Where the objection is allowed, the capital reduction procedure shall be suspended until the claims are reimbursed or until guarantees are provided for the creditors if the company offers such guarantees and if they are considered adequate.

#### **ARTICLE 638**

The reduction of capital shall be subject to publicity formalities as provided for in Article 264 of this Uniform Act.

### **CHAPTER 4**

#### **SUBSCRIPTION - PURCHASE ACCEPTANCE BY THE COMPANY OF ITS OWN SHARES AS SECURITY**

#### **ARTICLE 639**

Subscription to or purchase by the company of its own shares, either directly or by a person acting in his own name but on behalf of the company, shall be prohibited. In like manner, the company may not grant advances or loans or provide security for subscription to or purchase of its own shares by a third party.

However, the ordinary general meeting which has ordered a reduction of capital not justified by losses may authorize the board of directors or the managing director, as the case may be, to buy a specific number of shares with a view to cancelling them.

The founders or, in the case of an increase of capital, the members of the board of directors or the managing director shall be bound, under the conditions laid down in Articles 738 and 740 of this Uniform Act, to pay up the shares subscribed to or acquired by the company in violation of the provisions of the first paragraph of this article.

Likewise, where shares are subscribed to or acquired by a person acting in his own name but on behalf of the company, such person shall be bound to pay up the shares jointly with the founders or, as the case may be, the members of the board of directors or the managing director. The subscriber shall also be considered as having subscribed to shares on his own account.

#### **ARTICLE 640**

The provisions of the first paragraph of Article 639 of this Uniform Act notwithstanding, the extraordinary general meeting may authorize the board of directors or the managing director, as the case may be, to acquire a specific number of shares in order to allot them to workers of the company. In such case, the shares shall be allotted within a period of one month from the date of their acquisition.

The company may not hold, directly or through a person acting in his own name but on behalf of the company, more than 10% of the total number of its own shares.

The shares acquired shall be registered and fully paid up at the time of acquisition.

The founders or, in the case of an increase of capital, the members of the board of directors or the managing director shall be bound, under the conditions laid down in Articles 738 and 740 of this Uniform Act, to pay up the shares subscribed to or acquired by the company in pursuance of the provisions of the first paragraph of this article.

Likewise, where shares are subscribed to or acquired by a person acting in his own name but on behalf of the company, such person shall be bound to pay up the shares jointly with the founders or, as the case may be, the members of the board of directors or the managing director. The subscriber shall also be considered as having subscribed to shares on his own account.

The acquisition of shares may not lead to the reduction of the shareholders' equity to an amount lower than the amount of the capital and non-allocated reserves.

Shares held by the company shall not give a right to dividend.

#### **ARTICLE 641**

The provisions of Article 639 of this Uniform Act shall not be applicable to fully paid up shares acquired by a universal transfer of assets or by a decision of a court.

However, the shares shall be transferred within two years following the date of subscription or acquisition thereof; after this time limit they shall be cancelled.

#### **ARTICLE 642**

The acceptance of the company's own shares as security, directly or through a person acting in his own name but on behalf of the company, shall be prohibited.

The shares accepted by the company as security shall be refunded to their owner within a period of one year. The shares shall be refunded within a period of two years where the transfer of the security to the company is the result of a universal transfer of assets or a decision of a court; failing this, the security contract shall be automatically void.

The prohibition provided for in this article shall not apply to the ordinary transactions of credit enterprises.

#### **ARTICLE 643**

Where the company decides to purchase its own shares with a view to cancelling them and reducing its capital by the same amount, it shall make the purchase offer to all the shareholders.

For this purpose, it shall insert in a newspaper empowered to publish legal notices of the place of the registered office of the company a notice containing the following information:

- 1°) the name of the company;
- 2°) the form of the company;
- 3°) the address of the registered office;
- 4°) the amount of the registered capital;
- 5°) the number of shares to be purchased;
- 6°) the price offered per share;
- 7°) the method of payment;
- 8°) the period of offer. The period of offer may not be less than thirty days from the date of insertion of the notice in the newspaper;
- 9°) place of acceptance of offer.

#### **ARTICLE 644**

Where all the shares are registered, the notice provided for in Article 643 of this Uniform Act may be replaced by a notification containing the same information addressed to each shareholder by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception. The cost of notification shall be borne by the company.

#### **ARTICLE 645**

Where the shares offered for purchase exceed the number of shares to be purchased, the number of shares offered by each shareholder selling shares shall be reduced proportionately to the number of shares owned or held by him.

#### **ARTICLE 646**

Where the shares offered for purchase are fewer than the number of shares to be bought, the registered capital shall be reduced to the amount of shares bought.

However, the board of directors or the managing director, as the case may be, may decide to repeat the operation under the conditions laid down in Articles 643 and 644 of this Uniform Act until the number of shares initially fixed is completely sold, on condition that the operation is repeated within the period stipulated by the general meeting that authorized the reduction of capital.

#### **ARTICLE 647**

The provisions of Articles 643 and 646 of this Uniform Act shall not apply where the general meeting has authorized, in a bid to facilitate an increase of capital, a merger or a scission, the board of directors or the managing director, as the case may be, to buy a large number of shares representing not more than 1% of the amount of registered capital with a view to cancelling them.

Likewise, these provisions shall not apply where the company redeems shares whose transferee has not been approved.

The auditor shall express his opinion on the advisability and conditions of the planned purchase of shares in his report on the projected operation.

#### **ARTICLE 648**

Where a usufruct is attached to the shares, the purchase offer shall be to the bare owner. However, the purchase of shares shall be final only where the usufructuary has expressly consented to the transaction.

Except otherwise agreed upon between the bare owner and the usufructuary, the purchase price of the shares shall be shared between them proportionately to the value of their respective rights to the shares.

#### **ARTICLE 649**

Shares purchased by the company which issued them in order to effect a reduction of capital shall be cancelled within a period of fifteen days following the expiry of the period of the purchase offer mentioned in the notice provided for in Article 643 of this Uniform Act.

Where the purchase is made in order to facilitate an increase of capital, a merger or a scission, the time limit provided for the cancellation of the shares shall run from the day the shares were purchased. Shares acquired or held by the company in violation of the provisions of Articles 639 and 640 of this Uniform Act shall be cancelled within a period of fifteen days from the date of their acquisition or, where necessary, at the expiry of the period of one year referred to in the first paragraph of Article 640 above.

#### **ARTICLE 650**

The cancellation of bearer shares shall be established by the indication “cancelled” made on the share.

Where the shares are registered, the same indication shall be made on the company’s registered shares as well as on the registered shares certificate and on the counterfoil of the register from which the certificate was extracted, where necessary.

## **CHAPTER 5 REDEMPTION OF CAPITAL**

### **Section 1 Conditions of redemption**

#### **ARTICLE 651**

Redemption of capital is the operation by which the company reimburses the shareholders all or part of the nominal value of their shares, as an advance on the proceeds of the future liquidation of the company.

#### **ARTICLE 652**

Where it is so provided in the Articles of Association the resolution to redeem capital shall be taken in the ordinary general meeting.

Where there is no provision in the Articles of Association to this effect, redemption of capital shall be resolved in the extraordinary general meeting.

**ARTICLE 653**

Shares may be totally or partially redeemed. Shares totally redeemed are referred to as dividend shares.

**ARTICLE 654**

Redemption shall be effected by equal reimbursement for each share of the same category and shall not lead to the reduction of capital.

**ARTICLE 655**

Sums of money used for the reimbursement of shares shall be deducted from profits or withdrawn from the non-statutory reserves.

Money may not be withdrawn from the legal reserve or, except otherwise decided by the extraordinary general meeting, from the statutory reserves.

Reimbursement of shares may not lead to the reduction of shareholders' equity to an amount lower than the amount of the authorized capital increased by reserves that the law or the Articles of Association do not permit to be distributed.

**Section 2**

**Rights attached to redeemed shares and conversion of redeemed shares into capital shares**

**ARTICLE 656**

Shares totally or partially redeemed shall retain all their rights with the exception, however, of the right to the first dividend provided for in Article 145 of this Uniform Act and the reimbursement of the nominal value of shares which they shall lose proportionately.

**ARTICLE 657**

The extraordinary general meeting may decide to convert redeemed shares totally or partially into capital shares.

The decision to so convert shall be taken under the quorum and majority conditions laid down for the amendment of the Articles of Association.

**ARTICLE 658**

Conversion of shares shall be effected by a compulsory deduction, up to the redeemed amount of shares to be converted, from the portion of profits of one or more fiscal years allocated to these shares after payment, for partially redeemed shares, of the first dividend or the interest accruing from the shares.

Likewise, the extraordinary general meeting may authorize the shareholders, under the same conditions, to pay back to the company the amount of their shares redeemed and, if need be, the first dividend or the statutory interest for the past period of the current fiscal year and, eventually, of the preceding fiscal year.

#### **ARTICLE 659**

Decisions provided for in Article 658 of this Uniform Act shall be submitted for ratification by the special meetings of each of the categories of shareholders who have the same rights.

#### **ARTICLE 660**

Sums of money deducted from the profits or paid by the shareholders in pursuance of Article 658 of this Uniform Act shall be paid into a reserve account.

Where the shares are totally redeemed, a reserve account shall be opened for each of the categories of totally redeemed shares.

#### **ARTICLE 661**

Conversion shall be effected where the amount of a reserve account constituted by deductions from the profits of the company is equivalent to the amount of shares redeemed or to the amount of the corresponding category of shares.

The board of directors or the managing director, as the case may be, shall be empowered to make the necessary amendments to the clauses of the Articles of Association in so far as the said amendments correspond materially to the results of the operation.

#### **ARTICLE 662**

Where conversion is carried out by payments made by shareholders, the board of directors or the managing director, as the case may be, shall be empowered to make, no later than at the close of each fiscal year, amendments to the Articles of Association corresponding to the conversions made during the said fiscal year.

#### **ARTICLE 663**

Partially redeemed shares whose conversion into capital shares has been resolved shall be entitled, for each fiscal year and until such conversion is carried out, to the first dividend or to the interest in lieu thereof calculated on the basis of the amount of the unredeemed paid up shares.

Furthermore, totally or partially redeemed shares whose conversion has been resolved to be by deductions from the company's profits shall, for each fiscal year and until the conversion is finally carried out, be entitled to the first dividend calculated on the basis of the amount, at the close of the preceding fiscal year, of the corresponding reserve account.

### **SUB-TITLE 5 VARIATION OF SHAREHOLDERS' EQUITY**

#### **ARTICLE 664**

Where, owing to losses recorded in the summary financial statements, the shareholders' equity capital of the company falls below half of the company's authorized capital, the board of directors or the managing director, as the case may be, shall be bound, within four months following the approval of the accounts that showed the losses, to convene the extraordinary general meeting to take a decision as to whether or not the company should be wound up prematurely.

#### **ARTICLE 665**

Where the winding up of the company is not pronounced, the company shall be bound, no later than at the close of the second fiscal year following the one during which the losses were recorded, to reduce its capital by an amount at least equal to the amount of the losses that have not been charged to the reserves where, within such time limit, the shareholders' equity has not been reconstituted up to a value at least equal to half of the registered capital.

#### **ARTICLE 666**

The resolution of the extraordinary general meeting shall be deposited at the registry of the court responsible for commercial matters of the place of the registered office and entered in the Trade and Personal Property Rights Register.

The resolution shall be published in a newspaper empowered to publish legal notices of the place of the registered office.

#### **ARTICLE 667**

Where the session of the meeting does not hold like in the case where the meeting fails to deliberate validly upon the last convocation, any party concerned may bring an action before the court for the winding up of the company.

Likewise, any party concerned may petition the court for the winding up of the company where the provisions of Article 665 of this Uniform Act have not been applied.

#### **ARTICLE 668**

The competent court before which an action is brought for the winding up of the company may grant the company a maximum period of six months to regularize the situation.

The court shall not order the winding up of a company where such regularization is made on the day it is examining the case on its merits.

#### **ARTICLE 669**

The provisions of Articles 664 to 668 of this Uniform Act shall not apply to companies under legal redress or those in liquidation.

### **SUB-TITLE 6 MERGER, DIVISION AND TRANSFORMATION**

#### **CHAPTER 1 MERGER AND DIVISION**

##### **Section 1 Merger**

#### **ARTICLE 670**

Transactions referred to in Articles 189 to 199 of this Uniform Act which are carried out solely between public limited companies shall be subject to the provisions of this chapter.

#### **ARTICLE 671**

The merger shall be resolved by the extraordinary general meeting of each of the companies taking part in the transaction.

The merger shall, where necessary, be subject, in each of the companies taking part in the transaction, to ratification by the special meetings of shareholders referred to in Article 555 of this Uniform Act.

The board of directors of each of the companies participating in the transaction shall draw up a report which shall be placed at the disposal of the shareholders.

The report shall explain and justify the project in detail from a legal and economic standpoint, in particular concerning the exchange ratio of shares and the valuation methods used which shall be the same for the companies concerned as well as the specific difficulties of valuation, if any.

#### **ARTICLE 672**

One or more merger valuers appointed by the president of the competent court shall be responsible for preparing a written report on the terms of the merger.

They may obtain all the relevant documents from each company and carry out all necessary verifications. They shall be subject, with respect to the participating companies, to the incompatibilities provided for in Article 698 of this Uniform Act.

The merger valuers shall ascertain that the relative values given to the shares of the companies participating in the transaction are fair and reasonable and that the exchange ratio is equitable. The report(s) of the merger valuers shall be placed at the disposal of shareholders. They shall mention:

- 1° the method(s) of determination of the proposed exchange ratio;
- 2° whether this or these method(s) are adequate in the case in point and the values to which each of these methods leads; an opinion shall be expressed on the relative importance given this or these method(s) in the determination of the value adopted;
- 3° specific evaluation difficulties, if any.

#### **ARTICLE 673**

Merger or division valuers shall be appointed and they shall perform their task under the conditions laid down in Article 619 et seq. of this Uniform Act.

Where only one report is established for the whole transaction, the valuer(s) shall be appointed at the joint request of all the participating companies.

#### **ARTICLE 674**

Any public limited company participating in a merger or division transaction shall place the following documents at the disposal of its shareholders at the registered office at least fifteen days before the date of the general meeting to take a resolution on the proposed merger or division:

- 1° the proposed merger or division;

- 2°) the reports referred to in Articles 671 and 672 of this Uniform Act;
- 3°) the summary financial statements approved by the general meetings as well as the management reports of the last three fiscal years of the companies participating in the transaction;
- 4°) an accounting report drawn up using the same methods and according to the same presentation as the last annual balance-sheet adopted on a date which, where the last summary financial statements are on a fiscal year the close of which precedes by more than six months the date of the proposed merger or division, shall precede by less than three months the date of the proposal.

Any shareholder may obtain at his expense, on a mere request, a complete or partial copy of the documents referred to above.

#### **ARTICLE 675**

The extraordinary general meeting of the company acquiring the others shall take a resolution on the approval of non-cash contributions in accordance with the provisions of Articles 619 et seq. of this Uniform Act.

#### **ARTICLE 676**

Where, from the time of deposit at the registry of the court in charge of commercial matters of the proposed merger up to the time the transaction is carried out, the company acquiring the other permanently holds all the capital of the acquired company or companies, there shall be no need for the approval of the merger by the extraordinary general meeting of the acquired companies or for the preparation of the reports referred to in Articles 671 and 672 of this Uniform Act.

#### **ARTICLE 677**

Where the merger is realized by the setting up of a new company, such company may be formed without other contributions apart from those of the merging companies.

In any case, the draft Articles of Association of the new company shall be approved by the extraordinary general meeting of each of the disappearing companies. The approval of the transaction by the general meeting of the new company shall not be necessary.

#### **ARTICLE 678**

The proposed merger shall be submitted to the meetings of debenture holders, unless the said debenture holders are offered the possibility of reimbursement of their debentures on a mere request by them.

Where debentures are reimbursable on a mere request, the acquiring company shall become the debtor of the debenture holders of the acquired company.

Offer of reimbursement of debentures on a mere request by debenture holders provided for above shall be published in a newspaper empowered to publish legal notices of the State Party.

Any debenture holder who has not applied for reimbursement within the time limit fixed shall retain his status in the acquiring company, under the conditions laid down by the merger contract.

#### **ARTICLE 679**

The acquiring company shall be the debtor of the creditors, who are not debenture holders, of the acquired company instead of the latter, without such substitution entailing a novation on their part.

Creditors, who are not debenture holders, of the companies participating in the merger transaction, including the lessors of premises hired by the acquired companies, whose claim is made prior to the publicity given the proposed merger, may file an opposition to the proposal within a period of thirty days from the date of such publicity before the competent court.

The president of the competent court shall rule against the opposition or order either the reimbursement of the debts or the provision of guarantees where the company can offer such guarantees and where they are considered adequate.

Failing reimbursement of the debts or provision of the guarantees ordered, the merger shall not have effect vis-à-vis this creditor.

The opposition filed by a creditor may not lead to the suspension of the merger transaction.

#### **ARTICLE 680**

The provisions of Article 679 of the Uniform Act shall not prevent the implementation of agreements authorizing a creditor to demand the immediate reimbursement of his claim in the case of a merger of the debtor company with another company.

#### **ARTICLE 681**

The proposed merger shall not be submitted to the meetings of debenture holders of the acquiring company.

However, the general meeting of debenture holders may authorize the representatives of the general body of the debenture holders to oppose the merger under the conditions and effects provided for in Articles 679 and 680 of this Uniform Act.

#### **ARTICLE 682**

Opposition by of a creditor to the merger or the division under the conditions laid down in Articles 679 and 681 of this Uniform Act shall be filed within a period of thirty days from the date of the insertion prescribed by Article 265 of this Uniform Act.

#### **ARTICLE 683**

Opposition by the representatives of the general body of the debenture holders to the merger or division provided for in Article 681 of this Uniform Act shall be filed within the same period.

### **Section 2 Division**

#### **ARTICLE 684**

The provisions of Articles 670 to 683 of this Uniform Act shall apply to the division of a company.

#### **ARTICLE 685**

Where the division shall be carried out by contribution to new public limited companies, each of the new companies may be formed without any other contribution apart from the contribution of the divided company.

In this case and where the shares of each of the new companies are allotted to the shareholders of the divided company proportionately to their rights in the capital of the company, it shall not be necessary to draw up the report referred to in Article 672 of this Uniform Act.

In any case, the draft Articles of Association of the new companies shall be approved by the extraordinary general meeting of the divided company.

There shall be no need for the approval of the transaction by the general meeting of each of the new companies.

#### **ARTICLE 686**

The proposed division shall be submitted to the meetings of the debenture holders of the divided company, unless the possibility of reimbursement of debenture stocks on a mere request on their part is offered them.

Where reimbursement by a mere request is possible, the companies receiving contributions resulting from the division shall be joint debtors of the debenture holders who apply for reimbursement.

#### **ARTICLE 687**

The proposed division shall not be submitted to the meetings of shareholders of the companies to which the property has been transferred. However, the meeting of debenture holders may authorize the representatives of the general body of the debenture holders to oppose the division, under the conditions and the effects laid down in Article 681 of this Uniform Act.

#### **ARTICLE 688**

The beneficiary companies of the contributions resulting from the division shall be the joint debtors of the debenture holders and the creditors who are not debenture holders of the divided company, instead of the latter, without such substitution entailing a novation on their part.

#### **ARTICLE 689**

The provisions of Article 688 of this Uniform Act notwithstanding, it may be stipulated that the companies receiving contributions resulting from the division shall be liable only for part of the liabilities of the divided company to be borne by them severally.

In this case, the creditors who are not debenture holders of the participating companies may oppose the division, under the conditions and the effects stipulated in Article 679 paragraph 2 et seq. of this Uniform Act.

## **CHAPTER 2 TRANSFORMATION**

#### **ARTICLE 690**

Any public limited company may be transformed into another form of company where, at the time of transformation, it has been incorporated for at least two years and where it has drawn up the balance sheet of its first two fiscal years of operation and has had them approved by its shareholders.

#### **ARTICLE 691**

The resolution to transform the company shall be taken upon a report of the auditor of the company.

The report shall attest that the company's net assets are at least equal to its registered capital.

The transformation shall, where necessary, be submitted for approval by the meeting of debenture holders.

The transformation resolution shall be subject to publicity, under the conditions laid down in Articles 263 and 265 of this Uniform Act for the amendment of the Articles of Association.

#### **ARTICLE 692**

Transformation of a public limited company into a partnership shall be resolved unanimously by the shareholders. In this case, Articles 690 and 691 of this Uniform Act shall not apply.

#### **ARTICLE 693**

The transformation of a public limited company into a private limited company shall be resolved under the conditions laid down for the amendment of the Articles of Association of companies of that form.

### **SUB-TITLE 7**

## **AUDIT OF PUBLIC LIMITED COMPANIES**

### **CHAPTER 1**

## **CHOICE OF AUDITOR AND HIS ALTERNATE**

#### **ARTICLE 694**

Each public limited company shall be audited by one or more auditors.

The duties of auditor shall be performed by natural persons or by companies incorporated by natural persons, under one of the forms provided for by this Uniform Act.

#### **ARTICLE 695**

Where there exists an association of chartered accountants in the State Party of the registered office of the company to be audited, only the chartered accountants approved by the association of chartered accountants may perform the duties of auditor.

#### **ARTICLE 696**

Where there is no association of chartered accountants, only the chartered accountants entered before hand on a list drawn up by a committee holding at a Court of Appeals in the State Party of the registered office of the company to be audited may perform the duties of auditor.

The committee shall comprise four members as follows:

- 1°) a judge at the Court of Appeal who shall chair the committee and shall have the casting vote;
- 2°) a lecturer of law, economics or management;

3°) a judge of the competent court hearing commercial matters;

4°) a representative of the Public Treasury.

#### **ARTICLE 697**

The duties of auditor shall be incompatible with:

1°) any activity or act of a nature to compromise his independence;

2°) any paid job. However, an auditor may give lectures in a course relating to his profession or take up a paid job with an auditor or a chartered accountant;

3°) any commercial activity, whether or not such activity is carried on directly by him or on his behalf by a nominee.

#### **ARTICLE 698**

The following may not be auditors:

1°) the founders, contributors, beneficiaries of special benefits, managers of the company or of its subsidiaries, as well as their spouses;

2°) the blood relatives and persons related by marriage, up to the fourth degree inclusive, of the persons referred to in paragraph 1) of this article;

3°) the managers of companies holding one-tenth of the company's capital or in which the latter holds one-tenth of the capital, as well as their spouse;

4°) the persons who, directly or indirectly or through third parties, receive either from the persons figuring in paragraph 1) of this article or from any company referred to in paragraph 3) of this article, a salary or any remuneration for a permanent activity other than that of auditor; the same shall apply to the spouses of the said persons;

5°) the auditors' companies one of whose members, shareholders or managers is in one of the situations referred to in the preceding paragraphs;

6°) the auditors' companies one of whose managers, members or shareholders performing the duties of auditor has a spouse who is in one of the situations referred to in paragraph 5) of this article.

#### **ARTICLE 699**

An auditor may not be appointed director, Managing Director, assistant managing director, General Manager or assistant general manager of the companies which he audits less than five years following the cessation of his duties as auditor of the said companies.

The same prohibition shall be applicable to the members of an auditors' company.

He may not, during the same period, perform the duties of auditor in the companies holding one-tenth of the capital of the company audited by him or in the companies in which the company audited by him holds one-tenth of the capital after cessation of his duties as auditor of the said companies.

#### **ARTICLE 700**

Persons who have been directors, Managing Directors, assistant managing directors, General Managers or assistant general managers, managers or workers of a company may not be appointed auditors of the company less than five years following the cessation of their duties in the said company.

They may not, during the same period, be appointed auditors in the companies holding 10% of the capital of the company in which they were performing their duties or in the companies in which the said companies hold 10% of the capital following the cessation of their duties.

The prohibition provided for in this article for the persons mentioned in the first paragraph of this article shall apply to the auditors' companies in which the said persons are members, shareholders or managers.

#### **ARTICLE 701**

Decisions taken in the absence of duly appointed substantive auditors or on the report of the substantive auditors appointed or on duty contrary to the provisions of Articles 694 to 700 of this Uniform Act shall be null and void.

Action for nullity shall cease where the said decision are expressly confirmed by a general meeting, upon the report of the duly appointed auditors.

### **CHAPTER 2**

#### **APPOINTMENT OF THE AUDITOR AND HIS ALTERNATE**

#### **ARTICLE 702**

Public limited companies which do not make public call for capital shall be bound to appoint an auditor and an alternate auditor.

Public limited companies which make a public call for capital shall be bound to appoint at least two auditors and two alternate auditors.

#### **ARTICLE 703**

The first auditor and his alternate shall be designated in the Articles of Association or appointed by the constituent general meeting.

During the existence of the company, the auditor and his alternate shall be appointed by the ordinary general meeting.

#### **ARTICLE 704**

The term of office of the auditor designated in the Articles of Association or appointed by the constituent general meeting shall be two fiscal years.

Where he is appointed by the ordinary general meeting, his term of office shall be six years.

The mandate of the auditor shall expire at the end of the general meeting that adjudicates either on the accounts of the second fiscal year where he is designated in the Articles of Association or appointed by the constituent general meeting, or on the accounts of the sixth fiscal year where he is appointed by the ordinary general meeting.

#### **ARTICLE 706**

An auditor appointed by the meeting of shareholders in replacement of another auditor shall hold office until the expiry of the mandate of his predecessor.

#### **ARTICLE 707**

Where, at the expiry of the mandate of an auditor, it is proposed to the meeting not to renew his mandate, the auditor may, at his request, be heard by the meeting.

#### **ARTICLE 708**

Where the meeting fails to elect a substantive auditor or his alternate any shareholder may bring action before the president of the competent court sitting in chambers for the designation of an auditor - substantive or alternate - with the president of the board of directors, the chairman and managing director or the managing director duly summoned to the proceedings.

The mandate thus conferred on the auditor shall expire when the general meeting appoints an auditor.

#### **ARTICLE 709**

Where the meeting fails to renew the mandate of an auditor or to replace him at the expiry of his mandate and, except where the auditor expressly declines the appointment, his mandate shall be extended until the very next annual ordinary general meeting.

### **CHAPTER 3 DUTIES AND RIGHTS OF THE AUDITOR**

#### **Section 1 Duties of the auditor**

#### **ARTICLE 710**

The auditor shall certify that the summary financial statements are regular and accurate and give a fair image of the result of operations of the past fiscal year as well as the financial situation and the estate of the company at the end of the said fiscal year.

#### **ARTICLE 711**

The auditor shall either:

- certify that the summary financial statement is regular and accurate; or
- certify with reservation or refuse to certify giving the reasons for such reservation or refusal.

#### **ARTICLE 712**

The permanent task of the auditor shall, excluding any interference in the management of the company, be to audit the assets and the accounting documents of the company and to check compliance of its accounting operations with the rules in force.

#### **ARTICLE 713**

The auditor shall ascertain that the information contained in the management report of the board of directors or of the Managing Director, as the case may be, as well as in the documents on the financial situation and the summary financial statements circulated to the shareholders is accurate and in conformity with the summary financial statement of the company.

He shall set out his observations in his report to the annual general meeting.

#### **ARTICLE 714**

The auditor shall finally ascertain that the equality of the members of the company is respected, in particular that all the shares of the same category have the same rights.

#### **ARTICLE 715**

The auditor shall prepare a report in which he shall inform the board of directors or the Managing Director of:

- 1°) the audits and verifications that he carried out and the various investigations that he conducted as well as their results;
- 2°) the items of the balance-sheet and other accounting documents to which amendments have been made, making all the relevant observations on the evaluation methods used in the preparation of the said documents;
- 3°) the irregularities and inaccuracies which he discovered;
- 4°) the conclusions of the above observations and amendments on the results of the fiscal year compared to those of the past fiscal year.

The report shall be made available to the chairperson of the board of directors or the Managing Director before the meeting of the board of directors or the decision of the managing director who adopts the accounts of the fiscal year.

#### **ARTICLE 716**

The auditor shall report to the next general meeting on the irregularities and inaccuracies he discovered in the course of his duties.

Furthermore, he shall disclose to the Legal Department any offence he discovers in the course of his duties, provided that he shall not commit himself by such disclosure.

#### **ARTICLE 717**

The auditor as well as his assistants shall, subject to the provisions of Article 716 of this Uniform Act, be bound to professional secrecy regarding the facts, acts and information they have knowledge of in the course of their duties.

### **Section 2 Rights of the auditor**

#### **ARTICLE 718**

The auditor shall, at any time of the year, carry out any verifications and audits which he deems appropriate and may demand and have produced before him immediately any document he deems relevant to the exercise, in particular contracts, books, accounting documents and minutes registers.

The auditor may in the course of this exercise enlist under his responsibility the assistance or representation of any experts or collaborators of his choice whom he shall make known by name to the company. The experts or collaborators so chosen shall have the same powers of investigation as those of the auditor.

Parent companies or subsidiaries within the meaning of Articles 178 to 180 of this Uniform Act may be subject of the investigations provided for in this article.

#### **ARTICLE 719**

Where many auditors are appointed, they may carry out their investigations and audits separately but they shall draw up a joint report.

In case of disagreement among the auditors, the report shall indicate the different opinions expressed.

#### **ARTICLE 720**

The auditor may also collect all the information relevant in the performance of his duties from third parties who carried out transactions on behalf of the company. However, this right of information may not cover the communication of documents, contracts and other documents of any nature kept by third parties, unless the auditor is authorized to obtain such contracts and documents in an order of the president of the competent court giving a summary judgment.

Professional secrecy may not be raised against the auditor save by auxiliary officers of justice.

#### **ARTICLE 721**

The auditor shall compulsorily be invited to all meetings of shareholders, no later than at the time the shareholders are themselves summoned, by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

#### **ARTICLE 722**

The auditor shall compulsorily be invited to the meeting, as the case may be, of the board of directors or of the Managing Director adopting the accounts of the fiscal year, as well as, where necessary, to any other meeting of the board or of the Managing Director.

The invitation shall be forwarded to the auditor no later than at the time of convening the members of the board of directors or, where the company is managed by a managing director, at least three days before the meeting by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

#### **ARTICLE 723**

The fees of the auditor shall be borne by the company.

The amount of the fees shall be a global sum to be shared among the auditors irrespective of their number.

#### **ARTICLE 724**

Travel and subsistence expenses incurred by the auditors in the discharge of their duties shall be borne by the company.

Likewise, the company may grant the auditor a special remuneration where he:

- 1°) carries out an additional professional activity, on behalf of the company, abroad;
- 2°) carries out special audits of accounts of companies in which the audited company holds a share or intends to hold a share;
- 3°) performs temporary duties entrusted to him by the company at the request of a public authority.

## CHAPTER 4 LIABILITY OF THE AUDITOR

### ARTICLE 725

The auditor shall be liable, to the company and as well as to third parties, for the actionable wrongs which he commits in the course of his duties.

However, he shall not be liable for information given or disclosures made by him in the course of his duties, in accordance with the provisions of Article 153 of this Uniform Act.

### ARTICLE 726

The auditor shall not be liable for any damage resulting offences committed by the members of the board of directors or by the Managing Director, as the case may be, except where he had knowledge of them and failed to mention same in his report to the general meeting.

### ARTICLE 727

Any civil action against the auditor shall lapse after three years from the date of commission of the tort or, where such tort was hidden, from the date of its disclosure.

Where such deed is described as a felony, the action shall lapse after ten years.

## CHAPTER 5 TEMPORARY OR PERMANENT INCAPACITY OF THE AUDITOR TO PERFORM

### ARTICLE 728

Where the auditor is unable to perform his duties or resigns or dies, his duties shall be performed by the alternate until the auditor is available or, where he is permanently absent, until the expiry of the mandate of the substantive auditor.

Where the impediment ceases, the substantive auditor shall resume duty following the next ordinary general meeting which approves the accounts.

### ARTICLE 729

Where the alternate auditor is called upon to perform the duties of the substantive auditor, a new alternate shall be appointed during the next ordinary general meeting. The mandate of the alternate so appointed shall automatically expire when the cause of the disability of the substantive auditor ceases and he resumes duty.

### ARTICLE 730

One or more shareholders representing at least 10% of the company's capital as well as the Legal Department may bring an action before the court for the recusal of auditors appointed by the ordinary general meeting.

Where the court grants the application for recusal, a new auditor shall be appointed by the court. He shall hold office until the assumption of duty by the auditor to be appointed by the meeting of shareholders.

#### **ARTICLE 731**

One or more shareholders representing at least 10% of the company's capital, the board of directors or the managing director, as the case may be, the ordinary general meeting or the Legal Department may bring an action before the court for the dismissal of the auditor in case of misconduct on his part or where he is unable to perform his duties.

#### **ARTICLE 732**

The action for recusal or for the dismissal of the auditor shall be brought before the president of the competent court who shall give a summary judgment.

The writ of summons shall be issued against the auditor and the company.

The action for recusal shall be filed within 30 days from the date of the general meeting which appointed the auditor.

#### **ARTICLE 733**

Where the action is initiated by the Legal Department, it shall be filed by way of a petition. Parties other than the representative of the Legal Department shall be summoned at the instance of the court registrar by hand-delivered letter with acknowledgement of receipt or by registered letter with notification of reception.

#### **ARTICLE 734**

The time limit for filing an appeal against the decision of the president of the competent court shall be 15 days from the date of notification of the said decision to the parties.

### **SUB-TITLE 8**

## **WINDING-UP OF PUBLIC LIMITED LIABILITY COMPANIES**

#### **ARTICLE 735**

The provisions of Articles 736 and 737 of this Uniform Act shall not apply to companies under legal redress or in liquidation.

#### **ARTICLE 736**

A public limited company shall be wound up for reasons common to all companies under the conditions and with the effects stipulated in Articles 200 to 202 of this Uniform Act. A public limited company shall also be wound up in case of partial loss of its assets under the conditions laid down in Articles 664 to 668 of this Uniform Act.

#### **ARTICLE 737**

Shareholders may pronounce the premature winding up of the company.

The decision shall be by a resolution of the extraordinary general meeting of shareholders.

## **SUB-TITLE 9 CIVIL LIABILITY**

### **CHAPTER 1 LIABILITY OF PROMOTERS**

#### **ARTICLE 738**

The promoters of the company who are responsible for the nullity of the company and the directors or Managing Director in office at the time when the nullity of the company occurred may be declared jointly and severally liable for damage suffered by shareholders or third parties as a result of the nullity of the company.

Shareholders whose contributions or benefits have not been verified and approved may also be jointly and severally liable.

#### **ARTICLE 739**

Action for liability on grounds of nullity of the company shall lapse under the conditions laid down in Article 256 of this Uniform Act.

### **CHAPTER 2 LIABILITY OF DIRECTORS**

#### **ARTICLE 740**

The directors or the Managing Director, according to the circumstances, shall be jointly or severally liable to the company or to third parties either for the offences committed in violation of the laws and regulations applicable to public limited companies or for violation of the provisions of the Articles of Association or for wrongs committed in their management.

Where many directors took part in the commission of the same acts, the competent court shall determine the contribution of each of them in the award of the damages.

#### **ARTICLE 741**

In addition to the action for the award of personal damages, the shareholders may, either individually or collectively, institute proceedings in the company's interest, as the case may be, against the directors or the managing director.

Shareholders may, where they represent at least 5% of the company's capital, authorize, in their common interest and at their expense, one or more shareholders to represent them in prosecuting or defending an action involving the company.

The withdrawal of one or more of the said shareholders from the action either voluntarily or because of loss of their status as shareholders shall have no effect on the continuation of the said action.

The plaintiffs may institute proceedings for the reparation of all the injuries suffered by the company for which, where necessary, damages may be awarded.

#### **ARTICLE 742**

Any clause of the Articles of Association subjecting the institution of the action in the company's interest to a prior notice or to the authorization of the general meeting, or imposing in advance renunciation of the institution of such action shall be void.

No decision of the general meeting may extinguish an action against the directors or the managing director, as the case may be, for wrong committed in the course of their duties.

#### **ARTICLE 743**

A civil action against the directors or the Managing Director, both in the company's interest and individual interest, shall lapse after three years from the date of commission of the wrong or, where it was concealed, from the date of disclosure. However, where it is a felony, the action shall lapse after ten years.

## **TITLE 2 TRANSFERABLE SECURITIES**

### **CHAPTER 1 COMMON PROVISIONS**

#### **Section 1 Definition**

#### **ARTICLE 744**

Public limited companies shall issue transferable securities whose form, class and characteristics shall be listed in this Title.

Transferable securities shall confer identical rights per category and shall give access directly or indirectly to a quota of the capital of the issuing company or a right to a general claim on its estate. They shall be indivisible with regard to the issuing company.

The issue of partnership or founder's shares shall be forbidden.

#### **Section 2 Form of securities**

#### **ARTICLE 745**

Shares and bonds shall be in the form of bearer bond or registered securities irrespective of whether they are issued against non-cash contributions or cash contributions.

However, registered securities may be the exclusive form imposed by the provisions of this Uniform Act or by the Articles of Association.

#### **ARTICLE 746**

The owner of securities which are part of an issue comprising bearer bonds shall have the option, notwithstanding any clause to the contrary, to convert his bearer bonds into registered securities and vice-versa.

### **Section 3** **Pledge of securities**

#### **ARTICLE 747**

Subject to the provisions of Articles 772 and 773 of this Uniform Act, the pledge of transferable securities registered in an account shall be effected, with respect to both the issuing corporate person and third parties, by a statement dated and signed by the holder of the securities. The statement shall contain the amount of money due as well as the amount and nature of the securities pledged.

The secured bonds shall be transferred into a special account opened in the name of the holder of the securities and kept by the issuing corporate person or the financial broker, as the case may be.

A certificate of pledge shall be issued to the pledgee.

In case of a collective action for the wiping off of debts of the intermediary financial broker who keeps the account, the holders of the securities entered in the account shall have all their rights transferred into an account kept by another financial broker or by the issuing corporate person.

The competent court shall be informed of such transfer. Where the entries in the account are insufficient, the holders of the securities shall make a declaration thereof to the representative of the creditors for their rights to be supplemented.

The pledge of registered securities provided for in Article 764 1) below shall be carried out by registration in the transfer registers of the company. The same shall apply in the case of sequestration of goods.

## **CHAPTER 2** **PROVISIONS RELATING TO SHARES**

### **Section 1** **Different classes of shares**

#### **ARTICLE 748**

Shares issued for cash shall be shares whose amount is paid up in cash or by set-off of certain, liquid and due claims on the company, shares which are issued following the incorporation of reserves, profits or issue premiums and shares whose amount is made up in part of an incorporation of reserves, profits or issue premiums and in part of an issue for cash. Shares issued for cash shall be fully paid up during subscription.

All the other shares shall be non-cash shares.

#### **ARTICLE 749**

A share issued for cash shall be a registered share until it is fully paid up.

A non-cash share shall be convertible into a bearer bond only after two years.

## **ARTICLE 750**

The nominal amount of shares or share denominations may not be lower than ten thousand (10 000) CFA francs.

### **Section 2 Rights attached to shares**

#### **Paragraph 1 Voting rights**

## **ARTICLE 751**

Each share shall have voting rights proportional to the percentage of share capital it represents and shall give right to at least one vote.

## **ARTICLE 752**

A voting right double the right conferred on other shares, may in view of the percentage of share capital represented, be conferred by the Articles of Association or the extraordinary general meeting on fully paid-up registered shares where there is justification that the shares have been registered for at least two years in the name of the same shareholder.

Likewise, where share capital has been increased through capitalization of reserves, profits or issue premiums, double voting rights may, from the time of issue, be conferred on registered shares freely allotted to a shareholder in proportion to the number of his old shares which already enjoy this right.

## **ARTICLE 753**

Any share converted into a bearer share shall lose the double voting right.

#### **Paragraph 2 Right to dividend**

## **ARTICLE 754**

Each share shall have a right to dividend proportional to the percentage of share capital it represents. The Articles of Association or the extraordinary general meeting may grant shares a right to the first dividend.

## **ARTICLE 755**

Notwithstanding the provisions of Article 754 of this Uniform Act, during the formation of a company or during its existence, preference shares may be issued having preferential rights in relation to all the other shares. These rights may particularly consist in a bigger share in the profits or bonus after liquidation, a preferential right to profits and cumulative dividends.

## **ARTICLE 756**

Notwithstanding any clause to the contrary in the Articles of Association of the issuing company, the totality of interest, dividends or other periodic revenue accruing to shares for a specific company fiscal year shall be paid in a lump-sum.

The date of payment of the lump-sum shall be fixed by the general meeting of shareholders. The general meeting may, however, request the board of directors to fix the said date.

**Paragraph 3**  
**Pre-emptive right of subscription**

**ARTICLE 757**

Shareholders shall have proportionately to the amount of their shares, a pre-emptive right of subscription for shares issued for cash in order to increase capital.

This right shall be negotiable under the same conditions as the share itself during the subscription period.

**ARTICLE 758**

The application of the provisions of Article 757 of this Uniform Act may only be set aside by the general meeting sitting under the conditions of quorum and majority of an extraordinary meeting, and the deliberations shall not be valid unless the board of directors or the managing director, as the case may be, indicates in their report to the general meeting the reasons for the increase of capital and the persons to whom the new shares shall be allotted, together with the number of shares allotted to each person, the issue price and the basis on which such price was determined.

**Section 3**  
**Negotiability of shares**

**ARTICLE 759**

Shares shall be negotiable only after registration of the company in the Trade and Personal Property Rights Register or entry therein of the statement of amendment following an increase of capital.

**ARTICLE 760**

Negotiation of a promise of shares shall be prohibited except where it concerns shares still to be issued in case of an increase of capital for a company whose existing shares are already registered on the securities list of a stock exchange of one or more States Parties. In such case, negotiation shall not be valid unless it is conditioned on the realization of the increase of capital. Failing an express statement, this condition shall be presumed.

**ARTICLE 761**

Shares issued for cash shall not be negotiable until they have been fully paid up.

**ARTICLE 762**

Shares shall remain negotiable after the winding up of the company and until the close of liquidation.

**ARTICLE 763**

The annulment of a company or of an issue of shares shall not imply the nullity of the negotiations which took place prior to the decision to dissolve, where the shares appear to be valid. However, a purchaser may take action against the vendor on the guarantee.

## **Section 4**

### **Transfer of shares**

#### **ARTICLE 764**

In principle, shares shall be freely transferable. The transfer of shares shall be carried out according to the following procedure:

1°) for companies not making a public call for capital:

by transfer on the registers of the company, for registered shares, the holder's rights resulting from the single registration on the company's registers;

by simple delivery for bearer shares. The bearer of the share shall be deemed to be the owner;

2°) for companies making a public call for capital:

besides the above procedure whether for registered or bearer shares, the shares may be represented by registration in an account opened in the name of their proprietor and held either by the issuing company or a financial intermediary approved by the Minister in charge of the Economy and Finance. In such case the transfer shall take place by transfer from one account to another.

## **Section 5**

### **Limitations to the transfer of shares**

#### **ARTICLE 765**

Notwithstanding the principle of free transferability stated in Article 764 of this Uniform Act, the Articles of Association may lay down certain limitations to the transfer of shares under the following conditions:

1°) the limitation clauses shall not be valid in a company unless all its shares are registered;

2°) the Articles of Association may provide that the transfer of shares to a third party who is an outsider to the company either free of charge or for payment shall be subject to approval by the board of directors or the ordinary general meeting of shareholders ;

3°) limitations to the transfer of shares may not operate in case of succession, liquidation of the community of property between spouses or of transfer to a spouse or an ascendant or a descendant.

#### **ARTICLE 766**

Where approval is given by the meeting, the transferor shall not take part in the vote and his shares shall be deducted when calculating the quorum and the majority. The same shall apply where the transferor is a director, and the approval is given by the board of directors.

#### **ARTICLE 767**

Where an approval clause is applicable, the transferor shall attach to his application for approval addressed to the company by hand-delivered letter against a receipt, or by registered letter with a request for acknowledgement of receipt, by telex or fax, the full names, capacity and address of the proposed transferee, the number of shares earmarked for transfer and the price offered.

#### **ARTICLE 768**

Approval shall result from notification or from failure to reply within a time limit of three months from the date of the application.

#### **ARTICLE 769**

Where the company does not approve the proposed transferee, the board of directors or the managing director, as the case may be, shall, within a period of three months from notification of the refusal, cause the shares to be acquired by a shareholder, a third party, or, with the consent of the transferor, by the company with a view to a reduction of capital.

#### **ARTICLE 770**

Failing an agreement between the parties, the transfer price shall be determined by an expert designated by the president of the competent court at the request of the more diligent party.

#### **ARTICLE 771**

Where at the expiry of the three-month period, the purchase has not taken place, the approval shall be deemed to be granted. However, where an expert has been designated by the president of the competent court to fix the price, the time limit may be extended for a period not exceeding three months by the court which designated the expert.

### **Section 6 Pledge of shares**

#### **ARTICLE 772**

Where the company has given its consent for a plan to pledge shares, such consent shall mean approval of the transferee in case of compulsory sale of the pledged shares, unless the company prefers to redeem the shares without delay with a view to reducing its capital.

A plan to pledge shares shall not be binding on the company unless it was approved by the organ designated for that purpose by the Articles of Association to approve the transfer of shares.

#### **ARTICLE 773**

The plan to pledge shall first have been sent to the company by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt, by telex or fax, stating the full names and the number of shares to be pledged.

Agreement shall result from acceptance of the pledge notified in the same form as the application for approval of the pledge, or from failure to reply within the time limit of three months from the date of the application.

### **Section 7 Failure to pay up shares**

#### **ARTICLE 774**

At least one quarter of the value of shares shall be paid up on subscription; the balance shall be paid up as the board of directors makes calls within a maximum period of three years from the date of subscription.

#### **ARTICLE 775**

In case of non-payment of the balance on the shares that have not been fully paid up at the time fixed by the board of directors or the managing director, as the case may be, the company shall

send a formal notice to the defaulting shareholder by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

One month after such formal notice has gone unheeded; the company shall on its own initiative take over the sale of the shares. With effect from the same date, shares for which the amount owed has not been paid shall cease to give right to votes in shareholders' meetings and shall be deducted when calculating the quorum and the majority.

Upon the expiry of the time limit of one month, the right to dividend and the pre-emptive right of subscription to increases of capital attached to such shares shall be suspended until the sums owed are paid up.

#### **ARTICLE 776**

In the case referred to in Article 775, paragraph 2 of this Uniform Act, the sale of quoted shares shall take place on the stock exchange, whereas the sale of unquoted shares shall take place at a public auction conducted by a stockbroker or a notary public.

Before carrying out the sale referred to in the preceding paragraph, the company shall publish in a newspaper empowered to publish legal notices, thirty days following the formal notice provided for in Article 775 of this Uniform Act, the number of the shares on sale. The company shall notify the debtor and, where necessary, his co-debtors of the sale by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt containing an indication of the date and number of the newspaper in which publication was made. The actual sale of shares may not take place less than 15 (fifteen) days after the despatch of the hand-delivered letter against a receipt or the registered letter with acknowledgement of receipt.

The defaulting shareholder shall remain debtor or benefit from the balance. The defaulting shareholder shall bear all the costs incurred by the company in carrying out the sale.

#### **ARTICLE 777**

The defaulting shareholder, successive transferees and subscribers shall be jointly and severally liable for the unpaid amount of the share.

The company may take action against them before or after the sale, or at the same time, to obtain the sum owed and a refund of the costs incurred.

Any person who pays off the company shall be entitled to take action for the entire sum against successive holders of the share. The final charge on the debt shall fall to the last of such holders.

### **Section 8 Redemption of shares**

#### **ARTICLE 778**

Redemption of shares by the casting of lots shall be prohibited notwithstanding any legislative, statutory or contractual provisions to the contrary.

**CHAPTER 3  
PROVISIONS RELATING TO BONDS**

**Section 1  
General provisions**

**Paragraph 1  
Definition**

**ARTICLE 779**

Bonds shall be negotiable instruments which, for one and the same issue, shall confer the same rights to a claim for the same nominal value.

**Paragraph 2  
Conditions of issue**

**ARTICLE 780**

The issue of bonds shall only be allowed for public limited companies and economic interest groups made up of public limited companies, which have existed for two years and have drawn up two balance-sheets duly approved by the shareholders.

**ARTICLE 781**

The issue of bonds shall be prohibited for companies whose capital is not fully paid up.

**ARTICLE 782**

The issue of lottery bonds shall be prohibited.

**ARTICLE 783**

The general meeting of shareholders shall have the sole prerogative to decide on or authorize the issue of bonds. It may delegate to the board of directors or the managing director, as the case may be, the necessary powers to issue bonds in one or more instalments within a period of two years and to lay down the conditions thereof.

**ARTICLE 784**

Any bonds redeemed by the issuing company and paid for shall be cancelled and may not be re-floated.

**Paragraph 3  
Grouping of bondholders**

**ARTICLE 785**

Holders of bonds issued at the same time shall as of right be grouped together to defend their interests in an organization having legal personality. However, where bonds are issued successively and a clause in each contract of issue so provides, the company may bring together bondholders having identical rights into a single group.

#### **ARTICLE 786**

The group shall be represented, according to the decision taken by the general meeting of bondholders which elected them, by one to three representatives.

#### **ARTICLE 787**

The mandate of representative of the group may be conferred only on natural or corporate persons resident in the State Party of the head office of the debtor company.

The following may not be chosen to represent the group:

- 1°) the debtor company;
- 2°) companies having a share in the debtor company;
- 3°) companies which have guaranteed all or part of the commitments of the debtor company;
- 4°) managers or directors of the debtor company or of any company having a share in its capital, as well as their ascendants, descendants or spouses;
- 5°) employees of the companies referred to above;
- 6°) the auditor of the companies referred to above;
- 7°) persons who have forfeited their right to be director, administrator or manager a company in any capacity whatsoever.

#### **ARTICLE 788**

In emergency cases, representatives of the group may be designated by the president of the competent court on the application of any interested party.

#### **ARTICLE 789**

Representatives of the group may be relieved of their right of representation by the general meeting of bondholders.

#### **ARTICLE 790**

Representatives of the group shall, unless otherwise restricted by the general meeting of bondholders, have the power to carry out in the name of the group and of all the bondholders any acts of management to defend the common interests of the bondholders.

#### **ARTICLE 791**

Representatives of the group may not interfere in the management of the company. They may take part in the meetings of shareholders but in an advisory capacity. They shall have the right to be served any documents available to shareholders under the same conditions as the shareholders.

#### **ARTICLE 792**

In case of liquidation or judicial fiscal adjustment of the company, the representatives of the group of bondholders shall be competent to act in the company's name. Under the liabilities column of the liquidation of assets or judicial fiscal adjustment of the company, they shall declare

for all the bondholders of the group the amount of the capital and interest owed by the company to the bondholders of the group.

They shall not be required to produce the bonds of the bondholders of the group to justify their declaration. In case of difficulty, any bondholder may apply to the president of the competent court to appoint a receiver to make the said declaration and represent the group.

#### **ARTICLE 793**

Where the liquidation or adjustment procedure cannot continue because of insufficient assets the group representative or court appointed special manager shall recover the debts due to the bondholders.

The costs incurred in representing the bondholders during the process of liquidation of assets or judicial adjustment of the company shall be borne by the company and shall be considered as receivership expenses.

#### **ARTICLE 794**

Remuneration of the group representatives shall be determined by the general meeting or by the contract of loan. It shall be borne by the debtor company.

Where the said remuneration is not fixed, or where the amount is challenged, it shall be determined by the president of the competent court.

### **Section 2**

#### **General meeting of bondholders**

##### **Paragraph 1**

##### **Convening**

#### **ARTICLE 795**

The general meeting of bondholders of the same group may hold at any time.

#### **ARTICLE 796**

The general meeting shall be convened by the representatives of the group of bondholders or, where necessary, by the board of directors or the managing director, as the case may be, or by the liquidator during liquidation.

The general meeting may also be convened at the request of bondholders representing at least one-thirtieth of bonds of the company by the group representatives or by a receiver designated by the president of the competent court.

#### **ARTICLE 797**

The convening of the meeting of bondholders shall be done under the same conditions of form and time limit as for shareholders' meetings. The same shall apply for communicating to bondholders the draft resolutions to be proposed and the reports to be presented at the meeting.

##### **Paragraph 2**

##### **Compulsory particulars**

#### **ARTICLE 798**

The convening notice to the meeting shall contain particulars in respect of the following:

1°) particulars as to the loan subscribed to by the bondholders for which the group is convened;

- 2°) the full names and address of the person who took the initiative to convene the meeting and the capacity in which he is acting;
- 3°) where necessary, the date of the court decision appointing the receiver responsible for convening the meeting.

#### **ARTICLE 799**

Any meeting convened irregularly may be annulled. However, the action for annulment shall not be entertained where all the bondholders of the group concerned are present or represented.

### **Paragraph 3 Agenda**

#### **ARTICLE 800**

The agenda shall be drawn up by the convenor. However, one or more bondholders representing at least one-thirtieth of the company's bonds shall have the option of requesting that draft resolutions be included on the agenda.

The draft resolutions shall be included on the agenda and submitted to the meeting by the chairperson for approval.

The meeting may not deliberate on any matter which is not included on the agenda.

On the second invitation, the agenda may not be amended.

### **Paragraph 4 Representation**

#### **ARTICLE 801**

Every bondholder shall be entitled to participate in the meeting or be represented by any person of his choice.

Persons who may not represent the group by virtue of Article 787 of this Uniform Act may not represent bondholders in the meeting.

### **Paragraph 5 Conduct of meetings**

#### **ARTICLE 802**

The meeting shall be presided over by a representative of the group. Where there are several representatives and there is disagreement among them, the meeting shall be presided over by a bondholder in attendance representing the highest number of bonds.

Where the meeting is convened by an official receiver, it shall be presided over by him.

The rules governing the conduct of shareholders' meetings shall apply, where appropriate, to bondholders' meetings.

#### **ARTICLE 803**

The ordinary meeting of bondholders shall deliberate on the appointment of the group's representatives, their term of office, determination, where necessary, of their remuneration, their

alternate, summoning them and any other measure intended to ensure the defence of bondholders and the execution of the loan contract, on the management expenditure that such measures could incur and, in general, on all measures of a protective or administrative nature.

#### **ARTICLE 804**

The extraordinary meeting of bondholders shall deliberate on every recommendation likely to modify the loan contract, in particular the following:

- 1°) the change of object or form of the company;
- 2°) its merger or division;
- 3°) any proposal of compromise or settlement of rights in dispute or rights which have been the subject of a court decision;
- 4°) the total or partial modification of guarantees or extension of due date;
- 5°) change of registered office;
- 6°) winding up of the company.

#### **Paragraph 6 Voting rights**

#### **ARTICLE 805**

Voting rights attached to bonds shall be proportionate to the fraction of the amount of the loan which they represent.

Each bond shall give right to at least one vote.

Bondholders may vote by correspondence under the same conditions and form as shareholders in shareholders' meetings.

#### **ARTICLE 806**

A company holding at least 10% of the capital of the debtor company may not vote during the meeting using the bonds it holds.

#### **ARTICLE 807**

In case of break-up of ownership of the bonds, the voting right shall belong to the bare owner, unless otherwise provided by the parties.

#### **Paragraph 7 Resolutions of the meeting**

#### **ARTICLE 808**

The meetings may neither increase the responsibility of bondholders nor set up an unequal treatment of bonds of the same issue.

#### **ARTICLE 809**

Failing approval by the general meeting of bondholders of the proposals made by the company relating to an amendment of its form or objects, the company may override this by redeeming the bonds before implementing the change of its form and objects.

#### **ARTICLE 810**

Where the general meeting of bondholders fails to approve the company's proposals regarding its merger or division, the company may override this and the bondholders shall maintain their rights as bondholders in the acquiring company or in the new company created from the merger or in the companies created from the division, as the case may be.

Where the company decides to override the failure of the said general assembly to give approval, the chairperson managing director, the general manager or the managing director, as the case may be, shall inform the representative of the bondholders' group thereof by hand-delivered letter against a receipt or by registered letter with a request for acknowledgement of receipt.

The group of bondholders may file an opposition to the merger or division with the president of the competent court.

The said president may dismiss the action or order a refund of the bonds or that guarantees be provided if the acquiring company or the company being divided offers guarantees which are deemed sufficient.

#### **ARTICLE 811**

In case of winding up of the company not resulting from merger or division, refund of the bonds shall be immediately due.

#### **ARTICLE 812**

Judicial adjustment of the company shall not put an end to the functioning or the role of the general assembly of bondholders.

### **Paragraph 8 Individual bondholders' rights**

#### **ARTICLE 813**

Bondholders may not exercise individual control over the company's transactions or be sent company documents.

They shall have the right, at their own expense, to obtain from the company a copy of reports and attendance lists of bondholders' meetings of the group to which they belong.

#### **ARTICLE 814**

In the absence of special clauses in the contract of loan, the company may not force the bondholders to accept a reimbursement before term of the bonds.

### **Paragraph 9 Guarantees in respect of bonds**

#### **ARTICLE 815**

The general meeting of shareholders which decides to issue bonds may decide that the bonds will be secured.

The meeting shall determine what securities to offer or shall delegate to the board of directors or the managing director, as the case may be, the power to determine it.

**ARTICLE 816**

The securities shall be formed by the company before issue in a special deed for the benefit of the group of bondholders being formed.

The formalities of publishing the securities shall be complied with before any subscription of bonds.

**ARTICLE 817**

Acceptance of the guarantee shall be evidenced only by subscription. It shall take effect from the date of registration for those securities subject to registration and on the date of their subscription for the other securities.

**ARTICLE 818**

Within a period of six months from the opening of subscription, the result of the subscription shall be recorded in a notarial deed at the instance of the legal representative of the company.

Within a period of thirty days from the date of preparation of the deed, the results of the subscription shall be entered on the margin of the security.

Where the issue of bonds is not realized because there is little or no subscription, registration shall be cancelled.

**ARTICLE 819**

Renewal of the security shall be done at the expense of the company, under the responsibility of its statutory representatives.

The representatives of the group shall be responsible for ensuring compliance with the provisions relating to renewal of registration.

**ARTICLE 820**

Discharge of the mortgage may only be done by the group's representatives and on condition that the loan has been repaid in full and that all the interest has been paid.

Furthermore, it shall be necessary for the representatives to be expressly authorized by the general assembly of bondholders of the group to discharge the mortgage.

**ARTICLE 821**

Any securities provided after the issue of bonds shall be granted by the legal representatives of the company either upon the authorization of the ordinary general meeting of shareholders or, where the articles so provide, by the board of directors or the managing director.

Acceptance by the group shall be by an express act.

**CHAPTER 4  
OTHER TRANSFERABLE SECURITIES**

**ARTICLE 822**

When the issue of securities representing claims on the issuing company or giving right to subscribe or acquire a transferable security representing claims, it may be provided that the said transferable securities shall only be redeemed after the other creditors have been paid off, excluding holders of equity-type loans.

## **TITLE 3**

### **PROVISIONS PECULIAR TO PUBLIC LIMITED COMPANIES MAKING PUBLIC CALL FOR CAPITAL**

#### **CHAPTER 1**

##### **GENERAL PROVISIONS**

###### **ARTICLE 823**

Without prejudice to the provisions which may govern the stock exchange and the acceptance of transferable securities on the exchange, incorporated companies or those in the process of making a public call for capital by the issue of shares shall fall under the general rules governing public limited companies and the special provisions of this title.

The provisions of this title shall override the general provisions governing the form of public limited companies in case of incompatibility between the two sets of rules.

###### **ARTICLE 824**

The minimum capital of a company whose shares are listed on the stock exchange of one or more State Parties or of a company making a public call for capital for the sale of its shares in one or more State Parties shall be one hundred million (100 000 000) CFA francs.

The registered capital may not be lower than the amount stipulated in the preceding paragraph unless the company changes into another form of company.

In case of failure to comply with the provisions of this article, any interested party may apply to the court for the winding up of the company. Such winding up may not be pronounced where, on the day the court is giving its judgment on the merits of the case, the matter has been regularized.

#### **CHAPTER 2**

##### **FORMATION OF A COMPANY**

###### **ARTICLE 825**

The promoters shall publish, before subscription for shares begins, a prospectus in newspapers empowered to publish legal notices in the State Party of the registered office of the company and, as the case may be, in the State Parties where a public call for capital is made.

###### **ARTICLE 826**

The prospectus referred to in the preceding article shall contain the following details:

- 1°) the name of the company being formed followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the registered capital;
- 4°) the company's object;

- 5°) the address of the registered office;
- 6°) the duration of the company;
- 7°) the number of shares subscribed to, for cash and the amount immediately due comprising, as the case may be, the agio on issue;
- 8°) the nominal value of the shares to be issued, with a distinction made, where necessary, between each category of shares;
- 9°) a summary description of non-cash contributions, their total valuation and their mode of remuneration, with an indication of the provisional nature of the said valuation and the mode of remuneration;
- 10°) the special benefits stipulated in the draft Articles of Association in the interest of any person;
- 11°) the conditions of admittance to shareholders' meetings and of exercising the voting rights with an indication, where necessary, of the provisions relating to the granting of the double voting right;
- 12°) where necessary, the clauses relating to the approval of transferees of shares;
- 13°) the provisions relating to the sharing of profits, the building up of reserves and the sharing of the bonus after liquidation;
- 14°) the full names and address of the notary public or the corporate name and registered office of the bank in which the funds from the subscription shall be deposited;
- 15°) the time limit open for subscriptions with an indication of the possibility of early closure in case the full subscriptions are made before the expiry of the said time limit;
- 16°) the procedure for convening the constituent general meeting.

The prospectus shall be signed by the promoters and it shall state:

- 1°) in case of natural persons, their usual full names, address and nationality;
- 2°) in case of corporate persons, their name, form, registered office and, as the case may be, the amount of the registered capital.

#### **ARTICLE 827**

To inform the public about the forthcoming issue of shares, circulars shall be written reproducing the contents of the prospectus provided for in Article 826 of this Uniform Act.

The circulars shall contain a statement to the effect that the prospectus has been published in the newspapers empowered to publish legal notices. They shall make reference to the publication number of the said newspapers.

Furthermore, the circulars shall make known the plans of the promoters regarding the use of the funds derived from the payments of the shares subscribed.

Posters and notices in newspapers shall reproduce the same information or at least extracts from such information with reference to the prospectus and an indication of the number of the newspapers empowered to publish legal notices in which the prospectus was published.

## CHAPTER 3 FUNCTIONING OF THE COMPANY

### Section 1 Administration of the company

#### ARTICLE 828

Companies making a public call for capital in order to sell their shares in one or more State Parties or whose shares are listed on the stock exchange of one or more State Parties shall be bound to have a board of directors.

#### ARTICLE 829

The board of directors of the companies referred to in Articles 828 to 853 of this Uniform Act shall, as of necessity, comprise at least three members and at most fifteen members where its shares are listed on the stock exchange.

However, to include the total number of directors in office for more than six months in the merged companies in case of a merger involving one or more companies whose shares are quoted on the stock exchange of one or more State Parties, the number of members may exceed fifteen but may not exceed twenty.

No new directors may be appointed even to replace directors who are deceased, dismissed or have resigned as long as the number of directors has not been reduced to fifteen where the shares of the company are quoted on the stock exchange of one or more State Parties.

Where a company quoted on the stock exchange of one or more State Parties is struck off from those stock exchanges, the number of directors shall as soon as possible be reduced to twelve.

Within the various limits fixed above, the number of directors shall be freely determined in the Articles of Association.

#### ARTICLE 830

The Chairperson Managing Director, the General Manager of a company whose shares are quoted on the stock exchange of one State Party and the natural or corporate persons performing the duties of director in the company shall be required, within the time limit fixed in the second paragraph of this article, to obtain registered status for the shares belonging to them personally or those belonging to their unemancipated minor children issued by the company itself, by its subsidiaries, by the company of which it is a subsidiary or by the other subsidiaries of such company, where the shares are quoted on the stock exchange of one or more State Parties.

The time limit referred to in the preceding paragraph shall be one month from the date on which the persons concerned acquire the capacity making them subject to the provisions by the preceding paragraph. The time limit shall be twenty days from the date of entry into possession where the persons concerned acquire the shares referred to in the first paragraph of this article.

The preceding provision shall apply to the permanent representatives of corporate persons performing the duties of director in the companies whose shares are quoted on the stock exchange of one or more State Parties. They shall also apply to the spouses (not separated) of all the persons referred to in this article.

Failure to obtain the registered status for the shares, the persons concerned shall deposit them in a bank or with a stock broker.

## **Section 2** **Shareholders' meetings**

### **ARTICLE 831**

Before the meeting of shareholders, companies making public call for capital in order to sell their shares or companies whose shares are registered in one or more State Parties shall be required to publish in newspapers empowered to publish legal notices of the State Party of the registered office and, where necessary, of the other State Parties where a public call for capital issue is made, a notice containing the following:

- 1°) the company name followed, where necessary, by the acronym of the company;
- 2°) the form of the company;
- 3°) the amount of its capital;
- 4°) the address of its registered office;
- 5°) the agenda of the meeting;
- 6°) the text of the draft resolutions which shall be presented to the assembly by the board of directors;
- 7°) the place where the shares shall be deposited;
- 8°) except where the company sends out to shareholders a form for voting by correspondence, the places and conditions under which the said forms may be obtained.

## **Section 3** **Modification of registered capital**

### **ARTICLE 832**

Shareholders and investors shall be informed of the issue of new share and the conditions thereof either by a notice inserted in the prospectus published in newspapers empowered to publish legal notices in the State Party of the head office and, as the case may be, of the other State Parties in which a public call for capital is made or by hand-delivered letter against a receipt or by registered letter with a request for notice of delivery where the shares of the company are registered.

### **ARTICLE 833**

The prospectus containing the company's seal and the hand-delivered letter against a receipt or by registered letter with a request for notice of delivery shall contain the following information:

- 1°) the name of the company followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) a summary of the company's objects;
- 4°) the amount of the registered capital;
- 5°) the address of the registered office;

- 6°) the registration number of the company in the Trade and Personal Property Rights Register;
- 7°) the normal expiry date of the company;
- 8°) the amount of increase of capital;
- 9°) the dates of commencement and close of subscription;
- 10°) the full names or company name, the address of registered office of the depositary;
- 11°) the categories of shares issued and their characteristics;
- 12°) the nominal value of the shares to be subscribed for in cash and, where necessary, the amount of the issue premium;
- 13°) the amount immediately due per share subscribed;
- 14°) the existence for the benefit of shareholders of the pre-emptive right of subscription to new shares as well as the conditions for exercising the said right;
- 15°) the special benefits stipulated by the Articles of Association in favour of any person;
- 16°) as the case may be, the statutory clauses restricting the free transfer of shares;
- 17°) the provisions relating to the sharing of profits, the building up of reserves and the sharing of bonus after liquidation;
- 18°) the unredeemed amount of the other bonds issued before and the securities covering them;
- 19°) the amount at the time of issue of the bond issues secured by the company and, where appropriate, the secured fraction of the said issues;
- 20°) where necessary, a summary description, assessment and mode of remuneration of non-cash contributions within the increase of capital, with an indication of the provisional nature of the assessment and mode of remuneration.

#### **ARTICLE 834**

A copy of the last balance-sheet, certified true by the legal representative of the company, shall be published in the annex to the prospectus referred to in Article 833 of this Uniform Act. Where the last balance-sheet has been published in a newspaper empowered to publish legal notices, a copy of the said balance-sheet may be replaced with an indication of the reference to the previous publication. Where a balance-sheet has not yet been drawn up, the prospectus shall so state.

#### **ARTICLE 835**

The circulars informing the public about the issue of shares shall reproduce the details of the prospectus referred to in Article 833 of this Uniform Act and shall contain a statement that the said prospectus has been published in newspapers empowered to publish legal notices alongside the reference number of the newspaper in which it was published.

The notices and posters in the newspapers shall reproduce the same information or at least an extract from such information with reference to the prospectus and an indication of the newspapers in which it was published.

#### **ARTICLE 836**

An increase of capital by public call which takes place less than two years after the formation of a company without such public call shall be preceded, under the conditions laid down in

Article 619 et seq. of this Uniform Act, by an audit of the assets and liabilities and, where necessary, of the special benefits granted.

#### **ARTICLE 837**

A public call without pre-emptive right of subscription to new shares which confer on their holders the same rights as old shares shall be subject to the following conditions:

- 1°) the call shall be realized within a period of three years from the date of the meeting which authorized it;
- 2°) for companies whose shares are listed on the stock exchange, the call price shall be at least equal to the average price recorded for those shares for twenty consecutive days chosen from the forty that precede the day call begins, after adjusting the average to take into account the difference in the date of enjoyment;
- 3°) for companies other than those referred to in paragraph (2) of this article, the issue price shall, at the company's choice, with account being taken of the difference in the date of enjoyment, be at least equal to the part of stockholders' equity per share as deduced from the last balance-sheet approved on the date of issue, or at a price fixed by an expert designated by the competent court giving a summary judgment.

#### **ARTICLE 838**

A public call without pre-emptive right of subscription to new shares which do not confer on their holders the same rights as old shares shall be subject to the following conditions:

- 1°) the call shall be realized within a period of two years from the date of the general meeting which authorized it;
- 2°) the issue price or conditions for fixing such price shall be determined by the extraordinary general meeting upon the report of the board of directors and the special report of the auditor.

Where the issue is not realized on the date of the annual general meeting following the decision, an extraordinary general meeting shall decide, upon the report of the board of directors and the special report of the auditors, on the maintenance or adjustment of the issue price or on the conditions for determining such price, failing which, the decision of the first meeting shall lapse.

#### **ARTICLE 839**

The general meeting which decides on the increase of capital may, in the interest of one or more persons designated by name or not, cancel the pre-emptive right of subscription.

Beneficiaries of this provision may not, under penalty of the decision being declared void, take part in the vote. The required quorum and majority shall be calculated after deducting the shares they own.

The issue price or the conditions for fixing such price shall be determined by the extraordinary general meeting upon the report of the board of directors and the auditor.

#### **ARTICLE 840**

An increase of capital shall be deemed to have been carried out where one or more credit establishments, within the meaning of the law regulating banking activities, irrevocably

guarantee its successful end. Payment of the paid-up fraction of the nominal value and of the totality of the issue premiums shall take place no later than the thirty-fifth day following the expiry of the time limit for subscription.

#### **Section 4** **Investment of bonds**

##### **ARTICLE 841**

Where an investment of bonds is carried out by public call for capital in one or more State Parties, the issuing company shall fulfil in the State Party before the opening of subscription and prior to any other publicity measures, the formalities specified in Articles 842 to 844 of this Uniform Act.

##### **ARTICLE 842**

The company shall publish in newspapers empowered to publish legal notices a prospectus containing the following information:

- 1°) the name of the company followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the address of the registered office;
- 4°) the amount of the registered capital;
- 5°) the company's registration number in the Trade and Personal Property Rights Register;
- 6°) a summary of the company's objects;
- 7°) the normal expiry date of the company;
- 8°) the unredeemed amount of bonds issued earlier and the securities attached to them;
- 9°) the amount during the issue, of the bond issues secured by the company and, where necessary, the guaranteed fraction of such issues;
- 10°) the amount of the issue;
- 11°) the nominal value of the bonds to be issued;
- 12°) the rate and mode of calculation of the interest and other proceeds, as well as the method of payment;
- 13°) the period and conditions of reimbursement as well as the conditions of eventual redemption of the bonds;
- 14°) the securities provided, where necessary, for the bonds.

The prospectus shall contain the company signature.

##### **ARTICLE 843**

The following shall be annexed to the prospectus referred to in Article 842 of this Uniform Act:

- 1°) a copy of the last balance-sheet approved by the general meeting of shareholders, certified by the statutory representative of the company ;

- 2°) where the balance-sheet was closed on a date more than ten months before the start of issue, a statement of the company's assets and liabilities dating not more than ten months, drawn up under the responsibility of the board of directors or managers, as the case may be;
- 3°) information on the progress of the company's business since the beginning of the current fiscal year and, where appropriate, on the preceding fiscal year where the ordinary general assembly required to adjudicate on the summary financial statements has not yet held.

Where no balance-sheet has yet been drawn up, the prospectus shall so state.

The annexures provided for in paragraphs (1) and (2) of this article may be replaced, depending on the case, by the reference to the publication in newspapers empowered to publish legal notices of the last balance-sheet or the interim financial statement of the balance-sheet drawn up on a date not more than ten months prior to the date of issue, where the balance-sheet or statement has already been published.

#### **ARTICLE 844**

The circulars informing the public about the issue of bonds shall reproduce the information in the prospectus referred to in Article 842 of the Uniform Act, indicating the issue price and containing a statement about the publication of the said prospectus in a newspaper empowered to publish legal notices, with reference to the number of the newspapers in which the prospectus was published.

The posters and notices in newspapers shall reproduce the same information or at least an extract from the said information with reference to the prospectus and an indication of the numbers of the newspapers in which it was published.

### **Section 5 Bondholders' meetings**

#### **ARTICLE 845**

Before the session of the meeting of bondholders, the notices convening the bondholders published in newspapers empowered to publish legal notices of the State Party of the registered office and, where necessary, of the other State Parties where a public call is made shall contain:

- 1°) the company's name followed, where necessary, by its acronym;
- 2°) the form of the company;
- 3°) the amount of the company's capital;
- 4°) the address of the registered office;
- 5°) the registration number of the company in the Trade and Personal Property Rights Register;
- 6°) the agenda of the meeting;
- 7°) the day, time and venue of the meeting;
- 8°) where necessary, the place or places where the bonds shall be submitted in order to obtain the right to take part in the meeting;
- 9°) an indication of the loan subscribed to by the bondholders whose group is convened for the meeting;

- 10°) the name and address of the person who took the initiative to convene the meeting and the capacity in which he acted;
- 11°) where appropriate, the date of the court decision designating the representative responsible for convening the meeting.

## **Section 6**

### **Publicity**

#### **ARTICLE 846**

The provisions of this section shall apply to companies whose shares are all or partially listed on the stock exchange of one or more State Parties.

#### Sub-section 1

#### Annual publicity

#### **ARTICLE 847**

The companies whose shares are listed on the stock exchange shall publish in a newspaper empowered to publish legal notices within a period of four months from the close of the fiscal year and no later than fifteen days before the date of the annual general meeting of shareholders, under a heading clearly showing that the publication concerns drafts not verified by the auditors:

- 1°) the summary financial statements (balance-sheet, profit and loss account, table of income and expenditure and annexed statement);
- 2°) the proposed allocation of income;
- 3°) for companies with subsidiaries or holdings, the consolidated summary financial statements, if available.

#### **ARTICLE 848**

Companies whose shares are listed on the stock exchange shall publish in a newspaper empowered to publish legal notices within a period of forty-five days following the approval of the summary financial statements by the ordinary general meeting of shareholders the following documents:

- 1°) the approved summary financial statements, containing the certificate of the auditors;
- 2°) the decision on the allocation of income;
- 3°) the consolidated summary financial statements containing the attestation of the auditors.

However, where these are exactly identical to those published in pursuance of Article 765 of this Uniform Act, only one notice making reference to the first publication and bearing the attestation of the auditor shall be published in a newspaper empowered to publish legal notices.

#### Sub-section 2

#### Publicity at the end of the first semester

#### **ARTICLE 849**

Companies whose shares are listed on the stock exchange of one or more State Parties shall, within a period of four months following the end of the first half of the fiscal year, publish in a

newspaper empowered to publish legal notices of the State Parties a table of trading operations and the profit and loss situation as well as a semester report of its trading operations accompanied by an attestation from the auditor on the authenticity of the information provided.

#### **ARTICLE 850**

The statement of operations and income shall show the pretax net amount of the turnover and income from the ordinary operations of the company. Each item on the statement shall show the figure of the corresponding item during the previous fiscal year and the first half of that year.

#### **ARTICLE 851**

The half-yearly progress report of its activity shall analyse the data on the turnover and the income of the first half of the year. It shall also describe the company's operations during this period and provide a forecast of the development of the operations up to the close of the fiscal year. Any important events which happened during the just-ended half year shall also be included in the report.

#### **ARTICLE 852**

Companies drawing up consolidated summary financial statements shall be required to publish their tables of trading operations and balance sheet and their half-yearly reports in consolidated form accompanied by an attestation from the auditor on the authenticity of the information provided.

#### Sub-section 3

#### Publicity - Subsidiaries of listed companies

#### **ARTICLE 853**

Companies not listed on the stock exchange, half of whose shares are held by one or more listed companies having:

- 1°) a balance-sheet above two hundred million (200 000 000) CFA francs; or
- 2°) a share portfolio with an inventory value or stock exchange value exceeding eighty million (80 000 000) CFA francs,

shall, within a period of forty-five days following the approval of the summary financial statements by the meeting of shareholders, publish in a newspaper empowered to publish legal notices the documents, approved summary financial statements containing the attestation of the auditors, and the decision to allocate the income.

**BOOK 5**  
**THE JOINT VENTURE**

**TITLE 1**  
**GENERAL PROVISIONS**

**ARTICLE 854**

A joint venture shall be an entity whose partners agree not to register it in the Trade and Personal Property Rights Register and not to give it a corporate personality. It shall not be subject to publicity.

The existence of a joint venture may be proved by any means.

**ARTICLE 855**

The partners shall freely agree on the object, duration, conditions of functioning, rights of partners and termination of the joint venture, subject to there being no derogation from the mandatory rules of the provisions common to companies, with the exception of those relating to corporate personality.

**TITLE 2**  
**RELATIONS AMONG PARTNERS**

**ARTICLE 856**

Unless a different organization has been provided for, the relations between partners shall be governed by the provisions applicable to private companies.

**ARTICLE 857**

The assets necessary for the operation of the joint venture shall be placed at the disposal of the manager of the joint venture. However, each partner shall remain owner of the assets he places at the disposal of the joint venture.

**ARTICLE 858**

The partners may agree to put certain assets in joint ownership or that one of the partners, in relation to third parties, shall be owner of all or part of the assets he acquires with a view to the realization of the object of the joint venture.

**ARTICLE 859**

The assets acquired by application of funds or re-investment of joint earnings shall be deemed to be joint holdings throughout the duration of the joint venture, as well as assets which were joint before being placed at its disposal.

The same shall apply to assets which the partners may have agreed to put into joint ownership.

#### **ARTICLE 860**

Unless otherwise provided for by the articles, no partner may request the sharing of joint assets as long as the joint venture is a going concern.

### **TITLE 3 RELATIONS WITH THIRD PARTIES**

#### **ARTICLE 861**

Each partner shall contract in his personal name and shall be solely liable to third parties.

However, where the partners act expressly in their capacity as partners towards third parties, each of those who acted shall be liable for the commitments of the others.

The liability for any bonds subscribed to under these conditions shall be unlimited, joint and several.

The same shall apply to a partner who, by interference, has made the contracting partner believe that he intended to commit himself on the partner's behalf and it is proved that he reaped profit from the enterprise.

### **TITLE 4 WINDING UP OF THE JOINT VENTURE**

#### **ARTICLE 862**

A joint venture shall be dissolved by the same events which terminate a private company.

The partners may, however, agree in the Articles of Association or in a subsequent deed that the joint venture shall continue in business in spite of such events.

#### **ARTICLE 863**

Where the joint venture is of an unspecified duration, it may be wound up at any time after notification, by hand-delivered letter against a receipt or by registered letter with acknowledgement of receipt, from one partner to all the others, provided that the notification shall be in good faith and not at the wrong moment.

## **BOOK 6 DE FACTO PARTNERSHIP**

#### **ARTICLE 864**

A de facto partnership shall exist where two or more natural or corporate persons act as partners without having formed between themselves one of the companies recognized by this Uniform Act.

#### **ARTICLE 865**

A de facto partnership shall exist where two or more natural or corporate persons form between themselves a company recognized by this Uniform Act but have not fulfilled the constituent legal formalities, or have formed between them a company not recognized by this Uniform Act.

#### **ARTICLE 866**

Any interested party may apply to the competent court of the principal place of activity of a de facto partnership between two or more persons for the recognition of the partnership whose identity or company name shall produce give.

#### **ARTICLE 867**

The existence of a de facto partnership shall be proved by any means.

#### **ARTICLE 868**

Where the existence of a de facto partnership is recognized by the judge, the rules governing private companies shall apply to the partners.

## **BOOK 7** **THE ECONOMIC INTEREST GROUP**

### **TITLE 1** **GENERAL PROVISIONS**

#### **ARTICLE 869**

An economic interest group shall be one which has the exclusive object of putting in place for a specified duration all the means necessary to facilitate or develop the economic activity of its members and to improve or increase income from the said activity.

Its activity shall mainly be connected with the economic activity of its members and shall not be of an auxiliary nature in relation thereto.

#### **ARTICLE 870**

The economic interest group shall not by itself give rise to the realization or sharing of profits.

It may be formed without capital.

#### **ARTICLE 871**

Two or more natural or corporate persons, including persons exercising a liberal profession governed by a legislative or statutory instrument or whose title is protected, may form between them an economic interest group.

The rights of members of the group may not be represented by negotiable instruments. Any clause to the contrary shall be disregarded.

#### **ARTICLE 872**

An economic interest group shall have corporate personality and full capacity with effect from registration in the Trade and Personal Property Rights Register.

#### **ARTICLE 873**

The liability of members of the economic interest group for the debts of the group shall be covered by their personal assets. However, a new member may, where the contract permits, be exempted from the debts contracted before he joined the group. The exemption decision shall be published.

The members of the economic interest group shall be jointly and severally liable for payment of the debts of the group, unless otherwise agreed with a contracting third party.

#### **ARTICLE 874**

The creditors of the group may not take action for the settlement of debts against any one partner except after unsuccessfully notifying the group by an extra-judicial act of the said debts.

#### **ARTICLE 875**

An economic interest group may issue bonds under the general conditions relating to the issue of bonds where the group exclusively comprises companies authorized to issue bonds.

#### **ARTICLE 876**

Subject to the provisions of this Uniform Act, a contract shall determine the organization of the economic interest group and shall freely lay down the contribution of each member to the debts of the group. Failing this, each member shall bear an equal portion of the debt.

During its existence, the group may accept new members under the conditions laid down by contract.

Any member may withdraw from the group under the conditions laid down in the contract, subject to having fulfilled his obligations.

The contract shall be in writing and shall be subject to the same conditions of publicity as the companies concerned by this Uniform Act.

It shall in particular contain the following details:

- 1°) the name of the economic interest group;
- 2°) the name, trade name or corporate name, legal form, address or head office and, as the case may be, the registration number in the Trade and Personal Property Rights Register of each member of the economic interest group ;
- 3°) the duration of the economic interest group;
- 4°) the object of the economic interest group;
- 5°) the address of the registered office of the economic interest group.

Any amendments to the contract shall be drawn up and published under the same conditions as the contract itself. They shall be binding on third parties from the date they are published.

The deeds and documents emanating from the economic interest group intended for third parties, more particularly, invoices, various notices and publications shall clearly show the name of the group, followed by the words “ economic interest group “ or the acronym “E.I.G.”

Any violation of the provisions of the above paragraph shall be punished as a simple offence.

#### **ARTICLE 877**

The general meeting of members of the economic interest group shall be competent to take any decision, including premature winding up or extension of the existence of the group under the conditions laid down in the contract.

The contract may provide that all or some resolutions shall be taken under the conditions of quorum and majority it shall determine. Where the contract is silent, decisions shall be taken unanimously.

The contract may also allocate to each member of the economic interest group a number of votes different from that allocated to others. Failing this, each member shall have one vote.

#### **ARTICLE 878**

Meetings shall hold as of right at the request of at least one quarter of the members of the economic interest group.

## **TITLE 2 ADMINISTRATION**

#### **ARTICLE 879**

The economic interest group shall be administered by one or more natural or corporate persons provided that in the case of a corporate person, such corporate person shall designate a permanent representative, who shall incur the same civil and criminal liabilities as if he were a director in his own name.

Subject to the above, the contract or, failing that, the general meeting of members of the economic interest group shall freely organize the administration of the group and appoint the directors whose duties, powers and conditions of dismissal it shall determine.

In relations with third parties, a director shall commit the economic interest group for any act connected with the object of the group. No limitation of powers may be invoked against third parties.

## **TITLE 3 AUDIT**

#### **ARTICLE 880**

The audit of the management and of the summary financial statements shall be carried out under the conditions laid down by the contract.

However, where an economic interest group issues bonds under the conditions provided for in Article 874 of this Uniform Act, the management audit shall be carried out by one or more natural persons appointed by the meeting.

Their term of office and powers shall be determined by the contract.

The audit of the summary financial statements shall be conducted by one or more auditors chosen from the official list of auditors and appointed by the meeting for a term of six fiscal years.

Subject to the regulations peculiar to the economic interest group, the auditor shall have the same status, duties and responsibilities as the auditor of a public limited company.

#### **ARTICLE 881**

In case of issue of bonds by the economic interest group, the punishment for offences relating to the obligations provided for in this Uniform Act shall be applicable to the executives of the economic interest group as well as to natural persons managing the member companies or permanent representatives of the corporate persons managing these economic interest groups.

## **TITLE 4 TRANSFORMATION**

#### **ARTICLE 882**

Any company or association whose object corresponds to the definition of the economic interest group may be transformed into an economic interest group. It shall not be necessary to wind up the company or to set up a new corporate person.

An economic interest group may be transformed into a private company without having to wind up the group or to set up a new corporate person.

## **TITLE 5 DISSOLUTION**

#### **ARTICLE 883**

The economic interest group shall be dissolved:

- 1°) at the end of the term;
- 2°) by the realization or extinction of its object;
- 3°) by decision of its members under the conditions laid down in Article 877 of this Uniform Act;
- 4°) by a reasoned court decision;
- 5°) by death of a natural person or dissolution of a corporate person member of the economic interest group, unless otherwise provided for in the contract.

#### **ARTICLE 884**

Where one of the members becomes incapacitated, personally bankrupt or is banned from

directing, managing, administering or controlling an enterprise, whatever its form or object, the economic interest group shall be dissolved, unless its continuation is provided for in the contract or the other members so decide unanimously.

#### **ARTICLE 885**

The dissolution of the economic interest group shall lead to its liquidation. The personality of the group shall subsist for the purposes of the liquidation.

The liquidation shall be carried out in accordance with the provisions of the contract. Failing this, a liquidator shall be appointed by the general meeting of the members of the economic interest group or, where the meeting is unable to make such appointment, by decision of the president of the competent court.

After settlement of the debts, the surplus of assets shall be shared among the members under the conditions laid down by the contract. Failing this, the sharing shall be done in equal parts.

## **PART 3 PENAL PROVISIONS**

### **TITLE 1 OFFENCES RELATING TO THE FORMATION OF COMPANIES**

#### **ARTICLE 886**

A criminal offence shall be committed where the promoters, Chairperson Managing director, General Manager, Managing Director or assistant managing director of a public limited company issue shares before registration of the company or at any time whatsoever where registration is obtained by fraud or the company is irregularly formed.

#### **ARTICLE 887**

Whoever

- 1°) knowingly, by the establishment of the notarial statement of subscription and payment or of the depositary's certificate, certifies as true and authentic subscriptions he knows are fictitious or declares that the funds which have not been placed definitely at the disposal of the company have been effectively paid ; or
- 2°) hands over to the notary or to the depositary a list of shareholders or statements of subscription and payment bearing fictitious subscriptions or payment of funds which have not been definitely made available to the company ; or
- 3°) knowingly, by fictitious subscriptions or payments or by publication of non-existent subscriptions or payments or by any other false acts obtains or attempts to obtain subscriptions or payments; or
- 4°) knowingly, in order to obtain subscriptions or payments, publishes the names of persons falsely designated as being or expected to be linked to the company in any capacity

whatsoever; fraudulently, causes a non-cash contribution to be given an assessment above its real value shall be criminally liable.

#### **ARTICLE 888**

Whoever knowingly carries out any deal in respect of:

- 1°) registered shares which have not remained in the registered form until they were fully paid up; or
- 2°) non-cash shares before the expiry of the time limit during which they are not negotiable; or
- 3°) shares issued for cash for which a quarter of the nominal value has not been paid up shall be criminally liable.

### **TITLE 2**

## **OFFENCES RELATING TO THE MANAGEMENT AND ADMINISTRATION OF COMPANIES**

#### **ARTICLE 889**

Any company executives, who, in the absence of an inventory or by means of a fraudulent inventory, knowingly share fictitious dividends among shareholders or partners of the company, shall be criminally liable.

#### **ARTICLE 890**

Any company executives who, knowingly, even without any sharing of dividends, publish or present to the shareholders or partners, with a view to hiding the true situation of the company, summary financial statements not showing, for each fiscal year, an accurate picture of the transactions of the year, of the financial situation and of the situation of the estate of the company at the expiry of the said period, shall be criminally liable.

#### **ARTICLE 891**

Any manager of a private limited company, directors, Chairperson Managing Director, General Manager, Managing Director or assistant managing director who, in bad faith, use the assets or credit of the company in a way they know is against the interests of the company, for personal, material or moral ends, or in favour of another corporate body in which they have an interest directly or indirectly, shall be criminally liable.

### **TITLE 3**

## **OFFENCES RELATING TO GENERAL MEETINGS**

#### **ARTICLE 892**

Whoever, knowingly, prevents a shareholder or a partner from participating in a general meeting shall be criminally liable.

## TITLE 4

# OFFENCES RELATING TO VARIATION OF THE CAPITAL OF PUBLIC LIMITED COMPANIES

### CHAPTER 1

#### INCREASE OF CAPITAL

#### ARTICLE 893

Any directors, chairperson of the board of directors, Chairperson Managing Director, General Manager, Managing Director or assistant managing director of a public limited company who, on the occasion of an increase of capital, issue shares or share coupons:

- 1°) before the establishment of the depositary's certificate; or
- 2°) without due compliance with the preliminary formalities for an increase of capital; or
- 3°) without the previously subscribed capital of the company having been fully paid up; or
- 4°) without the new non-cash shares having been fully paid-up before the registration of the amendment in the Trade and Personal Property Rights Register; or
- 5°) without one quarter of the nominal value of the new shares having been paid up at the time of subscription; or
- 6°) where necessary, without the totality of the issue premium having been fully paid up at the time of subscription, shall be criminally liable.

Penalties shall also be applied against persons referred to in this article who fail to maintain the shares issued for cash in registered form until they are fully paid up.

#### ARTICLE 894

Any company executive who, at the time of an increase of capital

- 1°) fails to enable shareholders to benefit, proportionately to the amount of their shares, from the pre-emptive right of subscription for shares issued for cash where such right has not been cancelled by the general meeting and where the shareholders have not renounced it ; or
- 2°) fails to reserve a deadline of at least twenty days for shareholders from the opening of subscription, unless such deadline has expired prematurely; or
- 3°) fails to allot the shares which become available because of insufficient number of subscriptions as of right, to shareholders who have subscribed for excess shares which outnumber the shares they subscribed for as of right, proportionately to the rights which they enjoy ; or
- 4°) fails to reserve the rights of holders of subscription certificates, shall be criminally liable.

#### ARTICLE 895

Any company executive who, knowingly, gives or confirms incorrect information in the reports presented to the general meeting convened to decide on the cancellation of the pre-emptive right of subscription, shall be criminally liable.

## CHAPTER 2 REDUCTION OF CAPITAL

### ARTICLE 896

Any director, Chairperson Managing Director, General Manager, Managing Director or assistant managing director who, knowingly, carries out a reduction of capital:

1°) without respecting the principle of equality of shareholders; or

2°) without communicating the proposed reduction of capital to the auditors forty-five days before the holding of the general meeting convened to decide on the reduction of capital, shall be criminally liable.

IV

## TITLE 5 OFFENCES RELATING TO THE AUDIT OF COMPANIES

### ARTICLE 897

Any company executive who fails to have auditors appointed for the company or fails to invite them to the general meetings of shareholders, shall be criminally liable.

### ARTICLE 898

Whoever, in his own name or as a member of an auditors company, knowingly accepts, performs or maintains the duties of auditor, notwithstanding legal incompatibilities, shall be criminally liable.

### ARTICLE 899

Any auditor who, either in his own name or as a member of a firm of auditors, knowingly gives or confirms false information on the situation of the company or fails to disclose to the Legal Department any offences which may have come to his knowledge, shall be criminally liable.

### ARTICLE 900

Any company executive or any person in the service of a company who knowingly, obstructs verifications or audit by auditors or refuses to immediately communicate to them on demand, all the documents needed for the performance of their duty, in particular contracts, books, accounting documents and minutes registers, shall be criminally liable.

## TITLE 6 OFFENCES RELATING TO THE DISSOLUTION OF COMPANIES

### ARTICLE 901

Any company executive who, knowingly, fails, where the shareholders' equity of the company falls below half the registered capital due to losses recorded in the summary financial statements to

1°) have an extraordinary general meeting convened, within a period of four months following the approval of the summary financial statements in which the losses appear to order, where necessary, the premature dissolution of the company; or

2°) file at the registry of the court responsible for commercial matters, register in the Trade and Personal Property Rights Register and publish in a newspaper empowered to publish legal notices the premature dissolution of the company shall be criminally liable.

## **TITLE 7**

### **OFFENCES RELATING TO THE LIQUIDATION OF COMPANIES**

IV

#### **ARTICLE 902**

Any liquidator of a company who, knowingly

1°) fails within a time limit of one month from the date of his appointment, to publish in a newspaper empowered to publish legal notices of the place of the registered office of the company, the document appointing him liquidator and to enter the decisions pronouncing the dissolution of the company in the Trade and Personal Property Rights Register ; or

2°) fails to convene the members of the company at the end of liquidation to pass a resolution on the final liquidation account, the final discharge of his management and mandate and to ascertain the end of the liquidation exercise; or

3°) fails, in the case provided for in Article 219 of this Uniform Act, to deposit final accounts at the registry of the court responsible for commercial matters of the place of the registered office, or to apply to the court for the approval of the accounts, shall be criminally liable.

#### **ARTICLE 903**

Any liquidator who, where liquidation is ordered by a court, knowingly

1°) fails to present, within six months of his appointment, a report on the situation of the assets and liabilities of the company under liquidation and on the pursuit of liquidation transactions, or to apply for the authorizations needed to end them ; or

2°) fails to establish, within three months following the close of each fiscal year, the summary financial statements upon the inventory and a written report in which he gives account of the liquidation transactions during the just-ended fiscal year; or

3°) fails to enable the members of the company to exercise, during the liquidation period, their right to receive the company's documents under the same conditions as before; or

4°) fails to convene the members of the company, at least once a year, to give them an account of the summary financial statements in the case where the company continues in business; or

5°) fails to deposit in a bank account opened in the name of the company under liquidation, within a time limit of fifteen days following the decision to share the sums allocated to the members and the creditors of the company ; or

- 6°) fails to deposit in a deposit account opened in the Treasury, within a time limit of one year from the end of the liquidation, the sums allocated to the creditors or members of the company but not claimed by them shall be criminally liable.

#### **ARTICLE 904**

Any liquidator who, in bad faith

- 1°) uses the assets or credit of a company under liquidation in a way he knows is contrary to the interests of the company, for personal ends or in the interest of another corporate person in which he has an interest directly or indirectly ; or
- 2°) transfers all or part of the assets of a company under liquidation to a person who has had in the company the status of partner in name, active partner, manager, member of the board of directors, managing director or auditor, without having obtained the unanimous consent of the partners or failing this, the authorization of the competent court shall be criminally liable.

### **TITLE 8**

#### **OFFENCES RELATING TO PUBLIC CALL FOR CAPITAL**

#### **ARTICLE 905**

Any chairperson, director or General Manager of a company who issues transferable securities offered to the public:

- 1°) without publishing a notice in a newspaper empowered to publish legal notices prior to any publication measure; or
- 2°) without a prospectus and circular reproducing the information in the notice referred to in paragraph (1) of this article and containing a statement of the publication of such notice in a newspaper empowered to publish legal notices with reference to the number of the newspapers in which it was published ; or
- 3°) without posters and notices in newspapers reproducing the same information in or at the very least an extract of the information with reference to the said notice and indications of the number of the newspaper empowered to publish legal notices in which it was published ; or
- 4°) without posters, prospectus and circular stating the signatory or the representative of the company making the offer and specifying whether the securities are quoted or not and, where quoted, on which stock exchange, shall be criminally liable.

The same penalty shall be applicable to any person who acts as an accessory in the transfer of transferable securities in violation of the provisions of this article.

## **PART 4**

# **FINAL AND TRANSITIONAL PROVISIONS**

### **BOOK 1**

### **MISCELLANEOUS PROVISIONS**

#### **ARTICLE 906**

The CFA franc shall, within the meaning of this Uniform Act, be the basic currency of OHADA. The exchange rate in the national currency of State Parties which do not have the CFA franc as their monetary unit, shall initially be the one determined by application of the parity in force between the CFA franc and the national currency of the said State Parties on the date of adoption of this Uniform Act. The exchange rate shall be rounded up to the next higher unit where the conversion shows a decimal number.

The Council of Ministers of the State Parties to the Treaty on the Harmonization of Business Law in Africa, on the proposal of the Finance Ministers of the State Parties, shall, as and when necessary, examine and, where necessary, revise the amounts in this Uniform Act expressed in CFA francs, depending on the economic and monetary developments in the said State Parties. The exchange rate in the national currency shall, where necessary, be that determined by application of the parity in force between the CFA franc and the national currency of the said State Parties on the day of adoption of the revised amounts in this Uniform Act.

### **BOOK 2**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **ARTICLE 907**

This Uniform Act shall be applicable to companies and economic interest groups which shall be formed on the territory of one of the State Parties from the date of its entry into force in the said State Party.

However, any formalities towards the formation of a company accomplished prior to the entry into force of this Uniform Act shall not be repeated.

#### **ARTICLE 908**

Companies and economic interest groups formed prior to the entry into force of this Uniform Act shall be subject to its provisions. They shall be required to modify their Articles of Association in order to comply with the provisions of this Uniform Act within a period of two years following its entry into force.

Partnerships limited by shares existing regularly in one of the State Parties shall be transformed, within the same time limit of two years, into public limited companies, under penalty of being dissolved as of right on the expiry of the said time limit.

#### **ARTICLE 909**

The purpose of such modification shall be to repeal, amend and replace, where necessary, the provisions of the Articles of Association contrary to the mandatory provisions of this Uniform Act and to include therein any additions warranted by this Uniform Act.

#### **ARTICLE 910**

Modification may be carried out through amendment of the old Articles of Association or through adoption of redrafted Articles of Association.

Modification may be decided upon by shareholders or partners during a regular meeting, notwithstanding any legal or statutory provisions to the contrary, provided there shall be amendment in substance of only those clauses which are incompatible with the new law.

#### **ARTICLE 911**

Transformation of the company or an increase of its capital by any means other than incorporation of reserves, profits or agio on issue may only be carried out under the conditions normally required for the amendment of the Articles of Association.

#### **ARTICLE 912**

Where, for any reason whatsoever, the meeting of shareholders or of partners has been unable to reach a valid decision, the proposed harmonization of the articles shall be submitted for the approval of the president of the competent court on the application of the statutory representatives of the company.

#### **ARTICLE 913**

Where harmonization is unnecessary, the fact shall be duly noted by the meeting of shareholders or of partners whose decision shall be subject to the same publication as for the decision to amend the Articles of Association.

#### **ARTICLE 914**

Where private limited companies and public limited companies fail to increase their registered capital by at least the minimum amount stipulated respectively in Articles 311 and 387 of this Uniform Act, they shall, where their capital is below the said amounts, pronounce, before the expiry of the time limit specified in Article 908 of this Uniform Act, their dissolution or be transformed into another form of company for which this Uniform Act does not require minimum capital above the existing capital.

Companies which do not comply with the provisions of the preceding paragraph shall be dissolved as of right upon the expiry of the stipulated time limit.

#### **ARTICLE 915**

Where the Articles of Association of a company are not harmonized with the provisions of this Uniform Act within a period of two years from the date of entry into force, the clauses of the articles contrary to these provisions shall be disregarded.

#### **ARTICLE 916**

This Uniform Act shall not repeal laws applicable to companies subject to a special regulations.

The clauses of the articles of such companies which conform to the provisions repealed by this Uniform Act but which are contrary to the provisions of this Uniform Act and which are not provided for by the special regulations of the said companies, shall be harmonized with the provisions of this Uniform Act under the conditions laid down in Article 908 of this Uniform Act.

#### **ARTICLE 917**

This Uniform Act shall not derogate from the laws relating to the minimum amount of company shares issued by the companies formed prior to its entry into force.

#### **ARTICLE 918**

Partnership shares or promoters' shares issued before the entry into force of this Uniform Act shall remain governed by the instruments concerning them.

#### **ARTICLE 919**

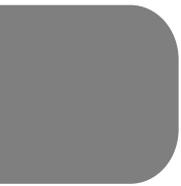
All laws contrary to the provisions of this Uniform Act shall be repealed, subject to their transitional application for two years from the date of entry into force of this Uniform Act to the companies which have not harmonized their Articles of Association with the provisions of this Uniform Act.

However, notwithstanding the provisions of Article 10 of this Uniform Act, each State Party may, during a transitional period of two years from the date of entry into force of this Uniform Act, maintain its national law applicable for the procedure of establishing the Articles of Association.

#### **ARTICLE 920**

After deliberation, the Council of Ministers of the State Parties present and voting, in accordance with the provisions of the Treaty of 17 October 1993 on the Organization for the Harmonization of Business Law in Africa, hereby adopts unanimously this Uniform Act.

This Uniform Act shall be published in the Official Gazette of OHADA and of the Contracting States. It shall enter into force on 1 January 1998.



# **UNIFORM ACT ORGANISING SECURITIES**



**ADOPTED ON 15 DECEMBER 2010 AT LOMÉ**

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

Mindful of the Treaty on the Harmonization of Business Law in Africa signed at Port Louis on October 17, 1993, as amended in Quebec on October 17, 2008 particularly Articles 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;

Mindful of the report of the OHADA Permanent Secretariat and the observations of the State Parties;

Mindful of the opinion of the Common Court of Justice and Arbitration reference n°002/2010 dated 3 August 2010;

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

V



# PRELIMINARY TITLE

## DEFINITION AND SCOPE OF APPLICATION OF SECURITIES – SECURITIES AGENTS

### CHAPTER 1

#### DEFINITIONS AND SCOPE OF APPLICATION OF SECURITIES

##### ARTICLE. 1

A security shall be the allocation of an asset or property in favour of a creditor to guarantee the discharge of an obligation or obligations, whatever their legal nature, provided that such obligation or obligations is existing, prospective, ascertained or ascertainable, conditional or unconditional and of a fixed or changing amount.

##### ARTICLE 2

Except as otherwise provided for by this Act the securities concerned shall be accessory to the obligation whose discharge they guarantee.

##### ARTICLE. 3

By this Act, a debt shall be considered professional where it is contracted in the course of any professional activity or where it has a direct link to any one of the professional activities of the debtor even if such activity is not the debtor's principal activity.

##### ARTICLE. 4

By this Act, a personal security shall consist in the undertaking by an obligor to discharge an obligation in default of the principal debtor or at the earliest request of the obligee.

Except otherwise provided for by this Act, the only real securities validly constituted shall be those governed by this Act. These shall consist of, either the right of the creditor to insist on his preferential right of payment from the proceeds of sale of the secured property, or the right to freely dispose of same acquired by virtue of the security agreement.

Subject to the special provisions of this Uniform Act, real securities may be constituted by the debtor himself or by a third party to secure an obligation.

Securities in the domain of fluvial, maritime and air space law, legal securities other than those governed by this Uniform act, as well as securities to guarantee the execution of contracts existing exclusively between financial institutions may be regulated by specific legislation.

### CHAPTER 2

#### SECURITIES AGENT

##### ARTICLE 5

Any security or other guarantee to secure the discharge of an obligation may be made, registered, managed and executed by a financial institution or a national or foreign credit company acting in its own name and as surety agent appointed for that purpose by the creditor of the secured debt.

## ARTICLE 6

Under pain of nullity the deed appointing the surety agent shall include:

- 1°) the secured debt or debts, or where they are prospective, information to enable their identification such as details relating to the identity of the debtor, place of payment, the amount of the debt or its valuation and its maturity date;
- 2°) the identity of the creditor or creditors on the day the agent was appointed;
- 3°) the identity and head office of the agent;
- 4°) the duration of his mission, the scope of his powers of administration and degree of availability;
- 5°) the conditions under which the agent gives account of his mission to the creditor or creditors of the secured debt or debts.

## ARTICLE 7

Where the agent acts for the benefit of creditors of the secured debt or debts, he shall so expressly state and every registration of a security done in the course of his assignment shall make mention of his name and status as agent.

## ARTICLE 8

Except otherwise provided for and for everything relating to secured debts, the creditors shall be represented by the surety agent in their dealings with their debtors, sureties, as well as with all persons who have allocated or transferred property as security, and with any other third party.

Within the powers conferred by the creditors of the secured debt or debts, the agent may bring any action including court proceedings to defend the interests of the said creditors. The mere indication that he does so as an agent shall suffice.

## ARTICLE 9

Where the constitution or the realization of a security results in a transfer of the property to the surety agent, the property so transferred shall form part of the capital allocated for his mission and shall be kept separate from his personal estate. The same shall be for payments received by the agent in the course of his mission.

Subject to the eventual exercise of the creditor's right to pursue the debtor's property and, outside the cases of fraud, such property may be seized only by the holders of claims arising from the preservation and management of the said property including collective proceedings for the discharge of debts against the surety agent.

## ARTICLE 10

The deed appointing the agent may provide for the conditions under which the agent may employ a third party to accomplish, under his responsibility, his mission. In that case, the creditor may take action directly against such third party.

The said deed may equally provide for conditions under which the agent may be replaced where he neglects his mission or where he puts into jeopardy the interests entrusted in him, or again,

where collective proceedings have been instituted against him. In the absence of any contractual provisions to this effect, the creditor may, in the above-cited circumstances, pray the competent court to urgently appoint a temporary agent or have the agent replaced.

Where the agent is replaced either as a result of a contractual clause or by order of court, all the rights and all the shares he held on behalf of the creditor shall be transferred as of right and with no other formality to the new agent.

#### **ARTICLE 11**

In the absence of any contrary clause in the deed appointing him, the responsibility of the agent with regard to the creditors shall be considered as that of a paid agent.

## **TITLE 1 PERSONAL SECURITIES**

#### **ARTICLE 12**

Personal securities governed by this Uniform Act shall be the surety-bond and the autonomous guarantee.

### **CHAPTER 1 SURETY-BOND**

#### **ARTICLE 13**

A surety-bond shall be a contract whereby the surety undertakes, and the creditor accepts, to discharge an existing or future debt contracted by the debtor in the event of the latter failing to do so.

This undertaking may be in the absence of any order by the debtor.

#### **Section 1 Formation of a Surety-bond**

#### **ARTICLE 14**

A surety-bond shall not be presumed no matter the nature of the secured debt. It shall be proved by a deed signed by the surety and the creditor. Mention shall also be made in the deed, in the surety's handwriting, and in words and figures of the maximum secured amount covering the principal, interest and other accessories. In case of disparity the amount in words shall be deemed the secured sum.

The surety who does not know or cannot write shall be assisted by two witnesses who shall attest in the deed to his identity and presence and to the fact that the nature and the effects of the deed were explained to him. The presence of attesting witnesses shall exempt the surety from complying with the formalities provided for in the preceding paragraph.

The provisions in this article shall equally apply to surety-bonds required by the laws of each State Party or by a court decision.

## ARTICLE 15

Where a debtor either by agreement or by the laws of each State Party or by a court decision shall provide a surety, the said surety shall be resident or choose an address within the area of jurisdiction of the court of the place where he shall be needed unless the said requirement is waived by the creditor or the competent court.

The said surety shall show proof of solvency which shall be assessed taking into account all the elements of his estate.

The debtor who cannot find a surety may in replacement thereof provide real security of a value acceptable to the creditor.

## ARTICLE 16

Where the surety voluntarily accepted by the creditor or appointed by the court later becomes insolvent, the debtor shall provide another surety or allocate real property of the same value acceptable to the creditor.

The exception to this rule shall be where the creditor's acceptance of the main contract was conditioned on the debtor providing a particular surety.

## ARTICLE 17

There shall be no surety-bond unless the secured principal debt is valid. However, any person having full knowledge of the facts may stand surety for a person who lacks capacity. The ratification of a voidable debt by the debtor shall only be binding on the surety where he expressly waives his right to challenge same.

The surety may invoke the lack of authority of the representative to commit the principal indebted legal person if the principal debt is not properly constituted unless the indebted legal person has ratified the debt and the surety has expressly waived his right to challenge the said debt.

Where the responsibility of the surety is engaged under more exacting conditions than the principal debt the said responsibility shall be reduced to the amount of the debt. It shall also not exceed the amount owed by the principal debtor at the time proceedings are taken.

The principal debtor shall not increase the liability of the surety by any subsequent agreement.

## ARTICLE 18

Unless otherwise provided, the surety-bond shall cover, in addition to the principal debt and within the limits of the maximum amount secured, accessories and recovery charges incurred after the surety has been notified.

At the request of the surety, the deed constituting the principal debt shall be annexed to the surety bond.

The surety bond may equally, under less exacting conditions, be contracted for part of the debt only.

## ARTICLE 19

Unless otherwise provided, a general surety bond covering the debts of the principal debtor, in the form of a security for all liabilities, the debit balance of a current account or in any other form shall refer only to direct contractual debts. Under pain of nullity, it shall be made for a maximum amount including the principal debt, interest and other accessories which shall be freely determined by the parties.

The general surety bond may be renewed where the maximum amount is reached. The renewal shall be express. Any clause to the contrary shall be disregarded.

It may be revoked at any time by the surety before the maximum secured amount is reached. Any commitment of the debtor made before such revocation shall remain secured by the surety.

Unless otherwise provided, the general surety bond shall not secure the debts of the principal debtor contracted before the date of the surety bond.

### Section 2 Terms and Conditions of a Surety-Bond

## ARTICLE 20

The surety-bond shall be deemed joint and several.

It shall be deemed single when so expressly provided by the laws of each State Party or by agreement between the parties.

## ARTICLE 21

The surety may himself have a counter surety duly named in the contract.

Unless otherwise stated, the liability of the counter surety or counter sureties shall not be joint and several.

## ARTICLE 22

The surety may secure his commitment by providing as security one or more of his assets.

The surety may also limit his commitment to the value in cash of the assets so provided as security.

### Section 3 Effects of the Surety bond

## ARTICLE 23

The surety shall only settle the debt where the principal debtor fails to do so.

The creditor may not commence any action against the surety unless the principal debtor fails to comply with a formal notice to pay.

The creditor shall give notice to the surety of any extension of time he grants the principal debtor to pay his debt. The surety may object to such extension and institute proceedings against the debtor to compel him to pay or provide security or protective measures

Notwithstanding any clause to the contrary, any decision to accelerate payment shall not automatically be binding on the surety who shall only be required to pay on the date fixed at the

time the security was given. However, the surety may lose this right where he, having been duly served, fails to discharge his obligation on the agreed date.

#### **ARTICLE 24**

In the month when the notice to pay is served on the principal debtor and he fails to comply, the creditor shall inform the surety of the default of the principal debtor stating the unpaid amount including the principal, interest and other accessories on the due date of payment.

Failing that, the surety shall not be liable for penalties or late payment interest accruing from the due date of payment to the date he was given notice of the default.

Any clause contrary to the provisions of this article shall be disregarded.

#### **ARTICLE 25**

The creditor shall within the month following the end of each semester of the calendar year as from the date of signature of the surety-bond communicate to the surety the account of the debts of the principal debtor giving details of their origin, the due dates of payment, the various amounts in terms of principal, interest and other accessories still unpaid at the end of the past semester, and reminding him of his option to revoke by literally reproducing the provisions of article 19 of this Uniform Act.

Where the creditor fails to comply with the prescriptions of this article, he shall vis a vis the security lose the contractual interest which accrued from the date of the preceding information up to the date the latest information was communicated to him without prejudice to the provisions of article 29 of this Uniform Act.

Any clause contrary to the provisions of this article shall be disregarded.

#### **ARTICLE.26**

The liability of the surety shall be the same as that of the principal debtor. Any surety whose liability shall be joint and several shall in the same manner as the principal debtor be bound to discharge the main debt subject to any special provisions of this Uniform Act.

However, the creditor may pursue the surety only by instituting an action against the principal debtor.

#### **ARTICLE.27**

The court appointed surety and the surety whose liability is joint and several shall have no benefit of discussion. Unless he has expressly waived this benefit, the surety with single liability may once action has been commenced against him, require that the creditor exhaust his recourse against the principal debtor identifying the said debtor's assets which can immediately be attached within the national territory and which are likely to yield sufficient funds for the full settlement of the debt. The surety shall also advance money to cover the cost of this exercise or deposit the necessary sum of money as may be fixed by the competent court for that purpose.

Where the surety has identified these assets and deposited sufficient funds for the discussion, the creditor shall with regard to the surety be responsible up to the value of the identified assets for the insolvency of the debtor resulting from the creditor's failure to pursue the said assets.

#### **ARTICLE 28**

Where there are many sureties for the same debtor and for the same debt, unless their liability is joint or the benefit thereof is waived, each surety may upon the institution of proceedings by

the creditor, request that the debt be shared among the sureties who are credit worthy at the time the issue is raised.

One surety shall not be responsible for the insolvency of the other sureties after the debt has been shared.

The creditor who decides to institute an action against any one or more of the sureties may not go back on that decision and shall bear the insolvency of the said sureties without the possibility of transferring their insolvency to the other sureties.

#### **ARTICLE 29**

Any surety or counter surety may in relation to the debt raise the issues which the principal debtor would have raised to reduce, set-off, or defer the said debt subject to the provisions of Articles 17 and 23(3) and (4) of this Uniform Act and the special provisions of the Uniform Act on collective proceedings for the wiping off debts.

A surety shall be discharged when the subrogation to the rights and guarantees of the creditor no longer operates in his interest through the fault of the creditor. Any contrary clause shall be disregarded.

Where the fault attributed to the creditor limits solely the said subrogation, the liability of the surety shall be limited to the same extent.

#### **ARTICLE 30**

The surety shall notify the principal debtor or implicate him in the action instituted by the creditor before paying the debt to the said creditor.

Where the surety settles the debt without giving notice to the principal debtor of the action against him or fails to implicate him in it, he shall forfeit his right of action against the said debtor who at the time of payment of the said debt or before it was contracted, had grounds for declaring the said debt bad or had paid the said debt in ignorance of the payment made by the said surety. Nevertheless, the surety shall retain a recovery action against the creditor.

#### **ARTICLE.31**

The surety shall be subrogated to the rights and privileges of the pursuing creditor for every payment made to the latter.

Where there are many principal debtors who are jointly liable for one and the same debt, one surety shall be subrogated to the rights of the creditor against each of the said debtors in respect of all the payments he made even where he stood surety for only one of the debtors. He shall separate his actions where the liability of the debtors is joint and several.

#### **ARTICLE 32**

A surety who has settled the debt may also institute an action against the principal debtor in recovery of the money paid as principal debt, interest and all the costs he incurred since he notified the said debtor of the proceedings instituted by the creditor. He may also claim compensation for the damages suffered as a result of the action instituted against him by the creditor.

Where only a part of the debt was secured preference may not be given to the creditor for the outstanding amount over a surety who paid and acted by virtue of his personal action. Any contrary clause shall be disregarded.

**ARTICLE 33**

Any action instituted by the counter surety against the surety shall be according to the provisions of articles 30, 31 and 32 of this Uniform Act.

**ARTICLE 34**

Where there are many sureties who are jointly or severally liable for one and the same debt, and one of the said sureties settles the debt within time, he may institute an action against the others in recovery of their respective portions of the debt.

**ARTICLE 35**

The surety may commence proceedings against the principal debtor in recovery of the debt or request that his interests in the estate of the debtor be preserved even before he settles the debt in the following circumstances:

- as soon as proceedings are instituted against him; or
- where the debtor is in default of payment or fails to meet his liabilities; or
- where the debtor fails to release the surety of his obligations within the agreed time limit; or
- where payment of the debt has become due pursuant to the agreement between the creditor and the debtor.

**Section 4****Termination of the Surety-bond****ARTICLE 36**

The partial or total settlement of a principal debt shall to the same extent lead to the termination of the surety's commitment. Where there is accord and satisfaction ( *datio in solutum* ) the surety shall unconditionally be discharged even where the creditor thereafter loses possession of the property he had accepted in satisfaction of the debt. Any contrary clause shall be disregarded.

The novation of the principal obligation by a change of subject or consideration, the modification of terms and conditions or of the securities attached thereto shall discharge the surety unless he agrees to transfer his security to the new debt. Any contrary clause stipulated before the said novation shall be disregarded.

The heirs of the surety shall only be responsible for any debts contracted prior to the death of the said surety.

**ARTICLE 37**

The responsibility of the surety shall end regardless of the main obligation:

- where in an action against him the said surety successfully pleads a set-off; or
- where the creditor allows the sole surety a remission; or
- where there is a merger between the creditor and the surety.

**ARTICLE 38**

However, any merger between the debtor and his surety resulting from any one of them becoming the heir of the other shall not be a bar to any possible action by the creditor against the counter surety.

## CHAPTER 2 AUTONOMOUS GUARANTEE AND AUTONOMOUS COUNTER GUARANTEE

### ARTICLE 39

An autonomous guarantee shall mean an agreement by which, the guarantor undertakes, following an obligation signed by the principal and on his instructions, to pay a fixed sum of money to a beneficiary either at the earliest demand of the latter or as per the agreed terms.

The autonomous counter guarantee shall mean the agreement by which the counter guarantor undertakes, following an obligation signed by the principal and on his instructions, to pay a fixed sum of money to a guarantor either at the earliest demand of the latter or as per the agreed terms.

### Section 1

#### Formation of Autonomous Guarantees and Autonomous Counter Guarantees

### ARTICLE 40

Under pain of nullity, natural persons shall not enter into autonomous guarantee and counter-guarantee contracts.

They shall create obligations distinct from the agreements, acts and facts which are likely to be the basis of such obligations.

### ARTICLE 41

The existence of the autonomous guarantee contract and the autonomous counter guarantee contract shall not be presumed. Under the pain of nullity, they shall be in writing and contain the following information:

- designation of the autonomous guarantee or autonomous counter-guarantee;
- name of the principal;
- name of the beneficiary;
- name of the guarantor or the counter guarantor;
- the basic agreement, act or event leading to the signing of the contract;
- the maximum amount of the guarantee or counter guarantee;
- the date or event that may cause the expiration of the guarantee;
- where necessary, the conditions under which payment may be demanded;
- the impossibility for the guarantor or the counter guarantor to raise any objection on the security.

### Section 2

#### Effects of autonomous guarantee and autonomous counter guarantee

### ARTICLE 42

Except otherwise provided, the beneficiary's right to a guarantee shall not be assignable. However, the non-transferability of this right shall not affect the beneficiary's right to transfer any amount of money he may be entitled to following the presentation of a demand which

conforms to the guarantee bond.

#### **ARTICLE 43**

The autonomous guarantee and the autonomous counter guarantee shall take effect at the date of issue unless a later date is stated.

The principal's orders, the autonomous guarantee and the autonomous counter guarantee shall be irrevocable where they are of a fixed duration.

Where the duration is not fixed, the autonomous guarantee or the autonomous counter guarantee may be revoked respectively by the guarantor or the counter guarantor.

#### **ARTICLE 44**

After deduction of prior payments made respectively by the guarantor or the counter guarantor in conformity with the terms of their obligation, the liability of the guarantor and the counter guarantor shall be to the extent of the sum stated in the autonomous guarantee or autonomous counter guarantee bond.

The autonomous guarantee and autonomous counter guarantee bonds may stipulate that the amount of the debt shall be reduced by a determined or determinable amount on definite dates or on presentation to the guarantor or counter guarantor of documents stated for that purpose in the obligation.

#### **ARTICLE 45**

The demand for payment on the basis of the autonomous guarantee shall take the form of a written document executed by the beneficiary accompanied by any other document provided for in the obligation. This demand shall state the duties the principal failed to perform in the discharge of his obligation with regard to the subscribed guarantee.

The demand for payment on the basis of the autonomous counter guarantor shall take the form of a written document executed by the guarantor stating that he has received the said demand from the beneficiary in conformity with the terms of the counter guarantee bond.

A demand for payment shall be in accordance with the terms of the autonomous guarantee or autonomous counter guarantee regarding the purpose for which it is made and shall, except otherwise stipulated, be presented in the place of issue of the autonomous guarantee or, in the case of the autonomous counter guarantee, in the place of its issue.

#### **ARTICLE 46**

The guarantor and the counter guarantor shall each have five working days to examine the conformity of the demand for payment with the terms of the autonomous guarantee or autonomous counter guarantee. They may only reject the demand on condition that they give notice of all the irregularities justifying the rejection to the beneficiary or, in the case of counter guarantor, to the guarantor, latest, at the expiration of this time limit.

The guarantor shall forward a copy of the beneficiary's demand for payment and its annexures to the principal or, in the case of a counter guarantee, to the counter guarantor who shall in turn forward them to the principal.

The guarantor shall notify the principal or, in the case of a counter guarantee, the counter guarantor, who shall in turn notify the principal of any reduction of the amount of the guarantee

and of any other act or event the guarantee to an end other than the date ending its validity.

#### **ARTICLE 47**

The principal may not object paying the guarantor unless the demand for payment of the beneficiary is manifestly excessive or fraudulent. The same shall be between the counter guarantor and the guarantor.

The principal may not object to paying the counter guarantor unless the guarantor knew or had reasons to know that the beneficiary's demand for payment is manifestly excessive or fraudulent.

#### **ARTICLE 48**

The guarantor or the counter guarantor who pays in accordance with the terms of the autonomous guarantee or autonomous counter guarantee shall have the same cause of action the surety has against the principal.

#### **ARTICLE 49**

The autonomous guarantee or autonomous counter guarantee shall cease to exist in any of the following cases:

- on the specified calendar day or at the expiration of the time limit;
- on the presentation to the guarantor or counter guarantor of discharging documents specified in the autonomous guarantee or counter guarantee;
- on the written declaration of the beneficiary discharging the guarantor of his obligation regarding the autonomous guarantee or the written declaration of the guarantor discharging the counter guarantor of his obligation regarding the autonomous counter guarantee.

## **TITLE – 2 TRANSFERABLE SECURITIES**

#### **ARTICLE 50**

Transferable securities shall consist of possessory lien, assets held or transferred as security, pledge of real property, pledge of intangible assets and privileges.

Except otherwise provided, transferable securities subject to publicity shall be registered in the Trade and Personal Property Rights Register in conformity with the provisions of chapter 1 of this title.

### **CHAPTER 1 REGISTRATION OF TRANSFERABLE SECURITIES IN THE TRADE AND PERSONAL PROPERTY RIGHTS REGISTER**

#### **ARTICLE 51**

Registration shall be at the instance of the creditor, the surety agent or settlor.

The registration of the general privilege of the Treasury, Customs and Excise and of the Social Security Institutions shall be at the instance of the public accountant of the concerned creditor administration.

**ARTICLE 52**

Registration shall be in the Trade and Personal Property Rights Register respecting the following rules:

- the competent Trade and Personal Property Rights Registry to register transferable securities shall be that of the area of jurisdiction where the settlor of the security is registered or if he is not bound to be registered, that of his head office or residence;
- the competent Trade and Personal Property Rights Registry to register pledges of debt or the transfer of a financial claim as a security shall be that of the area of jurisdiction where the debtor is registered or if he is not bound to register, that of his head office or residence;
- the competent Trade and Personal Property Rights Registry to register pledges of partnership rights and the personal securities of a trading company or a corporate person subject to registration shall be that of the area of jurisdiction where the said company or corporate person is registered;
- the competent Trade and Personal Property Rights Registry to register the pledge of business property and the privileges of the vendor of business property shall be that of the area of jurisdiction where the natural person or legal person owning the business is registered;
- the competent Trade and Personal Property Rights Registry to register the general privileges of the Treasury, Customs and Excise and of Social Security Institutions shall be that of the area of jurisdiction where tax payer concerned is registered, or if he is not subject to registration, that in whose area of jurisdiction he has his head office or residence.

These same rules shall apply to the registration of securities concerning the small scale entrepreneur.

**ARTICLE 53**

For the purposes of registration, the creditor, surety agent, settlor or where necessary the public accountant shall present to the Trade and Personal Property Rights Registry or to the competent official in the State Party a registration form carrying the following information:

- a) name, first name, company name, address or head office and where necessary, e-mail address and registration number or declaration of activities, of the creditor or of the surety agent, the debtor of the secured financial claim and of the settlor if he is not the debtor;
- b) the nature and the date of the deed giving rise to the security;
- c) where necessary, the duration of the registration as agreed by the parties;
- d) the maximum amount of the secured debt including the principal, interest and other accessories, the date due and the existence of a forfeiture agreement. For future debts, the form shall make mention of elements leading to the determination of the said debts;
- e) where necessary, the option for the settlor to dispose the fungible assets encumbered by securities under conditions laid down in article 102 of this Uniform Act;
- f) the designation of the encumbered asset with indication of the elements leading to its identification, notably the nature of the asset, its location, and where necessary, its make or serial number, or, where it concerns a group of future or actual assets, their nature, quality, quantity or value.

Where the object of the security is a debt or a series of actual or future debts, the designation of the encumbered asset or assets shall indicate the elements naturally leading to the identification of the said debt or debts such as, the indication as to the debtor, the place of settlement, the amount of the debts or their valuation and date of settlement.

In the case of a pledge of partnership rights and transferable securities of a trading company and those which are transferable from any other legal person, the form shall in addition to the afore mentioned information, contain the registration number of the firm whose partnership rights and transferable securities are pledged.

In the case of a pledge or sale of business property, the form for the registration of the pledge or the privilege of the vendor, shall also include the registration number or the declaration of activities of the natural or legal person owning and running the business for which the registration of the pledge or privilege of the vendor is required.

#### **ARTICLE 54**

Upon verification that the entry form contains all the information prescribed by article 53 of this Uniform Act, the registrar in charge of the competent Trade and Personal Property Right Register or the competent authority in the State Party shall forthwith chronologically register the deposited securities. He shall immediately issue the applicant an acknowledgement receipt containing the date, type of formality carried out and the registration number. Registration or of any refusal thereof shall be notified by the registry or the competent authority in the State Party to the debtor or to the settlor of the security where the latter is different from the debtor. Such registration or any refusal thereof may within eight days from the date of notification be challenged by the debtor or the settlor before the competent court or before the competent authority in the State Party which shall rule without delay.

Where the form is irregular, the registrar or the competent officer in the State Party shall reject the registration. Such rejection shall be motivated. The registrar or the competent officer in the State Party shall forthwith notify the applicant and make mention of such rejection in the margin of the chronological register. Any rejection may within eight days from the date of service of notification be challenged before the competent court or authority in the State Party which shall rule without delay.

The decision delivered by virtue of paragraphs (1) and (2) of this article may be appealed against within fifteen days of notification before the competent appeal court which shall rule without delay.

#### **ARTICLE 55**

Where no notification of the rejection is made, the registrar or the competent officer in the State Party shall without delay:

- i) make mention thereof in the individual file opened in the name of the natural or legal person against whom the entry was made;
- ii) put in the said individual file the declaration form with its date of entry and entry number;
- iii) forward to the National Index Card of the to Trade and Personal Property Rights Register a note of the entry to which shall be annexed a copy of the entry form and an extract of the individual file opened in the name of the person against whom the entry was made.

**ARTICLE 56**

In the case of a pledge of partnership rights and transferable securities of a trading company and all those which are transferable from any other legal person, the registrar or the competent official in the State Party shall also make mention thereof in the individual file of the natural or legal person whose rights or transferable securities are concerned with the registration of the pledge.

**ARTICLE 57**

Any duly registered transferable security subjected to publicity shall be binding on any third party from the date of entry in the chronological register of the Trade and Personal Property Right Register.

Where the registration of competing securities encumbering one and the same asset are due on the same date, the entry with the earliest date shall be deemed to have been registered first irrespective of the order of the register mentioned above.

Where the registration of competing securities encumbering one and the same asset are due on the same date by virtue of the title deeds having the same date, the securities shall be deemed to be of the same rank except where the transfers were made as security with an ownership reserve clause which shall then be deemed registered before the other securities irrespective of the order of the register mentioned above.

Where the registration of an ownership reserve clause and any transfer made as security over one and the same asset are due on the same date, the ownership reserve clause shall be deemed to have been registered first irrespective of the order of the register mentioned above.

Where the registration of transfers made as security over one and the same asset are due on the same date by virtue of the title deeds bearing the same date, the said asset shall be deemed to belong to the creditors in proportion to the amount of their financial claims irrespective of the order of the register mentioned above.

**ARTICLE 58**

The registration of the general privileges of the Treasury, the Department of Customs and Excise and of the Social Security Institutions shall preserve the right of the creditor for three years as from the date of entry.

As for the other transferable securities subject to publicity, the parties may in the deed establishing the said security agree on the validity period of registration in the Trade and Personal Property Right Register not exceeding ten years.

Where the registration is not renewed before the expiration date, it shall no longer be valid and shall of right be struck off by the registrar or by the competent officer in the State Party.

Registration guarantees in the same rank as the principal debt, two years of interest.

**ARTICLE 59**

The initial registration shall be renewed under the same conditions it was made.

Any valid renewal shall be binding on third parties from the date of entry in the chronological register of the Trade and Personal Property Right Register. The claimant shall retain the benefits of such registration where the renewal is made before the expiration of the initial registration.

An attestation of renewal containing the date of registration and its number in the chronological deposit register of the Trade and Personal Property Right Register shall forthwith be given to the claimant.

#### **ARTICLE 60**

No change in the initial registration in the Trade and Personal Property Right Register by a contractual subrogation of an after-acquire clause of the security or the transfer of a postponement agreement of the right of priority shall take effect unless the said change is entered in the margin of the initial register.

Any contractual or judicial modification of the floating charge or a secured claim shall be subject to registration under the same terms and in the same form prescribed for the initial registration.

#### **ARTICLE 61**

Any natural or legal person against who one or more of the entries set out in this Title is made may at any time move the competent court or the competent official in the State Party to set aside, or change or limit the number of entries.

The competent court or the competent official in the State Party may whatever the circumstances and even before deciding on the merits of the application strike off the whole or part of entry where the applicant presents a well-founded case.

#### **ARTICLE 62**

Any partial or total cancellation of the entry in the Trade and Personal Property Right Register shall take effect from the date of entry in the margin of the initial registration.

#### **ARTICLE 63**

Any judicial cancellation of an entry may only be by the competent court or by the competent official in the State Party.

#### **ARTICLE 64**

The cancellation of an entry by agreement shall take effect only where the creditor or his assignee substituting him deposits or transmits by electronic means an instrument drawn up by a competent authority or a private deed attesting to the cancellation of his rights. This shall be accompanied by a filled form containing the following information:

i) names, company name, address or head office and where need be, the registration number of the natural or legal person against whom the was required, or in the case of registration of partnership rights and transferable securities, registration number of the legal person whose partnership rights are subject of the registration;

ii) nature and the date of the deposited deed or deeds.

The cancellation shall be registered in the Trade and Personal Property Right Register after verifying that the form is in conformity with the deposited deed or deeds.

A certificate of cancellation shall be issued to anyone who applies for it.

#### **ARTICLE 65**

Any fraudulent registration of a transferable security or any registration containing false

information shall be punishable with the penalty provided for by the national criminal law.

The competent court or the competent official in the State Party may in its decision order the correction of the wrong information on terms it may deem fit.

#### **ARTICLE 66**

All inquiries shall be contained in a form prepared for that purpose by the Trade and Personal Property Right Register.

The registrar or the competent official in the State Party shall reply promptly or at least within two working days from the date of inquiry to all inquiries made in conformity with the preceding paragraphs by issuing the person making the inquiry either a certificate attesting that no registration was made, or giving a general statement of the existing registrations including relevant information in the margin or one or more statements relating to a particular aspect where the application refers to an asset or a category of assets belonging to a debtor or a settlor.

The Registrar or the competent official authority in the State Party shall be liable for any entry, modification or cancellation, as the case may be, which shall not be in accordance with this law. He shall also be liable for the delivery of any incomplete or inaccurate extracts.

## **CHAPTER 2 POSSESSORY LIENS**

#### **ARTICLE 67**

A creditor in lawful possession of an asset belonging to the debtor may, regardless of any other security, continue to hold the said asset pending payment in full of the debt due, without prejudice to the provisions of Article 107 (2) of this Uniform Act.

#### **ARTICLE 68**

A possessory lien may only be exercised under the following conditions;

- where the claim of the possessor is unquestionable, liquid and due;
- where there is a nexus between the origin of the claim and possession of the asset withheld;  
and
- where there was no attachment prior to the withholding of the asset.

#### **ARTICLE 69**

The nexus shall be deemed established:

- 1) where possession of the asset withheld was transferred in full satisfaction of the claim of the possessor;
- 2) where the unpaid debt results from a contract which requires the possessor to relinquish that possession;
- 3) where the unpaid debt has arisen from the possession of the asset withheld.

#### **ARTICLE 70**

The creditor shall be bound to keep the asset withheld in good state.

Notwithstanding the preceding paragraph, he may by order of the competent court given upon an urgent application proceed to sell the asset where the state or the perishable nature of the said asset so requires or where the cost of keeping the asset is disproportionately higher than its value. In that case, the possessory lien shall be transferred to the proceeds of sale which shall be consigned.

### **CHAPTER 3**

#### **PROPERTY WITHHELD OR TRANSFERRED AS SECURITY**

##### **ARTICLE 71**

Ownership of an asset may be withheld to secure a loan by operation of an ownership reserve clause.

The said ownership may equally be transferred to secure a loan under the terms provided for in this chapter.

##### **Section – 1**

##### **Title Retention**

##### **ARTICLE 72**

Title over personal property may be withheld as security by operation of an ownership reserve clause which shall have the effect of suspending the execution of a contract until the debt is fully settled.

##### **ARTICLE 73**

Under pain of nullity, the ownership reserve clause shall be acknowledged in writing at the latest, when the asset is transferred. It may be a clause in a written document governing existing or future transactions between the parties.

##### **ARTICLE 74**

An ownership reserve clause shall not be binding on third parties unless it was duly published in the Trade and Personal Property Right Register in accordance with the provisions of articles 51 to 66 of this Uniform Act.

##### **ARTICLE 75**

An ownership reserve clause in respect of fungible goods may be brought into operation to the limit of the amount of the due balance of the debt, on assets of the same nature and quality held by the debtor or on his behalf.

##### **ARTICLE 76**

The incorporation of assets forming part of the reserved property into another asset shall not be an obstacle to the rights of the creditor where the said assets can be separated without being damaged.

On the contrary, ownership of the whole property shall be given the party with the principal share who shall pay off the other party the value of his incorporated share on the date payment shall be due.

##### **ARTICLE 77**

Where full payment is not be made on the due date, the creditor may ask for the restitution of

the asset in order to regain the right to sell it.

For the purpose of payment the value of the said asset shall be deducted from the balance of the secured debt.

Where the value of the asset recovered is more than the said balance, the creditor shall owe the debtor an amount equal to the difference.

Any clause contrary to paragraphs 2 and 3 above shall be disregarded.

## **ARTICLE 78**

Where the asset is sold or destroyed, the right of ownership shall be transferred as the case may be, to the debtor's claim against the sub purchaser or to the insurance benefit replacing the asset.

### **Section 2**

#### **Property transferred as Security**

## **ARTICLE 79**

The actual or future ownership of an asset or assets may be transferred as security for the settlement of a current or future debt or of debt on the conditions laid down in this section.

### Subsection 1

#### The Assignment of a Debt as Security

## **ARTICLE 80**

Any debt owed by a third party may be assigned to a national or foreign legal person as security for a loan it may granting the course of its normal banking and credit professional operations.

The non-assignability of the debt shall not be relied upon by the debtor-assignor against the assignee where it arises from a contract and in the course of the exercise of the profession of the debtor-assignor or where the debt has a direct link with one of his professional activities even if the said activity is not the debtor's main activity.

## **ARTICLE 81**

Under pain of nullity the assignment of a debt as a security shall be executed in a written instrument containing the following information:

- 1) The names or company name of the assignor and the assignee;
- 2) Date of the assignment; and
- 3) The designation of the secured debts and assigned debts.

Where these are future debts, the instrument shall permit their identification or contain elements permitting their identification such as information identifying the debtor, the place of payment, the amount of the debts or their value and where necessary, their maturity date.

## **ARTICLE 82**

A contract assigning an existing or future debt shall immediately take effect between the parties from the date of signature irrespective of the date the debt arose, maturity date or the date the assigned debt may be due, and it may be binding on third parties from the date it shall be registered in the Trade and Personal Property Right Register irrespective of the law applicable

to the said debt and the law applicable where the debtor resides.

From the date of assignment the assignor may not without the consent of the assignee modify the rights attached to the assigned debt.

#### **ARTICLE 83**

Unless otherwise agreed by the parties, the assignment shall extend to accessories of the debt and shall by right be binding on third parties without any other formality apart from that prescribed in the preceding article.

#### **ARTICLE 84**

The assignment of a debt may not be binding on the debtor himself unless he was given notice of the said assignment or he was a party thereto.

Failing this, the assignor shall legitimately receive payment for the debt.

#### **ARTICLE 85**

Where the debtor of the assigned debt is a professional debtor within the meaning of article 3 of this Uniform Act, he may at the request of the assignee commit himself to pay directly by accepting the said assignment.

In that case, the debtor may not set up against the assignee any defense based on his personal relationship with the assignor unless the assignee on acquiring or receiving the loan acted knowingly to the detriment of the debtor. Under pain of nullity, the said commitment shall be by an instrument titled “Deed of Acceptance of an Assignment of a Debt as Security” reproducing in sufficiently clear letters the provisions of this article.

#### **ARTICLE 86**

All sums of money paid to the assignee in respect of an assigned debt shall be charged on the secured debt when it matures. Any surplus shall be paid back to the assignor.

Any clause to the contrary shall be disregarded.

#### Subsection 2 Fiduciary Transfer of Money

#### **ARTICLE 87**

The fiduciary transfer of a sum of money shall mean the agreement whereby a settlor transfers funds as security for the performance of an obligation.

The said funds shall be entered into a blocked account opened in the name of the creditor in the books of an approved finance company.

**ARTICLE 88**

Under pain of nullity, the agreement shall determine the secured loan or loans as well as the amount of the funds transferred as security and shall identify the blocked account.

**ARTICLE 89**

The fiduciary transfer of money shall be binding on third parties as soon as notice is given to the credit establishment holding the funds, provided the said funds are put in the blocked account.

**ARTICLE 90**

Except otherwise agreed, the interest accruing from the said funds shall be credited to the blocked account.

**ARTICLE 91**

On the maturity date and where the secured debt is fully paid, the said funds shall be paid back to the settlor.

Where the debtor fails to pay and eight days after due notice shall have been served on the settlor, the creditor may have the funds transferred to him within the limit of the amount of the unpaid secured debt.

**CHAPTER 4  
THE PLEDGE OF TANGIBLE PROPERTY**

**ARTICLE 92**

A pledge shall mean a contract whereby the settlor grants a creditor a right of preference to have himself paid from a personal asset or a set of existing or future assets.

**Section 1  
Constitution of a Pledge**

**ARTICLE 93**

A pledge may be made to secure one or more existing or future debts provided they are certain or ascertainable.

**ARTICLE 94**

In the course of the execution of the pledge the parties may agree on the subrogation of the collateral by another asset.

The pledge may equally bear on sums of money or bonds deposited as security by civil servants, sworn officers of court or any other person, to insure against any abuses for which they may be liable, and to secure loans obtained to make up the said security.

**ARTICLE 95**

The pledgor shall be the owner of the pledged asset. Where he is not, a bona fide pledgee may challenge any action for recovery by the rightful owner under the rules applicable to persons who hold property in good faith.

**ARTICLE 96**

Under pain of nullity the contract of pledge shall be in writing with the indication of the secured debt, the quantity of assets given on pledge as well as their type and nature.

Unless otherwise agreed, where the pledge bears on an asset or a set of future assets the right of the creditor on the collateral shall be exercised as soon as the settlor acquires ownership.

#### **ARTICLE 97**

The contract of pledge shall be binding on third parties either by its registration in the Trade and Personal Property Rights Register or by the handing over of the collateral to the pledgee-creditor or to any third party agreed upon by the parties.

Where the pledge is regularly published the specific legatees or devisees of the settlor may not be regarded as bona fide possessors and the pledgee-creditor may pursue the collateral in their hands for the enforcement of his claim.

#### **ARTICLE 98**

Except otherwise provided, the settlor shall not demand the cancellation of the registration or the return of the collateral until full payment of the secured debt, interest and other accessories.

### **Section 2 Effects of a Pledge**

#### **ARTICLE 99**

Where, following the contract, the pledgor is not in possession of the collateral, the pledgee-creditor may, subject to the application of article 107 (2) of this Uniform Act invoke his possessory lien on the collateral directly or through the instrumentality of the third party agreed upon until full payment of the principal, interest and other accessories of the secured debt.

#### **ARTICLE 100**

Where the creditor loses possession of the collateral against his will, he may assert his rights as a bona fide possessor.

#### **ARTICLE 101**

Where the collateral in the possession of the creditor consists of fungibles he shall, except otherwise provided, hold them separately or cause them to be held separately from other things of the same kind held by him or by the third party agreed upon. Failing this, the settlor may demand the return of the collateral without prejudice to his claim for damages.

Where the agreement exempts the creditor from the said obligation, he shall acquire the right of ownership of the collateral on condition that he returns the same quantity of equivalent things. Where possession is given to a third party in escrow the right of ownership so acquired by the creditor may be exercised on assets of the same kind and quality held by the third party agreed upon.

#### **ARTICLE 102**

Where the collateral in the possession of the debtor consists of fungibles, the contract may authorize the settlor to dispose of them on condition that he replaces them with the same quantity of equivalent things. The authorization given to the settlor shall amount to a waiver by the creditor of his right to pursue this property in the hands of a subsequent buyer for the enforcement of his claim.

**ARTICLE 103**

Except otherwise provided, the pledgee-creditor may neither use the collateral nor derive any benefit therefrom. Where he has authority to derive benefit there from, he shall charge such benefit on the interest he is entitled to or, failing this, on the capital of the debt.

**ARTICLE 104**

Where payment has not been made on the due date, the pledgee-creditor in possession of a writ of execution may proceed to the forceful sale of the collateral eight days after notice has been duly served on the debtor and, where necessary, on the third party settlor under the conditions laid down by the provisions organizing measures of execution from which no pledge may derogate. In this case, he shall exercise his right of preference on the price of the thing sold under the terms of article 226 of this Uniform Act.

The creditor may also cause the competent court to order that the collateral be given to him in payment of the balance of his debt and following the valuation at current market or as determined by an expert.

Where the collateral is a sum of money or an asset whose value has been officially fixed, the parties may agree that the collateral be allotted to the pledgee-creditor where there is default in payment. The same shall be for other tangible assets where the debtor of the secured debt is a professional debtor. In this case, the value of the collateral shall be estimated by the parties or by an expert agreed upon by the parties or chosen by the court on the day it is transferred. Any contrary clause shall be regarded.

**ARTICLE 105**

Where the collateral results from a court order or an agreement, and the value of the asset exceeds the amount due, the pledgee-creditor shall deposit the balance if there are other creditors who have a lien on the same asset, or failing which, he shall pay it to the settlor. Any clause to the contrary shall be disregarded.

**ARTICLE 106**

In case of an unintentional loss, partial or total damage of the collateral, the pledgee-creditor shall exercise his right of preference on the insured amount, and where necessary for the secured amount in principal, interest, and other accessories in accordance with the provisions of article 226 of this Uniform Act.

**ARTICLE 107**

Where one and the same asset is the subject of many and successive non-possessory pledges the ranking of the creditors shall be determined by the order of their registration.

Where an asset which is the subject of a non-possessory pledge subsequently becomes the subject of a possessory pledge, the right of preference of the first pledgee shall be binding on the subsequent pledgee where the first pledge was regularly published notwithstanding the possessory lien of the latter.

Where an asset which is the subject of a possessory pledge subsequently becomes the subject of a non-possessory pledge the possessory lien of the first pledgee shall be binding on the subsequent creditor who shall exercise no right over the asset as long as the first creditor has not been fully paid.

#### **ARTICLE 108**

Where there is a possessory pledge, the pledgee creditor or the third party agreed upon by the parties shall keep the collateral and ensure its conservation as a paid bailee does.

Similarly, where the settlor retains possession of the collateral, he shall keep same as a responsible person and in particular by insuring same against of loss, partial or total damage.

#### **ARTICLE 109**

Where the pledge is possessory, the settlor may demand the return of the collateral without prejudice to a claim in damages, where the creditor or the third party agreed upon fails to take proper care of the collateral.

Where the pledge is non-possessory the creditor may rely on the expiration of the time limit for payment of the secured debt or ask for additional security where the settlor fails to take appropriate steps for the preservation of the pledge.

#### **ARTICLE 110**

Where the contract of pledge, irrespective of its terms and conditions, has a set of fungibles as subject, the creditor may demand that the settlor maintain their value under pain of the pledge becoming payable before maturity.

The creditor may at any time and at the debtor's expense obtain from the settlor or the third party agreed upon a statement of the totality of the collaterals as well as an account of all transactions involving them. Where the constitution of the security gives rise to the issue of a note of the pledged stocks, the same power shall be vested on the institution having custody of the said pledge note.

Any institution empowered to receive deposits from the public shall within the meaning of this Uniform act be considered the paying institution.

#### **ARTICLE 111**

Where a collateral of a non-possessory pledge is in danger of perishing, the pledgee-creditor or the third party agreed upon may by order of the competent court made on the basis of a simple application cause it to be sold upon giving notice of the said court order to the settlor. The effects of the pledge shall then be transferred to the proceeds of sale.

#### **ARTICLE 112**

The third party agreed upon and where necessary, the party who in bad faith purchases the collateral and the pledgee-creditor shall be jointly and severally liable for the nonperformance of the obligations mentioned in articles 103, 108 (1) and 111 of this Uniform Act.

#### **ARTICLE 113**

Where the pledgee-creditor is paid the full debt, interest and other accessories he shall return the collateral and all its accessories. The settlor shall in turn pay back to the pledgee-creditor or to the third party agreed upon the needed and necessary expenses he had to incur for the preservation of the pledge.

#### **ARTICLE 114**

The pledge shall be indivisible notwithstanding the possibility of sharing the debt between the heirs of the debtor or those of the creditor.

As long as the whole debt is not fully paid any heir of the debtor who has paid his portion of the said debt may not demand any portion of the collateral even where the said collateral may be divisible by nature.

Any heir of the creditor who shall receive his portion of the debt may not return any part of the collateral to the detriment of the co-heirs who shall not have been paid even where the said collateral shall be divisible by nature.

#### **ARTICLE 115**

The pledge of goods which the debtor may dispose of by pledge note of stocks, bill of lading, transportation or custom receipt shall be constituted in accordance with the provisions peculiar to each of these deeds or documents.

### **Section 3 Termination of a Pledge**

#### **ARTICLE 116**

The pledge shall be terminated whenever the secured debt is fully settled in terms of the capital, interest and other accessories.

#### **ARTICLE 117**

The non-possessory pledge shall cease to exist regardless of the secured debt, where the collateral is voluntarily returned to the settlor, or where the collateral through the fault of pledgee-creditor is lost, or where the competent court orders its restitution for a fault committed by the pledgee-creditor, unless a sequestrator is appointed to act as a third party agreed upon by the parties.

### **Section 4 Special Provisions relating to Certain Pledges**

#### Subsection 1

#### Pledge of Professional Equipment and Motor Vehicles

#### **ARTICLE 118**

Without prejudice to the provisions of this subparagraph, professional equipment and motor vehicles whether registered or in circulation may be pledged in application of articles 92 to 117 of this Uniform Act.

Any professional equipment which is part of the business property may also be pledged at the same time as the other elements of the business property in conformity with the provisions of articles 162 to 165 of this Uniform Act.

#### **ARTICLE 119**

Concerning any motor vehicle subject to a declaration of circulation and official registration, mention of the pledge shall be made on the document registering and permitting it to circulate. Failure to make mention of this shall not vitiate the pledge or its binding force where it is duly registered in the Trade and Personal Property Rights Register.

Subsection 2  
Pledge of Stocks

**ARTICLE 120**

Without prejudice to the provisions of this subsection, raw materials, agricultural produce or industrial products or goods may be pledged in pursuance of the provisions of articles 92 to 117 of this Uniform Act.

**ARTICLE 121**

The constitution of a non possessory pledge of stocks, may give rise to the issue by the registrar or the competent official in the State Party of a pledge note.

In that case, the deed establishing the pledge shall under pain of nullity, contain in addition to the information provided for in article 96 of this Uniform Act, the name of the insurers covering the pledged stocks against theft, fire and total or partial damage as well as the designation of company responsible for the payment.

**ARTICLE 122**

The pledge note given to the debtor upon registration in the Trade and Personal Property Rights Register shall clearly mention the following:

- the words “Pledge of Stocks”;
- the date of issue which shall correspond to the date of registration in the Trade and Personal Property Rights Register;
- the entry number in the Chronological Deposit Register;
- the signature of the Debtor.

The said note shall be signed dated and endorsed by the debtor to the creditor.

It may be endorsed and guaranteed under the same conditions as a promissory note and shall have the same effects.

In the absence an agreement to the contrary, the note shall, unless renewed be valid for five years as from the date of issue.

**ARTICLE 123**

Any endorsement shall confer to the holder of the note the status and rights of a pledgee-creditor.

**ARTICLE 124**

The debtor issuing the pledge note shall retain the right to sell the pledged stocks.

He may only deliver the sold stocks after depositing the proceeds of sale with the receiving institution.

## CHAPTER 5 PLEDGE OF INTANGIBLE PROPERTY

### ARTICLE 125

The pledge of intangible property shall mean a contract whereby existing or future intangible property is allocated as security for one or more existing or future debts on condition that the said debts are certain or ascertainable.

Such pledge may be by agreement or imposed by the court.

### ARTICLE 126

The following may be pledged:

- Debts;
- Bank accounts;
- Partnership rights, transferable securities, Portfolios
- Business property;
- Intellectual property rights.

#### Section 1 Pledge of Debt

### ARTICLE 127

Under pain of nullity, the pledge of a debt shall be in a writtendocument containing the designation of the secured debts and the pledged debts or where they shall be future debts, elements permitting their identification such the name of the debtor, the place of payment, the amount of the debt or its valuation and the latest date of payment.

### ARTICLE 128

Where the subject of the pledge is a future debt the secured creditor shall acquire a right over such debt as soon as it is contracted.

### ARTICLE 129

Part of the debt may be pledged unless it is indivisible.

### ARTICLE 130

The pledge shall extend to the accessories of the secured debt unless the parties otherwise decide.

### ARTICLE 131

On the date the contract is signed, the pledge of an existing or future debt shall take effect between the parties irrespective of the date of signature, date of maturity or payability of the secured debt and may be binding on third parties upon registration in the Trade and Personal

Property Rights Registry irrespective of the law applicable to the debt or the law of the country of residence of the debtor.

#### **ARTICLE 132**

The contract of pledge may not be binding on the debtor of the secured debt unless he was given due notice thereof in writing, or was a party thereto.

Failing that, only the settlor shall rightfully receive payment of the debt on condition that he pays the amount received to the secured creditor unless otherwise provided and without prejudice to the provisions of article 134 of this Uniform Act.

#### **ARTICLE 133**

Upon notification or intervention of the deed executed by the debtor of the secured debt, only the secured creditor may rightfully receive payment of this debt both in capital and interest and other accessories even where payment was not pursued by him.

#### **ARTICLE 134**

Where the maturity date of the pledged debt is due before that of the secured debt, the secured creditor shall keep the money as security in an account opened in an institution empowered to receive the said money on condition of refunding same to the settlor when the secured debt shall be paid. Failing this, and eight days after due notice unheeded to by the debtor of the secured debt, the secured creditor shall transfer, an amount equal to his unpaid debt.

Where the maturity date of the secured debt is due before that of the pledged debt, the creditor may by court order or by operation of the terms of the contract, be granted the secured debt and all other rights attached thereto. The creditor of the pledged debt may also wait for the maturity date of the pledged debt.

Except otherwise agreed, the creditor of the pledged debt shall in addition receive the interest charged on the amount due in capital, interest and other accessories.

#### **ARTICLE 135**

Where an amount higher than the secured debt is paid to the creditor of the pledged debt, he shall be deemed to hold the surplus as agent of the settlor. Any clause to the contrary shall be void ab initio.

### **Section 2 Pledge of Bank Account**

#### **ARTICLE 136**

The pledge of a bank account shall be a pledge of a claim. The rules governing the latter shall also be applicable to the former subject to the provisions of this section.

#### **ARTICLE 137**

Where the pledge concerns a bank account, the pledged claim shall cover the provisional or final credit balance on the date the security is realized subject to the regularization of current

transactions in accordance with the terms and conditions provided for by the Uniform Act on the Organization of Simplified Recovery Procedures and Measures of Execution on matters of attachment and assignment of debts in the custody of a credit institution.

Subject to the same reservation, where collective proceedings are started against the debtor of the secured debt, the creditor of the pledged debt shall have the right to claim the credit balance of the account on the day the said proceedings are commenced.

#### **ARTICLE 138**

The parties may agree on the terms on which the settlor may continue to dispose of the money in the pledged account.

#### **ARTICLE 139**

Even after realization, the pledge shall continue to subsist as long as the account is not closed and the secured debt is not fully settled.

### **Section 3**

#### **Pledge of Partnership Rights, Transferable Securities and Portfolios**

##### Subsection 1

##### Pledge of Partnership Rights and Transferable Securities

#### **ARTICLE 140**

Partnership rights and transferable securities of commercial companies and those which are transferrable from any other legal person subjected to registration in the Trade and Personal Property Rights Register may be subjects of a conventional or judicial pledge.

#### **ARTICLE 141**

Under pain of nullity, partnership rights and transferable securities shall be in writing and shall contain the following information:

- 1°) the designation of the creditor, debtor, and settlor of the pledged sum where he is different from the debtor;
- 2°) the head office and the registration number in the Trade and Personal Property Rights Register of the legal person issuing the partnership rights and transferable securities;
- 3°) the number or the means of determining this number and where necessary, the serial numbers of the collaterals;
- 4°) the elements permitting the identification of the secured debt such as its amount or valuation, duration and settlement date.

#### **ARTICLE 142**

The competent court may authorize the creditor to register the pledge on the partnership rights and transferable securities. The judicial pledge shall be governed by the provisions relating to the sequestration of company stocks and shares regulated by the Uniform Act on the organization of Simplified Recovery Procedures and Measures of Execution.

The court decision shall contain the information provided for in article 141 of this uniform Act.

#### ARTICLE 143

Subject to the special provisions relating to the law on commercial companies and the corporate persons concerned, a conventional or judicial pledge may only be binding on third parties to the extent and following the conditions provided for by articles 51 to 66 above if it is registered in the Trade and Personal Property Rights Register.

The provisional or final registration shall be done respectively, after the decision authorizing the pledge and after the decision validating it has become final.

Besides the aforementioned registration, a conventional or judicial pledge may be served or notified on the commercial company or on the corporate person issuing the partnership rights and transferable securities or title-deeds acknowledging the partnership rights.

#### ARTICLE 144

The pledge of partnership rights and transferable securities shall confer on the creditor:

- The right to pursue the collateral in the possession of any third party which shall be exercised in conformity with the provisions of article 97(2) of this Uniform Act;
- The right to the realization of a pledge which shall be exercised in conformity with the provisions of articles 104 and 105 of this Uniform Act;
- Right of preference which shall be exercised in conformity with the provisions of article 226 of this Uniform Act;
- The right to reap benefits from shares and pledged transferable securities where the parties so agree.

#### ARTICLE 145

In addition to the revenue received in advance subjected to the rules governing securities, financial and credit institutions may, if they are so authorized by the regulations in force, grant three months loan on the listed transferable securities which the pledgee-creditor may, in the absence of reimbursement, distrain any day after the default in the stock exchange without formality.

##### Subsection 2

##### Pledge of Account of Financial Bonds

#### ARTICLE 146

The pledge of a financial bond shall be an agreement whereby the settlor shall allocate as security for a debt any transferable securities and other financial bonds appearing in the account.

#### ARTICLE 147

The pledge of financial bonds may be constituted between parties and also between the legal person issuing them and third parties by a declaration dated and signed by the holder of the account.

Under pain of nullity the notice constituting the pledge shall contain the following information:

- 1) The designation of the creditor, debtor and settlor of the pledge;

- 2) The number and nature of the financial bonds forming the initial basis of the pledge;
- 3) The elements which shall permit the identification of the secured debt such as its amount or valuation, duration and maturity date;
- 4) The identification items of the pledged special account.

#### **ARTICLE 148**

The financial bonds initially appearing in the pledged credit account, those substituting or in any manner completing them as well as the benefits accruing from them shall be included in the assessment of the pledge.

Any financial bond and any sum of money put in the pledged credit account prior to the date the pledge is declared shall be deemed to have been put on the date of the said declaration.

By a simple demand, the secured creditor may obtain from the holder of the pledged account an attestation of pledge of financial bonds comprising the inventory of the bonds and sums of money put in that account on the date of the said attestation.

#### **ARTICLE 149**

The pledged account shall take the form of a special account opened in the name of the holder and kept by the legal person or the financial middleman.

#### **ARTICLE 150**

Where the account is held by a person not authorized to receive funds from the public, the benefits and produce aforementioned in article 148 of this Uniform act shall be credited in a special account opened in the name of the holder of the pledged account in the books of any institution empowered to receive these funds.

The said account shall be deemed to form an integral part of the pledged account on the date the pledge is declared.

By a simple application the secured creditor may obtain from the holder of the special account an attestation comprising the inventory of sums of all money credited in the said account on that date.

#### **ARTICLE 151**

The secured creditor and the holder of the pledged account shall define the conditions under which the holder of the said account may have at his disposal the financial bonds and the sums of all the money appearing in the pledged account.

Where the secured creditor not being the holder of the pledged account authorizes the holder of the said account to dispose of any security and any sum of money appearing in the pledged account, the holder of the account and the secured creditor shall in writing let the keeper of the account know the conditions of such disposition. The keeper of the account may not disregard the instructions he receives without the consent of the secured creditor.

#### **ARTICLE 152**

Any secured creditor who is holder of an unquestionable liquid and due claim may, concerning any financial bond and any sum of money appearing in the pledged account, after notice is served personally or by registered mail on the debtor, liquidate the security within eight days or at the

expiration of any other time limit he and the holder of the account had beforehand agreed upon. The said notice shall also be served on the settlor of the pledge where he is not the debtor and to the keeper of the account where he is the secured creditor of the pledged debt.

#### **ARTICLE 153**

Under pain of nullity the notice referred to the article above shall contain the following information:

- 1) “Failing to pay, the security may be liquidated by the creditor within eight days or at the expiration of the time limit agreed beforehand with the holder of the secured account.”
- 2) The holder of the pledged account may, up to the expiration of the time limit mentioned above, make known to the keeper of the account the order in which sums of money or any financial bond shall be given in full ownership or sold according to the creditor’s choice”.

#### **ARTICLE 154**

Within the limits of the amount of the debt secured and where necessary, with respect to the order indicated by the holder of the pledged account the realization of the pledge of this account shall take place;

- 1) For any sum of any money present in the pledged account directly by transfer of full ownership to the secured creditor of the pledge;
- 2) For financial bonds accepted for negotiation in the regulated market which the holder of the pledged account or failing that, the secured creditor of the pledge has chosen, by sale in the regulated market or by transfer of ownership of a determined quantity by the secured creditor. The said quantity shall be determined by the secured creditor on the basis of the latest quotations available in the regulated market.

The holder of the pledged account shall bear the costs resulting from the realization of the security. The said costs shall be charged on the amount realized.

#### **ARTICLE 155**

Where not being the keeper of the pledged account the secured creditor considers that all the requirements have been met for the liquidation of the security, he shall in writing ask the keeper of the account to proceed with the liquidation as provided for in article 154 of this Uniform Act.

### **Section 4 Pledge of Intellectual Property Rights**

#### **ARTICLE 156**

A pledge of intellectual property rights shall mean an agreement whereby the settlor allocates as security for a debt all or any part of his existing or future intellectual property rights such as letters patent, trade mark and trade name, design and registered pattern.

The said pledge may be conventional or judicial.

#### **ARTICLE 157**

Under pain of nullity, the pledge of intellectual property rights shall be in writing containing the following information:

- 1) Designation of the creditor, debtor and settlor of the pledge where he is not the debtor;
- 2) Elements identifying or permitting the determination of the rights allocated as security;
- 3) The elements permitting the identification of the secured debt such as its amount or valuation, duration and settlement date.

**ARTICLE 158**

A court of competent jurisdiction may authorize the creditor to register the pledge on intellectual property rights. The judicial pledge shall be governed by the provisions relating to sequestration of company stocks regulated by the provisions of the Uniform Act organizing Simplified Recovery Procedures and Measures of Execution.

The decision of the court shall comprise the information stated in the preceding article.

**ARTICLE 159**

Unless otherwise agreed by the parties, the pledge of intellectual property rights shall not extend to accessories and benefits emanating from the exploitation of the intellectual property rights pledged.

**ARTICLE 160**

The conventional or judicial pledge may only be binding on third parties to the extent of and following the conditions provided for in articles 51 to 66 of this Uniform Act only if it is registered in the Trade Personal Property Rights Register.

Provisional or final registration shall be done respectively after the decision authorizing the pledge and the decision validating it has become final.

Where the subject of the pledge is a right registered in any of the registers governed by the regulations applicable in matters of intellectual property, the pledge shall in addition fulfill the requirements of publicity provided for by those regulations.

**ARTICLE 161**

The pledge of intellectual property rights shall confer on the creditor:

- A right to pursue the pledged property in accordance with article 92(2) of this Uniform Act ;
- A right to liquidate the pledged property in accordance with articles 104 and 105 of this Uniform Act;
- A right of preference over the pledged property in accordance with article 226 of this Uniform Act.

**Section 5****Pledge of Business Property and the Preferential Rights of the Vendor**Subsection 1Pledge of Business Property**ARTICLE 162**

The pledge of business property shall mean the agreement whereby the settlor allocates as security for a debt intangible elements which constitute his business property, namely the clientele and trade sign or the trade name.

Other intangible elements of the business such as the right to a commercial lease, exploitation licenses, letters patent, trade mark and trade name, designs and models and other intellectual property rights may be the subject of a pledge. It may be extended to professional equipment.

This extension of the pledge shall be contained in a special clause designating the elements so pledged and specially mentioned in the Trade and Personal Property Rights Register. The said clause shall have no effect unless it is published according to article 160 of this Uniform Act.

There shall be no pledge on real property rights conferred or stated in the leases or in agreements subject to registration in the real property publicity register.

Where the pledge is on the business property and its branches, they shall be designated by a precise indication of their head office.

### **ARTICLE 163**

Under pain of nullity, the pledge of business property shall be in writing and shall contain the following information :

- 1) The designation of the creditor, debtor and the settlor where he is not the debtor;
- 2) The precise name and head office and where necessary, its branches;
- 3) The elements of the pledged business property;
- 4) The elements which shall permit the identification of the secured debt such as the amount or its valuation, its duration and settlement date.

### **ARTICLE 164**

The court of competent jurisdiction may authorize the creditor to register the pledge on the business property of his debtor. The judicial pledge shall be governed by the provisions relating to sequestration of company stocks regulated by the Uniform Act organizing Simplified Recovery Procedures and Measures of Execution.

The court decision shall contain all the information stated in the preceding article.

### **ARTICLE 165**

The conventional or judicial pledge shall be binding on third parties to the extent and following the conditions provided for in articles 51 to 66 above only if it is registered in the Trade and Personal Property Rights Register.

Provisional and final registration shall be done respectively after the decision authorizing the pledge and after the decision validating it has become final.

#### Subsection 2 Preferential Rights of the Vendor of Business

### **ARTICLE 166**

For any sale to be effective and binding on third parties, it shall be registered in the Trade and Personal Property Rights Register at the request of the registered purchaser in accordance with the terms prescribed by the Uniform Act relating to the General Commercial Law.

**ARTICLE 167**

Subject to the preceding article, the vendor of business property shall register the sale and his preferential rights in the Trade and Personal Property Rights Register in order to benefit from the said privilege and the resolute clause provided for by the provisions relating to the sale of business property.

**ARTICLE 168**

Any demand tending towards an amicable, judicial or as of right cancellation of the sale of the business property shall be the subject of a prenotation in the Trade and Personal Property Rights Register at the initiative of the vendor.

The said prenotation shall be authorized by the court of competent jurisdiction of the place where the sale was registered through a ruling made in chambers on condition that it may be referred back to the court.

The prenotation made, the validity of the previous registration shall be subordinated to the decision to be given upon the cancellation of the sale.

**ARTICLE 169**

Where the sale is cancelled amicably, or by a court order, or as of right by virtue of a resolute clause, the said cancellation shall be published in the Trade and Personal Property Rights Register.

Subsection 3Rules of Publicity common to the Pledge of Business Property and the Preferential Rights of the Vendor**ARTICLE 170**

Where the conventional or judicial pledge or the preferential rights of the vendor of business property is on letters patent, trade mark, service mark or trade name, designs and models and other intellectual property rights or professional equipment, it shall, in addition to being registered in the Trade and Personal Property Rights Register, be in conformity with the rules of publicity prescribed for deeds transferring ownership of intellectual property rights and the rules of this Uniform Act relating to the pledge of any equipment forming part of the business property.

**ARTICLE 171**

Where the business property subject of a pledge or a right comprises one or more of its branches, the registration provided for in articles 164 to 167 of this Uniform Act shall be done in the Trade and Personal Property Rights Register where the principal business is registered.

**ARTICLE 172**

The lessor of the premises where the business property is used shall be served notification of the registration slip or the modification slip of the original registration. Failing that, the secured creditor shall not rely on the provisions of article 176 of this Uniform Act.

**ARTICLE 173**

The sale either private or by court order, of business property or of any part thereof shall not be effected unless the vendor or the auxiliary officer of justice produces a statement of entries concerning the business property.

Subsection 4  
Effects of Registration

**ARTICLE. 174**

Where there is a sale or liquidation of business property, any unsecured creditor may obtain from the court the fore closure of the debt and to bring about the distribution of the proceeds from the said liquidation.

**ARTICLE 175**

Where the business property is to be relocated, the owner shall at least fifteen days prior to the relocation give notice to the registered creditors by extrajudicial means of his intention to relocate the said business property indicating the new location.

Where the business property is relocated without the said notification, settlement of the debt shall be immediately due.

Any registered creditor who refuses to consent to the relocation may within fifteen days following notification demand immediate payment if his collateral security is reduced thereby.

Any registered creditor consenting to the relocation shall retain his collateral security if he makes mention of his consent on the margin of the initial registration.

Where the business property is transferred to another State Party, the initial registration shall at the demand of the registered creditor be transferred in the Trade and Personal Property Rights Register of the new location.

**ARTICLE 176**

Any lessor wishing to terminate a lease on property housing business property with a registered encumbrance shall give notice by extrajudicial means to the registered creditors.

No court decision or private agreement or resolute clause as of right shall have the effect of cancelling a lease except after two months following notification.

**ARTICLE 177**

A registered creditor shall have the right to a higher bid in accordance with the provisions of the law relating to the sale of business property.

**ARTICLE 178**

The registered creditor shall be entitled to:

- A right to pursue in accordance with article 97(2) of this Uniform Act;
- A right to liquidate in accordance with article 104(1) of this Uniform Act;
- A right of preference in accordance with article 226 of this Uniform Act.

## CHAPTER 6 PREFERENTIAL RIGHTS

### Section 1 General Liens

#### ARTICLE 179

A general lien shall confer on the holder a right of preference in accordance with the provisions of articles 225 and 226 of this Uniform Act.

The special law creating general liens shall specify their ranks while classifying them in relation to the dispositions of article 180 of this Uniform Act. Failing that, these liens shall be ranked lowest following the said article 180 of this Uniform Act.

#### ARTICLE 180

Without any publicity, the following shall be preferred in this order;

- 1) Burial expenses and medical expenses for the last illness of the debtor prior to the seizure of his property;
- 2) Provisions made to the debtor for his subsistence in the last year prior to his death, the seizure of his property, or the court decision ordering collective proceedings;
- 3) Sums owed workers and apprentices for work done or as severance allowances during the last year prior to the debtor's death, the seizure of his property or the court decision ordering collective proceedings;
- 4) Sums owed the authors of intellectual, literary and artistic works for the last three years prior to the debtor's death, the seizure of his property or court decision ordering collective proceedings;
- 5) Social insurance contributions owed by the debtor to social welfare insurance institutions up to the amount legally fixed for the provisional enforcement of court decisions;
- 6) Sums owed by the debtor as custom duty and taxes up to the amount legally fixed for the provisional enforcement of court decisions.

#### ARTICLE 181

Unpaid taxes, custom duties and unpaid social insurance contributions shall be preferred beyond the amount fixed by article 180(5) and (6) of this Uniform Act.

These rights of preference shall be effective only where they are registered in the Trade and Personal Property Rights Register within six months of the payable date. However, where there is a violation of fiscal, customs or social insurance law, time shall start running from the notification of the distress, tax payment notice or of any other form of recovery notice.

Registration shall confer preferential rights to the public Treasury, Custom and Excise department and social insurance institutions for three years from the date the registration was done; the right shall cease to be effective on the expiration of this period unless renewed before the expiration period.

## Section 2 Special Liens

### ARTICLE 182

Any creditor who holds a special lien shall have a right of preference over any asset legally transferred to him as a base which he shall exercise upon distraint in conformity with the measures provided for in article 226 below.

As long as the insured amount of the asset is unpaid the right of preference may also be exercised by subrogation of that amount where the asset has perished or disappeared.

### ARTICLE 183

Where any sold asset is still in the possession of the debtor, the vendor shall have on the said asset a lien as security for the payment of the unpaid price or on the price still owed by the sub purchaser.

### ARTICLE 184

The lessor shall have a lien on the assets stocked in the leased premises.

In addition to securing any compensation the creditor may be awarded, the privilege also secures his rents overdue for twelve months prior to the distraint and those for the twelve months to fall due thereafter.

The lease holder or whosoever by fraudulent means shall deprive the lessor of all or any part of his preferential rights shall be prosecuted under the national laws of the State Party.

Where the assets are relocated without his consent, the lessor may again proceed to have them distrained and so retain his lien on them where the said lien is declared in the distress warrant.

### ARTICLE 185

The road transporter shall have a lien on the goods he carries in respect of the payment he is due provided that there is a nexus between the said goods and the amount due.

### ARTICLE 186

The worker of a performing party employed to do work in a home shall have a lien on the sum owed by the employer to secure any claim arising from the labour contract provided the said claim is for work done.

### ARTICLE 187

The workers and the firm supplying labour to an enterprise shall have a lien on the balance owed the said firm, for the work done as security for the wages owed in respect of the said work.

The payment of the workers' wages shall be given preference over the debts owed the said supplier.

### ARTICLE 188

A commission agent shall have a lien over the goods he holds on behalf of the principal, as security for his commission arising from the agency.

**ARTICLE 189**

Any person who incurs expenses or provides services to avoid the loss of an asset or to ensure that it continues to serve its intended purpose shall have a lien on the said asset.

**TITLE 3  
MORTGAGES**

**CHAPTER 1  
GENERAL PROVISIONS**

**ARTICLE 190**

A mortgage shall mean the transfer of any determined or determinable real property belonging to a settlor to secure one or more existing or future debts provided the said debts are certain or ascertainable.

A mortgage may be legal, conventional or judicial.

**ARTICLE 191**

Except otherwise provided, the rules applicable to conventional mortgages shall apply to forcible mortgages.

**ARTICLE 192**

Except otherwise provided, only existing and registered real property may be the subject of a mortgage.

The following may be the subject of a mortgage:

- Built-on or non-built-on property and improvements or additional structures thereon except movables affixed thereto;
- Real property rights duly registered following the law on land tenure.

**ARTICLE 193**

A mortgage shall be indivisible by nature and shall remain wholly on the mortgaged property until full payment of the debt notwithstanding that title to the said property has devolved by succession.

**ARTICLE 194**

Any holder of a right subjected to a condition, cancellation or rescission regularly published may only consent to a mortgage subject to the same condition, cancellation or rescission.

The mortgage of a joint property shall maintain its effect irrespective of the outcome of the partitioning provided that the mortgage was consented to by the co-owners. Otherwise, it shall maintain its effect only to the extent where the co-owner who consented to it shall, in the event of partitioning be allotted the joint property or where the said property is sold by auction to a third party, the said co-owner is allotted the proceeds of such auction.

The mortgage of a portion within one or more joint real property shall maintain its effect only to the extent where the co-owner who consented to the mortgage is during the partitioning allotted the whole property; it shall then maintain this effect to the full extent of the allotment without being limited to the portion of the co-owner who consented to it; where the property is sold to a third party by auction, the mortgage shall also maintain the same effect if the proceeds are allotted to the said co-owner.

#### **ARTICLE 195**

Any conventional or judicial deed constituting a mortgage shall be registered in conformity with the rules of publicity enacted for that purpose by the State Party where the encumbered property is situated.

A regularly published mortgage shall take its rank on the date of registration.

Where the real property rights subject of a mortgage consists of other proprietary rights such as usufruct, surface rights, long lease or building lease, notice of the registration of the mortgage shall be given to the usufructuary, to the owner of the soil and subsoil or to the lessor.

#### **ARTICLE 196**

Except otherwise provided by national law, registration shall have a fixed duration and shall maintain the right of the creditor up to a date to be fixed by agreement or by court order within the limit of thirty years from the date of this formality. It shall cease to have effect where it is not renewed for a fixed duration before the expiration of this time limit.

The same shall apply where the mortgage is constituted for an undetermined duration.

#### **ARTICLE 197**

The mortgage shall confer on the mortgagee the right to pursue the debtor's property and the right of preference.

The right of preference shall be exercised in accordance with article 225 of this Uniform Act to secure the principal, costs and interest for three years on the same rank, except particular registrations of mortgages are taken from their date, for interests other than those maintained by their initial registration.

The right of preference shall also be exercised by subrogation on the insured amount of the damaged property.

#### **ARTICLE 198**

The mortgagee-creditor whose debt has not been paid may bring an action for the transfer of the mortgaged property in his name unless he proceeds to sell the said property in accordance with the rules governing the attachment of real property which a mortgage contract shall not circumvent.

He shall however not avail himself of this option where the mortgaged property is the principal residence of the settlor.

#### **ARTICLE 199**

Provided that the settlor is a legal or natural person duly registered in the Trade and Personal Property Rights Register and that the mortgaged property is not a dwelling house, it may be agreed in the mortgage contract that ownership of the said house shall be transferred to the creditor.

After the thirty days' time limit following an unheeded notice to pay by an extrajudicial act, the mortgagee-creditor may cause the transfer to be recorded by deed made in accordance with the manner and form required by the State Party for the transfer of real property.

#### **ARTICLE 200**

In the cases provided for in the two preceding articles the property shall be valued by an expert appointed by the parties or by the court.

Where the value exceeds the secured debt, the mortgagee-creditor shall owe the settlor an amount equal to the difference. Where there are other mortgagee-creditors the mortgagee-creditor shall hold the difference on their behalf. Any contrary clause shall be disregarded.

#### **ARTICLE 201**

Any deed relating to a mortgage and concerning transfer, change of rank, subrogation renunciation, termination shall be established by a notary or by a private deed in accordance with the national law of the place where the property is situated following a model which conforms to the rules applicable in the State Party concerned and published as a proof the mortgage was consented to or constituted.

The termination of a mortgage shall result from the following:

- The extinction of the principal debt;
- Renunciation of the mortgage by the mortgagee-creditor;
- The lapse of the registration certified, under his responsibility, by the Conservator of the land publicity register;
- The redemption of a mortgage resulting from a report of award on a forced expropriation and on the payment or the deposit of the final compensation for an expropriation based on public interest.

#### **ARTICLE 202**

The mortgage shall be cancelled in accordance with the rules applicable to publicity in the State Party where the property is encumbered.

Where the creditor refuses to consent to it or where the Conservator refuses to proceed to the cancellation of the mortgage, the debtor or his beneficiary may obtain a court order releasing this security. If the order made against the creditor or claimant is final the conservator shall proceed to the said cancellation.

## **CHAPTER 2 CONTRACTUAL MORTGAGES**

#### **ARTICLE 203**

The contractual mortgage may only be consented to by the holder of a regularly registered real property right which he can transfer.

As an exception to the preceding paragraph, the mortgage may be taken on future acquired property in the following cases and under the following conditions:

- 1) Whoever does not own existing and free property or who may not have sufficient property to secure a debt may agree that each time property is acquired such property shall be allocated for the payment of the debt;
- 2) The person whose mortgaged property has perished or suffered damage to the point that it is insufficient to secure a debt may also do so without prejudice to the right of the creditor to immediately start proceedings for repayment;
- 3) Whoever possesses a right on the real property of another, on public property or on national lands permitting him to build structures for himself may mortgage the said structures or construction works just commenced or simply projected; where these are destroyed, the mortgage shall be transferred as of right to new structures constructed on the same site.

#### **ARTICLE 204**

The conventional mortgage shall be made for a fixed sum or a sum at least ascertainable in principal and brought to the knowledge of third parties by registration of the deed. The debtor shall where necessary have a right later to ask for a reduction of this sum in compliance with the landed property publicity rules provided to this effect.

#### **ARTICLE 205**

The conventional mortgage shall be made in accordance with the national laws of the place where the property is situated by the following:

- By an instrument drawn up by the competent notary or administrative or judicial official vested with the powers to draw up such deeds; or
- By a private deed drawn up following a model accepted by the conservator of lands.

Any power of attorney given to a third party to establish a mortgage in the notarial form shall be drawn up in the same form.

#### **ARTICLE 206**

As long as the mortgage deed is not registered, it shall not be binding on third parties and shall constitute to the parties thereto an exchange of promises which shall impose on them the obligation to have the deed registered.

#### **ARTICLE 207**

The publication of any conventional mortgage securing a short term loan may be deferred for a period not longer than ninety days without the creditor losing the rank he has acquired.

For this purpose, the creditor shall comply with the special provisions laid down to that effect by the rules governing the publication of matters of land tenure in respect of mortgages to secure short term loans provided for by the national laws of the place where the property is situated.

#### **ARTICLE 208**

A mortgage granted as security for a credit not exceeding a fixed sum shall be ranked on the date it shall be published regardless of the successive dates the provider of the credit discharges his obligations.

## CHAPTER 3 FORCIBLE MORTGAGES

### ARTICLE 209

A forcible mortgage shall be one created either by operation of the law or by a court decision irrespective of the debtor's consent.

Forcible mortgages other than those provided for by this Uniform Act shall be governed by specific provisions of the national laws of each State Party.

### Section 1 Legal Forcible Mortgages

### ARTICLE 210

Any mortgage created by law for the benefit of a group of creditors provided for by the Uniform Act organizing collective proceedings for the discharge of debts shall be registered at the request of the registrar or receiver within the time limit of ten days from the date of the court decision opening collective proceedings.

### ARTICLE 211

The vendor, exchanger or the co-beneficiary may require from the other party to the deed a mortgage on the property sold, exchanged or distributed to secure the total or partial payment of the price, difference in value to be paid in cash or the loan arising from the distribution. In the absence of a conventional mortgage clause, the vendor, exchanger or the co-beneficiary may in pursuance of a decision of the competent court obtain a forcible mortgage on the said property.

Any action to cancel the deed of sale, exchange or of distribution based on the failure to pay the price or the difference in value shall lie with the vendor, exchanger or the co-beneficiary who holds a conventional or forcible mortgage duly published on account of having obtained this security conjointly with it.

Whoever shall provide funds for the acquisition of sold, exchanged or shared property may obtain a conventional or forcible mortgage under the same terms as the vendor, exchanger or co-beneficiary once it is formally established from the loan agreement that the funds were intended for that purpose and through a receipt issued by the vendor, exchanger or the co-beneficiary showing that payment was made from the borrowed funds.

### ARTICLE 212

Any architect, contractor or any other person employed to construct, repair or reconstruct a building, may before beginning work, obtain a conventional mortgage or, through a court order, a forcible mortgage on the building on which work is done.

The said mortgage shall be temporarily registered for the estimated amount due. Such registration shall be assigned a rank at the same time for a period not exceeding one month following the completion of work attested by a bailiff. The said mortgage shall maintain its date where within the same time-limit, either by agreement between the parties or by court order the registration is made final for the total or any part of the estimated amount due.

Any person who provides funds for the payment or reimbursement of the architects, contractors

and any other persons employed to construct, repair or reconstruct a building may obtain a conventional or forcible mortgage under the same conditions as the creditor once it is formally established from the loan agreement that the said amount was intended for that purpose and, from the receipt issued by the architects, or the contractors and any other persons that payment was made from the borrowed funds.

## **Section 2**

### **Judicial Forcible Mortgages**

#### **ARTICLE 213**

Apart from the cases provided for by Articles 210 to 212 of this Uniform Act, the creditor, in order to secure his debt, may by a decision of the competent court of the area where the debtor resides or where the property to be attached is situated, be authorized to seek a temporary registration of a mortgage on the property of the debtor.

The said decision shall state the sum for which the mortgage is authorized.

It shall give the creditor a time-limit within which, under pain of nullity of the said authorization, he shall bring an action for the validation of the mortgage before the competent court or for the said court to rule on the merits of his debt. Such action may be through an application for an injunction to pay. The decision may in addition prescribe a period within which the creditor shall be barred from bringing an action in court.

Where the creditor acts in violation of the provisions of the preceding paragraph, the court which authorized the mortgage may withdraw its decision.

#### **ARTICLE 214**

The decision may compel the creditor to first show proof of his credit worthiness, or in default, sign an undertaking in the Registry of the court or in the office of a receiver with or without an obligation to comply with the rules on the reception of securities.

#### **ARTICLE 215**

Where any difficulties shall arise the matter shall be referred back to the court which authorized the mortgage. The decision of the said court shall be immediately enforceable notwithstanding any objection or appeal.

#### **ARTICLE 216**

The creditor shall be allowed to make a temporary registration upon presentation of the said decision that shall contain:

- 1) the name of the creditor, his chosen address, the name of the debtor;
- 2) the date of the decision;
- 3) the origin and amount of the secured debt including the principal, interest and costs;
- 4) the description by number of the land certificate of each property for which registration was ordered; in the absence of a land certificate and subject to the provisions of Article 192 of this Uniform Act, the description of the unregistered property shall be done in conformity with the provisions of the national law specifically laid down for that purpose.

The provisions of this article shall not exclude the publication formalities prescribed by the rules

governing land tenure.

#### **ARTICLE 217**

The creditor shall give notice of the court decision ordering the forcible mortgage to the debtor by giving the said debtor the writ of summons relating to the action for the validation of the mortgage or the decision the court gave on the merits. He shall equally give notice of the registration within a period of fifteen days of this formality.

He shall choose an address within the area of jurisdiction of the competent court or the land registry service.

#### **ARTICLE 218**

The President of the competent court who had authorized the mortgage, may at short notice order that the said mortgage be discharged or reduced subject to the debtor depositing with a court appointed receiver sums covering the principal debt, interest and costs specifically allocated to the debt. Any application for the discharge or reduction of the mortgage shall be made within the month the writ of summons relating to the action for the validation of the mortgage or to the debt was served on the debtor.

Where an action over the debt in dispute is finally determined by the court, all sums relating to that debt deposited with the receiver shall be specifically allocated to the payment of the debt owed the plaintiff in preference to all others. The said sums shall remain sequestered throughout the duration of the proceedings.

#### **ARTICLE 219**

The court hearing the dispute may at any time, and even before it delivers its final judgment order the total or partial discharge of the mortgage where the debtor provides compelling and reasonable grounds for such discharge.

Where an action is time-barred, or where the plaintiff applies to withdraw his claim, an interim order shall be made by the court which had authorized the said registration to temporarily release the mortgage. The mortgage shall be cancelled upon the presentation of a final court order.

#### **ARTICLE 220**

Where it is proved that the value of the various real properties is twice the total amount of the sums registered, the debtor may seek to limit the scope of the first registration to the properties which he shall choose for that purpose.

#### **ARTICLE 221**

Where the debt is admitted, the judgment given on the merits shall maintain the totality or part of the mortgage which is already registered or shall grant a final mortgage.

Within the period of six months following the final judgment, the ensuing mortgage shall be registered in conformity with the publicity formalities prescribed by the laws governing land tenure. The portion that has been maintained shall acquire a rank from the date of its provisional registration; the mortgage shall acquire a rank from the date of final registration.

Where the final registration is not done within the period referred to above, or where the debt is not acknowledged in a final court decision, the initial registration shall be void ab initio and its cancellation may be demanded by any one of the interested parties before the court which authorized the said registration at the expense of the person who did it.

## CHAPTER 4 EFFECTS OF A MORTGAGE

### ARTICLE 222

Where the mortgaged property as a result of destruction or deterioration becomes inadequate to secure the debt, the creditor may claim payment before the due date of the debt or obtain another mortgage.

### ARTICLE 223

The right to pursue the debtor's property may be exercised against any third party who holds property whose title-deed was published prior to the mortgage contract.

While the holder of the said property may not be responsible for the debt, he may subrogate himself for the creditor-claimant by paying to the latter the total amount of the debt in capital, interest and other accessories.

## TITLE 4 DISTRIBUTION OF FUNDS AND THE CLASSIFICATION OF SECURITIES

### ARTICLE 224

Subject to the provisions relating to the order of distribution here below, the procedure for distributing the proceeds obtained from a sale shall be fixed by the rules governing measures of execution.

### ARTICLE 225

Proceeds obtained from the sale of real property shall be distributed in the following order:

- 1) To creditors owed statutory costs incurred in the realization of the real property sold and in the distribution itself of the proceeds;
- 2) To creditors of super privileged wages;
- 3) To creditors who have a conventional or forcible mortgage, and to separate creditors who are registered in the land publication register within the legal deadline, each according to the rank of his registration;
- 4) To creditors with a general privilege which is subjected to publication, each according to the rank of his registration in the Trade and Personal Property;
- 5) To creditors with a general privilege which is not subjected to publication in accordance with the order laid down by article 180 of this Uniform Act;
- 6) To unsecured creditors with a writ of execution issued in their favour when they intervened in attachment proceedings or objected to the procedure.

Where the funds to pay the creditors of the same rank mentioned in 1, 2, 5 and 6 of this article are inadequate, the funds shall be distributed in proportion to their total claims and on a pro-rata basis.

**ARTICLE 226**

Without prejudice to the exercise of an eventual possessory lien or the exclusive right to payment, the proceeds obtained from the sale of personal property shall be distributed in the following order:

- 1) To creditors owed statutory costs incurred in the realization of the personal property sold and in the distribution itself of the proceeds;
- 2) To creditors who bore the cost of preserving the debtor's property in the interest of creditors with older debts;
- 3) To creditors of super privileged wages;
- 4) To creditors secured by a general privilege subject to publicity, a pledge, or security each one of them depending on the date it became binding on third parties;
- 5) To creditors with a special privilege each depending on the movable property concerned; in the event of a conflict between the debts covered by a special privilege on one and the same property, preference shall be given to the first distrainor;
- 6) To creditors with a general privilege which is not subject to publicity in accordance to the order established by article 180 of this Uniform Act;
- 7) To the unsecured creditors with a writ of execution issued in their favour when they intervened by way of attachment proceedings or objected to the distribution procedure.

Where the funds to pay the creditors of the same rank mentioned in 1, 2, 3, 6 and 7 of this article are inadequate, the funds shall be distributed in proportion to their total debts and on a pro-rata basis.

## **TITLE 5 TRANSITORY AND FINAL PROVISIONS**

**ARTICLE 227**

This Uniform Act which repeals the Uniform Act of 17 April 1997 on the organization of securities shall apply only to securities granted or constituted after its entry into force.

Any security granted or constituted or created prior to this Uniform Act and in conformity with the laws in force at the time shall remain subjected to the said laws until its extinction.

**ARTICLE 228**

This Uniform Act shall be published in the Official Gazette of OHADA within sixty days from the date of its adoption. It shall also be published by any appropriate means or in the Official Gazette of each State Party. It shall enter into force ninety days as from the date of publication in the Official Gazette of OHADA in conformity with article 9 of the Treaty relating to the harmonization of business law in Africa signed in Port Louis on 17 October 1993 as amended in Quebec on 17 October 2008.

*Done in Lome, This 15<sup>th</sup> day of December 2010*

**UNIFORM ACT ORGANIZING  
COLLECTIVE PROCEEDINGS  
FOR CLEARING OF DEBTS**



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The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA),

- Considering the Treaty on the Harmonization of Business Law in Africa, in particular Articles 2 and 5 to 12 thereof;
- Considering the report of the Permanent Secretary and the observations of the State Parties;
- Considering the opinion of the Common Court of Justice and Arbitration dated 20 March 1998; the States Parties present having deliberated, unanimously adopt the Uniform Act set out below:

#### **ARTICLE 1**

The purpose of this Uniform Act shall be:

- to organize collective proceedings for preventive settlement, receivership and liquidation proceedings against the debtor with a view to the collective clearing of his debts.
- to provide sanctions relating to the estate, profession and offences which may be imposed in case of default by the debtor and managers of the debtor company.

#### **ARTICLE 2**

- (1) The purpose of a preventive settlement shall be to avoid the insolvency or the cessation of activity of a company and to enable the debtor company clear its debts through a preventive composition agreement.

Preventive settlement shall apply to any natural or corporate person doing business and to any non-trading private corporate person, to any public corporation having the form of a private corporate person, facing a difficult but not irremediable economic and financial situation no matter the nature of the debts.

- (2) Receivership is a procedure aimed at safeguarding a company and clearing its debts through a composition agreement.
- (3) Liquidation proceedings are aimed at disposing of the assets of the debtor company in order to clear its debts.
- (4) Receivership and liquidation proceedings shall apply to any person who stops payment. Such person may be a natural or corporate person doing trading, a non-trading private corporate person and any public corporation having the form of a private corporate person.

#### **ARTICLE 3**

Preventive settlement, receivership and liquidation proceedings shall be within the jurisdiction of the commercial court.

This court shall also be competent to settle all disputes arising from collective proceedings, disputes on which collective proceedings have a legal bearing as well as disputes concerning the bankruptcy of individuals and other sanctions, with the exception of disputes falling within the exclusive jurisdiction of the administrative, criminal and labour courts.

#### **ARTICLE 4**

The competent court to deal with collective proceedings shall be the court in whose jurisdiction the debtor company has his principal place of business or where it is a company, its registered office; where it has no registered office within the national territory, its principal place of business. Where the head office is located abroad, the competent court shall be the court in whose jurisdiction within the national territory the principal activities of the company are carried out.

The court in whose jurisdiction the registered office or the principal place of business of the company is located shall also be competent to make any order as to the composition agreement, receivership or liquidation proceedings against persons jointly and severally liable for the debts of the company.

Any dispute over the jurisdiction of the court before which the matter is brought shall be settled by the court itself within a period not exceeding fifteen days and in case of appeal, within a period not exceeding one month by the court of appeal.

In case of an objection to the court's territorial jurisdiction, the said court shall in the decision declaring itself competent, also rule on the merits of the case; its decision in this respect may only be challenged by way of an appeal.

## PART I PREVENTIVE SETTLEMENT

### CHAPTER I

#### COMMENCEMENT OF PROCEEDINGS FOR PREVENTIVE SETTLEMENT

##### ARTICLE 5

The debtor company shall commence proceedings before the competent court by a petition outlining the economic and financial situation of the company, the prospects for its recovery and clearing its debts.

The petition shall be addressed to the President of the competent court and filed in the registry of the court against a receipt. It shall specifically state the claims for which the individual lawsuits should be suspended.

No petition for a preventive settlement shall be filed by the debtor before the expiration of a time limit of five years following a previous petition that resulted in a decision granting a preventive settlement.

##### ARTICLE 6

The following documents shall be attached to the petition;

- 1° an extract of the registration in the Trade and Personal Property Rights Register;
- 2° summary financial statements comprising, specifically the balance sheet, profit and loss account and statement of income and expenditure;
- 3° available funds;
- 4° a statement in figures of claims and debts, containing the names and addresses of the creditors and debtors;
- 5° detailed statement of collateral securities and secured debts granted or received by the company and its managers;
- 6° an inventory of the debtor's property showing the movable property subject to claim by their owners and the property affected by an ownership reserve clause;
- 7° the number of workers, the payroll and wage costs;
- 8° the turnover and profits for the past three years;
- 9° the names and addresses of staff representatives;
- 10° where it is a company, the list of persons jointly and severally liable for its debts, with their names and addresses, 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 only be partially furnished, the petition shall state the reasons for such impediment.

##### ARTICLE 7

The debtor shall, at the time of filing the documents provided for under Article 6 above or no later than thirty days following such filing, under penalty of inadmissibility of his petition, also file a proposal of a preventive composition agreement specifying the measures and conditions envisaged for the recovery of the company, particularly:

- The modalities for continuing the operation of the company such as the application for time limits and debt remissions, partial transfer of assets specifying the property to be transferred; transfer or management lease of a branch of an activity which is part of the business; the transfer or management lease of the entire company. Such modalities shall not be restrictive or exclusive of each other;
- The persons who will execute the composition agreement and all the engagements undertaken by them for the recovery of the company;
- The modalities for maintaining and financing the company, and clearing the debts contracted prior to the decision provided for under Article 8 below and where necessary, the guarantees given to ensure the execution; such commitments and guarantees may consist, in particular, in subscribing to an increase of the registered capital of the company by old or new members, the allocation of credits by any bank or any financial institution, the continuation of the execution of contracts concluded prior to the petition and the providing of securities;
- layoffs for economic reasons which shall be carried out under the conditions laid down by the of the labour law;
- The replacement of managers.

## ARTICLE 8

As soon as the proposal for preventive composition agreement is filed, it shall be forwarded to the President of the of the competent court who shall order the suspension of individual lawsuits and appoint an expert to prepare a report on the economic and financial situation of the company, the prospects for recovery considering the time limits and remissions granted or likely to be granted by the creditors and any other measures contained in the preventive composition proposals.

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

The expert shall within a period not exceeding eight days following the decision to suspend individual lawsuits be informed of his mission by registered letter or by any means in writing wherein reception can be acknowledged, by the President of the competent court or by the debtor.

## ARTICLE 9

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

The suspension shall apply to measures of execution as well as to preventive measures.

It shall apply to all unsecured creditors having general liens or special secured debts such as a special lien on personal property, a pledge, a collateral security or a mortgage, with the exception of creditors who are due wages.

The suspension of individual lawsuits shall neither apply to an action for the acknowledgment of a right or disputed claim nor to an action relating to foreign exchange against the signatory of a negotiable instrument other than the beneficiary of the suspension of individual lawsuits.

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

## ARTICLE 10

Except in a case where remission has been given by the creditor, legal or contractual interest 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, under pain of the debtor not being allowed to plead any right, preclude him from:

- paying either in whole or in part, debts contracted prior to the decision to suspend individual lawsuits covered by the decision;
- taking measures that are unrelated to the normal operations of the company or granting securities.

The debtor shall also be prohibited from paying off the securities given for debts contracted prior to the decision provided for under Article 8 above.

#### ARTICLE 12

(1) An expert shall assess the debtor's situation.

For that purpose, he shall, notwithstanding any laws and regulations to the contrary, obtain from auditors, accountants, staff representatives, public services, security and social insurance agencies, banks or any financial institutions and services in charge of centralizing banking risks and incidental payments, information likely to give him an exact picture of the economic and financial situation of the debtor.

(2) It shall be the expert's duty to give notice to the competent court of any breaches of the provisions of Article 11 above.

(3) The expert shall hear the debtor and the creditors and assist them in order to reach an agreement on the modalities for the recovery of the business and the clearing of his debts.

#### ARTICLE 13

Save by a reasoned decision of the President of the competent court authorizing extension of the aforementioned period by one month, the expert so appointed shall deposit, in two copies, his report containing the preventive composition agreement proposed by the debtor or concluded between the debtor and his creditors, within a period of at least two months from the date the matter is referred to him.

The expert shall comply with the time limit specified in the preceding paragraph, under pain of being liable to the debtor or creditors.

A copy of the report shall be forwarded to the representative of the Legal Department by the registrar-in-chief.

#### ARTICLE 14

The President shall, within eight days from the day the report is deposited, 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 the expert rapporteur as well as any creditor whose testimony he deems necessary to hear.

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

## ARTICLE 15

The competent court shall deliver its ruling in camera.

- (1) Where the court finds that payments have been suspended, it shall as a matter of routine and at any time, order receivership or liquidation proceedings, without prejudice to the provisions of Article 29 below.
- (2) Where the situation of the debtor so requires, the court shall render a decision on the preventive settlement and approve the preventive composition agreement recording the time limits and remissions granted by the creditors and duly note the measures proposed by the debtor for the recovery of the business.

The time limits and remissions granted by the creditors may be different.

The competent court may give approval to the preventive composition agreement where:

- the conditions for the validity of the arrangement have been satisfied;
- no reason arising from the common interest or public policy is likely to stop the arrangement;
- the arrangement offers genuine possibilities of recovery of the company, discharge of its liabilities and provides sufficient guarantees for execution;
- the time limits granted shall not exceed three years for all the creditors and one year for those creditors due wages.

Where the preventive composition agreement includes a request for a time limit not exceeding two years, the competent court may make the said time limit binding on the creditors who refused any time limit and any remission unless such time limit threatens the business of the said creditors.

Creditors due wages shall neither be subjected to any time limits nor remissions without their consent.

- (3) Where the competent court finds that the debtor's situation does not qualify for any collective proceedings or where it rejects the preventive composition agreement 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 deliver its ruling within the month from the date the matter is referred to it.

## ARTICLE 16

The decision of the competent court giving its approval to the preventive composition

agreement shall put an end to the mission of the expert rapporteur, subject to the provisions of Articles 17 below. However, the competent court may appoint a Bankruptcy Trustee and Controller responsible for supervising the execution of the preventive composition agreement under the same conditions as those provided for the recovery composition ordered by the court.

The court shall also appoint a Judge Administrator.

## ARTICLE 17

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

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

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

### **ARTICLE 18**

The decision giving approval to the preventive composition agreement shall render the said agreement compulsory on all those who were creditors prior to the preventive settlement decision irrespective of whether their claims are unsecured or guaranteed by a security under the conditions of the time limits and remissions granted to the debtor, without prejudice to the provisions of Article 15 (2) above. The same shall apply to guarantors for the debts of the debtor contracted prior to the said decision.

Creditors with secured debts shall not lose their guarantees but may only enforce them in the event of a cancellation or resolution of the preventive composition agreement to which they have consented or which has been imposed on them.

The debtor's sureties and co-obligors shall not take advantage of the time limits and remissions granted under the preventive composition agreement.

Statutory limitation shall stop running with regard to creditors who, due to the preventive composition agreement, cannot claim their rights or institute actions.

The debtor shall recover his freedom to administer and dispose of his property 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 of his mission to the President of the competent court within a period of one month from the date the preventive composition agreement is approved.

The President of the competent court shall visa the report.

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

### **ARTICLE 20**

The Bankruptcy Trustee appointed pursuant to the provisions of Article 16 above shall supervise the execution of the preventive composition agreement. He shall without delay, report any violations to the Judge administrator.

He shall make a report, every three months, to the Judge administrator on the conduct of the settlement operations and notify the debtor thereof. The debtor shall have a time limit of fifteen days to submit any observations and objections he may want to make.

A Bankruptcy Trustee who withdraws from his duties shall submit his accounts to the registry of the court within a period of one month from the date of his withdrawal.

The remuneration of the Bankruptcy Trustee in his capacity as Controller shall be determined by the court that appointed him.

### **ARTICLE 21**

At the request of the debtor and upon a report of the Bankruptcy Trustee responsible for

controlling the execution of the preventive composition agreement, where one has been appointed, the competent court may decide that changes likely to shorten or foster the execution of the agreement be made.

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

### **CHAPTER III LEGAL REMEDIES**

#### **ARTICLE 22**

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

#### **ARTICLE 23**

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

The court of appeal shall render its decision within a period of one month from the date on which the appeal was filed.

Where the court of appeal confirms the preventive settlement decision, it shall equally confirm the preventive composition agreement.

Where the court of appeal finds the debtor has suspended payments, it shall determine the date thereof and order the competent court to commence receivership or liquidation proceedings.

The registrar of the court of appeal shall, within a period of three days of its decision, forward an extract of the decision to the registrar of the court of first instance who shall publish same in the manner provided for in article 17 above.

#### **ARTICLE 24**

Any objection against the decision of the President of the competent court referred to in Article 11 above may only be made before the said court within the time limit of eight days from the date the decision was pronounced. The provisions of Article 218 below relating to the computation of time limits shall apply to the preventive settlement.

To this effect, the decision shall be forwarded to the registry of the court on the day it is rendered. Notice of the said decision shall forthwith be given to the debtor by registered mail or by any means with written proof thereof.

The competent court shall render its decision within a period not exceeding eight days from the day the objection is filed. The objection shall be made by declaration at the registry of the court. The registrar shall summon the party objecting, by registered mail or by any other means with written proof, to appear in the very next court session for the parties to be heard in camera.

Any appeal against the decision taken by the court on the objection may only be filed in the Supreme Court.

### **PART II**

# RECEIVERSHIP AND LIQUIDATION PROCEEDINGS

## CHAPTER I COMMENCEMENT OF RECEIVERSHIP AND LIQUIDATION PROCEEDINGS

### ARTICLE 25

A debtor who is unable to clear his current debts with his available assets shall file a declaration of insolvency so that receivership or liquidation proceedings may be commenced regardless of the nature of his debts.

The declaration shall be made at the registry of the competent court in return for a receipt within a period of thirty days from the date payments are suspended.

### ARTICLE 26

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

- 1° an extract of registration in the Trade and Personal Property Rights Register;
- 2° summary financial statements comprising, in particular, the balance sheet, statement of profit and loss, and a financial statement of income and expenditure;
- 3° available funds;
- 4° a statistical statement of claims and debts, mentioning the names and addresses of the creditors and debtors;
- 5° a detailed statement (assets and liabilities) of collateral securities and secured debts given or received by the company and its managers;
- 6° an inventory of the debtor's property showing the movable property subject to a claim by their owners and property affected by an ownership reserve clause;
- 7° the number of workers, the payroll and wage costs;
- 8° the turnover and profits of the past three years;
- 9° the names and addresses of staff representatives;
- 10° where it is a company, the list of members jointly and severally liable for its debts, with their names and addresses, as well as the names and addresses of its managers.

All these documents shall be dated, signed and certified true by the person making the declaration.

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

### ARTICLE 27

At the time he deposits the declaration provided for in Article 25 above or no later than fifteen days following the said deposit, the debtor shall file 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 or the grant of time limits and debt remissions, partial transfer of assets specifying the property to be transferred; transfer or management lease of a branch of activity forming a business; transfer or management lease of the entire company. Such modalities shall not be restrictive and

exclusive of each other;

- The persons to execute the composition agreement and all the commitments entered into by them and needed for the recovery of the company; modalities for maintaining and financing the company, and payment of debts contracted prior to the decision to commence proceedings as well as, where necessary, the guarantees provided to ensure its execution; these commitments and guarantees may consist, in particular, in subscribing to an increase of the registered capital of the company by old or new members, the opening of credits by banks or other financial institutions, the continuous execution of contracts concluded prior to the decision to commence proceedings 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**

Collective proceedings may be commenced on the application of any of the creditors, no matter the nature of his claim, so long as the said claim is unquestionable, liquid and payable.

The creditor's summons shall specify the nature and amount of his claim and state the deed upon which the debt is founded.

The debtor shall be allowed to make the declaration and proposal for receivership provided for under Articles 25, 26 and 27 above within a period of one month following the summons.

#### **ARTICLE 29**

(1) The competent court may of its own motion initiate proceedings, particularly on the basis of information provided by the representative of the Legal Department, the auditor(s) of the private company where such company has auditor(s), partners or members of the said company or on the basis of information provided by an institution representing the staff. Such information shall provide the court with the facts which are of a nature to justify such initiative.

The President of the competent court shall cause the registrar to summon the debtor by means of any extrajudicial act to appear before the court sitting in camera. The extrajudicial act shall contain a full reproduction of the present article.

(2) Where the debtor appears before the court, the President shall inform him of the facts that led to the decision to commence proceedings and shall record a statement of his views. Where the debtor acknowledges his insolvency or his difficulties or where the President is convinced of the debtor's insolvency or difficulties, he shall grant him a time limit of thirty days within which to file the declaration and proposal for receivership provided for in Articles 25, 26 and 27 above. The same time limit shall be granted members of a company whose liability for its debts is joint, several and indefinite.

After this time limit, the competent court shall render its decision in open court.

(3) Where the debtor fails to appear, the court shall so record and adjourn to render its decision in the very next session in open court.

#### **ARTICLE 30**

Where a trader who is insolvent dies, the matter shall be referred to the competent court within

the time limit of one year following his death, either by declaration of an heir or upon the summons of a creditor.

The competent court may on its own motion decide to examine the matter within the same time limit the known heir(s) of the debtor having been heard or duly summoned. In this case, the procedure stipulated under Article 29 above shall be applicable.

Where the matter is brought before the competent court by the heirs, they shall submit a declaration that payments have been suspended 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 on the application of the creditors, the provisions of Article 28 above shall be applicable.

### **ARTICLE 31**

The application to open collective proceedings may be made within the time limit of one year following the date the debtor is struck off the Trade and Personal Property Rights Register if his insolvency preceded his being struck off the register.

The application to open collective proceedings may also be made against a partner whose liability is joint, several and indefinite for the company's debts within a period of one year where payments are suspended before his withdrawal from the Trade and Personal Property Rights Register is recorded.

In both cases the competent court may commence proceedings on its own motion in accordance with the conditions laid down in Articles 28 and 29 above or the matter may be referred to it on the application of any of the creditors.

### **ARTICLE 32**

Only a decision of a competent court may order the commencement of collective proceedings for receivership or liquidation.

Before the decision to commence collective proceedings, 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 activities of the debtor and on the composition proposal made by him.

Where necessary, the competent court shall render its decision at the next possible court session on the report mentioned in the preceding paragraph; irrespective of the manner the matter was referred to it, the court may not render its decision before the expiration of the time limit of thirty days following the date the matter is referred to it.

The competent court to which the matter is referred may not enroll the matter on the general cause list.

### **Article 33**

The competent court which finds the debtor insolvent shall order receivership or liquidation proceedings.

It shall order receivership proceedings where it appears to it that the debtor has offered a serious composition proposal, otherwise, it shall order liquidation proceedings.

The court's decision that finds that a company has suspended payments shall have an affect on all the members whose liability is joint, several and indefinite for the company's debts and may order against each of the said members either receivership or liquidation proceedings.

The competent court may, at any stage of the proceedings convert the receivership proceedings into liquidation proceedings where it appears that the debtor is not or is no longer in a position to offer a serious composition proposal.

The decision of the competent court shall be subject to appeal. The appellate court that annuls or quashes the decision of the trial court may decide to order receivership or liquidation proceedings.

#### **ARTICLE 34**

The competent court shall fix provisionally the date of insolvency, failing which it shall be deemed to be the date of the court's finding.

The date of insolvency may not precede the decision to commence proceedings by more than eighteen months.

The competent court may modify, within the limits fixed in the preceding paragraph, the date of insolvency by a finding made after the decision to commence proceedings.

A petition to have the date of insolvency fixed on a date other than that fixed by the decision to commence proceedings or by a latter decision shall be inadmissible after the expiration of the time for filing appeal provided for under Article 88 below. As from that day, the date of insolvency shall no longer be changed.

#### **Article 35**

The decision to commence proceedings shall include the appointment of a Judge Administrator from amongst the judges of the court. The President of the court shall not appoint himself Judge Administrator save in the case where he is the only judge of that court. The decision shall also include the appointment of one or at most three Judge Administrators. Only under very exceptional circumstances may an expert who is appointed for the preventive settlement of a debtor be appointed Bankruptcy Trustee.

The registrar of the court shall diligently forward an extract of the decision to the representative of the Legal Department. The extract shall make mention of the main provisions of the decision.

#### **Article 36**

Every decision to commence collective proceedings shall without delay be entered in the Trade and Personal Property Rights Register. Where the debtor is a non-trading private company, 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 index card mentioning the decision concerning the party; the full name and address of the manager(s) as well as the registered office of the company shall also be mentioned.

An extract of the decision including the other entries shall also be published in a newspaper empowered to publish legal notices within the jurisdiction of the competent court. A second publication shall be made, under the same conditions, after a period of fifteen days. In addition to the information provided for in this article, the two extracts shall contain a notice to creditors to file their claims to the Bankruptcy Trustee. The notice shall contain a full reproduction of the provisions of Article 78 of this Uniform Act.

The same publication shall be made at the debtor's or the company's main business places.

The above publication shall be made as a matter of course by the registrar of the court.

#### **Article 37**

The information entered in the Trade and Personal Property Rights Register shall within a period of fifteen days from the date of delivery of the decision be sent for publication to the Official Gazette. This publication shall make mention of the debtor or the debtor company, his residence or its registered office, his or its registration number in the Trade and Personal Property Rights Register, the date of the decision ordering preventive settlement, receivership or liquidation proceedings and, and also the name of the newspapers in which the extracts provided for in Article 36 above are published; it shall indicate the name and address of the Bankruptcy Trustee to whom the creditors shall submit their claims and reproduce *in extenso* the provisions of Article 78 of this Uniform Act.

The publication in the Official Gazette shall be made as a matter of course by the registrar or, failing that, by the Bankruptcy Trustee.

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

### **Article 38**

The Bankruptcy Trustee shall be bound to verify whether the instructions and publications provided for under Articles 36 and 37 of this Uniform Act have been carried out.

He shall also be bound to register the decision to commence proceedings in accordance with the provisions governing land tenure advertising.

## **CHAPTER II ORGANS RESPONSIBLE FOR RECEIVERSHIP AND LIQUIDATION PROCEEDINGS**

### **Section I Judge Administrator**

#### **ARTICLE 39**

The Judge Administrator, who is under the authority of the competent court, shall ensure the rapid conduct of the proceedings and the protection of all the interests involved.

He shall collect all the information he deems useful. He may, in particular, hear the debtor or the managers of the company, their authorized agents, the creditors or any other person, including the known spouse or heir of the debtor who is found to be insolvent at the time of his death.

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

The Judge Administrator shall submit to the competent court a report in relation to disputes arising from the collective proceedings.

The Judge Administrator may be replaced by the competent court at any time.

#### **ARTICLE 40**

The Judge Administrator shall take a decision on any demand, dispute or claim which is within his competence within the time limit of eight days from the day such matter is referred to him. Where no decision is taken after this period he shall be deemed to have rejected the demand.

The decision of the Judge Administrator shall be deposited forthwith in the court registry. Notice of such decision shall be given to all persons likely to object to it by registered mail or by any other means with written proof thereof.

The said decision may be subject to objection. Any such objection shall be made by a simple declaration in the court registry within a period of eight days following the date the decision was deposited or notice thereof was given or within the time-limit provided for in the first paragraph of this article.

The competent court may, within the same time-limit, decide to examine the matter and reverse or annul the decisions of the Judge Administrator.

The competent court shall rule on the objection in the very next court session.

The Judge Administrator shall not participate at the hearing when the competent court is examining the contested decision.

## **Section II The Bankruptcy Trustee**

### **ARTICLE 41**

No relation by blood or marriage of the debtor up to the fourth degree inclusive shall be appointed Bankruptcy Trustee.

Where there is need for one or more Bankruptcy Trustees to be added or replaced, the Judge Administrator shall refer the matter to the competent court which shall make the appointment or replacement.

### **ARTICLE 42**

The competent court may order the dismissal of one or more Bankruptcy Trustees upon the proposal of the Judge Administrator made on his own motion or upon an application addressed to him by the debtor, the creditor or controller.

Where there is a petition that a Bankruptcy Trustee be dismissed, the Judge Administrator shall render a decision on the said petition within a period of eight days from the date he received it. He shall either dismiss the petition or propose the dismissal of the Bankruptcy Trustee to the competent court.

Where, the Judge Administrator has not rendered a decision within the afore mentioned time limit, the application may be brought before the competent court; the decision taken by the Judge Administrator may also be subject to objection under the conditions laid down by Article 40 above.

The competent court shall adjudicate upon the report of the Judge Administrator and hear the explanation of the Bankruptcy Trustee in *camara*. The ruling shall be delivered in open court.

### **ARTICLE 43**

The Bankruptcy Trustee shall represent the creditors subject to the provisions of Articles 52 and 53 below. He shall have the rights of a paid agent and without prejudice to his criminal responsibility, shall be civilly liable for his wrongful acts under the provisions of the ordinary law.

Where several Bankruptcy Trustees have been appointed, they shall act collectively.

However, depending on the circumstances, the Judge Administrator may give one or more of them the authority to act individually; in this case, only the Bankruptcy Trustee with such authority shall be personally liable for his wrongful act.

Any petition filed against any of the liquidation operations carried out by the Bankruptcy Trustee, shall be referred to the Judge Administrator who shall render a decision on it under the conditions laid down by Article 40 above.

The Bankruptcy Trustee shall make periodic reports on his mission and the conduct of the collective proceedings to the Judge Administrator at such intervals as may be defined by the latter. Failing that, he shall make his report once every monthly and, whenever the Judge Administrator so demands.

#### **Article 44**

The Bankruptcy Trustee who resigns from his post shall render an account of his duties to the new Trustee in the presence of the Judge Administrator; the debtor shall be duly invited to attend by registered mail or by any other means with written proof thereof.

#### **Article 45**

Funds eventually collected by the Bankruptcy Trustee, whatever their source, shall immediately be paid into an account specially opened for each collective proceedings. The account shall be held either in a bank, post office or the Public Treasury. The Bankruptcy Trustee shall tender proof of such deposits to the Judge Administrator within a period of eight days following the collection of the funds. In the case of late payments, the Bankruptcy Trustee shall pay interest on the sums he has not deposited. The Judge Administrator shall fix the sums of money necessary for expenses and costs of the proceedings.

Where funds due the debtor have been deposited into a special account by any third party, the said funds shall be transferred from the special account into an account opened by the Bankruptcy Trustee in the name of the collective proceedings provided that the Bankruptcy Trustee causes the withdrawal of any objections that may eventually be lodged.

The funds so deposited may be withdrawn only by virtue of a decision of the Judge Administrator.

#### **ARTICLE 46**

The Bankruptcy Trustee 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 the accounts are rendered.

### **Section III The Legal Department**

#### **ARTICLE 47**

(1) Information on the course of collective proceedings shall be given to the representative of the Legal Department by the Judge Administrator. The public prosecutor may at any stage of these proceedings ask that all deeds, books and documents relating to the collective proceedings be submitted to him.

Only the representative of the Legal Department may plead the failure to submit information or documents to him.

(2) The representative of the Legal Department shall decide, or when so asked, to forward to the Judge Administrator, information which may be useful for the administration of the collective proceedings and any other information relating to any criminal proceedings, notwithstanding the confidentiality of the investigations.

## **Section IV The Controller**

### **ARTICLE 48**

The Judge Administrator may, at any time, appoint one or more Controllers chosen from among the creditors; the number of Controllers appointed shall not exceed three.

However, the appointment of a Controller shall be compulsory at the request of creditors representing at least one half of the total amount of debts even where the said debts have not been verified.

In this case, the Judge Administrator shall appoint three Controllers chosen respectively from among creditors with special secured debts or nontransferable securities, staff representatives and unsecured creditors.

No person related to the debtor or manager of the company by blood or by marriage up to the fourth degree inclusive may be appointed Controller or representative of a company which has been appointed Controller.

A Controller may be dismissed by the competent court on the proposal of the Judge Administrator. The Judge Administrator shall replace a dismissed Controller with another one.

### **ARTICLE 49**

The Controller shall assist the Judge Administrator in his task of overseeing the conduct of the collective proceedings and shall look after the interests of the creditors.

The Controller shall always have the right to audit the accounts and check the economic and financial situation presented by the debtor; he may ask to be given an account of the state of the proceedings, the acts accomplished by the Bankruptcy Trustee as well as of the funds collected and deposits made.

He shall always be consulted on whether the company should continue its activities during the verification of claims and during the sale of the property of the debtor.

He may refer all disputes to the Judge Administrator who shall render his decision in accordance with the provisions of Article 40 above.

The duties of the Controller shall be free of charge and shall not be delegated.

A Controller shall be held accountable for his gross misconduct.

## **Section V General Provisions**

### **ARTICLE 50**

Where the debtor's funds are insufficient to immediately defray the costs of the receivership or liquidation decision, or the costs of notification, posting and publication of the said decision in newspapers, affixing, keeping and removing seals or instituting actions for the declaration that certain acts not be binding on him, making up the deficit, extending the collective proceedings and the personal bankruptcy of the managers of the company, the Public Treasury shall, upon the decision of the Judge Administrator, advance sums to cover such costs; the advanced sums shall be paid in preference from the first sums recovered.

This provision shall be applicable to appeal proceedings against the decision ordering the

receivership or liquidation proceedings.

#### **ARTICLE 51**

The Bankruptcy Trustee and all those who take part in the running of any collective proceedings shall be forbidden from personally acquiring, either directly or indirectly, by private sale or sale by court order, all or any part of the movable or immovable assets of the debtor who is subject to preventive settlement, receivership or liquidation proceedings.

### **CHAPTER III**

## **EFFECTS OF THE DECISION TO OPEN PROCEEDINGS ON THE DEBTOR**

### **Section 1**

#### **Assistance or Loss of control**

#### **ARTICLE 52**

The decision ordering receivership proceedings shall as of right entail the compulsory assistance of the debtor in every act concerning the administration and disposal of his property, from the date of the said decision to the date of the decision to approve of the composition agreement or the conversion of receivership proceedings into liquidation proceedings, otherwise the said act shall have no binding effect.

However, the debtor may alone validly perform acts to safeguard his property and those acts necessary for the daily management of the company and which are within the framework of the habitual activities of the company, in accordance with the practices of the profession, provided that he shall give an account of such acts to the Bankruptcy Trustee.

Where the debtor or the manager of the company refuses to perform an act which is necessary to safeguard the estate, the Bankruptcy Trustee may on his own perform the act, provided that he is so authorized by the Judge Administrator. The same shall apply, particularly where it concerns taking preventive measures, recovering bills and payable debts, selling objects whose preservation is expensive or objects about to perish or suffer from imminent depreciation and instituting or following up of actions relating to movable or immovable property.

Where the Bankruptcy Trustee refuses to assist the debtor or the manager of a company in the administration or disposal of his assets the latter or the Controller may compel him to do so by obtaining an order of the Judge Administrator given under the conditions laid down in Articles 40 and 43 above.

#### **ARTICLE 53**

The decision ordering the liquidation proceedings against a company shall entail the dissolution of the company.

The decision ordering liquidation proceedings shall as of right entail, with effect from the date the decision is taken and up to the end of the proceedings, the loss of control by the debtor over the administration and liquidation of his existing assets and those he may acquire in whatever capacity; save where it is an act of preservation any act carried out by him shall have no binding effect.

The rights, acts and actions of the debtor concerning his estate shall be exercised or carried out during the entire duration of the liquidation proceedings by the Bankruptcy Trustee acting alone as authorized agent of the debtor.

Where the Bankruptcy Trustee refuses to perform an act or to exercise a right or take action concerning the debtor's estate, the debtor or the manager of the company or the Controller, where one has been appointed, may compel him to do so by obtaining an order of the Judge Administrator given under the conditions laid down in Articles 40 and 43 above.

#### **ARTICLE 54**

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

He shall be bound, in particular, to apply, in the name of the body of creditors, for the registration of transferable and non transferable securities which are subject to publication where publication was not applied for by the debtor himself. The Bankruptcy Trustee shall attach to his application a certificate showing his appointment.

#### **ARTICLE 55**

Within a period of three days following the decision to open proceedings, the debtor shall report to the Bankruptcy Trustee with his account books in order to have them examined and closed.

On the application of the Bankruptcy Trustee any third party in possession of the said books shall be bound to hand them over to him. The debtor or the third party holding the books may be represented where there are good reasons to justify his absence.

Where the debtor fails to hand over the balance-sheet to the Bankruptcy Trustee, the latter shall, using the books, account documents, other documents and information which he has, draw up a statement of the debtor's situation.

#### **ARTICLE 56**

Where property is being liquidated, all correspondence addressed to the debtor shall be handed over to the Bankruptcy Trustee, with the exception of those of a personal nature. Where the debtor is present, he shall assist in the opening of the letters.

#### **ARTICLE 57**

From the time the decision to open collective proceedings against a company is taken, the rightful or de facto manager, apparent or hidden, paid or not, shall not transfer company shares, stocks or any other company rights; any such transfer shall be with the authorization of the Judge Administrator and under the conditions determined by him, under pain of the said transfer being declared null and void.

Whenever the competent court finds there is intermeddling in the management of the company it shall declare the non-transferability of the company rights to the intermeddler.

Title deeds belonging to the company shall be deposited with the Bankruptcy Trustee. Where they are not deposited voluntarily, the Bankruptcy Trustee shall summon the manager to do so. Failure to hand over the said documents shall constitute the offence provided for in Article 231(7°) below.

The Bankruptcy Trustee shall where necessary, make mention in the registers of the company and in the Trade and Personal Property Rights Register the non-transferability of the rights of the company managers.

The Bankruptcy Trustee shall draw up a statement of those rights and give the manager a certificate attesting the deposit or registration in order to enable him take part in the meetings of the company.

## ARTICLE 58

The Bankruptcy Trustee shall, be responsible for the title deeds handed over to him by the manager of the company.

He may return them only after the decision to approve of the composition proposal or the end of the liquidation proceedings, save where he has to hand them over at any time to a person designated by a court order.

## ARTICLE 59

The decision to open proceedings may order that the cash-boxes, safes, portfolios, books, documents, furniture, effects, stores and warehouses of the debtor be sealed and, where it concerns a company with members whose liability for its debts is indefinite, it may order that the said members' personal property be sealed. The decision may also include an order that the property of the manager of the company be sealed.

The court registrar shall forthwith give notice of the decision to the Judge Administrator who shall seal the said property.

Even before the said decision, the President of the competent court may exceptionally on his own decide to, or at the request of one or more creditors, appoint from among the members of the court a judge to seal the said property in the case where the debtor has disappeared or where he has misappropriated any part or all of his assets.

The Judge Administrator or the judge appointed in accordance with the provisions of the preceding paragraph shall forthwith give notice of the affixing of the seals to the President of the court who made the order.

## ARTICLE 60

Where the affixing of the seals has been ordered by the competent court, the Judge Administrator may, on the proposal of the Bankruptcy Trustee, exempt or authorize the removal of the seals of the following:

- 1° personal effects and things indispensable to the debtor and to his family appearing on the statement submitted to the Judge Administrator;
- 2° objects likely to decay or to depreciate; and
- 3° objects needed for the professional activity of the debtor or for his company where there is authorization that business operations continue.

The Trustee shall take an inventory and ascertain the value of the objects in the presence of the Judge Administrator who shall sign the report thereof.

## ARTICLE 61

The account books and other documents shall not be sealed; they shall be handed over to the Bankruptcy Trustee by the Judge Administrator after listing them and summarily stating in his report the state in which he found them.

Short term portfolio bills or those whose acceptance is likely or bills for which it is necessary to carry out preservative measures shall be removed from the list of property to be sealed by the Judge Administrator who shall describe and hand them over to the Bankruptcy Trustee for collection.

## ARTICLE 62

The Bankruptcy Trustee shall request the removal of seals within a period of three days following the date they were affixed with a view to drawing up an inventory.

**ARTICLE 63**

The Bankruptcy Trustee shall draw up an inventory of the debtor's property in the debtor's presence or where he fails to appear after duly invited to be present by registered mail or by any other means with written proof thereof.

In the course of the inventory, he shall also check the movable assets which were not available for sealing or assets removed from among the sealed assets after the inventory and valuation.

The Bankruptcy Trustee may employ the services of any person he deems necessary to draw up the inventory or carry out the valuation of the assets.

Goods known to be in the custody of customs by the Bankruptcy Trustee shall be the object of a special entry.

Where collective proceedings are 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 his known heirs or in their absence upon proof that they have been duly summoned by registered mail or by any other means with written proof thereof.

The representative of the Legal Department may participate in the drawing up of the inventory.

The inventory shall be drawn up in two copies: one copy shall forthwith be deposited at the registry of the competent court and the other shall remain with the Bankruptcy Trustee.

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

**ARTICLE 64**

The debtor may obtain for himself and his family aid from the assets. The amount of such aid shall be determined by the Judge Administrator who shall take his decision after consultation with the Bankruptcy Trustee.

**ARTICLE 65**

(1) In the case of receivership proceedings, the Bankruptcy Trustee shall forthwith ask the debtor to sign all his declarations relating to tax returns, customs and social security and insurance contributions.

The Bankruptcy Trustee shall monitor the production of the said declarations.

(2) In the case of liquidation, the Bankruptcy Trustee shall immediately cause the debtor to furnish him with all the information not found in the trade books which information is necessary for the assessment of all the taxes, duties and social insurance contributions pending payment.

The Bankruptcy Trustee shall forward to the tax, customs and social security services all the information provided by the debtor and any other information at his disposal.

(3) In either of the cases referred to above, where the debtor fails to respond within a period of twenty days to the request of the Bankruptcy Trustee, the latter shall record such failure and inform the Judge Administrator thereof. Within a period of ten days, he shall give the same information to the services of taxation, customs and social insurance by furnishing them with all the information at his disposal relating to deals that have been realized and the wages paid by the debtor.

## ARTICLE 66

The Bankruptcy Trustee shall, within the time limit of one month following his assumption of duty, save in the case of a special extension of this time limit granted in a reasoned decision of the Judge Administrator, submit to the latter a brief report on the apparent situation of the debtor, the causes and nature of such situation revealing the company's economic and social balance sheet, and its prospects for recovery as seen from the composition proposals of the debtor.

Where a Controller has been appointed, his opinion shall be included in the report.

The Judge Administrator shall forthwith forward the report and his observations to the representative of the Legal Department.

Where the report has not been submitted to him within the prescribed time limit, he shall inform the representative of the Legal Department accordingly and give reason for the delay.

### Section II

#### Acts with no binding effect on the body of creditors

## ARTICLE 67

Acts done by the debtor during the period of suspicion from the date of suspension of payments to the date of the decision to open proceedings shall as of right be non-binding or may be declared non-binding on the body of creditors as defined in Article 72 below.

## Article 68

The following shall as of right be non-binding on the body of creditors if and when they are done during the period of suspicion:

- 1° all gratuitous transfers of movable or immovable property;
- 2° all commutative contracts in which the debtor's obligation significantly exceeds that of the other party;
- 3° all payments, irrespective of the method of payment, of debts not payable, except where it concerns the payment of a negotiable instrument;
- 4° all payments of overdue debts made other than in cash, negotiable instrument, or payment by bank transfer, deduction, payment or credit card or by any legal, judicial or contractual compensation of debts connected to each other or by any other normal method of payment;
- 5° any contractual mortgage or contractual collateral security, any pledge given on the property of the debtor for debts previously contracted; and
- 6° any provisional registration of a judicial mortgage or pledge as a measure of preservation.

## ARTICLE 69

(1) The following may be declared non-binding on the body of creditors where they have caused loss to the said creditors:

- 1° all gratuitous transfers of movable or immovable property done within a period of six months preceding the period of suspicion;
- 2° registration of securities on personal and real property given or taken for concomitant debts where their beneficiary has had knowledge of the cessation of payments by the debtor;

3° transactions carried out for valuable consideration where the party who transacted with the debtor had knowledge of the latter's insolvency at the time of the transactions; and

4° voluntary payments of overdue debts where those who received the payments had knowledge of the debtor's insolvency at the time the payments were made.

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

1° the drawer or the principal, in the case of drawing on an account, where the drawee has had knowledge of the insolvency the debtor at the time he draws on the account 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 insolvency of the maker of the note either at the time of endorsement of the note by or at the time of payment.

3° the drawer of a cheque who had knowledge of the insolvency of the drawee at the time the cheque was issued;

4° the beneficiary of a cheque who had knowledge of the insolvency of the drawer at the time the cheque was issued.

5° the beneficiary of a cheque who had knowledge of the insolvency of the drawee either at the time of issuance or at the time of payment of the cheque.

#### ARTICLE 70

Only the Bankruptcy Trustee may apply to the court that ordered the opening of the collective proceedings to declare to be non-binding any act performed during the period of suspicion.

He may not file his action after the final list of debts provided for by Article 86 below has been deposited.

#### ARTICLE 71

The non-binding effect of an act may only be pleaded by the body of creditors.

(1) The body of creditors shall be collocated with a creditor whose security has been declared non-binding.

(2) Any gratuitous transfer declared non-binding shall have no effect where it has not been executed. Where the transfer has been executed, the transferee of the property shall return it.

Same shall be for a gratuitous sub-transfer. The sub-transferee, even where he is of good faith, shall not be allowed to plead the transfer. He shall return the property so transferred or pay its value, except where the property has disappeared from his estate due to circumstances beyond his control.

In the case of a sub-transfer for valuable consideration, the sub-transferee shall not be bound to return the property or pay its value except where, at the time he purchased the property, he had knowledge of the insolvency of the debtor.

However, the principal beneficiary of the gratuitous transfer shall be bound to pay the value of the property where the sub-transferee cannot or is not required to return the property.

(3) Any payment declared non-binding shall be returned by the creditor and shall be added to the debts of the debtor.

(4) The unbalanced commutative contract declared non-binding may no longer be executed.

Where it has been executed, the creditor may only add to the debts of the debtor the true value of the service provided.

(5) Transfers carried out for valuable consideration declared non-binding shall have no effect where they have not been executed.

In the case where a transfer has been made, the transferee shall return the property and add his claim to the debts of the debtor; where there has been a gratuitous sub-transfer, the sub-transferee shall be bound to return the property without recourse against the body of creditors; where there has been a sub-transfer for valuable consideration, the sub-transferee shall be bound to return the property and add his claim to the debts of the debtor where, at the time he purchased the property, he had knowledge of the non-binding nature of the act of the debtor.

Where the debtor has received all or part of the service of the co-contracting party which cannot be restored in kind, the creditor shall add the value of the service provided to the debts of the debtor.

## **CHAPTER IV EFFECTS OF THE DECISION TO OPEN PROCEEDINGS ON THE CREDITORS**

### **Section I**

#### **Constitution of the body of creditors and suspensive effects**

#### **ARTICLE 72**

The decision to open proceedings shall bring together the creditors into a body represented by the Bankruptcy Trustee who alone shall act in its name and in the interest of the creditors. He may commit the body of creditors.

The body of creditors shall be made up of all the creditors whose claims arose prior to the decision to open the collective proceedings, even where the payment of the claim is fixed at a date after the said decisions, provided that the said date is non-binding by virtue of Articles 68 and 69 above.

#### **ARTICLE 73**

The decision to open proceedings shall put an end to the registration of all movable and immovable property.

#### **ARTICLE 74**

The decision to open proceedings shall vest the body of creditors, with the right to a judicial mortgage on the immovable property of the debtor and on the property he may acquire subsequently which the court registrar shall be bound to register forthwith.

The mortgage shall be registered in accordance with the provisions relating to publication under the land tenure ordinance. Each mortgage shall have a ranking from the day when it is taken out on each of the debtor's property.

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

**Article 75**

The decision to open proceedings shall suspend or prohibit all individual law suits for acknowledgement of rights and claims as well as all other forms of actions for the recovery of debts by the body of creditors on the debtor's movable and immovable property.

The suspension of individual lawsuits shall also apply to creditors whose claims are guaranteed by a general lien or by a 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 an action for avoidance of contract and to an action to rescind a contract.

Any action solely for acknowledgement of a right or disputed claim or for determination of the amount of such claim shall be started or pursued as of right by the creditor after producing his claim where such right and claim has been rejected finally or accepted provisionally or partially by the Judge Administrator. The action shall be started or pursued against the debtor and the Bankruptcy Trustee under the conditions laid down in Articles 52 and 53 above.

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

Actions and claims which are not affected by the suspension may be started or pursued during collective proceedings only against a debtor with the assistance of the Bankruptcy Trustee in case of receivership, and in case of liquidation proceedings with the Bankruptcy Trustee representing the debtor.

**ARTICLE 76**

The decision to open collective proceedings may render immature debts payable only in case of liquidation proceedings and with regards to the debtor only.

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

**ARTICLE 77**

Whatever the nature of the collective proceedings decided upon, the decision to open proceedings shall, with respect to the body of creditors, stop the accruing of legal and contractual interest and all interest on overdue payments of claims irrespective of whether or not they are secured. However, concerning interest resulting from loan agreements concluded for a duration equal to or more than one year or loan agreements with a deferred payment of one year or more, such interest shall continue to accrue where the decision opening collective proceedings orders receivership proceedings.

**Section II****Production and verification of claims****ARTICLE 78**

From the date the decision to open proceedings is taken and up to the expiration 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 making up the body of creditors shall, under pain of

foreclosure, show proof of their claims to the Bankruptcy Trustee. This period shall be sixty days for creditors resident outside the national territory where collective proceedings have been opened.

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

Holders of a right to recover property shall also show proof of their claim specifying whether or not they intend to exercise that right. Failing such specification, they shall be considered to be unsecured creditors.

The production of a claim shall stop the extinguishment of the claim by prescription.

#### **ARTICLE 79**

A known creditor who has not shown proof of his claim within a period of fifteen days following the first publication of the decision to open proceedings in a newspaper empowered to publish legal notices, particularly the creditor whose name appears on the balance sheet and whose security has been published, shall be personally notified in a letter with acknowledgment of receipt or by any means with written proof thereof sent where necessary to his chosen address by the Bankruptcy Trustee.

In all cases the same notice shall be addressed to the Controller, where one has been appointed, to represent the personnel.

Under pain of nullity, the creditor shall show proof of his claim or his right to the recovery of property within a time limit not exceeding fifteen days following the receipt of the notice or no later than the time limit provided for in Article 78 above. This time limit shall be thirty days for a creditor and any other claimant resident outside the national territory of the place where the proceedings have been opened.

#### **ARTICLE 80**

The creditor shall hand over to the Bankruptcy Trustee, directly or by registered mail a declaration showing the amount of the overdue debt on the date of the decision to open proceedings, the sums accruing and the dates of their maturity.

The declaration shall specify the nature of the security eventually given for the debt. The creditor shall, in addition, furnish all information likely to establish the existence and the amount of those claims which are not based on a legal title, evaluate any claim which is not liquid and where the dispute is in court, the court hearing it.

The documents which can be produced to justify the claim shall be attached to the declaration.

A receipt acknowledging receipt of the documents shall be issued to the creditor by the Bankruptcy Trustee.

#### **ARTICLE 81**

The production of the claims of the Public Treasury, Customs and Excise services and social insurance agencies shall always be done subject to the claims yet to be established and adjustments or individual pay backs.

A claim shall be provisionally upheld where it arises from routine taxation or from an adjustment, even where it are disputed by the debtor under the conditions laid down in Article 85 below.

#### **ARTICLE 82**

After the meeting of the composition in the case of receivership proceedings or after the end of liquidation proceedings, the Bankruptcy Trustee shall, at the request of the creditor, return any document entrusted to him.

The document may be returned as soon as the verification has been completed where, in the case arising from the agreement to exchange documents, the creditor intends to file an action against the signatories involved in the exchange other than the debtor.

### **ARTICLE 83**

Where a claim has not been produced within the time limit provided for in Articles 78 and 79 above, defaulter may only be allowed to produce it on the basis of a reasoned ruling of the Judge Administrator delivered after the list of claims has been drawn up and deposited under the terms laid down in Art 86 below. The defaulter shall also prove that the failure to produce his claim in time cannot be attributed to him.

In the case of receivership proceedings, foreclosure shall mean extinction of the claims, unless there is a best estate reversion clause and subject to any discounts granted by the composition agreement.

Until the meeting of the composition the failure to produce claim may not be pleaded against a preferential wage creditor.

Where the competent court releases a claim and the defaulting claimant from foreclosure, mention thereof shall be made by the court registrar on the list of claims. Costs of proceedings relating to the release from foreclosure shall be borne fully by the claimant, except where he is a preferential wage creditor.

The defaulting creditor whose claim is released from foreclosure may not rank equally with other creditors except for the sharing of dividends due after his request.

### **ARTICLE 84**

The verification of a debt and a claim shall be compulsory regardless of the amount of assets and liabilities.

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

The verification shall be carried out by the Bankruptcy Trustee as and when the claim is produced in the presence of the debtor and Controller, where one has been appointed, or in their absence where they fail to appear after they have been duly summoned by registered mail or by any other means with written proof thereof.

### **ARTICLE 85**

Where the debt or the collateral security or the claim is challenged or disputed in whole or in part, the Bankruptcy Trustee shall notify the Judge Administrator and the creditor or the claimant concerned by registered mail with acknowledgment of receipt or by any other means with written proof thereof; such notice shall specify the object and reason for the challenge or dispute, and the amount of the debt the debtor admits and shall contain a full reproduction of this article.

The creditor or the claimant shall be given a time limit not exceeding fifteen days with effect from the date the notice was received within which to submit his written or verbal explanations to the Judge Administrator. After this time-limit, he may no longer be allowed to challenge the receiver's proposal. The said time-limit shall be thirty days for creditors resident outside the national territory of the place where the collective proceedings have been opened.

However, tax, customs duties and social security claims may be challenged only under the

conditions laid down in the instruments applicable to the respective claims.

#### **ARTICLE 86**

In the absence of discussion or dispute or the time limit provided for in Article 85 above or where there is discussion or dispute, following the expiry of the time limit provided for in Article 78 above, the Bankruptcy Trustee shall prepare a list of claims containing his proposals for the final or provisional admission or rejection wherein he shall specify those which are unsecured and those which are secured specifying the nature of each security.

A creditor whose security is only disputed shall be accepted temporarily as an unsecured creditor.

The list of claims shall be deposited at the court registry after verification and signature by the Judge Administrator who shall indicate against each claim: the amount and the final or provisional nature of its acceptance; an indication as to whether it is unsecured or guaranteed by a security the nature of which shall be specified; it shall also state if proceedings are on or whether or not the dispute is within his competence.

The Judge Administrator may reject a debt or claim in whole or in part or declare himself incompetent only after hearing or duly summoning the creditor or claimant, the debtor and the Bankruptcy Trustee by registered mail with acknowledgment of receipt or by any other means with written proof thereof.

#### **ARTICLE 87**

The Registrar-in-Chief shall immediately give notice to the creditors and claimants of the deposit of the list 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.

He shall, in addition, forward a full copy of the list of claims to the creditors.

So as to permit a creditor and claimant whose debt or claim has been rejected in whole or in part or whose security has been refused to file his complaint, he shall also send to the creditor or claimant, so as to be received at least fifteen days before the expiry of the time limit provided for in Article 88 below, a notice informing him of such rejection or refusal by registered mail with acknowledgment of receipt or by any other means with written proof thereof. Such notice shall 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 allowed 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 challenge directly at the court registry or by any extrajudicial act addressed to the court registry, the decision of the Judge Administrator.

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

The decision of the Judge Administrator shall be irrevocable in respect of persons who have failed to challenge it.

#### **ARTICLE 89**

The court registrar shall transfer for the first hearing and adjudication by the competent court in matters of collective proceedings all complaints and claims which are contested or admitted provisionally upon the report of the Judge Administrator, where the matter falls within the

competence of the said court.

The court registrar shall notify the parties of the transfer by registered mail with acknowledgment of receipt or by any other means with written proof thereof at least eight days before the court session.

Where the competent court cannot decide, on the merits of the claims before the close of the collective proceedings, the creditor or claimant shall be accepted on a temporarily basis.

The court registrar shall, within a time limit of three days, notify the parties, by registered mail with acknowledgment of receipt or by any other means with written thereof, of the decision taken by the competent court in their respect. He shall also make mention of the decision of the competent court on the list of claims.

#### **ARTICLE 90**

Where the court having jurisdiction in matters of collective proceedings finds that the claim of a 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 such party of the decision under the conditions laid down in the last paragraph of Article 89 above.

A creditor who fails to refer his matter to the competent court within a time limit of one month from the date of reception of the registrar's notice provided for in the last paragraph of Article 89 above shall no longer be allowed to do so. The Judge Administrator's decision in this respect shall be irrevocable.

Notwithstanding any provision to the contrary, individual disputes falling within the jurisdiction of the labour court shall not be subject to any attempt at conciliation provided for by the national laws of each State Party.

VI

### **Section III**

#### **Guarantors and co-obligors**

#### **ARTICLE 91**

A creditor whose claims are subscribed, endorsed or guaranteed jointly and severally by two or more co-obligors who have stopped payments may tender the full amount of those claims in every body of creditors and receive payment at every distribution until the complete payment of his claims or where his co-obligors had paid him part of his claims before stopping to pay, the balance thereof.

#### **ARTICLE 92**

Where a creditor who holds obligations to which are subscribed jointly and severally a debtor against whom receivership or liquidation proceedings have been ordered and some co-obligors has received an advance on his claims before the suspension of payments, the claim he shall produce before the body of creditors shall be the amount due after deduction of the said advance. He shall retain his rights on the balance due him against a co-obligor or guarantor.

A co-obligor or a guarantor who has made a partial payment shall be included in the same body of creditors for all that he has paid and the portion that was to be borne by the debtor.

#### **ARTICLE 93**

Notwithstanding the composition agreement, the creditor shall retain his cause of action for the full payment of his claim against a co-obligor of the debtor.

## ARTICLE 94

Where a creditor has received payment of a dividend on the assets of one or more co-guarantors against whom receivership or liquidation has been ordered, the latter shall have no action against the others, save where the totality of the dividends generated by the said proceedings exceeds the total amount of the principal and incidentals thereof; in this case, the excess shall be attributed, according to the order of those obligations, to those co-obligors who have other co-obligors 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

A claim resulting from a contract of employment or apprenticeship shall, in the case of receivership or liquidation of property, be guaranteed by the preferential right to wages established for the said case and the amount prescribed by the labour law and the provisions relating to securities.

## ARTICLE 96

The Bankruptcy Trustee shall, within ten days following the decision to initiate proceedings and upon a decision of the Judge Administrator, pay all the highly preferential claims of workers after deducting the advances already received.

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

Where the said claims are paid from an advance granted by the Bankruptcy Trustee or any other person, the lender shall, by virtue of this act, inherit the rights of the workers and shall be reimbursed in preference to any other claim as soon as the necessary funds are collected.

### Section V

#### **The right to terminate a lease and the preferential rights of the lessor of real property.**

## ARTICLE 97

The opening of collective proceedings shall not as of right entail the termination of the lease on buildings occupied for the exercise of the professional activity of the debtor; this shall include premises adjoining the buildings occupied by the debtor or his family as a dwelling house. Any provision to the contrary shall be disregarded.

In the case of liquidation, the Bankruptcy Trustee, and in case of receivership, the debtor assisted by Bankruptcy Trustee, may continue enjoying the lease alongside the rights and obligations attached thereto or transfer same on terms possibly contained in the contract concluded with the lessor.

Where, in the case of liquidation, the Bankruptcy Trustee, and in case of receivership, the debtor assisted by the Bankruptcy Trustee, decides not to continue with the lease, it shall be terminated upon a simple notice made by any extrajudicial act. The termination shall take effect at the end of the period for notice stipulated in the said act which shall not be less than thirty days.

The lessor who intends to request or have recorded the termination of a lease for reasons which existed prior to the decision to open proceedings shall, where he has not yet done so, submit his request within a period of one month following the second publication of the lease in a

newspaper empowered to publish legal notices provided for in Article 36 above or the publication in the Official Gazette provided for in Article 37 (3) above.

The lessor who intends to formally request for the termination of a lease for reasons occurring after the decision to open proceedings shall make the request within the time limit of fifteen days from the date when he had knowledge of the reason for such termination. Termination shall be ordered by the competent court where the guarantees offered are considered inadequate 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 over rents which were due prior to the decision to open proceedings as well as for the twelve months' rents due or accruing after the said decision and for any damages that could be awarded him. He may request payment as soon as the termination is ordered. He shall, in addition, be part of the body of creditors of the company for all rents due or damages awarded after the decision to open proceedings.

Where the lease is not terminated, the lessor shall have a preferential right to the rents of the last twelve months due prior to the decision to open proceedings as well as to the rents of twelve months due or accruing after the said decision. Where the securities given him during the contract are maintained or where those granted him from the date of the decision to open proceedings are considered adequate he may not insist on the payment of rents due or accruing for which he is also a creditor of the body of creditors as the said rents become payable after the decision to open proceedings.

Where the lease is not terminated and where the property which is stocked on the leased premises is sold or removed, the preferential right of the lessor of the real property shall guarantee the same claims and shall be exercised as if the lease is terminated; the lessor in addition has the right to ask for its termination.

Where there is a 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 vendor shall prevail.

#### **ARTICLE 99**

The extent of the personal property of the spouse of the debtor in receivership or liquidation shall be established by the debtor, in accordance with the rules of the ante nuptial settlement.

Where the body of creditors can prove by any means that the property acquired by the spouse of the debtor was purchased with funds provided by the debtor, the creditors may request that the property so purchased be included in the assets of the debtor.

The property so included may only be recovered by the spouse concerned only upon his payment of the debts and securities which burden it.

#### **ARTICLE 100**

A spouse whose partner is a trader at the time of celebration of the marriage or who becomes a trader in the year of its celebration may not institute any action, in collective proceedings, in relation to any benefits given by one of the spouses to the other in the marriage contract or during the marriage; the creditors on their part may not avail themselves of any benefits given by one of the spouses to the other.

## **Section VII**

### **Actions for Restitution**

#### **ARTICLE 101**

No action for restitution may be revived or instituted unless the claimant produces his claim and complies with the formalities and time limits provided for by Articles 78 to 88 above.

Any restitution accepted by the Bankruptcy Trustee, the Judge Administrator or the competent court shall under pain of foreclosure, be enforced within the time limit of three months from the date of the notice prescribed in Article 87 (3) above or from the date of the decision of its acceptance by the court.

#### **ARTICLE 102**

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

#### **ARTICLE 103**

Provided that they are in kind, goods deposited and movable property handed over to the debtor either to be sold on the owner's account or as a deposit, loan, money order or rental or on the basis of any other contract subject to restitution, may be reclaimed.

Goods and movable property in kind sold with a clause subjecting the transfer of ownership to the full payment of the price may also be reclaimed where the said clause is an agreement between the parties in a written document and has been duly published in the Trade and Personal Property Credit Register.

However, concerning goods and movable property deposited with the debtor to be sold with or without an ownership reserve clause, there shall be no restitution where, before the return of the goods and movable property, 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 movable property, the price or part of the price payable 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 movable property which have not been delivered or forwarded to the debtor or to a third party acting on his behalf may be retained by the vendor.

This right shall be exercisable even where it is stipulated that the price is payable on credit and the transfer of ownership has taken place before the delivery or dispatch of the goods and movable property.

#### **ARTICLE 105**

Goods and movable property forwarded to the debtor may be reclaimed as long as they have not been transferred into his warehouse or in that of the commission-agent responsible for selling them on his behalf or handed over to an agent responsible for receiving them. Nonetheless, the claim shall not succeed where, before the arrival of the goods and movable property the title documents pertaining thereto have regularly been transferred to another person..

## **ARTICLE 106**

Goods and movable property the sale of which was cancelled before the decision to open proceedings either by a court decision or by virtue of a clause or an agreed resolutive condition may be reclaimed in whole or in part where they are in kind.

Where action for cancellation is instituted by the vendor who has not been paid before the decision opening the proceedings any action for restitution shall at the same time be admissible even where the sale has been cancelled after the decision to open proceedings.

However, no action for restitution shall succeed where, before the restoration of the goods and movable property, the price together with the charges and damages awarded, are paid fully and immediately by the receiver assisting or representing the debtor, as the case may be.

### **Section IX**

#### **Execution of ongoing contracts**

## **ARTICLE 107**

Except in the case of contracts concluded considering the personality of the debtor and those expressly provided for by the law of each State Party cessation of payments ordered by a court decision shall not be a reason for cancellation of a contract. Any clause allowing rescission for such a reason shall be disregarded.

## **ARTICLE 108**

The Bankruptcy Trustee alone shall have the option, regardless of the nature of proceedings initiated, to demand the execution of ongoing contracts, provided that he provides the service promised to the other party.

In the case of a bilateral contract and where the Bankruptcy Trustee has not provided the service promised, the other party may plead non-performance of the said contract by the Bankruptcy Trustee. Where the other party fulfils the promise without having received the service promised, he shall become the creditor of the body of creditors.

The Bankruptcy Trustee may be called upon, by registered mail or by any means with written proof thereof, to make his choice or to provide the service promised within a time limit of thirty days, under pain of the contract being automatically cancelled.

## **ARTICLE 109**

Where the Bankruptcy Trustee fails to make a choice or to provide the promised service within the time limit specified in the notice, his failure to do so may, besides the contract being cancelled, give rise to damages the amount of which shall be added to the debts in favour of the other party.

A party to the contract may not offset the advance he received for services not yet provided by him against the damages due for the cancellation of the said contract. However, the competent court in which his action for cancellation against the Bankruptcy Trustee is brought may award compensation or authorize him to defer the refund of the said advance until a decision on the claim for damages is taken.

## **ARTICLE 110**

Where layoffs for economic reason are urgent or indispensable, the Judge Administrator may give his permission to that effect to the Bankruptcy Trustee according to the procedure 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.

Before referring the matter to the Judge Administrator, the Bankruptcy Trustee shall draw up the order in which workers shall be laid off following the applicable provisions of the labour law.

For the jobs maintained, the layoff of a worker with the least professional aptitude shall be proposed first and, in the case of equality of professional aptitudes, seniority in the company, seniority being calculated according to the applicable provisions of the labour law.

In order to have their opinions and suggestions, the Bankruptcy Trustee shall in writing inform the staff representative of the measures which he intends to take by providing them the list of workers he intends to lay off and stating the criteria he has adopted. The staff representative shall give his response in writing, within a period of eight days.

The employer shall transmit to the Labour Inspectorate a copy of his letter to the staff representative 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 to lay off workers drawn up by the Bankruptcy Trustee, the opinion of the staff representative where such opinion has been given, and a copy of the letter forwarded to the Labour Inspectorate shall be handed over to the Judge Administrator.

The Judge Administrator may, by decision served on the workers whose layoffs are authorized and on the Controller representing the workers, where one has been appointed, authorize the envisaged layoffs or some of them where they are necessary for the recovery of the company.

The decision authorizing or refusing any layoff shall be liable to objection before the court that initiated the proceedings within a time limit of fifteen days of its notification; the court shall render its decision within a period of fifteen days.

The said decision shall be final.

### **Section X**

#### **Continuation of activity**

#### **ARTICLE 112**

In the case of receivership and unless otherwise decided by the Judge Administrator, the activity of the company shall be continued with the assistance of the Bankruptcy Trustee for an unspecified duration.

The Bankruptcy Trustee shall, at the end of each period fixed by the Judge Administrator and at least every three months, forward the results of the business operations of the company to the Judge Administrator and to the representative of the Legal Department. He shall, in addition, mention the amount of money deposited into the account of the collective proceedings initiated under the conditions laid down in Article 45 above.

The Judge Administrator may at any time stop the company from continuing its activity after hearing the Bankruptcy Trustee who he shall summon in the manner and within the time limits to be determined by him.

He may, where necessary, also hear the creditor and controller who so request by a reasoned declaration deposited at the court registry and forthwith notified on him. Where it is deemed necessary, the Judge Administrator shall cause the court registrar to summon the creditor and controller within a period of eight days by registered mail or by any means with written proof thereof. He shall hear them and draw up a report of their statements.

The Judge Administrator shall rule within a period of eight days following the hearing of the Bankruptcy Trustee, the creditor and the controller.

### **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 only where such continuation does not endanger public interest or the interest of creditors.

The competent court shall render a decision upon a report of the Bankruptcy Trustee forwarded to the representative of the Legal Department.

The continuation of business or activity shall cease three months after the authorization, provided such authorization is renewed by the competent court one or more times.

It shall end one year after liquidation has been ordered, save for serious reasons and as an exceptional case the competent court in a specially reasoned decision decides otherwise.

The Bankruptcy Trustee shall, every three months, forward the results of company's business operation to the President of the competent court and to the representative of the Legal Department. He shall, in addition, make mention of the amount of money deposited into the account of the collective proceedings initiated under the conditions laid down in Article 45 above.

### **ARTICLE 114**

In the case of receivership, the Judge Administrator shall, at the request of the Bankruptcy Trustee, decide whether the debtor or the manager of the company shall participate in the continuation of company's business operation and shall determine, in this case, the conditions under which they shall be remunerated.

In the case of liquidation, the debtor or the manager of the company 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 Legal Department, the Bankruptcy Trustee or Controller, where one has been appointed, authorize the conclusion of a management agreement where the disappearance or even a temporary suspension of activity 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.

A management agreement may be concluded even where the lease on the real property contains a contrary term.

The competent court shall refuse authorization where it considers that the guarantees offered by the manager under the lease are inadequate or where the latter fails to tender sufficient proof that he is independent of the debtor.

The conditions relating to the duration of operation of the business by the debtor for the conclusion of a management agreement shall not apply.

The duration of the management agreement contract may not exceed two years; it shall be renewable.

The decision on the authorization of the management agreement shall be the object of the same communication and publicity as those provided for in Articles 36 and 37 above.

#### **ARTICLE 116**

The Bankruptcy Trustee shall ensure that the manager complies with his obligations. He may request the said manager to forward to him all documents and information necessary for his mission. He shall make a report to the Judge Administrator on the said manager's performance of his obligation at least every three months, stating the amount of money received and deposited into the account of the collective proceedings, interferences with the items leased out 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 agreement, either on its own motion, or at the request of the Bankruptcy Trustee or the representative of the Legal Department, or at the request of a Controller, upon a report by the Judge Administrator, where the lessee, by his own act, reduces the guarantees he had given or puts into jeopardy the value of the business.

#### **ARTICLE 117**

With the exception of debts contracted for the running of the business which shall be borne solely by the manager to the exclusion of the business owner, all other debts regularly contracted after the decision initiating proceedings for the continuation of activity and for any other regular activity of the debtor or the Bankruptcy Trustee shall be claims against the body of creditors.

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

#### **ARTICLE 118**

Any third party, creditor or not, who, through his wrongdoing, contributes towards the delay of the suspension of payments or the reduction of the assets of the debtor or to the increase of his liabilities, may be ordered to make good the loss suffered by the body of creditors upon an action instituted by the Bankruptcy Trustee acting in the common interest of the creditors.

To make good the loss, the competent court shall choose the most appropriate solution, that is, either order the wrongdoer to pay compensation for the damage or where he is a creditor who holds guarantees, make him forfeit his securities.

## **CHAPTER V RECEIVERSHIP AND LIQUIDATION SOLUTIONS**

### **Section I The Receivership Solution**

#### **Sub-section I Formation of Composition Agreement with Credits**

#### **ARTICLE 119**

The debtor shall propose a composition agreement with creditors under the conditions laid down in Articles 27, 28 and 29 above. Where no composition agreement is proposed or in case of a

withdrawal of the said agreement, the competent court shall order the opening of liquidation proceedings or shall convert receivership into liquidation proceedings.

As soon as the debtor deposits the composition proposal, the court registrar shall forward it to the Bankruptcy Trustee who shall seek the opinion of the Controller where one has been appointed. The court registrar shall give notice of the said proposal to the creditors by publishing same in a newspaper empowered to publish legal notices and of the deposit of the list of claims under the conditions laid down in Article 87 above.

Furthermore, the court registrar shall warn any creditor with a special secured debt to declare before the expiration of the time limit provided for in Article 88 above, whether or not he accepts the said composition proposals or intends to grant time limits and remissions different from those contained in the composition proposals. The notice of such proposal shall be given to the creditor personally by registered mail with acknowledgement of receipt or by any other 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 Bankruptcy Trustee shall take advantage of the time limits granted for the production and verification of claims to compare the proposals of the debtor and those of the creditors on the drawing up of the composition agreement.

#### **ARTICLE 120**

Any creditor with a special secured debt, even where the security, whatever the nature thereof, is disputed, shall deposit at the registry or shall address to the court registrar, by registered mail with acknowledgement of receipt or by any other means in writing, his reply to the notice provided for in the preceding articles.

The court registrar shall forward a certified true copy of the declaration of the creditor to the Judge Administrator and the receiver upon receiving it.

#### **ARTICLE 121**

A creditor whose claim is guaranteed by a special security shall retain the benefit of the said security, whether or not he has made the declaration provided for in Article 120 above and regardless of the content of the declaration unless he expressly renounces it.

#### **ARTICLE 122**

The Judge Administrator shall, within the period of fifteen days following the expiration of the time limit provided for in Article 88 above, refer the matter to the President of the competent court who shall have the court registrar summon, by notice published in newspapers and by individual letters, the creditors with claims which have finally or provisionally been admitted as unsecured claims.

The following shall be attached to the said individual notice with Article 125 below reproduced *in extenso*:

a statement drawn up by the Bankruptcy Trustee and deposited at the court registry showing the assets and liabilities of the debtor with a breakdown of his movable and immovable assets and preferential debts or secured and unsecured debts;

- the final text of the debtor's composition proposals with an indication of the guarantees offered and measures for recovery as provided in particular, in Article 27 above;
- the opinion of the Controller, where one has been appointed;

- an indication whether or not each creditor with a secured debt has made the declaration provided for in Articles 119 and 120 above and, where they have, the details as to the time limits and remissions granted.

The need to call a meeting of members of the composition shall not arise in the case where the composition proposal does not comprise any request for remissions or request for time limits exceeding two years even where other legal, technical and financial measures as provided for in Article 27 above are proposed. Only the Bankruptcy Trustee, the Judge Administrator, the representative of the Legal Department and the Controller, where one has been appointed, shall be given a hearing.

### **ARTICLE 123**

The competent court shall fix the venue, the day and the time to meet and hear the Judge Administrator and the representative of the Legal Department.

Any accepted creditor may 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 whatever it may be, is only challenged, may be allowed in the deliberations as a creditor with an unsecured debt.

The debtor or the manager of a company invited to this meeting by the court registrar by registered mail or by any other means with written proof thereof shall attend in person; they may be represented at the meeting provided reasons they give are legitimate and accepted by the competent court.

### **ARTICLE 124**

The Bankruptcy Trustee shall during the meeting present a report on the state of the receivership, the fulfilled formalities, the operations carried out as well as on the results obtained during the continuation of business.

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 debts and those guaranteed by property or a general lien as well as the Bankruptcy Trustee's opinion on the composition proposals.

The Bankruptcy Trustee's signed report shall be handed over to the competent court which shall receive it after listening to the Judge Administrator's views on the nature of the receivership and on the admissibility of the composition agreement.

The representative of the Legal Department shall be allowed to submit orally or in writing.

### **Article 125**

Upon receiving the report of the Bankruptcy Trustee the competent court shall take a vote on it.

Voting by correspondence and voting by proxy shall be allowed.

Any creditor who holds real property but has not made the declaration provided for in Article 120 above may take part in the voting without renouncing his security and without granting any time limits and remissions different from those proposed by the debtor.

An unsecured creditor and a creditor holding property which is not declared as provided for in Article 120 above shall be presumed to have accepted the composition agreement where having been duly summoned fails to participate in the vote as members of the composition.

The composition shall be voted by the majority of creditors who are finally accepted or who provisionally hold at least half the total number of claims.

Where only one of these two conditions is met, the deliberations shall without any other formality continue for a week at the latest from the date of the meeting. In this case, the creditor present or duly represented who signs the minutes of the first meeting need not attend the second meeting; the resolutions taken by them and his membership in the composition shall be irrevocable.

#### **ARTICLE 126**

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

Where the competent court finds that the conditions provided for in Article 125 above have been met, such finding shall be taken as its approval of the composition agreement.

A contrary finding shall mean the rejection of the composition agreement and receivership shall be converted into liquidation proceedings.

#### **ARTICLE 127**

The composition agreement may be approved by the competent court only:

- 1° where the conditions of validity of the agreement are met;
- 2° where no reason relating to the common interest or to public order is likely to hinder the agreement;
- 3° where the composition offers genuine possibilities of recovery of the company and settlement of its debts;
- 4° where, in the case of receivership of a company, the management of the said company is no longer in the hands of a manager whose replacement has been proposed in the composition proposals or by the Bankruptcy Trustee or, a manager against whom personal bankruptcy or prohibition to direct, manage or administer a commercial company has been pronounced.

Under no circumstance shall the approval of the composition agreement be taken to mean the validation of the special advantages defined and punished under Articles 244 and 245 below. The time limit or remission granted by a creditor who holds real property under the conditions laid down in Articles 120 and 125 above shall not be considered a special advantage.

Subject to the provisions of Article 140 below, the annulment of any provision relating to any special advantage shall not entail the cancellation of the composition agreement.

Where the composition agreement does not comprise any remission or time limit exceeding two years, the competent court may pronounce the approval thereof upon receiving the reports of the Bankruptcy Trustee and the Judge Administrator and after listening to the comments of the Controller, where one has been appointed, without necessarily inviting the creditors to vote.

#### **ARTICLE 128**

The competent court may appoint a Controller or maintain the one already appointed to oversee the execution of the composition agreement; where no controller is appointed, his functions

shall be performed by the Bankruptcy Trustee. The duties of the Controller shall be gratis, except where they are performed by the Bankruptcy Trustee; in that case, the remuneration of the Bankruptcy Trustee in his capacity as Controller shall be fixed by the competent court.

#### **ARTICLE 129**

The decision to approve the composition shall be communicated 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 Controller of the composition agreement or the Bankruptcy Trustee appointed as such. The said agreement may only be subject to appeal within a period of fifteen days and only by the representative of the Legal Department.

The decision to reject the composition agreement shall be communicated and published as provided for in Articles 36 and 37 above. The said decision may only be subject to appeal within a period of fifteen days and only by the representative of the Legal Department or the debtor.

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

#### **ARTICLE 130**

Where a company comprising members who liable indefinitely, jointly and severally for the debts of the company has gone into receivership, the creditors may accept the composition only in favour of one or more members.

Where the liquidation is ordered against the company, the company assets shall remain under the regime of the union. The personal property of those in favour of whom the composition was granted shall be excluded from the composition which may contain the commitment to pay a dividend only on assets outside the company's assets. A member who has obtained a special scheme of composition shall be discharged of all obligations resulting from the debts of the company as long as he has paid the promised dividends.

#### Sub-section II

#### Composition Agreement comprising partial transfer of assets

#### **ARTICLE 131**

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

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

The transfer of a company or a subsidiary shall mean the transfer of property likely to be operated autonomously so as to maintain its economic activity, jobs relating thereto and to pay off debts.

Where the partial transfer of assets or a company or a subsidiary is envisaged in the composition agreement, the Bankruptcy Trustee shall draw up a statement describing the tangible and intangible property whose transfer is envisaged, the list of possible uses of each property, the secured debt to which each is allocated and the share of each property in the transfer price. This statement shall be attached to the individual notice provided for in Article 122 above.

The Bankruptcy Trustee shall be responsible for making known these transfer proposals by all means, in particular through legal notices, as soon as they have finally been adopted by him and the debtor and approved by a decision of the Judge Administrator.

## ARTICLE 132

Purchase offers shall be received by the debtor assisted by the Bankruptcy Trustee and brought to the knowledge of the assembly of creditors who shall decide by majority of members as provided for in Article 125 above to accept the most advantageous offer.

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

- where the price is enough to pay off creditors with special secured debts on the property transferred, except in the case where they waive this condition and accept the provisions of Article 168 below;
- where the price is paid cash or where, in the case where the purchaser is granted a time limit for payment, the said time limit does not exceed two years and is backed by a joint guarantee of a banking institution.

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

Where no purchase offer is made before the meeting or where the offer made is deemed unsatisfactory by the composition, the debtor may withdraw his offer to transfer. Where he maintains the offer, the transfer shall be made at a later date under the conditions provided for in Articles 160 et seq. below.

## ARTICLE 133

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

Where the set of assets transferred comprises property burdened by a special security, the transfer shall mean the redemption of the said security if and only where the price is fully paid and where the creditor guaranteed by the said security is paid off.

Except in the case of goods, and as long as the price has not been fully paid, the purchaser may not transfer, under pain of nullity, any item of the set of assets which he has purchased. The fact that a said item shall not be transferred 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; publication shall also be made in the property register in accordance with the provisions governing the publication of 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 Agreement

## ARTICLE 134

Approval of the composition agreement shall render its terms binding on all creditors registered prior to the decision initiating the proceedings, regardless of the nature of their claims, except where a special legal provision prohibits the administration from granting remissions or time limits.

However, creditors with special secured debts shall be bound only by the special time limits and remissions granted by them; where the composition agreement comprises time limits not exceeding two years, any time limit they may grant that are shorter shall be binding on them.

Without prejudice to the provisions of Article 96 above, no remission or time limit exceeding two years may be imposed on any worker.

Creditors with secured debts shall not lose their guarantees; they may enforce them only in the case of annulment or cancellation of the composition agreement consented to or imposed on them.

The composition agreement granted to the principal debtor or to a co-obligor shall not apply to the guarantor or to any other co-obligor.

#### **ARTICLE 135**

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

#### **ARTICLE 136**

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

#### **ARTICLE 137**

The Bankruptcy Trustee shall make a report on his assistance mission to the Judge Administrator.

Where the debtor fails to withdraw any documents and bills given to the Bankruptcy Trustee, the Bankruptcy Trustee may keep them for only two years with effect from the date his report was made.

The Judge Administrator shall endorse the written report; his duties and those of the Bankruptcy Trustee 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 rule on any objection raised.

#### **ARTICLE 138**

Where in accordance with Article 128 above one or more Controllers have been appointed for the execution of the composition agreement, they shall forthwith make a report on any delay or any other breach in the execution of the agreement to the President of the competent court who may order that an investigation be carried out by the Bankruptcy Trustee who shall report to him thereon.

Where the mission of the Controller of the composition agreement comprises the payment of dividends to creditors, he shall open a special deposit account in a bank in his name and capacity as Controller of the composition or for each of the compositions in which he has been so appointed.

The Controller shall forward to the President of the competent court at the end of each half of the calendar year, the credit balance statements of the accounts which he has opened for the composition under his control.

The Controller shall hold an insurance policy covering his civil liability; he shall show proof of such policy to the President of the competent court.

Sub-section IV

Termination and annulment of the preventive composition agreement  
or the recovery composition agreement

**ARTICLE 139**

The termination of the composition may be ordered:

- 1° in case of non-performance by the debtor of his commitments under the composition agreement or the remissions and time limits given; however, the competent court shall determine whether these breaches are sufficiently serious to permanently compromise the execution of the composition agreement and, otherwise, it may grant a time limit for payment which shall not exceed those already granted by the creditors by more than six months;
- 2° where the debtor is prohibited, for whatever reason, from carrying on a commercial activity, except where the duration and nature of the said prohibition are not incompatible with the pursuance of the activity of the company under a management lease for purposes of a possible transfer of the company under conditions which are satisfactory to those concerned;
- 3° where, in the case of a company on whose behalf the composition is granted, a manager against whom personal bankruptcy or prohibition to direct, manage or administer a commercial company has been pronounced again assumes in fact or in law the direction of the said company; where the prohibition is imposed on the manager during the execution of the composition agreement, the said agreement shall be cancelled unless the manager effectively stops performing the duties which he has been prohibited from performing; however, the competent court may grant a reasonable time limit, which shall not exceed three months, within which to replace the said manager.

Any creditor or the Controller of the composition may petition to the competent court; the said court may also of its own motion examine the matter after hearing or duly summoning the debtor.

The cancellation of the composition agreement 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 debts where the fraud was discovered after approval has been given for the preventive settlement composition agreement or the recovery composition agreement.

The annulment shall, as of right, release the sureties who guaranteed the composition agreement except where they had knowledge of the fraud at the time they committed themselves.

The Legal Department shall alone have the discretion to institute an action for the annulment of the composition agreement. Such action may be instituted only within a time limit of one year following the discovery of the fraud.

Depending on the common interest of the creditors and workers, the competent court shall alone have the discretion to order the annulment of the composition agreement.

## ARTICLE 141

- (1) In case of cancellation or annulment of the preventive composition agreement, the competent court shall order receivership or liquidation proceedings where it finds payments have suspended.
- (2) In case of cancellation or annulment of the recovery composition agreement, the competent court shall convert the receivership into liquidation proceedings and shall appoint a Bankruptcy Trustee. Only one body of creditors shall be constituted before and after the composition agreement.

The Bankruptcy Trustee shall proceed, without delay, on the basis of the former inventory and with the assistance of the Judge Administrator, 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 issue invitations to new creditors, if any, to produce the evidence of indebtedness for verification under the conditions provided for in Articles 78 et seq. above.

The new evidence of indebtedness produced shall be checked immediately.

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

## ARTICLE 142

Where, before the termination or annulment of the composition, the debtor has paid no dividends, the remissions granted in the composition agreement shall be nullified and creditors admitted before the agreement shall recover all their rights.

Where the debtor has already paid part of the dividends, creditors registered before the composition may claim, against the new creditors only part of their original claims which corresponds to the share of the promised dividend which they did not receive.

A holder of a claim against the first body of creditors shall not lose his preferential rights with regard to the creditors who make up the said body.

## Article 143

Any act done by the debtor during the period between the time when the composition agreement is approved and the time when it is cancelled or annulled may exceptionally be declared not binding where there is fraud with respect to the rights of creditors; only the said creditors can plead the said fraud.

### Sub-section V

#### Initiation of a second collective proceeding

## ARTICLE 144

The provisions of Articles 141, 142 and 143 above shall apply in the case where an order is made that another receivership or liquidation proceeding be carried out without prior annulment or cancellation of the composition agreement.

## ARTICLE 145

The competent court shall convert the receivership into liquidation proceedings where the debtor does not propose a composition agreement or fails to obtain one or where the composition agreement has been annulled or cancelled.

Without prejudice to the provisions of Articles 139-2° above, the same shall apply where a natural person is incapable of continuing his activity because of the forfeitures ordered against him.

The decision converting the receivership proceedings into liquidation of proceedings shall be subject to the rules of publication provided for in Articles 36 to 38 above.

## **Section II**

### **Liquidation of Property Solution**

#### **ARTICLE 146**

As soon as liquidation is ordered, the creditors shall be constituted into a union.

Unless that has already done within the framework of Article 124 above, the Bankruptcy Trustee shall, within a period of one month of assumption of duty, submit to the Judge Administrator a statement drawn up based on information in his possession stating an estimate of the available or realizable assets and the unsecured debts and debts guaranteed by a special real security or a lien with, where it concerns a company, all information on the possible pecuniary liability of the manager(s) of the company.

The Bankruptcy Trustee shall draw up the list of claims even where it appears to him that the proceeds of sale of assets will be absorbed completely by court charges and preferential claims.

#### Sub-section I

#### Sale of assets

#### **ARTICLE 147**

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

The debtor's long-term claims may be transferred so as not to delay liquidation proceedings, under the conditions provided for in Article 148 on compromises and transactions.

Funds derived from sales and debt recovery shall, after deduction of the amount of expenses and costs fixed by the Judge Administrator, be paid immediately 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 Bankruptcy Trustee shall show proof to the Judge Administrator of such deposits; where he is late, he shall pay interest on the sums which he has not deposited into the account.

No objection in respect of the funds paid into the special account of the collective proceedings shall be admissible.

#### **ARTICLE 148**

The Bankruptcy Trustee may, with the authorization of the Judge Administrator make compromises or bargains on any issue concerning the body of creditors, even those relating to taxes and real property rights.

Where the object of the compromise or bargain is of an unspecified value or falls outside the jurisdiction of the competent court of last resort, the compromise or bargain shall further be sanctioned by a decision of the competent court.

In any case, the court registrar shall, three days before the decision of the Judge Administrator summon the debtor by registered mail or by any other means with written proof thereof stating

the scope of the compromise or bargain envisaged, and the conditions and legal and economic reasons for such act.

#### **ARTICLE 149**

Where authorized by the Judge Administrator, the Bankruptcy Trustee may, when clearing the debt, withdraw for the benefit of the body of creditors, the pledge or security given on the debtor's property.

Where, within a period of three months following the liquidation decision, the Bankruptcy Trustee has not withdrawn the pledge or security or initiated the procedure for the sale of the pledge or security, the pledgee or secured creditor may exercise or recover his right to take individual legal proceedings pending his report to the Bankruptcy Trustee.

The Public Treasury, the customs services and security and social insurance institutions shall have the same right to the recovery of their preferential claims; they shall exercise this right under the same conditions as the pledgee and the secured creditor.

#### **Paragraph 1**

#### **Common provisions relating to the sale of immovable property**

#### **ARTICLE 150**

The sale of immovable property shall take place in accordance with the procedure prescribed for the attachment of real property. However, the Judge Administrator shall, after receiving the observations of the Controller, where one has been appointed, and upon hearing the debtor and the Bankruptcy Trustee or summoning them, fix the reserve price and the main conditions of sale and determine the terms and conditions of publication.

The Judge Administrator may, under the same conditions, where the substance 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 which he shall fix, or by mutual agreement at a price and under the conditions which he shall determine.

Where, within a period of three months following the liquidation order, the Bankruptcy Trustee has not commenced the procedure for the sale of the immovable property, a secured creditor may exercise or recover his right to institute an individual lawsuit pending his report to the Bankruptcy Trustee.

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

Any auction sale carried out in pursuance of the preceding paragraphs shall entail redemption of the mortgaged property concerned.

The Bankruptcy Trustee shall distribute the proceeds of the sales and fix the order the creditors shall be paid subject to any dispute which shall be brought before the competent court.

#### **ARTICLE 151**

At the request of the Bankruptcy Trustee or the pursuing creditor, the Judge Administrator authorizing the sale of immovable property in pursuance of Article 150 above shall specify in his decision:

1° the reserve price of each of the property to be sold and the conditions of sale; where the sale

is pursued by a creditor, the reserve price shall be determined in agreement with the pursuing creditor, after duly hearing the Bankruptcy Trustee.

- 2° the number(s) of land certificates and the location of the immovable 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, considering the value, nature and location of the property.
- 4° where necessary, the appointed notary.

The Judge Administrator may specify that where the auction sale fails to attain the reserve price, the sale could be made at a lower reserve price which he shall fix. He may, where the value and substance of the property so justify, proceed to a total or partial valuation of the property.

#### **ARTICLE 152**

The decision of the Judge Administrator shall replace any order made for the attachment of real property.

Notice of the decision shall be given by any extrajudicial act by the court registrar to the Lands Registrar (Conservator), the debtor, the Bankruptcy Trustee and at the addresses for service of the registered creditors whose names are indicated in the decision.

It shall be published by the Lands Registrar (Conservator) in accordance with the conditions laid down for the publication of orders for the attachment of real property.

The Lands Registrar (Conservator) shall proceed with the formalities of publication of the decision even where the summons to pay had been published earlier; such earlier publication shall cease to have effect from the date of publication of the decision.

He shall give a list 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 appointed notary shall draw up the terms of reference which 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.

#### **Paragraph 2**

#### **Special provisions relating to sale upon attachment of real property**

#### **ARTICLE 154**

(1) The sale of seized real property shall be subject to the provisions prescribing the procedure for such sale, excepting those provisions that are repugnant to this Uniform Act.

The decision authorizing such sale shall comprise, apart from the information mentioned in Article 151 above:

- an indication of the competent court before which the expropriation shall be pursued;
- proof that the creditor has briefed a lawyer whose address the creditor instituting the action shall automatically choose for service and at whose address acts relating to objection to the summons to pay before execution and real property offers and all notifications relating to the sale shall be served.

- (2) The Judge Administrator may authorize the Bankruptcy Trustee or the creditor to pursue simultaneously the sale of several or all of the immovable property, even where they are located within the jurisdictions of different courts.

He shall decide whether the sale of immovable property shall be pursued before the courts in whose jurisdictions they are located or before the court in whose jurisdiction the address for service of the debtor or the registered office of the company is located.

### **Paragraph 3**

#### **Special provisions relating to the amicable auction sale of immovable property**

#### **ARTICLE 155**

The sale of immovable property by an amicable auction shall be subject to the provisions relating to such sale, excepting those provisions that are repugnant to this Uniform Act.

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

The notary shall inform, by registered mail with acknowledgement of receipt or by any other means with written proof thereof, the registered creditors whose names appear on the list of real property rights issued after publication of the decision to consult the terms of reference deposited at his chosen address at least two months before the date fixed for the auction sale and to have their statements 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 by other means with written proof thereof.

The Bankruptcy Trustee and the debtor shall be summoned to the sale by the notary at least one month in advance.

#### **ARTICLE 156**

Sale by auction may be carried out without the assistance of 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 Judge Administrator 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 complete or order that the property be put for a new auction according to one of the forms provided for in Article 150 above. Where he orders a new auction, he shall fix the time for it, fix the reserve price and the terms and conditions of publication; the time limit for such new sale shall not be less than fifteen days.

#### **ARTICLE 157**

Within the period of ten days following the auction sale, any person may make a bid higher by one-tenth on the price by a declaration lodged at the registry of the court in whose jurisdiction the notary responsible for the sale resides. The court registrar shall immediately forward the declaration to the Judge Administrator.

The higher bidder shall give notice of the said declaration by any extrajudicial act to the last bidder in person or at his address within a period of ten days; the notary shall be informed of the declaration.

The Judge Administrator shall, by a decision approving the higher bid, transfer the new bid before the same notary who shall carry out the sale according to the terms of reference previously drawn up.

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

#### **ARTICLE 158**

here there has been a false bid, the procedure shall be continued before the competent court in whose jurisdiction the notary responsible for the sale resides. The certificate establishing that the highest bidder has not fulfilled the terms and conditions of the sale shall be issued by the Bankruptcy Trustee.

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

#### **Paragraph 4**

#### **Special provisions relating to the sale of immovable property by private contract**

#### **ARTICLE 159**

The decision authorizing the sale by private contract of one or more items of immovable property shall determine the price of each item and the basic conditions of sale.

Notice of the decision shall be sent by the court registrar by any extrajudicial act to the debtor and to the chosen addresses of the registered creditors whose names are mentioned in the decision.

Where the price is not high enough to pay off the registered creditors, the said creditors shall have a time limit of thirty days following notification of the decision to make a higher bid of one-tenth on the price addressed to the Bankruptcy Trustee by registered letter with acknowledgement of receipt or by any other means with written proof thereof.

At the expiration of this time limit, the receiver shall sign the deeds 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.

#### **Paragraph 5**

#### **Bulk Sale of assets**

#### **ARTICLE 160**

All or part of the movable and immovable assets including if necessary operation units, may be the object of a bulk sale.

In this connection, the Bankruptcy Trustee shall call for bids and shall fix the time limit within which they shall be received. Any interested person may submit his bid to the Bankruptcy Trustee; the manager of the company in liquidation, the relatives or relations by marriage of the said manager or of the debtor up to the second degree, where he is a natural person, shall be excluded from making bids.

Every bid shall be in writing 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 institution; and
2. the date of the transfer.

The bid shall be deposited at the registry of the competent court where any interested party may read it; it is then communicated to the Bankruptcy Trustee, the Judge Administrator and to the representative of the Legal Department.

## Article 161

The Bankruptcy Trustee shall consult the debtor and Controller, where one has been appointed, to have their opinions on the bids which have been submitted.

He shall choose the bid which appears to him to be the most serious and forward it, together with the opinions of the debtor and Controller, to the Judge Administrator.

## ARTICLE 162

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

The Bankruptcy Trustee shall draw up the deeds necessary for the transfer.

### Paragraph 6 Effects of the sale of assets

## ARTICLE 163

The effects of a bulk sale shall be those defined by Article 133 above.

The Bankruptcy Trustee shall have the responsibility to proceed with the formalities necessary for the cancellation of security registrations.

### Sub-section II Payment of debts

## ARTICLE 164

The Judge Administrator shall, where necessary, order the distribution of funds among the creditors, fix the amount to be distributed and ensure that all the creditors are given notice of the distribution.

As soon as the distribution is ordered, the Bankruptcy Trustee shall forward to each listed creditor, in payment of his dividends, a cheque in his name drawn on the account opened specially to that effect in a banking institution, post office or the Public Treasury.

## ARTICLE 165

After deducting expenses and charges incurred for liquidation as well as aid which would have been granted to the debtor or to his family, the balance shall be distributed among all the creditors whose claim has been checked and accepted.

The portion of the funds corresponding to claims which are still in dispute and especially the share corresponding to the remuneration of the company manager whose situation is yet to be determined, shall be put aside.

The expenses and charges incurred during liquidation, including the Bankruptcy Trustee's fees, shall be deducted from the assets in proportion to the value of each item of the assets to all the assets as a whole.

## ARTICLE 166

Proceeds from the sales of immovable property shall be distributed to the following:

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

- 2° creditors of highly preferred wages in proportion to the value of the property with regard to the assets as a whole;
- 3° hypothecary creditors and creditors of separation of patrimony registered within the legal time limit, each according to the rank of his registration in the land register;
- 4° creditors of the body of creditors as defined by Article 117 above;
- 5° creditors with a general lien following the order established by the Uniform Act organizing securities;
- 6° unsecured creditors.

Where the funds are not enough to fully pay off the creditors of any of the categories mentioned in 1°, 2°, 4°, 5° and 6° of this article the said creditors occupying equal rank, the funds shall be distributed in proportion to their total debts.

#### **ARTICLE 167**

Proceeds from the sale of movable property shall be distributed to the following:

- 1° creditors owed legal costs incurred in the process leading to the sale of the property and in the actual distribution of the proceeds;
- 2° creditors who incurred cost in preserving the debtor's property in the interest of the creditor with older debts;
- 3° creditors of highly preferred wages in proportion to the value of the property with the assets as a whole;
- 4° creditor guaranteed by a pledge following the date when the pledge was signed;
- 5° 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° creditors with a special personal property lien, each according to the property charged with the lien;
- 7° creditors of the body of creditors as defined by Article 117 above;
- 8° creditors with a general lien following the order established by the Uniform Act organizing securities;
- 9° unsecured creditors.

Where the funds are not enough to fully pay off the creditors of any of the categories mentioned in 1°, 2°, 3°, 6°, 7° and 8° of this article the said creditor occupying equal rank, the funds shall be distributed in proportion to their total debts.

#### **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 as an unsecured creditor for the rest of his claim that has not been paid.

#### **ARTICLE 169**

The Bankruptcy Trustee shall draw up every six months a report on the state of the liquidation proceedings. The report shall be deposited at the court registry and, unless a waiver has been

granted by the Judge Administrator, a copy thereof shall be forwarded to the debtor, to all the creditors and to the Controller, where one has been appointed.

The Bankruptcy Trustee shall always update the debtor on the liquidation operations.

Sub-section III  
End of the Union of creditors

**ARTICLE 170**

At the end of the liquidation operations, the Bankruptcy Trustee shall, in the presence of the debtor or after due service on him by the court registrar by registered mail or by any other means with written proof thereof, submit his accounts to the Judge Administrator who in a written report shall acknowledge the end of the liquidation operations.

The report shall be communicated to the competent court which shall declare closed the liquidation proceedings and, at the same time, settle disputes relating to the accounts of the Bankruptcy Trustee filed by the debtor or the creditors.

The body of creditors shall automatically be dissolved and each creditor shall recover his right to individually institute his action.

**ARTICLE 171**

Where the creditor's claim has been checked and recognized, the President of the competent court declaring closed the liquidation proceedings shall endorse the final entry of the creditor, the dissolution of the union, the amount of the claim recognized and the balance due.

The court registrar shall include the executory formula in the decision. It shall not be subject to any appeal.

**ARTICLE 172**

The court registrar shall immediately send an extract of the decision to close the liquidation proceedings to the representative of the Legal Department.

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

**Section III**  
**Closure for reasons of insufficiency of assets**

**ARTICLE 173**

Where funds are not enough to undertake or complete liquidation proceedings, the competent court, upon the report of the Judge Administrator, may, at any time, declare, at the request of any interested party or even of its own motion, the end of operations for reasons of insufficiency 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 reasons of insufficiency of assets shall enable each creditor to recover his right to institute individual actions.

The provisions of Article 171 above shall apply to that effect.

#### **ARTICLE 175**

The decision may be revoked at the request of the debtor or any other interested party upon proof that the funds necessary to defray expenses relating to operations have been deposited with the Bankruptcy Trustee.

#### **ARTICLE 176**

In all cases where it would be necessary to institute action against those who are responsible for the insufficiency of assets, the Bankruptcy Trustee shall be authorized before the decision to close the liquidation proceedings to request legal aid by decision of the Judge Administrator taken upon a petition outlining the purpose of the aid and the available means.

#### **ARTICLE 177**

Following end of operations for reason of insufficiency of assets, the Bankruptcy Trustee shall within a period of three months deposit his accounts at the court registry.

The court registrar shall immediately notify the debtor who shall give him written proof of such notification, that he has a period of eight days within which to file any objection he may have.

Where an objection is filed, the competent court shall rule.

### **Section IV**

#### **Closure by extinguishment of debts**

#### **ARTICLE 178**

After the settlement of claims and so long as the receivership proceedings are not closed by a decision approving the composition agreement or the union of creditors by a decision taken under the conditions laid down in Article 170 above, the competent court shall, at any time, declare, at the request of the debtor or the Bankruptcy Trustee, or even on its own motion, closed the collecting proceedings where there are no more debts due or where the Bankruptcy Trustee has enough funds or where the sums due in capital, interest and expenses have been deposited.

Where a creditor dies, or is absent or refuses to receive his money, the said sum of money shall be deposited into an account specially opened in a bank or post office or the Public Treasury; proof of such deposit shall be as good as a receipt.

Creditors may not claim more than three years of interest accruing at the legal rate from the date of the decision acknowledging the cessation of payments.

Closure shall be declared upon the report of the Judge Administrator acknowledging 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 clearing all the debts, the Bankruptcy Trustee shall render his accounts under the conditions laid down in Article 177 above.

**CHAPTER VI**  
**SPECIAL PROVISIONS GOVERNING MANAGERS**  
**OF INCORPORATED COMPANIES**

**ARTICLE 180**

The provisions of this chapter shall apply, in case of suspension of payments by a company, to managers who may be 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**

A partner whose liability is indefinite, joint and several for the debts of the company, but who is not a manager, shall be subject to the collective proceedings in accordance with Articles 31 and 33 above.

**ARTICLE 182**

The provisions relating to seals and aid to a debtor shall be extended to the manager of a company subject to the provisions of this chapter.

**Section I**

**Paying off of the balance of debts**

**ARTICLE 183**

Where receivership or liquidation proceedings of a company results in an insufficiency of assets, the competent court may, in the case where a management error contributed to such insufficiency of assets, decide, at the request of the Bankruptcy Trustee or even of its own motion that the balance of the company's debts will be borne in whole or in part, with or without joint and several liability, by the manager or where there are more than one, all or some of the managers.

The Bankruptcy Trustee'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 any extrajudicial act within the same period.

The competent court shall take a decision as soon as possible, after reading the report of the Judge Administrator and hearing the managers in camera.

**ARTICLE 184**

The competent court shall be the court which ordered receivership or liquidation proceedings of the company.

**ARTICLE 185**

The competent court may order the managers responsible in whole or in part for the debts of the company to transfer their stocks or share capital in the company or order the compulsory transfer of the said share capital or stocks by the Bankruptcy Trustee, if need be after valuation; the proceeds of their sale shall be allocated for the payment of the share of the company's debts which were attributed to the managers.

**ARTICLE 186**

Any action for the paying off of the debts shall lapse after a period of three years following the date the final list of claims is drawn up. In the case of cancellation or annulment of the

composition agreement of the company, the statutory limitation which shall be suspended during the duration of the composition, shall begin to run again. However, the Bankruptcy Trustee shall again have a time limit which in any case may not be less than one year, to institute the action.

#### **ARTICLE 187**

Where a manager of a company is already declared insolvent, the amount of the debts to be borne by him or the company shall be determined by the court which ordered the receivership or liquidation proceedings of the company.

In this case, the Bankruptcy Trustee of the collective proceedings initiated against the company shall hand over to the recovery or liquidation composition the 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 with regard to the partner responsible for the debts of the company or the manager of a trading company under the registration number of the said company in the Trade and Personal Property Credit Register and where the partner or manager is a trader, the publication in the Official Gazette shall furthermore bear his personal number.

### **Section II**

#### **Extension of collective proceedings to the manager of the company**

#### **ARTICLE 189**

Where receivership or liquidation proceedings are opened against a company, the same proceedings may be opened against a manager who, although not declared insolvent:

- concealing his scheme, carried out a personal commercial activity either through an intermediary or under cover of another company;
- disposed of the credit or property of the company as if they belonged to him;
- wrongly pursued in his personal interest, loss-making operations which led to the insolvency of the company.

The competent court may also order receivership or liquidation proceedings against the manager who is responsible for all or part of the debts of a company and who fail to pay such debts.

#### **ARTICLE 190**

The competent court shall be the court which ordered receivership or liquidation proceedings against the company.

#### **ARTICLE 191**

Any creditor who is admitted in the collective proceedings initiated against the company shall, as of right be admitted in the receivership or liquidation proceedings initiated against the manager. The debts shall comprise the personal debts of the manager and those of the company.

#### **ARTICLE 192**

The date the manager is declared to have stopped payments may not be after the date fixed by the decision ordering the receivership or liquidation proceedings against the company.

### ARTICLE 193

The provisions of Article 188 above shall apply to the decision ordering the extension of collective proceedings to managers of companies.

## PART III PERSONAL BANKRUPTCY AND REHABILITATION

### ARTICLE 194

The provisions of this Part shall apply:

- 1° to any trader who are natural person;
- 2° to any natural person who is a manager of company subject to collective proceedings;
- 3° to any natural person permanently representing a company which is manager of the company referred to in 2° above.

Manager of company referred to in this article shall include any ex officio or de facto manager, whether remunerated or not, apparent or hidden.

### ARTICLE 195

The representative of the Legal Department shall oversee the implementation of the provisions of this Part and shall pursue their execution.

## CHAPTER I PERSONAL BANKRUPTCY

### Section I Cases of personal bankruptcy

### ARTICLE 196

At any time during the collective proceedings, the competent court shall declare the personal bankruptcy of any person who:

- 1° takes away the accounts of the company, misappropriates or hides part of its assets or recognizes fraudulent debts which do not exist;
- 2° in order to conceal his scheme, carries out a commercial activity in his personal interest either through an intermediary or under cover of a company;
- 3° disposes of the credit or property of the company as if the property belongs to him;
- 4° obtains for himself or for the company by fraudulent misrepresentation a composition agreement which is later annulled.
- 5° commits acts in bad faith or commits unworkable negligent acts or serious offences against the trade rules and practices such as defined in Article 197 below.

Any manager of a company who shall be convicted for fraudulent bankruptcy or culpable bankruptcy shall also be declared personally bankrupt.

### ARTICLE 197

The following shall be presumed to be fraudulent acts, unworkable negligent acts or serious offences against the trade rules and practices:

- 1° the carrying on of a commercial activity or the exercise of the function of manager, administrator, chairman, general manager or liquidator in violation of a prohibition as provided for by the Uniform Acts or by the law of each State Party;
- 2° the keeping of accounts which are not in conformity with the accounting regulations and the practices of the profession, having regard to the size of the company;
- 3° the buying for resale at lower prices with intent to delay the noticing that payments have been stopped or the use of ruinous means with the same intent to obtain funds;
- 4° the entry into an engagement on behalf of a third party without any consideration that commits the company or debtor to carry out some engagement which is considered too heavy at the time of its conclusion, having regard to the situation of the company or debtor;
- 5° the wrongful continuation of loss-making operations which will only lead to the insolvency of the company.

#### **ARTICLE 198**

The competent court may declare the personal bankruptcy of any manager who:

- 1° commits serious errors other than those referred to in Article 197 above or who shows proof of glaring incompetence;
- 2° fails to declare within a period of thirty days the insolvency of the company;
- 3° fails to pay the share of the company's debts for which he is responsible.

#### **ARTICLE 199**

Any manager declared personally bankrupt shall be deprived of the right to vote in the meetings of the company against which collective proceedings are initiated; this right shall for that purpose be exercised by an agent appointed by the Judge Administrator at the request of the Bankruptcy Trustee.

### **Section II Procedure**

#### **ARTICLE 200**

Where the Bankruptcy Trustee has facts likely to justify personal bankruptcy, he shall in a report immediately transmit same to the representative of the Legal Department and to the Judge Administrator within a period of three days.

The Judge Administrator shall forward the report to the President of the competent court. Where the Bankruptcy Trustee fails to submit such a report, the Judge Administrator may himself make a report to the President of the competent court.

As soon as the report of the Bankruptcy Trustee or the Judge Administrator is submitted, the President of the competent court shall immediately have the court registrar summon by any extrajudicial act, at least eight days in advance, the debtor or the manager of the company to appear before him on a fixed day in order to be heard in camera in the presence of the Bankruptcy Trustee or the person duly summoned by the court registrar by registered mail or by any other means with written proof thereof.

## ARTICLE 201

The debtor or the manager of the company involved shall appear before the court in person; where for any acceptable reason he is unable to appear he may be represented by a person empowered to assist or represent parties before the court before which the matter is referred.

Where the debtor or the manager of the company fails to appear before the court or is not represented, the competent court shall in the same manner and time as provided in Article 200 above serve them fresh summonses; where they again fail to appear, the competent court shall pronounce a contradictory judgment against them.

## ARTICLE 202

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

Concerning a manager of a non-trading company, the said decision shall be entered in the Register as well as on the margin of the entry recording the receivership or liquidation proceedings.

At the behest of the court registrar an extract of the decision shall also be published in the Official Gazette and in a newspaper empowered to publish legal notices within the jurisdiction of the court that render the decision 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 any individual business concern or any company engaged in business;
- 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 or legal office or to represent any professional body.

Where a competent court pronounces personal bankruptcy, it shall fix its duration which may not be less than three years and not 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 REHABILITATION

### Section I Cases of Discharge

## ARTICLE 204

Where debts are cleared under the conditions laid down in Article 178 above the decision to close collective proceedings as a result thereof shall entail the discharge of the debtor.

To be discharged as of right, a partner who is jointly and severally liable for the debts of a company declared insolvent shall show proof that even though he was granted a special composition agreement, he has paid under the same conditions, all the debts of the company.

#### **ARTICLE 205**

The following may be discharged where proof is shown of their probity:

- 1° any person who has obtained a special composition agreement from creditors and who has fully paid the dividends promised;
- 2° any person who justifies the total remission of his debt by his creditors or their unanimous consent to his discharge.

The following may also be discharged:

Managers of companies:

- against whom receivership or liquidation proceedings have been ordered 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 company in against which receivership or liquidation proceedings have been pronounced is in the situation provided for in the first paragraph of Article 204 above.

#### **ARTICLE 206**

A person declared to be personally bankrupt may be discharged after his death where, during his life time, he met the conditions laid down in Articles 204 and 205 above.

#### **ARTICLE 207**

A person convicted of a felony or a misdemeanour shall not be discharged as long as a consequence of his conviction is prohibition to carry on a commercial, industrial or handicraft activity.

### **Section II Procedure**

#### **ARTICLE 208**

Every application for discharge shall be addressed, accompanied by receipts and supporting documents, to the representative of the Legal Department where the company was pronounced insolvent.

This Magistrate shall forward all these documents to the President of the competent court who pronounced the decision and to the representative of the Legal Department of the residence of the applicant asking them to gather all possible and useful information on the veracity of the facts given. The Bankruptcy Trustee shall be sent the same documents for the same mission and he shall have the obligation to deposit a report within a period of one month with effect from the date the matter is referred to him.

#### **ARTICLE 209**

Notice of the application shall be given by registered mail or by any other means with written proof thereof, by the registrar of the competent court, to each of the creditors admitted or recognized as such 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 and by a

mere declaration in the court registry, file an objection against the discharge with supporting documents.

The said creditor may also intervene in the discharge proceedings by a petition addressed to the President of the competent court with the debtor notified thereof.

#### **ARTICLE 211**

After the expiry of the time limits provided for in Articles 208 and 210 above, the results of the inquiries, the reports prescribed above and the objection filed by the creditors shall be communicated to the representative of the Legal Department to whom the application was addressed; the said representative shall then send them together with his written submissions to the competent court.

#### **ARTICLE 212**

The competent court shall, where necessary, summon the applicant for discharge and the party who filed the objection and hear them in camera.

#### **ARTICLE 213**

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

Where it is allowed, the decision shall be entered in the register of the competent court which pronounced the decision and in the court where the applicant resides.

Furthermore, the decision shall be addressed to the representative of the Legal Department who received the application and with his assistance, to the representative of the Legal Department of the place of birth of the applicant who shall enter it in the criminal record of the applicant opposite the declaration of receivership or liquidation proceedings.

#### **ARTICLE 214**

Discharge proceedings shall be exempt from stamp duty and registration.

### **Section III Effects of Discharge**

#### **ARTICLE 215**

A debtor who is discharged shall have all the rights he had been deprived of by the decision pronouncing him personally bankrupt re-established.

## **PART IV REMEDIES AT LAW IN MATTERS OF RECEIVERSHIP AND LIQUIDATION PROCEEDINGS**

#### **ARTICLE 216**

The following shall not be subject to objection or appeal:

- 1° any decision relating to the appointment or replacement of the Judge Administrator, the appointment or dismissal of a Bankruptcy Trustee, and the appointment or dismissal of a Controller;
- 2° any decision by the competent court on a petition against a decision given by the Judge

Administrator within the limits of his powers, with the exception of decisions on claims and the decisions provided for in Articles 162 and 164 above;

3° any decision taken by the competent court in accordance with the last paragraph of Article 111 above;

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

#### **ARTICLE 217**

With the exception of a decision approving a composition agreement as well as a decision pronouncing personal bankruptcy any decision pronounced in a matter of receivership or liquidation proceedings shall be provisionally enforceable, objection or appeal notwithstanding.

#### **ARTICLE 218**

Within the time limits provided in matters of preventive settlement, receivership, liquidation of property and personal bankruptcy, the day of the act, event or decision which sets the time 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 on a public holiday shall be extended to the following first working day. The same shall apply to notifications to be served at the town-hall or at the Legal Department when offices are closed to the public on the last day of the time limit.

#### **ARTICLE 219**

To be admissible, an objection against a decision given in a dispute involving receivership or liquidation of property shall be filed by declaration at the court registry within the time limit of fifteen days with effect from the date of notification of the said decision.

However, for decisions which as a formality shall be posted on public notice boards and published in newspapers empowered to publish legal notices or in the Official Gazette, the said time limit shall start running only from the day the last formality is fulfilled.

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

#### **ARTICLE 220**

To be admissible, an objection against a decision given in a dispute involving personal bankruptcy shall be filed by declaration at the court registry within the time limit of fifteen days with effect from the date of notification of the said decision.

The debtor or the manager of company shall be summoned to appear before the court in accordance with formalities and conditions and within the time limits provided for in Articles 200 and 201 of this Uniform Act.

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

#### **ARTICLE 221**

To be admissible, an appeal against a decision given in a dispute involving receivership or liquidation of property or personal bankruptcy shall be lodged within the time limit of fifteen days with effect from the date the decision is pronounced.

The appeal shall be determined by the appellate court on presentation of documents within a period of one month.

The appeal decision shall be enforceable forthwith.

#### **ARTICLE 222**

In the case of personal bankruptcy, notice of the decision shall be served on the representative of the Legal Department within a period of three days by the court registrar.

The representative of the Legal Department may, within the time limit of fifteen days following the said notice, file an appeal against the said decision.

The appeal of the Legal Department shall be by a declaration at the registry of the court which pronounced the decision. Notice of the said appeal shall be served by the court registrar on the debtor and the Bankruptcy Trustee who shall sign the proof of service.

#### **ARTICLE 223**

Where personal bankruptcy or any other sanctions has been pronounced against the debtor or the manager, he may appeal by way of a petition addressed to the President of the appellate court.

At the request of the representative of the Legal Department of the appellate court the Bankruptcy Trustee shall be summoned to the suit by registered mail or by any other means with written proof thereof addressed to him by the registrar of the said court.

#### **ARTICLE 224**

Where all or part of the debts of a company are attributed to one or all the managers of the said company, the appeal shall be filed as provided for in Article 221 above.

#### **ARTICLE 225**

In any case, the registrar of the appellate court shall send a copy of the decision of the said court to the registry of the competent court for entry on the margin of the decision and for the publication formalities stipulated by Article 202 above to be carried out.

## **PART V BANKRUPTCY AND OTHER OFFENCES**

### **CHAPTER I BANKRUPTCY AND RELATED OFFENCES**

#### **ARTICLE 226**

Persons declared guilty of bankruptcy or of any misdemeanour related to bankruptcy shall be punished for the said offence in accordance with the provisions of the criminal law in force in the State Party.

#### **Section I Culpable bankruptcy and fraudulent bankruptcy**

#### **ARTICLE 227**

The provisions of this section shall apply to:

- any trader who is a natural person; and
- any partner of a commercial company who has the status of trader.

**ARTICLE 228**

Any person who, being insolvent:

- 1° enters into a contract without receiving securities in exchange, or into commitments deemed too expensive having regard to his situation when he contracted them;
- 2° with intent to conceal his insolvency buys goods with a view to selling them at a lower price or where, with the same intent, uses ruinous means to obtain funds;
- 3° without just cause fails to declare his insolvency within the time limit of thirty days in the registry of the competent court;
- 4° keeps accounts which are incomplete or irregular or keeps no accounts as required by the accounting regulations and practices of the profession having regard to the size of the company;
- 5° has twice been declared insolvent within five years whereby proceedings were closed for insufficiency of assets,

shall be punished with the penalty prescribed for the offence of culpable bankruptcy.

**ARTICLE 229**

(1) Any natural person referred to in Article 227 above who, being insolvent:

- 1° hides his accounts;
- 2° misappropriates or conceals all or part of his assets;
- 3° fraudulently declares himself, either in his entries or a public or private document or in his balance sheet debtor of sums which he does not owe;
- 4° carries on the profession of trader in violation of a ban imposed on him as provided for by the Uniform Act or by the law of a State Party;
- 5° pays a creditor to the detriment of the body of creditors after being declared insolvent;
- 6° arranges for special benefits for a creditor because of his vote during the deliberations of the general body of creditors or who concludes with a creditor a special agreement from which the creditor would enjoy an advantage to be borne by the assets of the debtor with effect from the date of the decision to initiate proceedings, shall be punished with the penalty prescribed for the offence of fraudulent bankruptcy

(2) The same penalty shall be faced by any natural person referred to in Article 227 above who, during receivership or liquidation proceedings:

- 1° in bad faith presents or permits the presentation of an inaccurate or incomplete income statement or of a balance sheet or inventory of claims and debts or of preferential claims and securities;
- 2° without the authorization of the President of the competent court performs any one of the acts banned by Article 11 above.

**Section II**  
**Offences related to bankruptcy**

**ARTICLE 230**

The provisions of this section shall apply to:

- 1° any natural person who is a manager of a company subject to collective proceedings; and
- 2° any natural person who is a permanent representative of a company appointed manager of the company referred to in 1° above.

The manager referred to in this article shall mean any ex officio or de facto manager and, as a general rule, any person who has directly or by an intermediary administered, managed or liquidated the company under cover or on behalf of its legal representatives.

**ARTICLE 231**

Any of the managers referred to in Article 230 above who, in that capacity and in bad faith:

- 1° uses money belonging to the company by carrying out purely hazardous or fictitious operations;
- 2 with intent to conceal the insolvency of the company, buys goods with a view to reselling them at a lower price or, with the same intent, uses ruinous means to obtain funds;
- 3° after the suspension of payments by the company pays or permits a creditor to be paid to the detriment of the body of creditors;
- 4° makes the company enter into a contract without receiving any security in exchange, or into commitments deemed too expensive having regard to company's situation when the contract is entered into;
- 5° keeps or permits the accounts of the company to be kept in an irregular or incomplete manner under the conditions described in Article 228-4° above;
- 6° fails to make at the registry of the competent court, within the time limit of thirty days, the declaration that the company has suspended all payments;
- 7° misappropriates or conceals, attempts to misappropriate or to conceal any part of his property or, with a view to concealing all or part of his estate from proceedings against the company that has suspended payments or against partners or creditors of the company, fraudulently declares himself debtor of sums of money he does not owe, shall be punished with the penalties provided for the offence of culpable bankruptcy.

**ARTICLE 232**

For a company that has partners whose liabilities for the debts of the company are indefinite, joint and several, the legal or de facto representative shall be guilty of culpable bankruptcy where, without good cause, he fails to make at the registry of the competent court, within the time limit of thirty days, a declaration of the company's insolvency or where such declaration does not include the list of partners jointly and severally liable with an indication of their names and addresses.

**ARTICLE 233**

- (1) any of the managers referred to in Article 230 above who fraudulently:

- 1° hides the books of the corporate body;
  - 2° misappropriates or conceals any part of the company assets;
  - 3° declares either in an entry or in a public or private document or in the balance sheet the company debtor of sums of money that it does not owe;
  - 4° performs the functions of manager in violation of a ban provided for by the Uniform Acts or by the law of each State Party;
  - 5° arranges with a creditor, in the name of the company, special benefits because of his vote during the deliberations of the body of creditors or concludes with a creditor a special agreement from which the creditor would enjoy an advantage to be borne by the assets of the company, with effect from the date of the decision declaring the company insolvent, shall be punished with the penalties provided for the offence of fraudulent bankruptcy.
- (2) The same penalties shall be meted out to any of the managers referred to in Article 230 above who, during the preventive settlement proceedings:
- 1° in bad faith presents or permits the presentation of an inaccurate or incomplete income statement or a balance sheet or an inventory of claims and debts or of preferential claims;
  - 2° without the authorization of the President of the competent court performs any one of the acts banned by Article 11 above.

### Section III

#### Prosecution of the offence of bankruptcy and other related offences

##### ARTICLE 234

The charge shall be brought to the criminal court either by the representative of the Legal Department or by a civil party or by way of a summons of the Bankruptcy Trustee or any creditor acting in his own name or in the name of the body of creditors.

The Bankruptcy Trustee may act in the name of the body of creditors only after the prior authorization of the Judge Administrator, the Controller, where one has been appointed, having submitted.

Any creditor may intervene individually in bankruptcy proceedings where they are instituted by the Bankruptcy Trustee in the name of the body of creditors.

##### ARTICLE 235

The Bankruptcy Trustee shall hand over to the representative of the Legal Department documents, stocks, bills and information requested from him.

The documents, stocks and bills given by the Bankruptcy Trustee shall, during the proceedings, be kept at the court registry for ease of consultation.

Application to consult any of these documents shall be through the Bankruptcy Trustee who may request that private extracts of the documents, stocks and bills or certified true copies be sent to him by the court registrar.

Documents, stocks and bills, whose deposit the court had not ordered shall after the decision be handed over to the Bankruptcy Trustee who shall acknowledge receipt thereof.

##### ARTICLE 236

A conviction for culpable or fraudulent bankruptcy or for any related offence may be pronounced even where no finding has been made under the conditions laid down by this Uniform Act that the company is insolvent.

#### **ARTICLE 237**

The costs of the proceedings instituted by the representative of the Legal Department shall not be borne by the body of creditors.

Where there is a conviction, the Public Treasury shall not institute its action for recovery of costs against the debtor in receivership proceedings until the composition agreement is executed; should it liquidation proceedings, the action for recovery may be after the union of creditors is disbanded.

#### **ARTICLE 238**

In case of discharge, the costs of the proceedings instituted by the Bankruptcy Trustee in the name of the creditors shall be borne by the body of creditors and, in case of conviction, by the Public Treasury except where the latter's action against the debtor is brought under the conditions laid down in paragraph 2 of Article 237 above.

#### **ARTICLE 239**

In the case of discharge, the costs of proceedings instituted by a creditor shall be borne by him and, in the case of conviction, by the Public Treasury except where the latter's action against the debtor is brought 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 provided for fraudulent bankruptcy:

- 1° persons convicted of having, in the interest of the debtor, shielded, concealed or covered up all or any part of his personal property or real estate, without prejudice to the criminal provisions relating to aiding and abetting;
- 2° persons proved guilty of having fraudulently produced, in collective proceedings, either in their name or by the fraudulent use of another person or by impersonation, fictitious claims;
- 3° persons who, trading under the name of another person or under a false name, have, in bad faith, misappropriated or concealed, attempted to misappropriate or to conceal any part of their property.

#### **ARTICLE 241**

The spouse, descendant, ascendant or blood relation of the debtor or his relation by marriage who, unknown to the debtor, misappropriates, diverts or conceals negotiable instruments pertaining to the assets of the insolvent debtor shall incur the penalties provided by the criminal law in force in the State Party for offences committed to the detriment of a person under a disability.

#### **ARTICLE 242**

Even where the offender is discharged 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 reintegration of

the property, rights or deducted stocks into the estate of the debtor.

#### **ARTICLE 243**

Any Bankruptcy Trustee of collective proceedings who:

- masking his schemes, carries out a personal activity under the cover of the company of the debtor;
- disposes of the credit or property of the debtor as if the credit or property belonged to him;
- dissipates the property of the debtor;
- pursues wrongly and in bad faith, in his own interest, either directly or indirectly any operation which causes loss to the company of the debtor;
- becomes purchaser on his own account, directly or indirectly, of the debtor's property in violation of the provisions of Article 51 above, shall be punished with the penalties provided by the criminal law in force in the State Party for offences committed by a person putting property out to tender to the detriment of a lessor, depositary, an authorized agent, a pledgor, service provider or a project owner.

#### **ARTICLE 244**

Shall be punished with the penalties provided by the criminal law in force in the State Party for offences committed to the detriment of a person lacking capacity any creditor who:

- arranges with the debtor or with any person special benefits because of his vote in deliberations of the body of creditors;
- concludes a special agreement from which the creditor would enjoy an advantage to be borne by the debtor's assets with effect from the date of the decision to initiate collective proceedings;

#### **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 all persons 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 court which has jurisdiction in cases of collective proceedings.

The creditor shall have to return to the rightful owner any sum of money or stocks which he has received by virtue of the annulled agreements.

Subject to the provisions of Article 140 above, the annulment of a special advantage shall not lead to the annulment of the composition agreement.

#### **ARTICLE 246**

Without prejudice to the provisions relating to the criminal record, the decision convicting an offender pronounced by virtue of the provisions of this Part shall, at the expense of the offender, be posted and published in a newspaper empowered to published 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 COLLECTIVE PROCEEDINGS

### ARTICLE 247

Any decision to initiate or close collective proceedings, or decision settling a dispute arising from the said proceedings or any other final decision pronounced in the territory of a State Party and on which collective proceedings have a legal impact shall be *res judicata* on the territory of the other States Parties.

### ARTICLE 248

The main content of decisions relating to collective proceedings and, where necessary, the decision appointing the Bankruptcy Trustee shall, at the request of the said Bankruptcy Trustee, be published in any of the States Parties where such publication may be useful with respect to the legal security or interests of creditors.

The competent court which initiates the collective proceedings may of its own motion order the said publication.

The Bankruptcy Trustee may where necessary, also enter decisions relating to the collective proceedings in the land register, the Trade and Personal Property Credit Register or in any other public register kept in the States Parties.

### ARTICLE 249

A Bankruptcy Trustee appointed by a competent court may exercise, on the territory of another State Party, all the powers conferred on him by this Uniform Act as long as no other collective proceedings have been initiated in that State.

The appointment of a Bankruptcy Trustee shall be proved by the 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 State Party on whose territory the Bankruptcy Trustee wants to act may be required.

### ARTICLE 250

A creditor who, after the opening of collective proceedings by the competent court of a State Party obtains, by any means, the complete or partial payment of his claim on the property of the debtor located on the territory of another State Party shall make restitution of whatever he has already obtained to the Bankruptcy Trustee, without prejudice to any ownership reserve clause and action for restitution.

Whoever, on the territory of a State Party unknowingly executes a commitment in favour of a debtor subject to collective proceedings initiated in another State Party which he ought to have done in favour of the Bankruptcy Trustee of the said collective proceedings, shall be discharged where he executed the said commitment before the publication of the measures provided for in Article 248 of this Uniform Act; it shall be otherwise where it is proved that he has had even by some other means knowledge of the proceedings.

### ARTICLE 251

The acknowledgement of the initiation of collective proceedings by a competent court of a State shall not be a bar to the initiation of other collective proceedings by the competent court of another State Party.

Where collective proceedings are initiated on the territory of a State Party in which the debtor has his main place of business or in which the company has its registered office, such proceedings shall be called principal collective proceedings. Where collective proceedings are initiated in the territory of a State-Party in which the debtor does not have his main place of business or in which the company does not have a registered office such proceedings shall be referred to as secondary collective proceedings.

#### **ARTICLE 252**

The Bankruptcy Trustees of the principal and secondary collective proceedings shall have the reciprocal duty to exchange information. They shall communicate to each other, without delay, all information which may be useful for other proceedings, in particular the state of production and verification of claims and measures aimed at putting an end to the collective proceedings for which they are appointed.

The Bankruptcy Trustee of the secondary collective proceedings shall in due course allow the Bankruptcy Trustee of the principal collective proceedings to present proposals relating to the liquidation or to use any of the assets of the secondary collective proceedings.

#### **ARTICLE 253**

Any creditor may produce his claim at the principal collective proceedings and at any of the secondary collective proceedings.

The Bankruptcy Trustees of principal and secondary collective proceedings shall also be empowered to produce in other proceedings claims already produced in proceedings for which they have been appointed, subject to the rights of creditors to object to it or to withdraw the claims they produce.

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

#### **ARTICLE 254**

No secondary collective proceedings may be terminated by preventive composition agreement or by recovery composition agreement or by liquidation proceedings unless consent for such termination is given by the Bankruptcy Trustee of the principal collective proceedings. Such consent shall be given within the time limit of thirty days with effect from the date the request of the Bankruptcy Trustee of the secondary collective proceedings is made by registered mail or by any other means with written proof thereof.

The Bankruptcy Trustee of the principal proceedings shall be deemed to have given his approval if he fails to give a response to the said request within the prescribed time limit of thirty days.

The Bankruptcy Trustee of the principal collective proceedings may refuse to give his approval only where he finds that the solution proposed affects the financial interests of the creditors of the proceedings for which he is appointed.

In case of a dispute, the court competent to order the closure of the secondary collective proceedings shall give a ruling as it would do in matters of preventive composition agreement or composition agreement or liquidation.

#### **ARTICLE 255**

A creditor who in collective proceedings obtained a dividend on his claim, shall not take part in distributions opened in other proceedings unless the creditors with the same rank have obtained an equivalent dividend in the said other proceedings.

**ARTICLE 256**

Where the liquidation of the assets of collective proceedings allows the payment of all the claims admitted in the proceedings, the trustee appointed for the collective proceedings shall transfer, without delay, the surplus of assets to the trustee of the other proceedings. Where there are many collective 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 collective proceedings initiated after its entry into force.

**ARTICLE 258**

This Uniform Act shall be published in the Official Gazette of OHADA and in that of the States-Parties. It shall enter into force on 1 January 1999.



**UNIFORM ACT ORGANIZING SIMPLIFIED  
RECOVERY PROCEDURES AND  
ENFORCEMENT MEASURES**



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The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA),

- Considering the Treaty on the Harmonization of Business Law in Africa and in particular Article s 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;
- Considering the report by the OHADA Permanent Secretariat and the observations of the Member States;
- Considering the opinion of the Common Court of Justice and Arbitration dated 23 March 1998;

Having deliberated thereon, the States Parties present and voting adopt the Uniform Act the terms of which are set out below.

**BOOK I  
SIMPLIFIED RECOVERY PROCEDURES**

**PART I  
MANDATORY INJUNCTION TO PAY**

**CHAPTER I  
CONDITIONS**

VII

**ARTICLE 1**

The recovery of a debt certain and due for immediate payment may be obtained following the procedure applied for mandatory injunctions to pay.

**ARTICLE 2**

The procedure for a mandatory injunction to pay shall be applicable where:

- 1) the debt arises from a contract;
- 2) the obligation arises from of the issuance or acceptance of any negotiable instrument, or of a cheque without cover or insufficient cover.

## **CHAPTER II PROCEDURE**

### **Section I The Petition**

#### **ARTICLE 3**

The action shall be commenced by a petition to the competent court of the place of residence or place of abode of the debtor or in the event of several debtors, in the residence or place of abode of one of the debtors.

The parties may derogate from the above rule by providing a jurisdiction clause in the contract.

Lack of territorial jurisdiction may only be raised by the court handling the matter or by the debtor during the proceedings initiated by his opposition.

#### **ARTICLE 4**

The application shall be filed in or sent to the registry of the competent court by the applicant or his agent duly authorized by the laws of each of the State Parties to represent him in court.

It shall under pain of inadmissibility mention the following;

- 1) the names, profession and residence of the parties or, for corporate persons, their legal form, corporate name and registered office;
- 2) a clear indication of the amount claimed, with a breakdown of the different heads of the said claim, as well as the grounds upon which it is based.

The petition shall be accompanied by the originals or certified true copies of the documents in support thereof.

Where the petition is filed by a person not resident within the state of the competent court before which the matter is pending, it shall, subject to the same penalty, contain a choice of address for service within the jurisdiction of said court.

### **Section II The Mandatory Injunction to Pay**

#### **ARTICLE 5**

Where, upon examination of the documents submitted, the petition appears to be wholly or partially well-founded, the President of the competent court shall issue a mandatory injunction to pay the amount determined by him.

Where the President of the competent court dismisses the petition in whole or in part his decision shall not be subject to appeal by the creditor. The creditor's only remedy shall be an ordinary civil claim.

#### **ARTICLE 6**

The original documents annexed to the petition shall be returned to the petitioner and their certified true copies shall be preserved in the registry.

Where the petition is dismissed, it shall be returned to the petitioner alongside any documents submitted in support thereof.

#### **ARTICLE 7**

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

The mandatory injunction to pay shall become null and void where it is not notified on the party concerned within three (3) months of the date of issue.

#### **ARTICLE 8**

Under pain of nullity, the notification of the mandatory injunction to pay shall enjoin the debtor:

either to pay to the creditor the amount indicated in the order, together with interest and registry fees, the amount of which shall be specified; or

where the debtor intends to put forward a defence, he shall file an opposition which shall have the effect of referring the initial petition filed by the creditor as well as the entire dispute to the court.

Under the same pain of nullity the notification of the mandatory injunction to pay shall:

- indicate the time limit within which the opposition shall be filed, the court before which the opposition shall be brought as well as the form of the said opposition;
- inform the debtor that he may take cognizance of the documents submitted by the creditor at the registry of the competent court whose President issued the mandatory injunction to pay, and that, failing to file an opposition within the prescribed time limit, he shall no longer have the right to any recourse and may be compelled through any legal means to pay the sums claimed.

### **Section III The Opposition**

#### **ARTICLE 9**

The ordinary remedy against the mandatory injunction to pay shall be the opposition. It shall be brought before the President of the competent court who rendered the decision granting the mandatory injunction to pay. The opposition shall be filed by extrajudicial act.

#### **ARTICLE 10**

The opposition shall be filed within fifteen (15) days from the date of service of the mandatory injunction. This time limit shall be extended taking into account the distance of the parties from the seat of the court.

However, where the injunction was not personally served on the debtor, the opposition shall be admissible up to the expiry of fifteen (15) days following first act of personal service or, failing this, following the first enforcement measure which shall have the effect of attaching all or part of the debtor's property.

#### **ARTICLE 11**

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

serve the opposition on all the parties as well as the registry of the court which issued the order;

serve a summons to appear before the competent court on a scheduled date which shall not exceed a period of thirty (30) days from the date of the opposition.

#### **ARTICLE 12**

The court in which the opposition is filed, shall attempt conciliation. Where the conciliation succeeds, the President shall draw up a conciliation report which shall be signed by the parties. One copy thereof shall contain the executory formula.

Where the conciliation fails, the court shall immediately rule on the claim for recovery, even in the absence of the debtor who filed the opposition and the court's decision shall have the effect of a judgment delivered after adversary proceedings.

#### **ARTICLE 13**

The burden of proof of the debt shall lie on whosoever petitions for a mandatory injunction to pay.

#### **ARTICLE 14**

The decision of the court taken upon the opposition shall substitute the mandatory injunction to pay.

## ARTICLE 15

The decision delivered upon the opposition may be appealed against in accordance with the national procedural law of each State Party. However, the time limit for appeal shall be thirty (30) days from the date of the said decision.

### Section IV Effects of the Mandatory Injunction to Pay

## ARTICLE 16

The creditor may request the insertion of the executory formula on the ruling where no opposition is filed within fifteen days from notification of the mandatory injunction to pay or, where the debtor withdraws his opposition. The effect of such insertion shall be that of a decision taken after an adversary hearing and shall not be liable to appeal.

## ARTICLE 17

The application to insert the executory formula shall be made at the registry in a simple written or verbal declaration.

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

The certified true copies of the documents produced by the creditor and provisionally preserved at the registry shall be returned on his application from the time of the opposition or when the executory formula is inserted in the decision.

## ARTICLE 18

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

## PART II SIMPLIFIED PROCEDURE FOR THE DELIVERY OR RESTITUTION OF SPECIFIC PERSONAL PROPERTY

## ARTICLE 19

Any person who claims the delivery or restitution of any specific, tangible, personal property may apply to the President of the competent court to order such delivery or restitution.

## CHAPTER I APPLICATION

### ARTICLE 20

The application for delivery or restitution shall be filed in the registry of the competent court of the place of residence or place of abode of the debtor of the obligation to deliver or restitute. The parties may derogate from the above rule of competence by providing a jurisdiction clause in the contract.

Lack of territorial jurisdiction shall only be raised by the court or by the debtor during the proceedings initiated by his opposition.

### ARTICLE 21

The application shall, under pain of inadmissibility, mention the following:

- the names, profession and residence of the parties and, in the case of corporate persons, the name, legal form and registered office;
- an exact description of the property which is the subject-matter of the claim for delivery or restitution;

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

### ARTICLE 22

Where the court dismisses the application, its decision shall not be subject to appeal. The only remedy shall be an ordinary civil claim.

## CHAPTER II DECISION ORDERING DELIVERY OR RESTITUTION

### ARTICLE 23

Where the petition is founded, the president of the competent court shall rule at the foot of the application ordering delivery or restitution of the property in dispute.

The originals of the application and the mandatory injunction shall be preserved by the registrar, who shall issue certified true copies thereof to the applicant.

The original documents annexed in support of the application shall be returned to the applicant and certified true copies preserved in the registry.

#### **ARTICLE 24**

Where the application is dismissed, it shall be returned to the applicant together with the documents annexed thereto.

#### **ARTICLE 25**

The decision ordering delivery or restitution, accompanied by the certified true copies of the documents annexed in support of the application, shall be notified by extrajudicial act at the instance of the creditor, on the person required to effect delivery or restitution.

Under pain of nullity, the notification shall contain an order to proceed within fifteen days:

- either to deliver, at the respondent's expense, the designated property to a specific place under given conditions; or
- where the holder of the property has a defense, to file an opposition in the registry of the court that delivered the ruling in by a written or verbal declaration with proof thereof or by registered mail with acknowledgement receipt or by any other means with written proof failing which the decision shall become enforceable.

The decision ordering delivery or restitution shall be null and void where it has not been notified on the party concerned within three months from the date of issue.

### **CHAPTER III**

#### **EFFECTS OF THE DECISION ORDERING DELIVERY OR RESTITUTION**

VII

#### **ARTICLE 26**

Opposition to the decision ordering delivery or restitution shall be in accordance with the provisions of Article s 9 to 15 of this Uniform Act.

#### **ARTICLE 27**

Where there is no opposition within the period prescribed under Article 16 above, the petitioner may apply to the president of the competent court to stamp the executory formula on the decision.

The conditions of such application shall be those provided for by Article s 17 and 18 of this Uniform Act.

**BOOK II**  
**ENFORCEMENT MEASURES**

**PART I**  
**GENERAL PROVISIONS**

**ARTICLE 28**

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

Save in the case of a debt secured by a mortgage or other privilege, execution shall be carried out in the first place on movable property and, where this is insufficient, on immovable property.

**ARTICLE 29**

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

The executory formula shall entail the direct requisition of the forces of law and order.

An action can be brought against the State for failure or refusal to lend assistance.

**ARTICLE 30**

Compulsory execution and protective measures shall not apply to persons who enjoy immunity from execution.

However, any debt which is certain, due and owed by state corporations or firms, regardless of their legal form and mission, shall give rise to a set-off against debts which are also certain, due and owed them, subject to an agreement of reciprocity.

The debts of the state corporations and firms referred to in the preceding paragraph may only be considered certain, within the meaning of this article, where they arise from either an acknowledgement by the said corporations and firms of the debts or from a writ which is enforceable within the territory of the State where the corporations and firms are located.

**ARTICLE 31**

Compulsory execution shall be available only to a creditor who can show proof of a debt certain, due and owing, subject to the provisions relating to attachment and seizure pendente lite.

**ARTICLE 32**

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

Execution shall then be carried out at the risk of the judgment creditor, who shall, where the writ is subsequently modified, be bound to fully make good any damage caused by the execution,

irrespective of whether he was at fault or not.

### **ARTICLE 33**

The following shall constitute writs of execution:

- (1) court decisions bearing the executory formula and decisions which are immediately enforceable;
- (2) foreign acts and court decisions as well as arbitral awards which have been granted exequatur in a ruling which is final in the State in which the writs are invoked;
- (3) conciliation reports signed by the judge and the parties;
- (4) notarial deeds bearing the executory formula;
- (5) decisions recognised as court decisions by the national law of each State Party.

### **ARTICLE 34**

Where a court decision is invoked against a third party, a certificate of non appeal and non opposition shall be produced containing the date of notification of the decision on the losing party. The certificate shall be issued by the registrar of the court that delivered the ruling concerned.

### **ARTICLE 35**

Unless otherwise provided for in this Uniform Act, any person who relies on a document in the course of measures taken to ensure the enforcement or protection of a debt shall notify such or give a copy thereof, except where it was notified before.

### **ARTICLE 36**

Where the attachment concerns tangible property, the debtor whose property has been attached or a third party holder of the attached property shall be deemed to be custodian of the objects attached, subject to the sanctions provided for under the criminal law.

Attachment shall render the property attached inalienable.

A debtor whose property has already been attached shall, under pain of a claim for damages, within five days from the date he became aware of the attachment, disclose to any new creditor attaching the same property, the existence of an existing attachment and the identity of the person who carried it out. He shall, in addition, produce the writ of attachment.

The same obligation shall apply to a third party holder of the property of the debtor.

The creditor so informed shall in turn communicate to all other creditors who are parties to the proceedings all documents and information which should be notified by virtue of Article s 74 to 76 of this Uniform Act.

**ARTICLE 37**

Notification of the writ of attachment on the debtor, even in the case of sequestration, shall interrupt the running of the statutory time limit.

**ARTICLE 38**

Third parties may not obstruct proceedings for the enforcement or the protection a claim. They shall lend support to such proceedings where so required by law. Failure by them to fulfill these obligations may make them liable to pay damages. A third party distrainee may also, under the same conditions, be ordered to pay for the judgment debt, subject to his filing an action for recovery against the debtor.

**ARTICLE 39**

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

However, taking into account the situation of the debtor and considering the needs of the creditor, the competent court may, save for claims for maintenance allowance and debts arising from an exchange transaction, postpone or order payment by installment of the debt over a period not exceeding one year. The court may also order that the payments shall first be applied to expunge the principal debt.

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

**ARTICLE 40**

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

**ARTICLE 41**

Where the legal conditions are met, the bailiff or process-server may enter a place whether used as a residence or not and, where need be, open doors and take possession of movable property.

**ARTICLE 42**

In the absence of the occupant of the premises, or where the occupant denies access to the bailiff or process-server, the latter may place a guard at the doors to prevent any fraudulent disposition of property. He shall request the competent administrative authority or the police or gendarme officers to be present during the operations.

Under the same conditions, he may take possession of movable property.

**ARTICLE 43**

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

#### **ARTICLE 44**

The bailiff or process-server may ask to be assisted by one or two adult witnesses who shall not be related by blood or marriage in direct line to the parties and who are not in their employ. In such case, he shall state in the report their full names, occupation and residence. The witnesses shall sign the original and copies of the report.

#### **ARTICLE 45**

The bailiff or process-server may take pictures of the attached property. The photographs shall be kept by him for purposes of verification of the attached property. They may only be produced where there is a dispute before the competent court.

#### **ARTICLE 46**

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

Execution may not commence before 8 a.m. or after 6 p.m., save in case of necessity, with the authorization of the competent court and only in premises not used as a dwelling house.

The distrainor may not, take part in the attachment process except in case of necessity determined by the competent court.

#### **ARTICLE 47**

The costs of execution by distraint shall be borne by the debtor, save where it is obvious that they were not necessary at the time they were incurred.

Save where they concern an act whose performance is provided for by the national law of each State Party or by this Uniform Act, or is authorized by the competent court, costs incurred for recovery without an executory formula shall be borne by the creditor. However, the competent court may, on his application order the transfer of all or part of the costs incurred to the debtor who has acted in bad faith.

#### **ARTICLE 48**

In case of any difficulty in the enforcement of a writ of execution the bailiff or process-server may, of his own motion, refer the matter to the competent court.

The bailiff or process-server shall, at the expense of the debtor, serve a writ of summons on the parties, informing them of the date, time and place of the hearing during which the difficulty shall be examined. He shall inform the parties that a decision may be taken in their absence.

#### **ARTICLE 49**

The competent authority to rule on all disputes or petitions relating to execution by distraint or sequestration shall be the President of the court sitting in the course of urgent proceedings, or the judge delegated by him to that effect.

His decision may be appealed against within fifteen days from the date it was delivered.

The time limit for appeal and the exercise of the right to appeal shall not constitute a bar to enforcement except where by a reasoned ruling, the president of the competent court decides otherwise.

#### **ARTICLE 50**

All property belonging to the debtor may be the subject of attachment, even where the said property is held by a third party, save where it has been declared inalienable by the national law of each State Party.

Attachments may also be carried out on conditional claims, immature debt or debts paid in installments. The terms applicable to each of these obligations shall be binding on the distrainor.

#### **ARTICLE 51**

Assets and rights that may not be subject to distraint shall be determined by each State Party.

#### **ARTICLE 52**

Non-distrainable claims paid into an account shall not be attached.

#### **ARTICLE 53**

Where an account, even a joint account, funded by the earnings and salary of one of the spouses married under the joint property regime, is subject to a distraint or sequestration for the payment or guarantee of a debt incurred by the other spouse, the spouse whose earnings have been funding the account shall forthwith be awarded a sum of his choice equivalent to the earnings and salary paid into the account during the month preceding the attachment or an average of the earnings for the twelve months immediately preceding the attachment .

## **PART II SEQUESTRATION**

### **CHAPTER I GENERAL PROVISIONS**

#### **ARTICLE 54**

Any person whose claim appears to be founded may, apply to the competent court of the residence or place of abode of the debtor for leave to take protective measures on all the tangible or intangible personal property of his debtor, without prior summons to pay, where he can show proof of circumstances likely to jeopardize the recovery of the debt.

**ARTICLE 55**

Prior leave of the competent court shall not be necessary where the creditor holds a writ of execution.

The same shall apply in the case of default in payment, duly established by an accepted bill of exchange, promissory note, cheque or unpaid rents after a summons to pay as soon as they fall due by virtue of a written lease over immovable property.

**ARTICLE 56**

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

**ARTICLE 57**

Where the sequestered property is a monetary claim, such sequestration shall render the sum claimed inalienable up to the sum authorized by the competent court or, where such authorization is unnecessary, up to the sum attached.

Sequestration shall, as of right, render the sums deposited inalienable and shall confer on the distrainor a possessory lien.

**ARTICLE 58**

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

**ARTICLE 59**

The decision ordering sequestration shall, under pain of nullity, specify the amount guaranteed by the said protective measure and also specify the nature of the property involved.

**ARTICLE 60**

The sequestration order of the competent court shall lapse where it is not executed within a period of three months from the date on which it was made.

**ARTICLE 61**

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

Where the sequestration is carried out on property in the hands of a third party, copies of the documents in support of the process shall be forwarded to the third party within a period of eight days from the date on which they were issued.

## **CHAPTER II DISPUTES**

### **ARTICLE 62**

Even where prior authorization is not required, the competent court may, at any time on the application of the debtor, after hearing the creditor or summoning him to appear, set aside the protective measure where the distrainer fails to show proof that the conditions prescribed by Article s 54, 55, 59, 60 and 61 above have been fulfilled.

### **ARTICLE 63**

The application to set aside the protective measure shall be brought before the court which ordered the measure. Where such measure was taken without prior leave of court, the application shall be brought before the competent court of the residence or place of abode of the debtor.

Other disputes, especially those relating to the execution of the measure, shall be brought before the competent court of the place where the attached property is situated.

## **CHAPTER III SEQUESTRATION OF TANGIBLE MOVABLE PROPERTY**

### **Section I The Sequestration Process**

### **ARTICLE 64**

After reminding the debtor that he is required to indicate any of his assets which have been subject to a previous attachment and to give the bailiff or process server the corresponding report thereof, the bailiff or process server shall draw up a report of the attachment which shall under pain of nullity, contain ;-

- 1) a reference of the decision of the competent court or the enforceable instrument on the basis of which the attachment was carried out; the originals or the certified true copies of these documents shall be appended to the original of the deed;
- 2) the full names and residence of the distrainer and distrainee or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 3) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not resident therein ; any service or offer may be made at the chosen address;
- 4) a detailed description of the property attached;

- 5) where the debtor is present, his declaration concerning any previous attachment of the same property;
- 6) a statement in bold characters that the attached property is inalienable; that it is in the hands of the debtor or any third party agreed upon by the parties or, failing such agreement, by a court order ruling in urgent application; that it may neither be alienated nor removed save under the circumstances provided for by Article 97 below, under pain of criminal sanctions; and that the distrainee is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 7) a statement in bold characters of the debtor's right, to apply to the competent court of his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled;
- 8) an indication of the competent court before which other disputes shall be brought, especially those relating to the attachment process;
- 9) an indication, where applicable, of the full names and status of the persons who were involved in the attachment process and who shall sign the original and the copies; where a person refuses to sign, it shall be mentioned in the report ;
- 10) a reproduction of the criminal provisions punishing the fraudulent disposition of the attached property, as well as the provisions of Article s 62 and 63 above. The provisions of Article 45 above may equally apply.

#### **ARTICLE 65**

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

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

Where the debtor was not present during the attachment process, a copy of the report shall be given to him allowing him a period of eight (8) days within which to inform the bailiff or process server of any details relating to all previous attachments and to send him the report thereof.

#### **ARTICLE 66**

The provisions of Article s 99 and 103 below shall apply to the sequestration where the attachment is carried out in the hands of the debtor.

#### **ARTICLE 67**

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

Where attachment is carried out without prior leave of court as required by Article 55 above, the provisions of Article 105 below shall apply.

The attachment report shall be served on the debtor within eight (8) days. It shall also, under pain of nullity, contain:

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment was carried out;
- 2) a statement in bold characters of the debtor's right, to apply to the competent court at his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled
- 3) a reproduction of Article s 62 and 63 above .

#### **ARTICLE 68**

All incidental issues arising in the course of the attachment process shall, where necessary, be treated in accordance with the provisions of Article s 139 to 146 below.

### **Section II Conversion into a Writ of Attachment and Sale**

#### **ARTICLE 69**

A creditor in possession of a writ of execution in proof of his claim shall serve on the debtor an instrument bearing the conversion of the writ. Such instrument shall under pain of nullity contain;-

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case mere reference to it shall be enough ;
- 4) a separate detailed account of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the interest rate.
- 5) a summons to pay the said sums within a period of eight (8) days, failing which the property attached shall be sold.

The conversion may be endorsed in the instrument bearing notification of the writ of execution.

Where the attachment is carried out on property in the hands of a third party, a copy of the instrument of conversion shall be served on the said third party.

## ARTICLE 70

Upon expiry of a period of eight (8) days from the date of the instrument of conversion the bailiff or process server shall proceed with a verification of the property attached. A report shall be drawn up with regard to any missing or damaged property.

In the report the distrainee shall be informed that he has a period of one (1) month to sell the property attached by private sale, under the conditions provided for in Article s 115 to 119 below.

## ARTICLE 71

Where the property is no longer found at the place of attachment, the bailiff or process server shall enjoin the distrainee to inform him within a period of eight (8) days of the place where it is located and, in the event where it has been subject to attachment and sale, to provide him with the name and address of either the bailiff or process server who undertook the said attachment and sale, or the creditor on whose account it was carried out.

In the absence of a response, the creditor shall petition to the competent court which may order that the said information be provided, failing which, a periodic default fine may ensue, without prejudice to his right to institute criminal proceedings for misappropriation of the attached property.

## ARTICLE 72

Where there is no private sale within the prescribed period, a forced sale shall be proceeded with in accordance with the procedure laid down for attachment and sale.

### Section III Foreign Attachment

## ARTICLE 73

Where the debtor has no fixed abode or where his residence or business establishment is in a foreign country, the competent court to order attachment of the debtor's property and settlement of disputes arising therefrom shall be the court of the creditor's residence.

The distrainor shall be the custodian of the property if, it is in his possession, otherwise a custodian legis shall be appointed.

The applicable procedure shall be the one laid down for sequestration.

## Section IV Multiple Seizures

### ARTICLE 74

The bailiff or process server who carries out a sequestration on property rendered inalienable by one or more previous sequestrations, shall serve a copy of the attachment report on each of the creditors whose action preceded his.

Where property covered by a writ of protective attachment subsequently become the subject of a writ of attachment and sale, the bailiff or process server shall serve the attachment report on the creditors who carried out the previous sequestrations.

Similarly, the instrument whereby the sequestration is converted into a writ of attachment and sale shall be served on the creditors who prior to the conversion had carried out protective attachment over the same property.

### ARTICLE 75

Where the debtor makes proposals for a private sale, the distrainor creditor who accepts the said proposals shall, by registered mail with acknowledgement of receipt or by any other means with written proof, notify the contents of the said proposals to the creditors who had previously carried out protective attachments on the property, before the act of attachment or before the instrument of conversion, as the case may be. Under pain of nullity, the mail or other means used shall reproduce in bold characters the three paragraphs below.

Each creditor shall, within a period of fifteen (15) days of receipt of the information by registered mail or by any other means, take a decision on the proposals of the private sale and inform the distrainor creditor of the nature and amount of his claim.

Where there is no reply within the prescribed delay, the creditor shall be deemed to have agreed to the proposals of sale.

Where, within the same time limit, the creditor does not give any information on the nature and amount of his claim, he shall lose the right to a share in the proceeds from the private sale, unless he asserts his claim on the balance of the proceeds after the distribution, if any.

### ARTICLE 76

The distrainor creditor who undertakes the removal of the property with a view to its forced sale shall, by registered mail with acknowledgement of receipt or by any other means with written proof, inform the creditors who carried out a sequestration of the same property before the attachment or conversion as the case may be. Under pain of nullity, registered mail or the other means used to communicate shall state the name and address of the officer of court in charge of the sale and reproduce in bold characters the following paragraphs.

Each creditor shall, within a period of fifteen (15) days of receipt of the registered letter or other means used in informing him of the removal of the property with a view to selling it, inform the

officer of court in charge of the sale of the nature and amount of his claim as at the date of the removal.

Where he fails to reply within the time limit, he shall lose the right to a share in the proceeds from the private sale, unless he asserts his claim on the balance of the proceeds after the distribution, if any.

## CHAPTER IV SEQUESTRATION OF DEBTS

### Section I The Attachment Process

#### ARTICLE 77

The creditor shall carry out the attachment by means of an instrument issued by a bailiff or process server, served on the third parties in accordance with the provisions of Article s 54 and 55 above.

The instrument, shall under pain of nullity, contain;

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 2) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not resident therein ; any service or offer may be made at the chosen address;
- 3) a reference to the decision of the competent court or the enforceable instrument on the basis of which the attachment was carried out;
- 4) a detailed account of the amount of the sums for which the attachment is carried out;
- 5) a prohibition to any third party from disposing the sums claimed up to the amount owed the debtor;
- 6) a reproduction of the provisions of the second paragraph of Article 36 above as well as those of Article 156 below.

#### ARTICLE 78

In the absence of an amicable settlement, any interested party may apply to the court that the sums attached be paid to an escrow agent who shall be appointed by the court of the place of residence or the place of abode of the debtor.

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

## ARTICLE 79

Within a period of eight (8) days, under pain of forfeiture the sequestration shall be notified to the debtor through an Act of a bailiff or a process server.

Under pain of nullity, the Act shall contain;

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment is carried out;
- 2) a copy of the attachment report;
- 3) a statement in bold characters of the debtor's right, to apply to the competent court at his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled;
- 4) an indication of the court before which other disputes shall be brought, especially those relating to the attachment process;
- 5) a reproduction of the provisions of Article s 62 and 63 above.

## ARTICLE 80

A garnishee shall be required to furnish the bailiff or process server with the information provided for in Article 156 below and to hand over copies of documents in support thereof. The information shall be mentioned in the report.

## ARTICLE 81

A garnishee who, without legitimate cause, fails to provide the information required may be liable to pay the sums for which the attachment is made where the said attachment is converted into a writ of attachment and award subject to any action he may bring against the debtor.

He may also be ordered to pay damages in the event of willful negligence or an inaccurate or false declaration.

Where the garnishee's declarations are not contested before the act of conversion, they shall be deemed to be accurate for purposes of the attachment.

## Section II

### Conversion into a Writ of Attachment and Award

## ARTICLE 82

A garnishor in possession of a writ of execution in proof of his claim shall serve on the garnishee a deed bearing the conversion of the writ. Such instrument shall under pain of nullity contain;-

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case it shall simply refer to it ;
- 4) a separate detailed account of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the interest rate.
- 5) a request for payment of the sums previously indicated, up to the amount acknowledged by the garnishee or the amount declared owed. The act shall mention the fact that within this time limit the request shall entail the immediate attribution of the sums attached to the garnishor.

#### **ARTICLE 83**

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

The debtor may, within fifteen (15) days from the date of the said service, file an opposition to the deed of conversion before the competent court of his place of residence or place of abode.

Where there is no opposition, the garnishee shall make payment to the garnishor or to his authorized agent upon presentation of a certificate of non-opposition from the registry. Payment may be made before the expiry of the said period where the debtor declares in writing that he does not intend to file any opposition.

#### **ARTICLE 84**

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

## **CHAPTER V SEQUESTRATION OF SHAREHOLDINGS AND OTHER TRANSFERABLE SECURITIES**

### **Section I Attachment Process**

Article 85  
Sequestration of shares and transferable securities shall be carried out by the service of an instrument on the persons mentioned in Article 236 below. Under pain of nullity, the instrument shall reproduce the provisions of Article 237 below, subject to (3) which provides that reference to the writ of execution may be replaced by the reference to the decision of the competent court that ordered the sequestration.

## ARTICLE 86

Within a period of eight (8) days, under pain of forfeiture, the sequestration shall be notified to the debtor through an instrument which shall, under pain of nullity, contain;

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment is carried out;
- 2) a copy of the attachment report;
- 3) a statement in bold characters of the debtor's right to apply to the competent court of his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled;
- 4) an indication of the court before which other disputes shall be brought, especially those relating to the enforcement of the writ of attachment;
- 5) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not resident therein ; any service or offer may be made at the chosen address;
- 6) a reproduction of the provisions of Article s 62 and 63 above.

## ARTICLE 87

The provisions of Article 239 below shall apply.

# VII

## Section II Conversion into a Writ of Attachment and Sale

## ARTICLE 88

A creditor in possession of a writ of execution in proof of his claim, shall serve on the debtor a writ of attachment and sale which shall, under pain of nullity, contain;-

- 1) the full names and residence of the distrainee and the distrainer, or, in the case of corporate bodies their legal forms, corporate names and registered offices;
- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case it shall simply refer to it ;
- 4) a separate detailed account of all the sums payable in principal, costs and accrued interest, as well as an indication of the interest rate.
- 5) a summons to pay the said sums, failing which the attached property shall be sold.
- 6) an indication in bold characters, that he has a period of one (1) month within which to sell

the attached securities by private sale, under the conditions provided for in Article s 115 to 119 below.

7) a reproduction of Article s 115 to 119 below.

#### **ARTICLE 89**

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

#### **ARTICLE 90**

The sale shall be conducted in accordance with the provisions of Article s 240 to 244 below.

## **PART III ATTACHMENT AND SALE**

#### **ARTICLE 91**

Any creditor in possession of a writ of execution in proof of a debt, certain and due for immediate payment, shall after the service of a summons to pay, proceed with the attachment and sale of any tangible and movable property belonging to his debtor in order to recover the debt from the proceeds of the sale whether or not the said property is in the hands of the debtor.

Any creditor who fulfills the above conditions may join the attachment process by way of an opposition.

### **CHAPTER I PRELIMINARY SUMMONS TO PAY**

#### **ARTICLE 92**

The attachment shall be preceded by a preliminary summons to pay served on the debtor at least eight (8) days before the attachment and shall under pain of nullity contain:-

- 1) a reference of the writ of execution by virtue of which the attachment exercise was carried out, with a separate detailed account of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the interest rate.
- 2) a summons to pay the debt within eight (8) days, failing which it shall be recovered by the forced sale of his movable property.

**ARTICLE 93**

Where the creditor is not resident within the territorial jurisdiction of the court where the proceedings are to be instituted, the summons shall contain his choice of address for service for the purpose of the proceedings. However, notice of any change of address, shall be given to the debtor. Any service or offer may be made at the chosen address.

**ARTICLE 94**

Service of the summons to pay shall be personal or at the residence. The summons may not be served at the chosen address for service. It may be endorsed in the instrument bearing notification of the writ of execution.

**CHAPTER II  
THE ATTACHMENT PROCESS**

**Section I  
General Provisions**

**ARTICLE 95**

Any attachable tangible movable property belonging to the debtor may be the subject of attachment and sale, including property which has been the subject of a prior sequestration, in which case, Articles 88 to 90 above shall apply.

**ARTICLE 96**

Where there is no attachable property or where it is obvious that such property has no market value, the bailiff or process server shall draw up a nulla bona report, except the creditor requires that the execution be continued.

**ARTICLE 97**

The property attached shall be inalienable. Where for legitimate reasons, the property has to be removed, the holder of the property shall be required to give prior notice to the creditor save in the case of extreme urgency.

In any case, he shall inform the creditor of the place where the property shall be located.

**ARTICLE 98**

Upon the expiry of the eight (8) days from the date of service of the unproductive summons to pay, the bailiff or process server may, on the basis of the writ of execution, enter a place whether serving as a dwelling house or not, under the conditions provide for in Article s 41 to 46 above.

## Section II Attachment of Property in the hands of the Debtor

### ARTICLE 99

Before any attachment carried out in the presence of the debtor, the bailiff or process server shall verbally reiterate the formal request for payment and inform the debtor that he is required to declare the property which has been the subjects of a prior attachment.

### ARTICLE 100

The bailiff or process server shall draw up an inventory of the property. The instrument of attachment shall under pain of nullity contain:-

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices and any choice of address by the distrainor;
- 2) the reference to the writ of execution authorizing the attachment;
- 3) an indication of the person to whom the writ was handed;
- 4) a detailed description of the property attached;
- 5) where the debtor is present, his declaration concerning any prior attachment of the same property;
- 6) a statement in bold characters that the attached property shall be inalienable, that they are in the custody of the debtor, that under pain of criminal sanctions they may not be transferred or removed save under the circumstances provided for in Article 97 above, and that the distrainee is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 7) an indication in bold characters, that he has a period of one (1) month within which to sell the attached securities by private sale, under the conditions provided for in Article s 115 to 119 below.
- 8) an indication of the court before which any disputes relating to attachment and sale shall be brought ;
- 9) an indication, where applicable, of the full names and status of the persons present during attachment process and who shall sign the original and the copies; where a person refuses to sign, it shall be mentioned in the report ;
- 10) a reproduction of the criminal provisions governing fraudulent disposition of attached assets as well as those of Article s 115 to 119 below;
- 11) a reproduction of Article s 143 to 146 below.

### **ARTICLE 101**

Where the debtor is present during the attachment process, the bailiff or process server shall verbally remind him of the provisions of (6) and (7) of the preceding article . He shall also remind him of the option of a private sale of the attached property, under the conditions provided for by Article s 115 to 119 below.

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

### **ARTICLE 102**

Where the debtor was not present during the attachment process, a copy of the report shall be served on him giving him a period of eight (8) days within which to inform the bailiff or process server of any details relating to all previous attachments and to send to him the report thereof.

### **ARTICLE 103**

The debtor shall continue to use the property rendered inalienable by the attachment save where such property is consumable. In such a case, he shall be required to bear in mind its estimated full value at the time of attachment.

However, the competent court may upon an application at any time and even before the commencement of the attachment and after hearing the parties or having duly summoned the parties, order the return of part of the property to a sequester it may appoint.

Where part of the property attached is a motor-vehicle, the competent court may after having heard or duly summoned the parties, order its immobilization pending removal for sale by any means which shall not lead to the deterioration of the vehicle.

### **ARTICLE 104**

Sums in cash may be attached up to the amount of the claim of the distrainor. They shall be kept in the custody of the bailiff or process server or at a registry of the distrainor's choice.

Mention shall be made thereof in the report of attachment, which shall also indicate, under pain of nullity, that the debtor has a period of fifteen (15) days, from notification of the said report, to contest it before the court of the place of the attachment which shall be named in the report.

Where the attachment is contested and no order made for payment to the creditor or restitution to the debtor, the competent court may order that the amount claimed be deposited in the registry.

Where the attachment is not contested within the prescribed period, the sums shall immediately be paid to the creditor and deducted from the total amount claimed.

### Section III Attachment of Property in the hands of a Third Party

#### ARTICLE 105

Where the attachment concerns property in the hands of a third party and in premises occupied as a dwelling house by the third party, it shall be authorized by the court of the place where the said property is located.

#### ARTICLE 106

Upon presentation of the summons to pay served on the debtor in accordance with the provisions of Articles 92 to 94 above, upon the expiry of the period of eight (8) days of its date, and upon the eventual presentation, where possible, of the order of the court provided for in the preceding Article, the bailiff or process server may attach property in the hands of a third party held on behalf of debtor.

Following the same procedure, the creditor may also attach any property in his hand which belongs to the debtor.

#### ARTICLE 107

The bailiff or process server shall invite the third party to declare the property which he is holding on behalf of the debtor and any part of it which may have been subject to some previous attachment.

In case of refusal to declare or in the event of any inaccurate or false declaration, the third party may be ordered to pay for the subject matter of the attachment subject to any action which he may file against his debtor. He may also be ordered to pay damages.

#### ARTICLE 108

Where the third party declares that he does not have any property belonging to the debtor in his possession or where he refuses to make any declaration, a report to that effect shall be drawn up. The said report shall be handed over to, or served on the third party, with an indication in bold characters of the sanction referred to in the preceding Article.

#### ARTICLE 109

Where the third party declares that property belonging to the debtor is in his custody, an inventory thereof shall be drawn up which shall, under pain of nullity, contain:-

- 1) the reference of the writ by virtue of which the attachment is carried out;
- 2) the date of the attachment, the full names, and residence of the distrainor or, in the case of a corporate body its legal form, corporate name and registered office; a possible choice of residence by the distrainor;

- 3) the full names and residence of the debtor or, in the case of a corporate person, its legal form, corporate name and registered office;
- 4) the full names and residence of the third party;
- 5) the third party's declaration, and in bold characters, an indication that any inaccurate or false declaration shall make him liable for the debt, without prejudice to being held liable for any damages.
- 6) a detailed description of the property attached;
- 7) a statement in bold characters that the attached assets shall be inalienable, that they are placed in the hands of the third party, that they may neither be transferred nor removed, save under the circumstances provided for in Article 97 above, under pain of criminal sanctions; and that the third party is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 8) a statement that the third party may avail himself of the provisions of Article 112 below, which shall be reproduced in the document;
- 9) a statement that the third party may assert his claim over the property attached, by a simple declaration or registered mail with acknowledgement of receipt or by any means with written proof addressed to the bailiff or process-server of the distrainor;
- 10) an indication of the court before which shall be brought any opposition relating to the attachment and sale;
- 11) an indication, where applicable, of the full names and status of the persons who were present during attachment process and who shall sign the original and the copies; in the case of refusal, it shall be mentioned in the report;
- 12) a reproduction of the criminal provisions governing fraudulent disposition of attached assets.

#### **ARTICLE 110**

Where the third party is present during the attachment, the bailiff or process server shall verbally remind him of the provisions of Article 109 (5), (7) and (8) above. Mention shall be made of these declarations in the attachment report and a copy bearing same signatures as the original shall immediately be handed to the debtor; such handing over shall serve as notification.

Where the third party was not present during the attachment, a copy of the report shall be served on him giving him a period of eight (8) days within which to inform the bailiff or process server of any details relating to all previous attachments and to send to him the report thereof.

#### **ARTICLE 111**

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

Under pain of nullity, it shall state that the debtor has a period of one month within which to organize a private sale of the attached property in conformity with the conditions provided for by Article s 115 to 119 of the present Act, which shall be reproduced.

#### **ARTICLE 112**

The third party may refuse custody of the attached assets. Where he accepts custody, he may at any time request to be discharged of them. The bailiff or process-server shall then proceed to appoint another person who shall take custody of the assets.

#### **ARTICLE 113**

Subject to the third party's right of usufruct of the property attached, the competent court may, at any time, even before the attachment and after hearing the parties or after they have been duly summoned, order the return of one or more objects to an escrow agent appointed by the court.

Where part of the property attached is a motor-vehicle, the competent court may after having heard the parties or after the parties have been duly summoned, order its immobilization pending removal for sale by any means which shall not lead to the deterioration of the vehicle.

#### **ARTICLE 114**

Where the third party claims a possessory lien over the attached property, he shall inform the bailiff or process-server thereof by registered mail with acknowledgement of receipt or through any means with written proof, except where he had made a declaration at the time of the attachment.

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

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

VII

### **CHAPTER III SALE OF ATTACHED PROPERTY**

#### **Section I Private Sale**

#### **ARTICLE 115**

Any debtor whose property is the subject of distraint may voluntarily, under the conditions defined below, sell the attached property and use the proceeds to pay the creditors.

#### **ARTICLE 116**

The debtor shall have a period of one month from the date of service of the attachment report to dispose of the attached property by private sale.

The attached property shall remain inalienable under the responsibility of the custodian. The property shall under no circumstances be removed before the deposit of the proceeds provided for in Article 118 below, except in the case of extreme urgency.

#### **ARTICLE 117**

The debtor shall inform the bailiff or process-server in writing of the offers made to him and shall state the name and address of the contingent purchaser as well as the period within which the latter offered to deposit the proposed price.

The bailiff or process-server shall forward these details to the distrainor and the opposing creditors by registered mail with acknowledgement of receipt or by any means with written proof.

The above parties shall within fifteen days decide either to accept or refuse the private sale, or to propose themselves as purchasers.

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

A forced sale may only be carried out after the expiry of the one month time limit provided in Article 116 above, extended, where necessary, by the fifteen-day period accorded the creditors to respond to the offer.

#### **ARTICLE 118**

The proceeds of sale shall be deposited with the bailiff or process-server or at the registry, named by the distrainor.

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

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

#### **ARTICLE 119**

Except where refusal to authorize the sale is intended to harm the debtor, the liability of the creditor may not be invoked.

## **Section II**

### **Forced Sale**

#### **ARTICLE 120**

The sale shall be carried out by public auction by an auxiliary officer of justice empowered to do so by the national law of each State Party. It shall either be carried out in the place of the attached property, or in a hall or in a marketplace whose geographical location is most appropriate to attract competitive bidding at minimal cost.

Where there is a disagreement between the creditor and the debtor over the place where the sale shall take place, the competent court, ruling in urgent matters, shall adjudicate over the dispute within five days of the complaint being filed by the most diligent party.

#### **ARTICLE 121**

Publication of the sale shall be done by affixing posters which shall indicate the place, date and time of sale and the nature of the attached property.

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

The sale may also be publicized either through print media or broadcast media.

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

#### **ARTICLE 122**

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

#### **ARTICLE 123**

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

#### **ARTICLE 124**

Before the sale, the state and nature of the property attached shall be verified by the officer in charge of the sale. A report thereof shall be drawn up. Only missing and damaged property shall be mentioned in the report.

**ARTICLE 125**

The auction shall be adjudicated to the highest bidder after three (3) calls. The purchase price shall be payable in cash, failing which the property shall be resold following the irresponsible bid.

**ARTICLE 126**

The sale shall be stopped once the price of the property sold is sufficient to cover amount of the claim for which the property was attached and that of the opposing creditors in terms of the principal, interest and costs.

**ARTICLE 127**

A report of the sale shall be drawn up. It shall contain a description of the property sold, the amount of the sale and the full names of the successful bidder.

**ARTICLE 128**

The auctioneer or any other auxiliary of justice charged with the sale may not receive any amount below the purchase price under pain of the applicable criminal sanctions.

**CHAPTER IV  
INCIDENTAL CLAIMS RELATING TO ATTACHMENT**

**ARTICLE 129**

Any disputes arising from an attachment and sale shall be brought before the court of the place of the attachment.

**Section I  
Opposition by Creditors**

**ARTICLE 130**

Any creditor who fulfills the conditions provided for by Article 91 of the this Uniform Act may join in an attachment which has already been executed against the property of the debtor by means of an opposition, by proceeding where necessary with a further attachment. No opposition may be admissible after the property has been verified.

**ARTICLE 131**

The act of opposition shall, under pain of nullity, contain an indication of the writ of execution by virtue of which the opposition was made, a separate detailed account of the sums claimed in principal, costs and interest accrued, as well as an indication of the interest rate.

The act of opposition shall be served on the first distrainor creditor, unless the opposition is initiated by him, in order to make a new claim or extend the basis of the previous attachment. It shall also be served on the debtor.

The first distrainor creditor shall proceed with the sale alone.

#### **ARTICLE 132**

Any opposing creditor may extent the initial attachment to other property. A report of an additional attachment shall be drawn up in accordance with the conditions set forth in Article s 100 to 102 above.

The report shall be served on the first distrainor creditor as well as on the debtor.

The right to proceed with a further sale may also be exercised by the first distrainor creditor.

#### **ARTICLE 133**

Where during the attachment, the debtor provides the creditor with a report of a previous attachment, the creditor may file an opposition in accordance with the provisions of Article 131 above. He may also carry out a further attachment forthwith in accordance with the provisions of Article s 100 to 102 above.

A report of the further attachment shall be served on the first distrainor creditor alongside the act of opposition; both shall also be served on the debtor.

#### **ARTICLE 134**

Where the initial attachment is extended, the forced sale of the property attached shall only be carried out upon the expiry of the deadlines provided for the private sale of the said property.

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

#### **ARTICLE 135**

Where the first distrainor creditor fails to proceed with the formalities of the forced sale upon expiry of the prescribed deadlines, any opposing creditor shall request the first distrainor creditor to do so within a period of eight (8) days failing which he shall automatically be subrogated in the place of the first distrainor creditor.

The first distrainor creditor shall be discharged of his obligations. He shall be obliged to make available all relevant documents to the subrogee creditor.

**ARTICLE 136**

The discharge of the attachment may be by a decision of the competent court or with the consent of the distrainor creditor and the opposing creditors.

**ARTICLE 137**

Where the nullity of the first attachment results from a mere irregularity in the attachment process, such nullity shall not lead to the forfeiture of the oppositions. It shall have no bearing on further attachments and neither shall additional attachments be affected by it. Nullity of the first attachment shall not entail nullity of the opposition save where such nullity results from an irregularity in the execution of the writ of attachment.

The nullity shall not affect any further attachment.

**ARTICLE 138**

Only distrainor or opposing creditors who had made known their claim before the verification of the attached property provided for in article s 124 above and those who had taken out protective measures over the same property prior to the attachment, shall be allowed to enforce their rights on the proceeds of sale.

**Section II**

**Disputes relating to Attached Property**

VII

**ARTICLE 139**

No application relating to ownership or inalienability shall obstruct the attachment process; it may suspend the process in relation to the property in dispute.

Sub-section 1

Disputes relating to Ownership

**ARTICLE 140**

The debtor may apply for the annulment of an attachment order over property which does not belong to him.

**ARTICLE 141**

Any third party claiming ownership over any attached property may apply to the competent court for an order of diversion thereof.

Under pain of inadmissibility the application shall specify the elements on which the proprietary right is founded. It shall be served on the distrainor creditor, the distrainee and where necessary, on the holder of the property. The distrainor creditor shall join the opposing creditors in the action by registered mail with acknowledgement of receipt or by any other means with written proof.

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

#### **ARTICLE 142**

The application for diversion shall no longer be admissible after the sale of the attached property. The only recourse shall be an action for the recovery of the property.

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

#### Sub-section 2

#### Disputes relating to Distrainability

#### **ARTICLE 143**

Disputes relating to the distrainability of the property included in the attachment shall be referred to the competent court by the debtor, the bailiff or the process server in the same manner as cases of difficulties relating to enforcement measures.

Where the debtor is opposed to the distraint of any property, he shall file such opposition within one month of being served with the notice of attachment.

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

### **Section III**

#### **Disputes relating to the Validity of the Attachment**

#### **ARTICLE 144**

The annulment of an attachment arising from a defect in form or substance, other than the claim that the attached property cannot be distrained, may be applied for by the debtor up to the time of sale of the attached property.

The distrainor creditor shall join the opposing creditors in the action.

Where the attachment is declared a nullity prior to the sale, the debtor may apply for the restitution of the attached property where it is in the possession of a third party without prejudice to any action for damages in accordance with the provisions of the common law.

Where the attachment is declared a nullity after the sale, but prior to the distribution of the proceeds, the debtor may apply for the restitution of the proceeds of sale.

#### **ARTICLE 145**

The court which annuls the attachment may order the debtor to bear all or part of the costs incurred, where the debtor had failed to apply for the nullity of the attachment in good time.

**ARTICLE 146**

The application for annulment shall not suspend the attachment Process, except otherwise ordered by the court.

**CHAPTER V  
SPECIAL PROVISIONS RELATING TO ATTACHMENT OF UNHARVESTED  
CROP**

**ARTICLE 147**

Crops and fruits which are almost mature may be attached before harvest. Only the creditor of the person entitled to the fruits may exercise this right of attachment. Under pain of nullity, this right may not be exercised more than six weeks prior to the habitual period of maturity.

**ARTICLE 148**

Under pain of nullity, the attachment report shall be drawn in conformity with the provisions of Article 100 above, with the exception of (4) of this Article, which shall be replaced by the description of the land upon which the crops are found, the quantity, state and an indication of the nature of the fruits.

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

**ARTICLE 149**

The debtor shall be made the custodian of the attached crops. However, the competent court may, at the instance of the distrainor creditor name a manager of the farm. The debtor shall be heard or summoned to attend the hearing.

**ARTICLE 150**

The sale shall be publicized by affixing posters at the town hall or at the place where public Acts are affixed and at the market situated nearest to the place where the crops are found.

The posters shall mention the date, time and place of the sale and shall indicate the place where the crops are found, as well as the quantity and the nature of the crops.

The affixing of posters shall be certified as in matters of attachment and sale.

**ARTICLE 151**

The sale shall be carried out, in accordance with the provisions of Article s 120 and following and at the place where the crops are located or in the nearest market.

**ARTICLE 152**

However, the formalities prescribed for the attachment and sale process shall be observed.

**PART IV  
GARNISHEE PROCEEDINGS**

**ARTICLE 153**

Any creditor in possession of a writ of execution in proof of a debt certain and due immediate payment may in order to secure payment, attach any sum of money owed the debtor by a third party subject to the special provisions relating to the attachment of earnings.

**ARTICLE 154**

The effect of such attachment shall be to immediately award to the distrainor creditor, depending on the amount owed by the third party, the amount of the claim in principal, interest and costs only.

The sums attached shall be made inalienable by the act of attachment.

The act of attachment shall render the third party personally liable for the claim up to the amount of his obligation to the debtor.

**ARTICLE 155**

Where several acts of attachment are served on the same third party and on the same day, they shall be deemed to have been served simultaneously. Where the sums available are not sufficient to satisfy all the distrainor creditors, the claims shall rank equally.

Subsequent notification of other attachments or any other measure of deduction at source, even those emanating from preferential creditors shall not affect the award, without prejudice to the provisions organizing collective proceedings.

Where an attachment of sums is annulled, subsequent attachments and deductions shall take effect from their due dates.

**ARTICLE 156**

The garnishee shall be required to declare the extent of his obligations to the debtor to the garnishor. He shall also disclose any terms likely to affect his obligations, and where necessary any previous transfer of claims, assignment of debts or any prior attachments.

He shall hand over any documents in proof thereof.

The above declaration and the handing over of the documents shall be done on the spot to the bailiff or process server or within five days of service of the act of attachment where same was not served personally on the party. The act of attachment shall make mention of any declaration made and any documents handed over on the spot. Any inexact, incomplete or late declaration

shall engage the liability of the third party debtor to pay the claim, without prejudice of an order to pay damages.

## **CHAPTER I THE WRIT OF ATTACHMENT**

### **ARTICLE 157**

The garnishor shall commence attachment through a writ served on the garnishee by the bailiff or process server.

The act shall, under pain of nullity, contain;

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment is carried out;
- 2) a copy of the attachment report.
- 3) a statement in bold characters of the debtor's right, to apply to the competent court at his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled
- 4) an indication that the garnishee is personally liable to the garnishor and that he is precluded from using the sums attached within the limit of the amount he owes the debtor.
- 5) a reproduction of the provisions of Article s 38, and 156 above and 169 to 172 below above.

The Writ shall mention the time of service.

### **ARTICLE 158**

The attachment of claims in the hands of a person resident abroad shall be served on his person or at his residence.

### **ARTICLE 159**

Where the property to be attached is in the hands of receivers, depositories or trustees of public funds, acting in that capacity, the writ shall be a nullity where it is not served on the person empowered to receive it or on any person named by him, and where the original is not endorsed by such person, or in the case of refusal, by the Legal Department which shall immediately notify the head of the service concerned.

### **ARTICLE 160**

Under pain of nullity, the attachment shall be disclosed to the debtor through an Act of bailiff or process server within a period of eight days.

The act of notification shall, under pain of nullity, contain:

- 1) a copy of the writ of attachment;
- 2) an indication in bold characters that under pain of inadmissibility any opposition shall be raised within a period of one (1) month from the date of notification. The act shall also state the date of expiry of the period aforementioned; it shall state the competent court before which disputes may be brought.

Where the act of notification is served on the debtor in person, the bailiff or process server shall verbally reiterate the above indications. Mention of these verbal declarations shall feature in the act of notification.

The act shall remind the debtor that he may authorize the creditor in writing, to cause the third party to pay forthwith the entire or part of the claim.

#### **ARTICLE 161**

Where the attachment is carried out is on money kept in bank or similar financial institution, the bank or institution shall declare the nature of the account(s) of the debtor and the balance(s) in the account(s) on the date of the attachment.

Within a period of fifteen (15) working days of the attachment and during which the sums in the account shall be frozen, the declared balance may, where it is established that the date of same transaction was before the date of attachment, be transferred either to the credit or debit of the distrainor creditor by the following operations:

**a) credit entry:**

- deposits previously made in order to cash cheques or negotiable instruments not yet in the account.

**b) debit entry:**

- charges on cheques deposited to be cashed or credited to the account before the attachment, which returned unpaid;

withdrawals from the cash dispenser made before the attachment and payments by card, where the beneficiaries were effectively paid off before the attachment.

Notwithstanding the provisions of the second paragraph, negotiable instruments returned to discount and not paid upon presentation or on their due date, where such date is subsequent to the attachment, may be endorsed within a period of one (1) month following the attachment.

The attached sums shall only be affected by these contingent debit and credit transactions where their aggregate result of these transactions is negative and higher than the sums not affected by the attachment on the day of their settlement.

Where the inalienable sums diminish, the bank or financial institution shall, by registered letter with acknowledgement of receipt or by any means with written proof, furnish the garnishor with a statement of all the transactions which affected the accounts from the date of the attachment inclusive, within eight (8) days of the expiry of the period of cross entry.

**ARTICLE 162**

Where the debtor has multiple accounts, payment shall primarily be made from the funds visibly available, except where the debtor prescribes payment in a different manner.

**ARTICLE 163**

Where the attachment is carried out on a joint account, it shall be disclose to each account holder

Where the names and addresses of the other account holders are unknown to the bailiff or process server, the latter shall request the bank or institution holding the account to inform them immediately of the attachment and of the sums claimed.

**CHAPTER II  
PAYMENT BY THE GARNISHEE**

**ARTICLE 164**

The garnishee shall make payment to the garnishor on presentation of a certificate from the registry to prove that no opposition was filed within one month following disclosure of the attachment, or on presentation of the enforceable decision of the court dismissing the opposition.

Payment may equally be made before the expiry of the time limit for opposition, where the debtor declares in writing that he is not opposed to the attachment.

**ARTICLE 165**

Payment shall be made against a receipt to the garnishor or his specially authorised agent, who shall immediately inform the creditor thereof.

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

**ARTICLE 166**

Where an opposition is filed, any party may apply to the competent court to name an escrow account into which the garnishee shall pay the sums attached.

**ARTICLE 167**

Where the attachment concerns a claim that is to be paid by installments, the obligation of the third party debtor shall be extinguished as and when the installments are paid in accordance with the provisions of paragraph (1) of Article 165 above.

The third party debtor shall be informed by the creditor by registered letter with acknowledgement of receipt or by any other means with written proof, of the fact that the debt has been extinguished even where the sums were paid into an escrow account as provided for in Article 166 above.

The attachment shall no longer be effective upon cessation of the obligation of the garnishee towards the debtor. The garnishee shall inform the garnishor thereof by registered mail with acknowledgement of receipt or by any other means with written proof.

#### **ARTICLE 168**

In the case of refusal by the garnishee to pay the sums which he admits or has been adjudged owed the debtor the dispute shall be brought before the competent court which may issue a writ of execution against the garnishee.

### **CHAPTER III DISPUTES**

#### **ARTICLE 169**

Disputes shall be brought before the court of the place of residence or the place of abode of the debtor. Where the debtor's residence is unknown, the disputes shall be brought before the court of the place of residence or the place of abode of the garnishee.

#### **ARTICLE 170**

Under pain of inadmissibility, the dispute shall be brought before the competent court by a writ of summons within a period of one month from the date of disclosure of the attachment to the debtor.

The garnishee shall be duly summoned.

The garnishee who fails to file an opposition within the prescribed period may institute a substantive action for the recovery of any payment made in error, in conformity with the procedure applicable to the institution of civil claims.

#### **ARTICLE 171**

The competent court shall endorse the attachment in relation to the uncontested amount of the debt. Its decisions shall be enforceable forthwith before registration.

Where it appears that neither the amount of the garnishor's claim nor the debt owed by the garnishee has been seriously challenged, the competent court may provisionally order the payment of an amount which it shall determine, and where necessary, order that guarantees be furnished by the garnishor.

#### **ARTICLE 172**

The decision taken by the court which heard the matter shall be subject to appeal within fifteen (15) days of notification.

The time limit for appeal and the notice of appeal shall suspend enforcement except the competent court decides otherwise in a reasoned ruling.

## **PART V ATTACHMENT AND ASSIGNMENT OF EARNINGS**

### **ARTICLE 173**

Any creditor in possession of a writ of execution in proof of a debt which is certain, and due for immediate payment may attach the earnings due his debtor by an employer.

### **ARTICLE 174**

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

### **ARTICLE 175**

Earnings shall not be subject to sequestration.

### **ARTICLE 176**

There shall be kept at the registry of each court a register which shall be numbered and initialed by the President of the court, in which shall be recorded all writs irrespective of the nature, decisions and formalities arising from assignments and attachment of earnings.

### **ARTICLE 177**

Earnings may only be assigned or attached in the proportion determined by each State Party.

The basis for the calculation of the attachable portion of wages or salaries shall be the gross salary or wages including extra earnings, after deducting of;

- taxes and compulsory legal deductions retained at source;
  
- allowances representing expenses;
  
- allowances, increases and supplements for family responsibilities;
  
- allowances which by the laws and regulations of each State Party shall not be subject of attachment.

The aggregate of sums attached or voluntarily assigned shall not, under any circumstances even for claims of maintenance allowance, exceed the threshold fixed by each State Party.

## **ARTICLE 178**

Where a debtor receives from several sources sums attachable or assignable under the conditions provided for by the present chapter, the attachable portion shall be calculated on the entire amount.

Any deductions shall be made in accordance with the terms and conditions determined by the competent court

## **CHAPTER I GARNISHMENT OF EARNINGS**

### **Section I The Conciliation Attempt**

## **ARTICLE 179**

Applications for prior conciliation shall be by petition addressed to the competent court by the creditor.

The application shall contain:

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

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

## **ARTICLE 180**

Notice of the place, date and time of the conciliation attempt shall be given to the creditor by registered mail with acknowledgement of receipt or by any other means with written proof.

## **ARTICLE 181**

The registrar shall, not later than fifteen (15) days before the hearing, summon the debtor by registered mail with acknowledgement of receipt or by any other means with written proof.

The summons shall contain:

- 1) the full names and residence of the creditor or, in the case of a corporate body, its legal form, corporate name and registered office;
- 2) the subject matter of the application and a statement of the sums claimed;
- 3) an indication to the debtor that he may, at the hearing, raise any objections and informing him that a late objection shall not stay the attachment proceedings.
- 4) also indicate the conditions for his representation at the hearing.

In the absence of an acknowledgement of receipt and in the absence of the debtor, the competent court shall, where it does not deem it necessary to issue a fresh summons, deliver a decision wherein it shall proceed with the verifications provided for in Article 182 below. The said decision shall not be subject to any opposition and may only be attacked by way of appeal.

#### **ARTICLE 182**

The president of the competent court, assisted by the registrar, shall draw up the report of the appearance of the parties, it shall state whether or not conciliation took place, or mention the fact that only one party appeared.

In case of conciliation, he shall state in the report the terms of settlement which shall bring an end to the proceedings.

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

### **Section II Attachment Process**

#### **ARTICLE 183**

Within eight days from the failure of conciliation or in the case where a ruling was delivered, within eight days following the expiry of the time limit for opposition, the registrar shall give notice of the writ of attachment to the employer by registered mail with acknowledgement of receipt or by any other means with written proof.

#### **ARTICLE 184**

The writ of attachment shall contain:

- (1) the full names and residences of the debtor and the creditor or, in the case of corporate persons, their legal forms, names and registered offices;
- (2) a separate account of the sums attached in principal, costs and accrued interest, as well as an indication of the interest rate;

- (3) the method of calculation of the attachable fraction and the method of payment thereof;
- (4) an injunction to declare at the registry within fifteen days, the nature of the relationship existing between the employer and the distrainee debtor, any assignments or attachments currently being carried out as well as any information authorizing deductions where the attachment concerns salary paid from public funds;
- (5) a reproduction of Article s 185 to 189 below.

#### **ARTICLE 185**

Any employer who, without just cause, either fails to make the declaration provided for by Article 184 (4) above or makes a false declaration, may be declared by the competent court to be the debtor of the deductions to be made and ordered to pay the costs incurred because of him, without prejudice to an order to pay damages.

#### **ARTICLE 186**

The employer shall be required to inform the registry and the distrainor within eight days of any changes in his relationship with the distrainee which may likely influence the proceedings in progress.

### **Section III Effects of the Attachment**

#### **ARTICLE 187**

Upon notification of the writ of attachment the attached fraction of the salary shall become inalienable.

#### **ARTICLE 188**

The employer shall send every month to the registry or the institution named for that purpose by each State Party the sums withheld from the earnings of the distrainee, without exceeding the attachable portion.

His obligations shall be extinguished upon the issue of a receipt from the registrar or by the acknowledgement of receipt of the money order issued by the postal department.

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

#### **ARTICLE 189**

Where the employer fails to make the payments, the competent court shall in its ruling adjudge him personally liable. The ruling shall be served on him by the registrar or the creditor by registered mail with acknowledgement of receipt or by any other means with written proof,

within three days from the date of the ruling. Notice thereof shall be given to the debtor and, where necessary, to the creditor.

The garnishee shall have a period not exceeding fifteen (15) days from notification of the decision to declare his opposition at the registry.

Any ruling which remains unopposed within a period of fifteen days shall become final. It shall be enforced at the request of the most diligent party on the basis of a copy with an executory formula issued by the registrar.

## **Section IV Multiple Attachments.**

### **ARTICLE 190**

Any creditor in possession of a writ of attachment may, without a prior attempt at conciliation, intervene in the proceedings relating to the attachment of earnings in order to partake in the sharing of the sums attached.

Such intervention shall be by an application submitted or addressed to the competent court against an acknowledgment of receipt.

The application shall contain the declarations provided for in Article 179 above.

### **ARTICLE 191**

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

### **ARTICLE 192**

Objection may be raised against the intervention by a declaration at the registry of the competent court at any stage of the attachment proceedings. In such a case, the objection shall be joint to the pending proceedings.

Where the attachment has already been carried out, the debtor may institute an action for the restitution of the sums paid in error to the intervening party.

### **ARTICLE 193**

A creditor who is a party to the proceedings may, by intervention, claim accrued interest, the costs and liquidated or verified expenses incurred since the attachment.

**Section V**  
**Payment and Distribution of Attached Funds.**

**ARTICLE 194**

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

**ARTICLE 195**

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

The creditor or his authorized agent shall sign in the register provided for in Article 176 above.

**ARTICLE 196**

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

**ARTICLE 197**

Where there are several distrainor creditors, any payments made by a garnishee shall be deposited in an account opened by the registrar in a banking or postal institution or in the public treasury.

Withdrawals of funds for distribution from such account shall be made by the registrar upon the authorization of the president of the competent court.

**ARTICLE 198**

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

The registrar shall give notice of the statement showing the distribution to each creditor and shall pay each his due.

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

**ARTICLE 199**

Where there is an objection against an intervention, the sums payable to the intervening creditor shall be held in an escrow account. They shall be paid to him where the objection is dismissed. Failing this, the said sums shall be distributed to the creditors or restituted to the debtor, as the case may be.

**ARTICLE 200**

Any objection to the statement of distribution may be made within a period of fifteen days from its notification through an opposition filed at the registry.

**ARTICLE 201**

The end of the attachment may result either from an agreement of the creditor(s) or from a finding of the President of the competent court that the debt has been extinguished.

It shall be notified to the employer within eight days.

**Section VI  
Miscellaneous Provisions**

**ARTICLE 202**

Except where he has a representative, the distrainor creditor who transfers his residence or his place of abode shall inform the registry thereof.

**ARTICLE 203**

Where, without change of employer, the debtor moves his residence or place of abode outside the jurisdiction of the court before which the proceedings are pending, the proceedings shall continue before the same court. Where any further attachments are instituted against the debtor the file shall be transmitted to the same court. The registry shall inform the creditors.

**ARTICLE 204**

Where there is a change of employer, the attachment may be pursued on property in the hands of the new employer, without any prior conciliation, on condition that the application is made within one year of the notice given by the former employer in accordance with the provisions of Article 186 above. Failing this, the attachment shall come to an end.

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

**CHAPTER II  
ASSIGNMENT OF EARNINGS**

**Article 205**

Consent may be given to the assignment of wages and salaries, regardless of the amount, by a declaration of the assignor in person at the registry of the court of his place of residence or of his place of abode.

The declaration shall indicate the amount and origin of the debt for which payment is allowed, as well as the amount to be deducted from each payment of the earnings.

#### **ARTICLE 206**

Following verification by the competent court that the assignment is within the limits of the attachable quota, and mindful of any deductions already made on the assignor's salary, the registrar shall make mention of the declaration in the register provided for in Article 176 above and notify same on the employer stating therein:

- the monthly amount of the assignor's salary:
- the amount of the attachable quota as well as the amount to be deducted on the monthly salary in respect of the assignment allowed.

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

#### **ARTICLE 207**

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

#### **ARTICLE 208**

In the event of an attachment being carried out, the assignee shall, as of right, be deemed to be the distrainor for the remaining sums owed him and shall rank equally with the other distrainor creditors.

#### **ARTICLE 209**

In any case of an attachment being carried out, the registrar shall give notice of the writ of execution to the assignee, inform him that he shall rank equally with the distrainor in the sharing of sums attached and request him to produce a statement of the remaining sums owed to him.

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

#### **ARTICLE 210**

Where the attachment comes to an end before the assignment, the assignee shall regain his rights under the assignment deed.

The registrar shall notify the employer and inform him that the sums assigned shall de novo be paid directly to the assignee. He shall equally inform the assignee.

#### **ARTICLE 211**

Where there are strong presumptions that the assignment was made to defraud the distrainor, he may, in an urgent motion for annulment of such assignment, obtain an order from the court, that

the deductions be deposited with the registrar until a final decision on the merits of the case is pronounced by the court.

#### **ARTICLE 212**

The registrar shall, automatically or on the application of the most diligent party, proceed to cancel the entry in the register provided for by Article 176 above and immediately notify the debtor concerned and the employer by registered mail with acknowledgement of receipt or by any other means with written proof where;

- annulment of the assignment is by court order;
- by a declaration from the assignee written in a form provided for in Article 205 above, the cancellation of the assignment is agreed to by the parties;
- payment of the last installment intended to complete the execution of the assignment has been made.

### **CHAPTER III SIMPLIFIED PROCEDURE FOR CLAIMS OVER MAINTENANCE ALLOWANCE**

#### **ARTICLE 213**

For the last accrued arrears and sums still to mature, persons claiming maintenance allowance who are in possession of a writ of execution may, carry out a simple attachment of the attachable fraction of wages, remuneration, salaries and pensions paid to the debtor from public or special funds.

Their claim shall be preferred to all others, regardless of any preferential rights attached to the other claims.

#### **ARTICLE 214**

Notice of the application shall be given to the third party by registered mail with acknowledgement of receipt or by any other means with written proof addressed by the bailiff or process server who shall notify the debtor by simple letter.

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

#### **ARTICLE 215**

The third shall pay directly to the distrainor against a receipt, the amount claimed for maintenance allowance.

## **ARTICLE 216**

Any objection relating to these proceedings shall not stay execution.

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

## **ARTICLE 217**

Where a new decision changes the amount awarded as maintenance allowance, or cancels or modifies the method of execution of the obligation, the application for direct payment shall, as of right, be modified in consequence with effect from the notification of the modifying decision to third parties in accordance with the provisions of Article 214 above.

# **PART VI SEIZURE-APPREHENSION AND ATTACHMENT UNDER A PRIOR CLAIM OF TANGIBLE MOVABLE PROPERTY**

## **Article 218**

Tangible movable property liable to be delivered or returned may only be attached by virtue of a writ of execution and, where necessary, by a final order of the competent court.

The same property may also be rendered inalienable pending any apprehension by means of an attachment under a prior claim

**VII**

## **CHAPTER I SEIZURE – APPREHENSION**

### **Section I**

#### **Apprehension of Property in the hands of the Person required**

to Deliver by virtue of a Writ of Execution.

## **ARTICLE 219**

A summons to deliver or restitute shall be served on the person required to deliver.

The summons shall under pain of nullity contain;

- (1)** a mention of the writ of execution authorizing the delivery as well as the full names and addresses of the beneficiary and debtor of the object to be delivered and, in the case of a corporate person, its legal form, name and registered office;

- (2) an indication that the person required to deliver may, within a period of eight days, transport at his expense, the named object to a place and under the stated conditions;
- (3) a warning that failure to deliver within the said period, the property may be apprehended at his expense;
- (4) an indication that disputes may be brought before the court of the place of residence or the place of abode of the recipient.
- (5) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; any service or offer may be made at the chosen address;-

#### **ARTICLE 220**

The property may also be apprehended immediately without a prior summons and on mere presentation of the writ of execution, where the person delivering same is present and where, in answer to the question to be asked by the bailiff or process server, he does not offer to bear the transport expenses

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

#### **ARTICLE 221**

An deed of voluntary delivery or apprehension of the asset shall be drawn up.

The deed shall contain a detailed description of the property. The property may, where necessary be photographed and the photograph shall be annexed to the deed.

#### **ARTICLE 222**

Where the property has been apprehended for delivery to its owner, a copy of the deed provided for in Article 221 above shall be given or notified, by registered mail with an acknowledgment of receipt or by any other means with written proof, to the person required by virtue of the writ of execution to deliver or restitute the property.

#### **ARTICLE 223**

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

A deed shall be delivered or notified to the debtor and shall, under pain of nullity, contain;

- (1) a copy of the deed of delivery or apprehension, as the case may be;
- (2) an indication of the place where the property is kept;

- (3) a separate account of the sums claimed in principal, costs and accrued interest, as well as an indication of the interest rate;
- (4) a statement in bold characters that the debtor has a period of one month to carry out a private sale of the attached property, in accordance with the provisions of Article s 115 to 119 above, and stating the date on which a forced sale may be carried out by public auction, where the private sale is not carried out within the said period,
- (5) a reproduction of Article s 115 to 119 above.

## **Section II**

### **Apprehension of Property in the hands of a Third Party by virtue of a Writ of Execution**

#### **ARTICLE 224**

Where the property is held by a third party, a summons to deliver the property shall be served on him directly. It shall immediately be disclosed, by registered mail with an acknowledgment of receipt or by any other means with written proof, to the person required to deliver or restitute it.

The summons shall, under pain of nullity, contain;

- (1) a copy of the writ of execution authorizing the restitution and, where it is authorized by court decision, the order of the court as well as the full names and addresses of the beneficiary of the restitution and of the third party holder of the object and, in the case of a corporate person, its legal form, name and registered office;
- (2) an injunction to, within a period of eight days, either deliver the named property or inform the bailiff or process-server, under pain of damages, as the case may be, of the reasons for his refusal to deliver;
- (3) an indication that any problems shall be brought before the court of place of residence or place of abode of the beneficiary of the deed;
- (4) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; any service or offer may be made at the chosen address;

#### **ARTICLE 225**

Where voluntary delivery is not made within the stipulated period, the petitioner may apply to the court of the place of residence or place of abode of the third party holder of the property to order delivery of the property. Any third party may also petition to the court.

The summons referred to in Article 224 above and any preventive measures taken shall lapse where the matter is not referred to the court within one month from the date of service of the summons.

## **ARTICLE 226**

The property may be apprehended upon the mere presentation of the court ruling ordering delivery of same to the petitioner. A deed of apprehension shall be drawn up in conformity with the provisions of Article 221 above. A copy of the deed shall be handed or notified to the third party by registered mail with an acknowledgment of receipt or by any other means with written proof.

After removal, the person required to deliver shall be informed thereof as specified in the provisions of Articles 222 and 223 above, as the case may be.

## **CHAPTER II ATTACHMENT UNDER A PRIOR CLAIM**

### **ARTICLE 227**

Any person who has an apparent reason for demanding the delivery or restitution of tangible movable property may, pending delivery, render the property inalienable by attaching same under a prior claim.

With the exception of the case where the creditor has a writ of execution or a court decision which is not yet enforceable, a prior authorization by the competent court following an application made to that effect, shall be necessary.

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

The decision granting the authorization shall bear a description of the property which may be attached and the identity of the person required to deliver or restitute same. The authorization shall be enforceable against any holder of the named property.

### **ARTICLE 228**

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

Where the said conditions are not met, an end of the attachment may be ordered at any time, even where the petitioner has a writ of execution or a court judgment which is not yet enforceable.

The application to end the attachment shall be brought before the court of the place of residence or place of abode of the debtor enjoined to deliver or restitute the property.

The decision putting an end to the attachment shall take effect from the date of its notification.

## ARTICLE 229

Any other disputes, particularly those relating to the attachment process, shall be brought before the court of the place of location of the attached property.

## ARTICLE 230

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

Special authorization from the competent court shall be required where the attachment is carried out in premises used as a dwelling house by a third party holder of the property.

## ARTICLE 231

After reminding the holder of the property that he is required to state whether the property has been subject to a prior attachment and, where necessary, to produce the report thereof, the bailiff or process-server shall draw up a deed of attachment which shall, under pain of nullity contain;

- (1) the full names and residence of the creditors and debtors or, in the case of corporate persons, their legal forms, names and registered offices;
- (2) reference of the authorization of the competent court which shall be annexed to the deed, or a mention of the writ upon which the attachment was carried out;
- (3) a detailed description of the property attached;
- (4) where the holder is present, his declaration as to a prior attachment of the same property;
- (5) a statement in bold characters that the attached property shall under pain of criminal sanctions be inalienable, it is placed in the custody of the third party, that it may neither be transferred nor removed, save under the circumstances provided for in Article 103 above,; and that the third party is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- (6) a statement in bold characters of the right to challenge the validity of the attachment and to apply to the court of the residence or place of abode of the debtor for an end to it;
- (7) an indication of the court before which shall be brought any opposition relating to the execution of writ of attachment;
- (8) an indication, under pain of criminal sanctions, where applicable, of the full names and status of the persons who were present during attachment exercise and who shall sign the original and the copies; any by any person refusal shall be mentioned in the deed ;
- (9) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; service or offer may be made at the chosen address;
- (10) a reproduction of the criminal provisions governing fraudulent disposition of attached property as well as the provisions of Article s 60, 61, 227 and 228 above.

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

#### **ARTICLE 232**

The writ of attachment shall be handed to the holder of the property and he shall be verbally reminded of the provisions of Article s 231 (5) and (6) above. Mention shall be made thereof in the writ.

Where the attachment is carried out on property in the hands of a third party, the writ shall also be served on the person required to deliver or restitute not later than eight days of issue.

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

#### **ARTICLE 233**

At any time, the president of the competent court may, after hearing the parties or duly summoning them, authorize upon an application, the delivery of the property to an escrow agent designated by him.

#### **ARTICLE 234**

Any party with a personal right on attached property in his hands shall inform the bailiff or process-server thereof by registered mail with acknowledgement of receipt or by any other means with written proof, except where he has made a declaration thereof at the time of the attachment. The distrainor shall, within a period of one month, bring any dispute before the court of the place of residence or place of abode of the holder.

The property shall be inalienable during the hearing.

Where no objection is raised within a period of one month, the inalienability shall lapse.

#### **ARTICLE 235**

Where the person who carried out an attachment under a prior claim is in possession of a writ of execution ordering the delivery or restitution of the attached property, the procedure shall be that applicable to seizure-apprehension and as provided for in Article s 219 to 226 above.

# PART VII

## SPECIAL PROVISIONS RELATING TO PARTNERSHIP RIGHTS AND ASSIGNABLE SECURITIES

### CHAPTER I ATTACHMENT PROCESS

#### ARTICLE 236

The attachment shall be carried out either on the issuing company or corporate person or on the authorized agent charged with the preservation or management of the securities.

#### ARTICLE 237

Eight days after an unproductive summons to pay, the creditor shall proceed to attachment by an deed which shall, under pain of nullity, contain;

- (1) the full names and residence of the debtor and the distrainor or, in the case of corporate persons, their legal form, name and registered office;
- (2) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; any service or offer may be made at the chosen address;
- (3) an indication of the writ of execution authorizing the attachment;
- (4) a detailed account of the sums claimed in principal, costs and accrued interests, as well as an indication of the interest rate;
- (5) an indication that the attachment shall render inalienable the pecuniary rights attached to the totality of shares and the transferable securities to which the debtor is entitled;
- (6) a demand to disclose within a period of eight days the existence of any subsequent pledges or attachment and to communicate to the distrainor a copy of the Article s of Association of the company.

#### ARTICLE 238

The attachment shall, within a period of eight days and under pain of forfeiture, be disclosed to the debtor by service of the writ, which shall under pain of nullity contain;

- (1) a copy of the attachment report;
- (2) a statement in bold characters that objections shall, under pain of inadmissibility, be raised within a period of one month following the service of the writ; The statement shall also mention the expiry date of the period in question.

- (3) an indication of the competent court, which shall be that of the place of the residence of the debtor;
- (4) a statement in bold characters that the debtor has a period of one month to carry out a private sale of the attached securities under the conditions provided for in Article s 115 to 119 above;
- (5) a reproduction of Article s 115 to 119 above.

#### **ARTICLE 239**

The deed of attachment shall render inalienable the pecuniary rights of the debtor, who may obtain an end to the attachment by depositing a sufficient sum of money to pay off the creditor. The said sum shall be specially assigned to the benefit of the distrainor creditor.

## **CHAPTER II THE SALE**

#### **ARTICLE 240**

Where a private sale is not realized as provided for by Article s 115 to 119 above, forced sale shall take the form of an auction sale, on the application of the creditor, upon presentation of a certificate issued by the registrar showing that no objection had been raised within one month following disclosure of the attachment or, where applicable, a court decision dismissing the opposition filed by the debtor.

#### **ARTICLE 241**

The terms of reference, drawn up in view of the sale shall besides a reminder of the above procedure contain:

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

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

#### **ARTICLE 242**

A copy of the terms of reference shall be served on the company which shall inform the partners thereof.

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

Any interested party may make observations on the terms of reference at the offices of the above persons. Such observations shall no longer be admissible after the expiration of two months following the notification provided for in the first paragraph.

#### **ARTICLE 243**

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

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

#### **ARTICLE 244**

Any contingent legal or contractual proceedings for approbation, pre-emption or substitution shall be implemented in accordance with the provisions peculiar to each one of them.

### **CHAPTER III MULTIPLICITY OF ATTACHMENTS**

#### **ARTICLE 245**

Where there is a multiplicity of attachments, the proceeds of the sale shall be shared among the creditors who carried out the attachment before the sale.

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

## **PART VIII ATTACHMENT OF REAL PROPERTY**

VII

#### **ARTICLE 246**

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

Any agreements to the contrary shall be null and void.

### **CHAPTER I CONDITIONS FOR THE ATTACHMENT OF REAL PROPERTY**

#### **ARTICLE 247**

The forced sale of real property may only be pursued by virtue of a writ of execution in proof of a debt which is certain and due for immediate payment.

The procedure for sale may equally be instituted for an amount provisionally awarded before final judgment or for a debt certain, due and owing; however sale may only be carried out when the writ has become enforceable and the debt liquidated.

#### **ARTICLE 248**

The court before which the sale is pursued shall be the court with full jurisdiction in the place where the real property is located.

However, the forced sale of real property which fall under the same management but which is situated within the jurisdictions of many courts shall be pursued before any of the courts concerned.

### **Section I**

#### **Conditions relating to the Nature of the Property**

#### **ARTICLE 249**

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

#### **ARTICLE 250**

The forced sale of joint real property shall be pursued against both spouses.

#### **ARTICLE 251**

The creditor may only pursue the sale of real property which has not been mortgaged in his favour where the real property mortgaged to him is insufficient, except where all the property constitutes one and the same commercial activity and where the debtor so requests.

#### **ARTICLE 252**

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

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

where the properties form part of one and the same commercial activity ;

With the authorization of the President of the competent court, where the value of the property situated within the jurisdiction of one court is below the total sum owed the distrainor creditor and the registered creditors. The authorization may include all or part of the property.

## **Section II**

### **Prior Registration**

#### **ARTICLE 253**

Where the property which is the subject of attachment is not registered and where the national laws provide for such registration, the creditor shall be bound to have the property registered at the land registry after he has been duly authorized to do so in a decision which is not subject to appeal, by the President of the competent court of the place where the property is situated.

Under pain of nullity, the summons provided for in Article 254 below may only be served after the application for registration has been filed; and the sale may not take place until the land certificate has been issued.

## **CHAPTER II**

### **PLACEMENT OF THE PROPERTY IN THE HANDS OF LEGAL AUTHORITIES**

#### **Section I**

##### **Summons to pay**

#### **ARTICLE 254**

For the purposes of attachment, a forced sale of real property shall be preceded by a summons to pay, under pain of nullity.

Under pain of nullity, such summons shall be served on the debtor and, where necessary, on the third party holder of the property and shall contain:

- (1) a reproduction or copy of the writ of execution and the amount of the debt, as well as the full names and address of the creditor and the debtor and, in the case of a corporate person, its legal form, name and registered office;
- (2) a copy of the special power to attach given to the bailiff or process-server by the pursuing creditor, save where the copy and the original of the summons to pay is endorsed with a special proxy given to the notary public or process server signed by the pursuing creditor.
- (3) a warning that, failure to pay within twenty days, the summons may be registered at the land registry and shall entail attachment from the date of publication;
- (4) an indication of the court before which expropriation shall be pursued;
- (5) the number of the land certificate and an indication of the precise location of the property which is the subject of attachment; in the case of unregistered real property, the reference

number of the application for registration; and, where expenses have been incurred by the debtor on land not belonging to him, but which had been assigned to him by decision of an administrative authority, its exact description as well as the reference of the assignment decision;

- (6) the designation of the counsel whose address the pursuing creditor has chosen as his address for service and where all oppositions to the summons, real tenders and notifications relating to the attachment shall be served.

#### **ARTICLE 255**

Under pain of nullity, the summons shall be served, where necessary, on the third party holder who shall be enjoined to either pay the debt in full including the principal and interest, or to surrender the mortgaged property or, lastly, or be subjected to the expropriation procedure.

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

#### **ARTICLE 256**

In order to obtain the information needed for drawing up the summons to pay, the bailiff or process-server may enter the property on which the attachment shall be carried out where necessary, with the assistance of the forces law and order.

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

#### **ARTICLE 257**

Where the attachment has to be carried out simultaneously on several properties, a single summons to pay may be issued for all of them.

#### **ARTICLE 258**

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

### **Section II**

#### **Publication of the Summons to Pay**

#### **ARTICLE 259**

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

Where the debtor seeks the recovery of expenses he incurred in relation to land that does not belong to him, but which has been assigned to him by decision of an administrative authority, the said authority shall comply with the formalities prescribed in the preceding paragraph.

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

#### **ARTICLE 260**

Where the land registrar or administrative authority concerned cannot proceed to register the summons at the time it is served, he shall mention the date and time of deposit on the original copy served on him.

Where there is a previously registered summons, the land registrar or administrative authority shall enter in the margin of the registration, any subsequent summons presented to him by order of presentation, he shall state the full names, residence or declared abode of the new pursuing creditor and the name of his counsel.

He shall also record his refusal to proceed with the registration in the margin, upon the presentation of the summons, and shall mention each of the summonses entirely registered or mentioned with the indications made on them as well as an indication of the court where the attachment took place.

The attachment may not end without the consent of the distrainor creditors who were subsequently disclosed.

#### **ARTICLE 261**

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

Failing this, the debtor or any interested party may request the discharge by showing proof of payment; to this effect, he shall refer the matter to the competent court for urgent hearing.

The court shall rule within eight days upon the matter being referred to it. Its decision shall be subject to appeal in accordance with the prescribed procedure.

### **Section III**

#### **Effects of the Summons to Pay**

#### **ARTICLE 262**

In the case of non-payment, the summons to pay shall entail attachment with effect from the date of registration.

The landed property and the revenue therefrom shall be immobilized under the conditions provided for in the articles below.

The debtor may neither alienate the landed property nor encumber it with a real right or charge.

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

However, the transfer or constitution of real rights shall be valid where, before the date fixed for the auction sale, the purchaser or creditor deposits a sufficient sum to settle the principal, interest and costs owed the registered creditors as well as the distrainor, and serves them notice of the deposit deed.

The sums thus deposited shall be specially assigned to the registered creditors and the distrainor.

Under no circumstances shall extra time be granted to pay the said deposit where a deposit is not made before the auction sale.

#### **ARTICLE 263**

Natural crops and industrial crops, rents and farm rents collected after the service of the summons or the proceeds therefrom, except in the case of a previous attachment, shall be immobilized for eventual distribution with the proceeds of the sale of the immovable property.

They shall be deposited either in the general deposit office or in the hands of an escrow agent appointed by the President of the competent court.

Where the immovable property is not leased out for farming or rented, the distrainee shall hold the property until the sale, as a court appointed receiver, unless otherwise ordered by the President of the competent court upon the application of one or more creditors.

The distrainee may, under pain of being adjudged liable in damages, not carry out any wood harvesting or cause any degradation of the property.

Any problems encountered shall be referred to the President of the competent court of the place where the property is located. His decision shall not be subject to appeal.

#### **ARTICLE 264**

Where the value of the attached property is significantly higher than the amount of the debt, the distrainee debtor may obtain an order from the competent court to stay the proceedings in relation to one or more parts of the immovable property named in the summons; the application for such order shall not stay the publication of the summons.

Before the deposit of the terms of reference, the application shall be made before the competent court by a simple exchange of submissions between counsels; after the deposit of the terms of reference, the application shall be made by way of a statement received as prescribed in Article 272 below.

To support his application, the debtor shall show proof that the value of the property which is the subject of the proceedings shall suffice to pay off the distrainor creditor and all the registered creditors.

The application shall be determined at the contingent hearing. The decision of the court granting the stay of proceedings shall indicate the property in relation to which proceedings shall be discontinued.

Where the proceeds of the property sold are not enough to pay off the creditor, the creditor may resume the proceedings in relation to the property which was provisionally exempted.

#### **ARTICLE 265**

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

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

### **CHAPTER III PREPARATION OF THE SALE**

#### **Section I Drawing up and Filing of the Terms of Reference**

#### **ARTICLE 266**

The terms of reference is the document which is drafted and signed by the counsel of the pursuing creditor specifying the conditions and procedure for the sale of the property attached.

Under pain of forfeiture, it shall be filed at the registry of the competent court of the place of the location of the property within a maximum period of fifty days of the publication of the summons.

#### **ARTICLE 267**

The terms of reference shall, under pain of nullity, contain:

- (1) the title of the document;
- (2) an indication of the writ of execution by virtue of which the proceedings against the debtor were instituted and the summons to pay with a mention of the fact of its publication, as well as the other acts and decisions of the court pronounced after the service of the summons to pay and which have been served on the pursuing creditor;
- (3) an indication of the court or notary agreed upon by the pursuing creditor and the judgment debtor to carry out the auction sale;

- (4) an indication of the place where the contingent hearing provided for by Article 270 below shall take place;
- (5) the full names, profession, nationality, date of birth and residence of the pursuing creditor;
- (6) the full names, capacity and address of the pursuing counsel;
- (7) designation of the attached property as contained in the summons to pay or report describing it drawn up by the bailiff or process-server;
- (8) the conditions of sale and, especially, the rights and obligations of the vendors and successful bidders, a mention of the costs of the proceedings and any special condition;
- (9) where necessary, the parcel of land;
- (10) the reserve price fixed by the judgment creditor which may not be lower than a quarter of the market value of the property. The value of the property shall be appreciated in accordance with the valuation made by the parties during the conclusion of the mortgage contract or, failing this, by comparison with the transactions concerning property of a similar nature or location.

A statement of the real rights registered in relation to the property concerned, issued by the land registrar on the date of service of the summons to pay shall be annexed to the terms of reference.

#### **ARTICLE 268**

The date of the sale shall be fixed in the deposit deed at the earliest forty-five days and latest ninety days from the date of filing the said document.

### **Section II**

#### **Summons to Consult the Terms of Reference**

#### **ARTICLE 269**

Within eight days of filing the terms of reference, the distrainor creditor shall summon the distrainee and other registered creditors to consult the terms of reference filed at the registry, and to cause their submissions to be entered therein.

Under pain of nullity, the said summons shall be served on the judgment debtor in person or at his residence, and to the registered creditors, at their respective addresses of service.

#### **ARTICLE 270**

Under pain of nullity the summons shall state:

- (1) the date and time of the contingent hearing during which the court shall rule on the statements and submissions made. Such hearing may not take place less than thirty days after the last summons;

- (2) the date and time envisaged for the auction sale which shall take place between the thirtieth and sixtieth day after the contingent hearing;
- (3) under pain of forfeiture, that the statements and submissions shall be received up to the fifth day preceding the contingent hearing and that where they fail to file an application for a resolutive action against a previous sale or file proceedings against an irresponsible bid of a previous forced sale and mention same pursuant to the terms of reference within the same period, they shall forfeit their right to exercise these actions against the successful bidder.

#### **ARTICLE 271**

Where the application for resolution or the proceedings for an irresponsible bid are duly filed, the proceedings in relation to the property concerned shall be stayed.

The application for resolution shall be brought before the court of the place where the action for the sale of the attached property is pending

It shall be subject to the procedure, time limits and remedies at law which apply in applications for the diversion of the attached property

### **Section III The Contingent Hearing**

#### **ARTICLE 272**

The declarations and observations shall be heard after the exchange of written submissions between the parties; the hearing shall be adversary.

Where there is an objection to the amount of the reserve price, the onus shall lie on the party objecting to support his objection.

He may apply to the president of the competent court to appoint an expert at his expense. The fees shall be payable in advance.

#### **ARTICLE 273**

The contingent hearing may only be adjourned for serious and duly justified reasons or where the competent court decides on its own motion to exercise its right of control over the terms of reference as provided for in article 275 below.

#### **ARTICLE 274**

The ruling of the court after the contingent hearing shall be transcribed in the register kept for terms of reference by the registrar;

The ruling shall be reproduced and served on the parties on the application of the most diligent party.

Where the date scheduled for the contingent hearing cannot be maintained, the competent court shall fix a new date.

#### **ARTICLE 275**

During the contingent hearing the competent court may on its own motion, where necessary, after a written expert report:

order forthwith the diversion of some of the attached property wherever its overall value appears to be disproportionate to the amount of debt to be recovered;

alter forthwith the amount of the reserve price where it was not fixed in conformity with the provisions of article 267 (10) above.

In such case, the competent court shall inform the parties of its intention to modify the terms of reference and invite them to file further submissions before the next hearing date within a period not exceeding five (5) days.

Where the matter could not be heard on the date initially scheduled, the parties shall be informed of the date and time of next hearing.

### **Section IV Publication of the Sale**

#### **ARTICLE 276**

Not earlier than thirty (30) days and not later than fifteen (15) days before the auction sale, an extract of the terms of reference shall be published with the signature of the pursuing counsel, in a newspaper empowered to publish legal notices and by affixing posters at the door of the residence of the judgment debtor, the competent court or of the approved notary public, as well as in the places reserved for the affixing of posters or posters of the local council where the property is located.

#### **ARTICLE 277**

Under pain of being declared null the extract shall contain:

- (1) the full names, profession, residence or place of abode of the parties and of their various counsel;
- (2) a description of the attached property, as stated in the terms of reference;
- (3) the reserve price;
- (4) an indication of the date, place and time of the auction sale, and mention of the competent court or the approved notary to carry out the sale.

**ARTICLE 278**

Proof of publication shall be by the tender of a copy of the newspaper, duly signed by the printer, and proof of the having affixed the poster shall be by a report of the bailiff or process-server written on a copy of the poster.

**ARTICLE 279**

Following an application the president of the competent court may in a ruling which shall not be subject to an appeal limit or extend the legal publication, depending on the nature and value of the property attached.

**Chapter IV  
SALE**

**Section I  
Date and Place of the Auction Sale**

**ARTICLE 280**

On the date scheduled for the adjudication of the auction sale, the court shall be moved by the written or verbal submissions of the counsel for the pursuing creditor or any other registered creditors.

The latter shall in open court, state the costs of the proceedings previously fixed by the president of the competent court.

**ARTICLE 281**

However, the auction sale may be adjourned for serious and legitimate causes by a reasoned decision of the court following an application which shall be filed not later than five (5) days before the date fixed for the sale.

In case of an adjournment, the decision of the court shall fix a new date for the auction sale which may not be more than sixty (60) days from the date of the court session.

The pursuing creditor shall proceed with the formalities of publication de novo.

The decision of the court shall not be subject to appeal, except where the competent court has disregarded the time limit provided for in the preceding paragraph. In such case, an appeal shall lie in accordance with the conditions provided for by article 301 below.

**ARTICLE 282**

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

The auction shall be in successive bids which shall progressively increase by the persons wishing to acquire the property. The property shall be adjudicated in favour of the highest bidder.

The bids shall be made either through a counsel or by the bidders themselves; the same counsel may represent several bidders, where the bidders present themselves jointly.

#### **ARTICLE 283**

Before bidding begins, candles shall be prepared in such a way that each shall last approximately one minute.

As soon as bidding is ordered, a candle shall be lit and the amount of the reserve price shall be announced.

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

The bidder shall cease to be bound where his bid is superseded by another, even where the later bid is declared a nullity.

Where no bid is made after three candles have been successively lit, the pursuing creditor who initiated the sale shall be declared the successful bidder at the reserve price unless he applies that the auction sale be adjourned to another court session with a new reserve price in conformity with the provisions of article 267 (10) above.

The adjournment of the auction sale shall be as of right; the formalities prescribed for publication shall be commenced de novo.

Where on the day of the adjourned auction no bid is made, the pursuing creditor shall be declared the successful bidder at the initial reserve price.

#### **ARTICLE 284**

Counsel may not bid for members of the competent courts or for the members of the office of the notary public carrying out the sale, under pain of the auction sale or the higher bid being declared a nullity without prejudice to the award of damages.

Under the same pain of nullity, they may not bid for the judgment creditor or for persons who are known to be insolvent. The pursuing counsel may not declare himself the winner of the bid or the higher bid, under pain of nullity of the adjudication or the higher bid and an order against him awarding damages to all the parties.

#### **ARTICLE 285**

The auction sale which shall either be in favour of the counsel making the last bid or in the absence of a bid, in favour of the pursuing creditor in the amount of the reserve price, shall be pronounced in a ruling of the court or in a report drawn up by the notary public.

## ARTICLE 286

The counsel who is the last bidder shall, within three days of the auction sale, disclose the successful bidder and furnish his written acceptance or proxy which shall remain annexed to the original of the ruling of the court or the report drawn up by the notary public, otherwise, he shall be deemed to be the successful bidder.

The successful bidder shall have the option within twenty-four (24) hours, to disclose in an act known as 'declaration of real purchaser', that he did not bid on his own account, but on the account of person whose name he shall disclose.

## Section 2 The Higher Bid

### ARTICLE 287

Any person may, within ten days following the date of adjudication, may make a higher bid, provided that it shall be higher than the purchase price by 10%.

The time limit for the higher bid shall entail forfeiture

The said higher bid may not withdrawn.

### ARTICLE 288

The higher bid shall be filed at the registry of the court which ordered the sale or before the named notary public either by the higher bidder himself or through counsel who shall act on his behalf. It shall be entered without delay in the register kept for terms of reference.

The higher bidder or his counsel shall be required to disclose the higher bid within five days of the declaration, to the person to whom the property was adjudicated, the pursuing creditor and to the distrainee.

The disclosure shall be entered in the register kept for terms of reference within a period of five days.

Where the higher bidder fails to make the disclose or to enter same in the register kept for terms of reference within the time limit, the pursuing creditor and the distrainee or any creditor who has been registered or summoned may make the disclosure and enter same in the said register within five days of expiry of the afore mentioned time limit; the costs shall be borne by the negligent higher bidder.

The disclosure shall be made by extra judicial act without the obligation to collect a copy of the declaration of the higher bid.

The act shall give the date of the contingent hearing during which objections relating to the validity of the higher bid shall be heard.

The hearing may not be scheduled before the expiry of a period not exceeding twenty (20) days from the date of disclosure.

It shall also give the date of the new auction sale, which may not take place earlier than thirty (30) days from the date of the contingent hearing.

#### **ARTICLE 289**

Any objection relating to the higher bid shall be contained in the submissions filed and communicated to the adverse party not later than five (5) days before the contingent hearing.

The filing of the submissions shall be mentioned next to the entry on the disclosure of the higher bidder in the register kept for terms of reference.

Where there is no objection relating to the higher bid, or where it is validated, the new auction sale shall be preceded by the affixing of posters at least eight days before the sale, in conformity with the provisions of articles 276 to 279 above.

On the scheduled date, new bidding shall be open; where a bid is not superseded, the property shall be adjudicated in favour of the bidder.

No higher bid may be allowed after the second auction sale.

### **Section III Public Auction Sale**

VII

#### **ARTICLE 290**

A copy of the decision of the court or the report of the auction sale drawn up by the notary public shall be registered alongside the terms of reference.

A copy thereof shall be issued by the registrar or the notary public, as the case may be, to the successful bidder after payment of the costs of the proceedings and of the purchase price and after having fulfilled the conditions of the terms of reference within twenty (20) days from the date of the auction sale.

However, where the successful bidder is the only registered or preferred creditor of the distrainee, he shall be required to pay only the amount of the purchase price in excess of his claim including costs.

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

An action for irresponsible bidding may be instituted against the successful bidder who fails to produce these justifications within twenty (20) days of the auction sale.

#### **ARTICLE 291**

Where the sale comprises of several parcels of landed property, a copy of the decision of the court or the report of the auction sale drawn up by the notary public shall be issued to each successful bidder.

The executory formula shall be affixed on the court ruling or the report.

#### **ARTICLE 292**

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

#### **ARTICLE 293**

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

#### **ARTICLE 294**

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

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

The registrar of lands shall mention the fact of publication in the margin of the copy of the published summons. He shall also proceed to strike off the registered preferential claims and mortgages which have been paid off by the proceeds of the sale, even those registered after the issuance of the statement of entry.

In this case, the creditor's only claim shall be for a share in the proceeds of the sale.

#### **ARTICLE 295**

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

The administrative authority shall proceed to cancel all the entries in the margin of the initial allotment decision and transfer the allotment in favour of the person to whom the property was adjudicated. Creditors' only claim shall be for a share in the proceeds of the sale.

#### **ARTICLE 296**

Even where the sale has been published in the office of the registrar of lands, it shall not confer upon the successful bidder real property rights that were not vested in the distrainee.

## **ARTICLE 297**

The time limits provided for in articles 259, 266, 268, 269, 270, 276, 281, 287, 288(7) and (8) and 289 above are subject to limitation by lapse of time.

The formalities provided for by this Act and by articles 254, 267 and 277 above shall only be sanctioned by nullity where the irregularity caused loss to the party seeking to rely on it.

The nullity grounded upon the lack of the adequate description of one or more of the attached property shall not necessarily entail the nullity of the proceedings in relation to the other properties.

## **CHAPTER V INCIDENTS RELATING TO THE ATTACHMENT OF REAL PROPERTY**

### **ARTICLE 298**

Any dispute or incidental claim relating to the proceedings in the attachment of real property raised after service of the summons to pay shall be filed through a simple document drafted by counsel. It shall contain the arguments upon which the claim is based. Where the party has not briefed counsel, his action shall be commenced by writ of summons

The matters shall be heard and adjudicated upon expeditiously.

### **ARTICLE 299**

Any dispute or incidental claim shall be raised prior to the contingent hearing under pain of forfeiture.

However under pain of forfeiture, claims founded on a fact or an act which happened or was disclosed after such hearing and those likely to cause the diversion of all or part of the attached property, the nullity of all or part of the procedure of the contingent hearing or the annulment of the attachment, may still be raised after the contingent hearing within eight days before the date of the auction sale.

### **ARTICLE 300**

The decisions of the court which are delivered in matters of attachment of real property shall not be subject to opposition.

They may only be subject to an appeal where the decision is in relation to the principle itself of the claim or grounds relating to the incapacity of one of the parties, or to the ownership, the non distrainability or the inalienability of the attached property.

### **ARTICLE 301**

The appeal shall be notified on all the concerned parties at their residence or their chosen address of service.

It shall also be notified, within the prescribed time-limit for appeals, to the registrar of the competent court who shall endorse the notice of appeal and mention same in the register kept for the terms of reference.

The notice of appeal shall contain the appellant's submissions under pain of nullity.

The court shall rule within fifteen (15) days of the filing of the appeal.

## **Section I**

### **Incidents arising from the Multiple Attachments.**

#### **ARTICLE 302**

Where two or more distrainers have published the summonses to pay relating to different properties belonging to the same debtor, and where the attachment is carried out before the same court, the other proceedings shall be joined to the petition of the earliest party and shall be continued by the first distrainer.

Where the summonses to pay were published on the same day, it shall be up to the creditor whose summons bears the earlier date to prosecute the action and, where the summonses bear the same date, the creditor with the oldest claim shall proceed with the action.

#### **ARTICLE 303**

Where a second summons to pay presented at the land registry comprises more property than the first, such summons shall be published in respect of the property not included in the first.

The second pursuing creditor shall disclose the published summons to the first distrainer, who shall be required to pursue the action for the two distrainers, where they are at the same level.

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

#### **ARTICLE 304**

Where the first distrainer fails to pursue the second attachment disclosed to him, the second distrainer may, in a written application addressed to the registrar of landed property, apply for subrogation.

#### **ARTICLE 305**

An application for subrogation may also be made where there is collusion, fraud, negligence or other cause for delay attributable to the distrainer, without prejudice to damages payable to the injured party.

Negligence shall be established where the pursuing creditor has failed to fulfill a formality or has failed to engage any procedure within the prescribed time limit.

A creditor may only apply for subrogation eight days after an unproductive summons to continue proceedings by a correspondence between counsel to creditors whose summonses to pay were previously filed in the office of the land registry.

The distrainee shall not be joined to the action.

#### **ARTICLE 306**

The party who loses the action for subrogation shall bear the costs. The pursuing creditor against whom subrogation is pronounced shall be required to hand over against a receipt, the documents of the proceedings to the subrogee who shall continue the proceedings at his own risks. The handing over of the documents shall discharge the subrogor pursuing creditor of all his obligations; his share of the costs shall only be payable after the auction sale, either from the proceeds of the sale or by the successful bidder.

#### **ARTICLE 307**

The applicant for subrogation shall have the option of modifying the reserve price fixed by the pursuing creditor. However, the reserve price may only be modified after publication has been made or commenced on condition that new posters and notices of the auction are affixed within the time limits provided for in 276 above with an indication of the new reserve price.

### **Section II Application for Diversion**

#### **ARTICLE 308**

A third party who claims ownership of a attached property and who is not personally liable for the debt and whose real property has no connection with the said debt may, in order to remove it from the attachment, apply for it to be diverted before the auction sale within the period provided for by article 299 (2) above.

However, the application for diversion shall only be admissible where the land law of the State Party where the property is located makes provision for an action for recovery of property or any other action for a similar purpose.

#### **ARTICLE 309**

The application for diversion of all or part of the attached property shall be against both the distrainor and the distrainee

## ARTICLE 310

Where the application for diversion concerns the whole property, the proceedings shall be discontinued. Where the diversion applied for concerns only part of the attached property, the proceedings for the adjudication of the rest of the property may be continued. The competent court may also, order the suspension of the proceedings in relation to all the property upon the application of the interested parties.

In the case of partial diversion, the pursuing creditor may be allowed to change the reserve price that was mentioned in the terms of reference.

### Section III Application for Annulment

## ARTICLE 311

With the exception of those grounds for nullity referred to in article 299 (2) above, the grounds relating to the form or merits, against the procedure preceding the contingent hearing shall be raised, under pain of forfeiture, by way of a statement annexed to the terms of reference not later than five days before the date fixed for hearing. Where they are allowed, the action may be recommenced from the last valid act and the time limits for accomplishing the subsequent acts shall be computed from the date of the notification of the decision which pronounced the nullity.

Where the grounds are dismissed, the action shall continue from the stage where the proceedings had been stopped.

## ARTICLE 312

Proceedings may not be annulled because they had been initiated by the creditor for an amount higher than the debt.

## ARTICLE 313

The nullity of the decision of the court or the report drawn up by the notary public of the auction sale may only be applied for in a main action before the competent court of the place where the auction sale took place within a period of fifteen (15) days after the auction sale.

Application for nullity may only be made for concomitant causes or causes subsequent to the contingent hearing by any interested person, except the successful bidder.

Annulment shall have the effect of invalidating the proceedings from the date of the contingent hearing or subsequent to such hearing, depending on the causes of annulment.

## **Section IV Irresponsible Bidding**

### **ARTICLE 314**

The effect of irresponsible bidding shall be to nullify the adjudication proceedings on the ground that the successful bidder failed to meet his obligations thereby causing a new auction sale of the property.

Bidding shall be deemed irresponsible where the successful bidder:

- (1) fails to show proof within twenty (20) days following the auction sale that he has paid the purchase price and the costs and fulfilled the conditions of the terms of reference;
  
- (2) fails to carry out publication of the decision of the court or the report drawn up by the notary public of the auction sale at the land registry within the period provided for in Article 294 above.

### **ARTICLE 315**

Proceedings in irresponsible bidding may be commenced by the distrainee, the pursuing creditor, registered creditors and the unsecured creditors. They shall be instituted against the successful bidder and, possibly, his rightful claimants. They shall not be subject to any time limit.

However, subject to the provisions of Article 320 below, an action may no longer be instituted nor continued where the cause of action no longer exists.

### **ARTICLE 316**

Where the report of auction sale has not been issued, the person instituting the action for irresponsible bidding shall cause the registrar or notary to issue him a certificate to prove that the successful bidder has not complied with the clauses and conditions of the terms of reference.

Where the successful bidder files an opposition to the issuance of a such a certificate, the president of the competent court shall rule at the instance of the most diligent party.

The ruling shall not be subject to an appeal.

### **ARTICLE 317**

The certificate provided for in the preceding article shall be served on the successful bidder within five days of service; publication of such service shall be made with a view to the new auction sale.

The posters and entries shall show the full names and residence of the irresponsible bidder, the amount of the auction, a reserve price fixed by the pursuing creditor and the date when the new auction sale shall take place shall be mentioned in the terms of reference that were previously filed.

The time limit between the new publication and the sale shall be within a period not exceeding fifteen (15) days and not more than thirty (30) days.

#### **ARTICLE 318**

Not later than fifteen days before the auction sale, notice shall be served on the successful bidder, distrainee, distrainor and the creditors indicating the date, time and place of the auction sale.

The said notice shall be communicated through a simple correspondence between the counsel and, in the absence of counsel, through notification by a bailiff or process-server.

#### **ARTICLE 319**

Where the report of the auction sale has been issued, the party prosecuting the action for irresponsible bidding shall serve a summons to pay, and a copy of the decision of the court or the report drawn up by the notary public of the auction sale on the successful bidder.

Five days after the service of the summons to pay, he may proceed to publish the new sale as provided for in article 317 above.

#### **ARTICLE 320**

No new sale shall take place where within the period provided for the new sale, the irresponsible bidder shows proof of having complied with the conditions of the auction sale and deposited a sufficient sum determined by the president of the competent court to be used for settling the costs of the action for the irresponsible bid.

#### **ARTICLE 321**

Under pain of the nullity of the auction sale the formalities and time limits provided for in articles 316 to 319 above shall be observed.

The grounds for nullity shall be filed five days before the auction sale as provided for in article 317 above.

#### **ARTICLE 322**

Where no bid is made, the reserve price may be reduced within the limit provided for in article 267 (10) above by a decision of the president of the competent court.

Where no bid is made despite the reduction of the reserve price, the property shall be adjudicated in favour of the pursuing creditor for the amount of the first reserve price.

The irresponsible bidder shall not bid during the new auction sale.

#### **ARTICLE 323**

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

Where the second price is higher than the first, he shall not benefit from the difference.

The costs of the proceedings, registry fees and the cost of stamp duty paid by the irresponsible bidder shall not be reimbursed.

## **PART IX DISTRIBUTION OF THE PROCEEDS OF THE SALE**

### **ARTICLE 324**

Where there is only one creditor, the proceeds of the sale shall be paid to him up to the amount of his claim in principal, interest and costs within a period not exceeding fifteen (15) days from the date of payment of the purchase price.

The balance shall be paid to the debtor within the same period.

Interest shall accrue at the legal rate upon the expiry of the said period, for any sums owed.

### **ARTICLE 325**

Where there are many creditors concerned in the attachment of the movable property or many registered and preferred creditors concerned in the attachment of immovable property they may agree on a consensual sharing of the proceeds of the sale.

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

The creditors shall be paid within a period of fifteen days as soon as the agreement is received.

The balance shall be paid to the debtor within the same period.

Interest shall accrue at the legal rate upon the expiry of the said period, for any sums owed.

### **ARTICLE 326**

Where within a period of one month of the payment of the purchase price by the successful bidder the creditors have not arrived at a unanimous agreement, the most diligent creditor shall refer the matter to the president of the court of the place of the auction sale or to the judge delegated by him. The latter shall rule on the distribution of the proceeds of the sale.

### **ARTICLE 327**

The writ of shall state the date of the hearing and enjoin the creditors to prove their claims, that is, to state their dues, the rank on which they are expected to be placed and to forward all documents in proof thereof.

The summons shall reproduce the provisions of article 330 below.

**ARTICLE 328**

The writ of summons shall equally be served on the distrainee.

**ARTICLE 329**

Hearing may not take place earlier than forty (40) days after service of the last summons.

**ARTICLE 330**

Within twenty (20) days of the date of the service of the summons, the creditors shall under pain of forfeiture deposit their claims at the registry of the competent court.

**ARTICLE 331**

Statements may be deposited not later than five (5) days before the hearing; copies thereof shall be served on the other parties.

**ARTICLE 332**

After examining the statements in support of the claim, and the submissions of the parties, the competent court shall proceed to the distribution of the proceeds of the sale. The court may for serious and duly justified reasons postpone the distribution to a new date.

The decision of the court granting or dismissing the application to postpone the distribution shall not be subject to appeal.

**ARTICLE 333**

The decision given on the merits by the court may be appealed against within fifteen days of its notification.

The appeal shall only be admissible where the contested amount is above the amount stated in the final ruling of the court.

**ARTICLE 334**

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

## **PART X FINAL PROVISIONS**

**ARTICLE 335**

The time limits provided for in this uniform act shall be clear time limits.

**ARTICLE 336**

All provisions relating to matters treated in the Uniform Act are hereby repealed within the States Parties.

**ARTICLE 337**

This Uniform Act shall apply to protective measures, recovery by distraint and recovery proceedings instituted after its entry into force.

**ARTICLE 338**

This Uniform Act shall be published in the official gazette of OHADA and the official gazettes of States Parties.

It shall enter into force in accordance with the provisions of Article 9 of the Treaty on the Harmonization of Business Law in Africa.

Done at Libreville on 10 April 1998

For the Republic of Benin

Moïse Mensa

Minister of Finance

For Burkina Faso

Larba Yarga

For the Republic of Cameroon

Joseph Belibi

Minister of Justice Secretary-General of the

Ministry of Justice

For the Central African Republic

Marcel Metefara

Minister of Justice

For the Republic of Côte d'Ivoire

Kouakou Brou Jean

Minister of Justice

For the Gabonese Republic

Marcel Eloi Rahandi Chambrier

Minister of Justice

For the Republic of Equatorial Guinea

Mrs. Evangelina - Filomena Oyo

Minister of Justice

For the Republic of Mali

Amidou Diabate

Minister of Justice

For the Republic of Niger

Issifou Abba Moussa

Minister of Justice

For the Republic of Senegal

Jacques Baudin

Minister of Justice

For the Togolese Republic

Assiba Amoussou-Guenou

Secretary of State in charge

of Finance



**ARBITRATION RULES OF THE  
COMMON COURT  
OF JUSTICE AND ARBITRATION**



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## **CHAPTER I**

### **THE ROLE OF THE COMMON COURT OF JUSTICE AND ARBITRATION IN ARBITRATION MATTERS**

#### **ARTICLE 1 - Exercise by the Court of its functions**

**1.1** The Common Court of Justice and Arbitration, hereinafter referred to as «the Court», shall be responsible for the supervision of arbitration proceedings in accordance with article 21 of the Treaty and under the conditions laid down hereinafter.

The decisions which the court shall take for the purpose of ensuring the proper conduct of arbitration proceedings and the proceeding linked to the scrutiny of the award, are of an administrative nature.

The above decisions shall not be binding and may not be challenged; the reasons upon which they are based shall be made public.

The decisions shall be arrived at by the court in accordance with the rules agreed upon at the general assembly following proposals made by the President.

The Registrar-in-Chief shall perform the functions of Secretary General of the administrative organs of the Court.

**1.2** The Court shall perform the judicial functions provided for in article 25 of the Treaty with respect to final arbitral awards and exequatur of the said awards while sitting in its judicial capacity and in accordance with the laid down procedure.

**1.3** The administrative functions of the court as defined in paragraph 1.1 above relating to the supervision of arbitral proceedings shall be performed in accordance with chapter II below.

The judicial functions provided for in paragraph 1.2 above are defined and regulated by chapter III below and the rules of procedure of the Court.

## **CHAPTER II**

### **THE PROCEDURE APPLICABLE BEFORE THE COMMON COURT OF JUSTICE AND ARBITRATION**

#### **ARTICLE 2 The role of the Court**

**2.1** The Court shall ensure that an arbitral award is made, in accordance with the present Rules, for the settlement by arbitration of any contractual dispute submitted to it by any party to a contract, pursuant to an arbitration clause or a submission agreement, either because one of the parties is resident or has his usual place of residence in the territory of one or more States Parties, or where the contract is performed or will be performed, wholly or partly in the territory of one or more States Parties.

**2.2** The Court shall not itself settle disputes.

It shall appoint or confirm arbitrators, who shall keep the court informed of the progress of the proceedings and submit the draft award to the court for its approval.

It shall, upon request, rule on the exequatur of its arbitral awards and on disputes relating to the binding effect of the said awards.

**2.3** The Court shall deal with issues relating to arbitral proceedings conducted by the Court pursuant to Part IV and Article I of these rules.

**2.4** The Court may where necessary draw up its own Internal Rules. The Court may, in accordance with these internal rules, delegate to a restricted panel of the court the power to take certain decisions, provided that any such decision shall be reported to the Court at its next session. These rules shall be deliberated upon and adopted at the General Assembly.

They shall become binding upon approval by the Council of Ministers pursuant to Article 4 of the Treaty.

**2.5** The President of the Court or any other member of the court delegated to this effect by him shall have the power to take, in case of urgency, decisions necessary for the smooth conduct of arbitral proceedings other than those that must be taken by the Court sitting in its judicial capacity, provided that any such decision shall be reported to the Court at its next session.

**ARTICLE 3- Appointment of arbitrators**

**3.1** The dispute may be settled by a sole arbitrator or by three arbitrators. In the present rules of arbitration, the arbitral tribunal may also be referred to as “the arbitrator”.

Where the parties have agreed that the dispute shall be settled by a sole arbitrator, he shall be appointed by mutual agreement subject to approval of the Court. If the parties fail to agree within thirty (30) days of notification of the request for arbitration, the arbitrator shall be appointed by the Court

Where the dispute is to be referred to three arbitrators, each party shall in the request for arbitration or in the reply to the request appoint one independent arbitrator, subject to the approval of the Court. If one of the parties fails to appoint an arbitrator, the latter shall be appointed by the Court. The third arbitrator, who will act as Chairman of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed that the two arbitrators they had designated would appoint the third arbitrator within a given time limit. In such event, the Court shall confirm the third arbitrator. If the two arbitrators fail to agree on an appointment within the time limit fixed by the parties or the Court, the third arbitrator shall be appointed by the Court.

Where the parties have not mutually agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, unless it appears that the dispute is such as to justify the appointment of three arbitrators. In such latter case, the parties shall appoint an arbitrator within a period of fifteen (15) days.

Where there are more than two parties, either as claimants or defendants, who have to submit to the Court joint proposals for the appointment of an arbitrator and where they fail to agree on such appointment within the fixed time limit, the Court may appoint each member of the arbitral tribunal.

**3.2** The arbitrators may be elected from the list of arbitrators drawn up by the Court and updated annually. The members of the Court cannot be included on the said list.

**3.3** In appointing arbitrators, the Court shall have regard to the nationality of the parties, their residence, the residence of their counsel as well as the residence of the arbitrators, the language of the parties, the nature of the claims and, if need be, the laws chosen by the parties to govern their relationship.

With a view to proceeding with the appointments and drawing up the list of arbitrators pursuant to Article 3.2, the Court, if it deems it necessary, may first require the opinion of experts whose competence is well known in the field international commercial arbitration.

#### **ARTICLE 4 - Independence, challenge and replacement of arbitrators**

**4.1** Any arbitrator appointed or confirmed by the Court shall be and remain independent of the parties involved in the arbitration.

He shall perform his duties until the end.

Before his appointment or confirmation by the Court, the prospective arbitrator who has received information on the dispute as set out in the request for arbitration as well as, if it has been submitted, as set out in the reply to such request, shall disclose in writing to the Secretary General of the Court any facts or circumstances which might be of such nature as to call into question the arbitrator's independence in the mind of the parties.

Upon receipt of this information, the Secretary General of the Court shall forward such information to the parties in writing and shall fix a time limit for the parties to present their respective comments.

The arbitrator shall immediately disclose, in writing, to the Secretary General of the Court and the parties, any facts and circumstances of similar nature which may occur between his appointment or confirmation by the Court and the notification of the final award.

**4.2** The challenge of an arbitrator, whether for an alleged lack of independence or otherwise, shall be made by the submission to the General Secretary of a written statement specifying the facts and circumstances on which the challenge is based.

To be admissible, the challenge shall be sent by a party either within thirty (30) days from the date of receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within thirty (30) days from the date when the party filing the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

The Court shall rule upon the admissibility of the request, and at the same time, if it deems it necessary, on the merits of the challenge, after the Secretary General has given an opportunity for the arbitrator concerned, the parties and any other members of the arbitral tribunal if any, to comment in writing within a reasonable period of time.

**4.3** An arbitrator shall be replaced upon his death, upon acceptance by the Court of the challenge against him, or upon acceptance by the court of his resignation.

Where the resignation of an arbitrator is not accepted by the Court and the arbitrator nevertheless refuses to continue to perform his assignment, he shall be replaced if he is a sole arbitrator or if he is the Chairman of the arbitral tribunal.

In any event, the Court shall consider whether the replacement is appropriate taking into account the progress of the proceedings and the opinion of the two remaining arbitrators. Where the court considers replacement not necessary, the proceedings shall continue and the award may be rendered in spite of the refusal to participate by the arbitrator whose resignation has been refused.

The Court shall render its decision having regards, in particular, to the provisions of Article 28 (2) below.

**4.4** An arbitrator shall also be replaced where the Court decides that he is prevented de jure or de facto from fulfilling his mission or that he is not fulfilling his functions in accordance with PART IV of the Treaty or in accordance with the Rules or within the prescribed time limits. When, on the basis of information that has come to its attention, the court considers applying the preceding paragraph, it shall decide on the replacement after the Secretary General of the Court has communicated this information in writing to the arbitrator concerned, the parties and other members of the tribunal, if any, and has given them the opportunity to comment in writing within a reasonable period of time.

In case of replacement of an arbitrator who is not fulfilling his functions in accordance with Part IV of the Treaty or in accordance with the rules of arbitration or within the prescribed time limits,, the appointment of a new arbitrator shall be made by the Court upon the recommendation of the party who had appointed the arbitrator to be replaced without the Court being bound by the said recommendation.

Where the Court is aware that in an arbitral tribunal composed of three arbitrators, one of the arbitrators other than the Chairman, is not participating in the arbitration even though he has not resigned, the Court may, pursuant article 4 sub 3 and 4 above, not replace the said arbitrator when the two other arbitrators have accepted to continue the arbitration despite the failure of the said arbitrator to participate.

**4.5** Once reconstituted, and after having invited the parties to furnish their comments, the arbitral tribunal shall determine to what extent the prior proceedings shall be repeated.

**4.6** In accordance with the provisions of Article 1.1 above, the ruling of the Court relating to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

## ARTICLE 5 Request for Arbitration

Any party wishing to have recourse to arbitration pursuant to article 2.1 above (Article 21 of the Treaty) and whose modalities are fixed by the present rules of arbitration, shall submit the request to the Secretary General for arbitration by the Court.

This Request shall contain:

- a) the surnames, given names, capacity, corporate name and address of the parties, with indication of the address for service for the continuation of the proceedings, as well as an indication of any amount(s) claimed;
- b) the arbitration agreement entered into between the parties as well as any contractual or non-contractual documents likely to throw light on the circumstances of the dispute;
- c) a brief statement of the relief sought and the grounds upon which the request is based;
- d) any useful information and proposals concerning the number and choice of arbitrators, in accordance with the provisions of Article 2.3 above.
- e) the agreement entered into between the parties, if any, relating to:
  - the seat of the arbitration
  - the language of the arbitration
  - the rules of law to be applied to
    - the arbitration agreement
    - the arbitration proceedings, and
    - the merits of the claim,

failing such agreements, the applicant for arbitration shall state his views on these issues;

- f) the Request shall indicate the amount of costs provided for the filing of the proceedings in accordance with the scale of the costs of the Court.

The claimant shall, in his Request, state that he has sent a copy of such request with all supporting documents to the defendants.

The Secretary General shall notify all parties or respondents of the date of the receipt of the request by the Secretariat General, attach to this notification a copy of the present rules of arbitration and shall forward to the claimant an acknowledgment.

The date of receipt by the Secretary General of the request for arbitration complying with the present article is deemed to be the date on which the arbitration commences.

## **ARTICLE 6 – Response to the Notice**

Every respondent shall submit to the Secretary General, his Response to the Notice within forty five (45) days of receiving notification from the Secretary General, with proof that he has also sent a copy to the claimant.

In the case above mentioned in Article 3.1 (2), the parties shall agree within the time limit of thirty (30) days provided in the said article .

The Response shall contain:

- a) confirmation or not of his surnames, given names corporate name and address as given by the applicant, with election of residence for the proceedings;
- b) confirmation of the existence of an arbitration agreement between the parties that refers to the arbitration provided for at title IV of the Treaty for the Harmonization of Business Law in Africa ;
- c) a brief summary of the dispute and the response of the respondent to the claim brought against him with a statement of the grounds and evidence upon which he will base his defence..
- d) the response of the respondent as regards the issues raised in the request for arbitration in relation with items (d) and (e) of Article 5 above.

## **ARTICLE 7**

Where the respondent has filed a counterclaim in his answer, the claimant shall file a reply to the counterclaim within thirty (30) days from the date of receipt of the Counterclaim

## **ARTICLE 8**

Upon receipt of the notice for arbitration, the respondent's reply, the claimants reply to the counterclaim pursuant to the provisions of articles 5, 6, and 7 above, or upon expiry of the time within which to file, the Secretary General shall request the court to fix a provisional advance to cover the costs of the arbitration, the institution of the arbitral proceedings and where necessary, the place of the arbitration.

The file shall be forwarded to the arbitrator as soon as the arbitral tribunal is constituted and the decisions taken in accordance with Article 11.2 have been complied with.

## **ARTICLE 9 - Absence of arbitration agreement**

Where, prima facie, there is no arbitration agreement between the parties requiring the application of the present rules of arbitration, if the defendant objects to the arbitration of the Court or does not file a reply within a period of forty five (45) days provided for at Article 6 above, the claimant shall be informed by the Secretary General of his intention to apply to the Court for a decision that the arbitration shall not proceed.

The Court shall rule, based on the claimant's comments submitted within the next thirty (30) days, if the latter deems it necessary to file such comments.

## **ARTICLE 10 - Effects of the arbitration agreement**

- 10.1** Where the parties have agreed to submit to arbitration by the Court, they shall be deemed thereby to have submitted ipso facto to the provisions of Part IV of the OHADA Treaty, to the present rules, to the internal rules of the Court, its annexes as well as to the scale of the costs of arbitration, as at the date of commencement of the arbitration proceedings pursuant to Article 5 above.
- 10.2** If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure.
- 10.3** Where one party raises one or more objections concerning the existence, validity or the scope of the arbitration agreement, and where the Court is satisfied of the prima facie existence of the agreement, the court may, without prejudice to the admissibility or merits of the objection, decide that the arbitration shall proceed. In such case, the arbitrator shall rule on any issues relating to his own jurisdiction.
- 10.4** Except as otherwise provided, where the arbitrator upholds the validity of the arbitration agreement, the arbitrator shall not cease to have jurisdiction by reason of any claim that the contract is null and void.
- 10.5** Unless otherwise provided, the arbitration agreement confers jurisdiction on the arbitrator to entertain any interim or conservatory applications in the course of the arbitral proceedings.

Awards made pursuant to the preceding paragraph shall be immediately enforceable by application for exequatur, where an exequatur is necessary for the enforcement of the interim or conservatory awards.

Before the file is forwarded to the arbitrator and, in exceptional circumstances, even thereafter, where the urgent nature of the interim and conservatory measures requested may not permit the arbitrator to rule promptly, the parties may apply to any competent judicial authority for such measures.

Any such application and any measures taken by the judicial authority shall without delay, be notified to the Court which shall inform the arbitrators thereof.

## **ARTICLE 11 - Advance to cover the costs of the arbitration**

- 11.1** The court shall fix the amount of the advance on costs in a sum likely to cover the costs of arbitration of the claims which have been referred to it in accordance with article 24.2 a) below.

This amount may be subject to readjustment where the amount of the dispute is modified by at least one quarter or if any new circumstances render such readjustment necessary.

The court may fix separate advances on costs for the claims and the counter claim if so requested by a party.

**11.2** The advance on costs shall be payable in equal shares by the claimant(s) and the respondents. However, any party shall be free to pay the whole of the advance on costs in respect of the principal claim and the counterclaim, should the other party fail to pay his share.

The advance on costs fixed shall be paid in full to the Secretary General of the Court before the file is transmitted to the arbitrator: the payment of at most three quarters of the amount fixed may be secured by an adequate bank guarantee.

**11.3** Only claims for which the advance on costs has been duly paid pursuant to paragraph 11.2 above shall be brought to the arbitrator.

Where a supplementary advance on costs has become necessary, the arbitrator shall suspend his assignment until the supplementary deposit has been paid to the Secretary General.

**ARTICLE 12 -Notification, communication and time limits.**

**12.1** All pleadings, correspondences and written communications exchanged by the parties, as well as documents annexed thereto, shall be furnished in as many copies as there are other parties plus one for each arbitrator and one for the Secretary General of the Court. However, the documents annexed may not be forwarded to the Secretary General except upon his request.

**12.2** All pleadings, correspondences and communications from the Secretariat, the arbitrators or the parties are valid if they are:

- delivered against a receipt, or
- dispatched by registered mail to the address or last known address of the addressee, as given by him or by the other party as the case may be, or
- by any means of communication with written proof, the original being considered as authentic, in case of dispute

**12.3** A notification or communication validly made shall be deemed to have been made on the day it was received by the interested party or by its representative.

**12.4** The time limit prescribed by the present rules or by the Court in application of these rules or its internal rules starts running from the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph.

When the next day following such date is an official holiday, or a non business day in the country where the notification or communication is deemed to have been made, the time limit shall start to run on the first following business day.

Official holidays and non- business days are included in the calculation of time limits and shall not prolong them. If the last day of the relevant time limit granted is an official holiday or a non- business day in the country where the notification or communication is deemed to have been made, the time limit shall expire at the end of the first following business day.

### **ARTICLE 13 - Seat of the arbitration**

The seat of the arbitration shall be determined by the arbitration agreement or by a later agreement of the parties.

Failing such agreement, it shall be determined by a decision of the Court rendered before the file is transmitted to the arbitrator.

After consultation with the parties, the arbitrator may decide to conduct the hearing in any other place. In case of disagreement, the Court shall rule on the matter.

Where the circumstances render impossible or difficult the conduct of hearings at the decided place, the Court may, at the request of the parties, or any of them, or the arbitrator, fix another seat.

### **ARTICLE 14-Confidentiality of the arbitral proceedings**

Arbitral proceedings shall be confidential. The work of the Court relating to conduct of arbitral proceedings is subject to this confidentiality; so too is the meeting of the Court held for the purpose of supervision of the arbitration. Confidentiality shall also apply to documents submitted to the Court or drawn up by it in the course of the proceedings it is following up.

Unless otherwise agreed by all the parties, the parties and their counsel, the arbitrators, the experts and any person involved in arbitral proceedings shall be bound by the duty to respect the confidentiality of the information and documents produced during the said proceedings. Confidentiality shall extend, under the same conditions, to the arbitral awards.

### **ARTICLE 15 - Report establishing the purpose of the dispute as well as the conduct of arbitral proceedings.**

**15.1** The arbitrator shall, upon receipt of the file, summon the parties or their duly qualified representative and their counsel, to a meeting which shall hold as soon as is possible and not later than sixty (60) days from the date of receipt of the file.

The purpose of the meeting shall be;

- a) To establish the fact that arbitration has been seized and to determine the claim submitted to him for determination. He shall proceed to list the claims as contained in the submissions filed by the parties as of that date, with a summary of the reasons for these claims and the grounds raised in support thereof;
- b) To declare if there exists an agreement between the parties on the issues listed in articles 5(e) and 6 (b) and (d) herein above.

In the absence of such an agreement, the arbitrator shall declare that the arbitral award shall contain a ruling on this issue.

The arbitrator shall, in the course of the meeting, immediately determine the language of the arbitration, with due regard to the observations of the parties on this issue, and after taking into account the circumstances.

The arbitrator shall, if necessary, enquire of the parties if they intend to confer on him the powers of aimable compositeur. The answer of the parties shall be recorded in writing.

- c) To take measures appropriate for the conduct of the arbitral proceedings in accordance with the rules which the arbitrator intends to use as well as how they will be applied.
- d) To establish a provisional calendar, fixing the dates of the filing of the respective submissions deemed necessary, as well as the date of hearing arguments after which the hearing shall be declared closed.

The hearing date fixed by the arbitrator shall not exceed six months from the date of the meeting except otherwise agreed by the parties.

**15.2** The arbitrator shall draw up a report of the meeting referred to in article 15(1) herein above. This report shall be signed the arbitrator.

The parties or their representatives shall also be invited to sign the report. Where one of the parties refuses to sign the report or expresses reservations about the report, it shall be submitted to the Court for approval.

A copy of the report shall be given to the parties and to their counsel, as well as to the Secretary General of the Court.

**15.3** The provisional calendar of arbitration contained in the report referred to in article 15(2) may, in case of necessity be modified by the arbitrator of his own motion after the observations of the parties, or at their request.

The modified calendar shall be sent to the Secretary General of the Court who shall communicate same to the Court.

**15.4** The arbitrator shall within 90 days of the close of deliberations, draw up and sign the arbitral award. This time limit may be extended by the Court upon the application of the arbitrator if he cannot meet up with the dead line.

**15.5** Where the arbitral award does not finally conclude the arbitral proceedings, a meeting shall immediately be convened to determine in the same conditions a new calendar for the arbitral award which shall completely dispose of the matter.

## **ARTICLE 16 - Rules governing the proceedings**

The rules applicable to the proceedings before the arbitrator, shall be the present rules and, in case of silence, any rules which the parties or failing them, the arbitrator, may settle on, by referring or not to rules of procedure of national law applicable to arbitration.

## **ARTICLE 17- Law applicable to the merits of the dispute.**

The parties shall agree upon the rules of law to be applied by the arbitrator to the merits of the dispute. In the absence of any such agreement, the arbitrator shall apply the law determined by the conflict of law rules which it considers appropriate in the circumstance.

In any event, the arbitrator shall take into account the terms of the contract and the usages of the trade.

The arbitrator shall decide as amiable compositeur if the parties have so authorised in the arbitration agreement or thereafter.

#### **ARTICLE 18 New Claims**

In the course of the proceedings, the parties shall be free to raise new grounds in support of their claims.

They may also file fresh claims, whether counter claims or not if the said claims are within the limits of the arbitration agreement, and unless the arbitrator considers that he does not have to authorise such an extension of his mission, due in particular, to the delay in filing the claim.

#### **ARTICLE 19 Establishing the facts of the case**

**19.1** The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.

After examining the written submissions of the parties and the documents filed by them, the arbitrator shall hear the parties together in person if so requested by any of the parties; failing such a request, the arbitrator may of his own motion decide to hear them.

The parties may appear either in person or through their duly authorized representatives. They may be assisted by their counsel.

The arbitrator may decide if he deems necessary to hear the parties separately. In this case, the hearing of each party shall take place in the presence of counsel of both parties.

The hearing of the parties shall take place on a day and at a place to be determined by the arbitrator.

If any of the parties duly summoned, fails to appear, the arbitrator, after establishing that the summons was properly served on him, shall, unless there is a good reason, nevertheless proceed to accomplish his mission, and the hearing shall be deemed to be after full hearing.

A copy of the report on the hearing of the parties, duly signed shall be forwarded to the Secretary General of the Court.

**19.2** The arbitrator may decide the case solely on the documents filed by the parties if the parties so request or accept.

**19.3** The arbitrator may appoint one or more experts, define their terms of reference, receive their reports and hear them in the presence of the parties and their counsel.

**19.4** The arbitrator shall be in charge of the hearing. The hearing shall be in the presence of the parties.

Except with the consent of the arbitrator and the parties, the hearing shall not be open to persons who are strangers to the proceedings.

**ARTICLE 20 Award by consent**

If the parties reach a settlement, during the arbitral proceedings, they may request the arbitrator to record the settlement in the form of an arbitral award made by consent of the parties.

**ARTICLE 21 Objection on lack of jurisdiction**

**21.1** If any of the parties intends to raise a plea that the arbitrator does not have jurisdiction to hear the whole or part of the dispute, for whatever reason, the party shall raise same in the submissions referred to in article 6 and 7 herein above and at the latest, during the meeting referred to in article 15(1) herein above.

**21.2** At any time during the hearing, the arbitrator may of his own motion raise question in relation to his own jurisdiction based on grounds of public policy. In such case, the parties shall be invited to make their comments or state their views.

**21.3** The arbitrator may rule on an objection on lack of jurisdiction either in an interim award or in a final or partial award on the merits.

When in accordance with the provisions of Chapter III herein, an appeal against an interim award acknowledging jurisdiction or not, is filed before the Court in its judicial capacity, the arbitrator may nonetheless continue the arbitral proceedings while the appeal is pending before the Court.

**ARTICLE 22 The Arbitral award**

**22.1** Unless otherwise agreed by the parties, and provided that such an agreement is in conformity with the applicable law, all awards shall state the reasons upon which they are based.

**22.2** They shall be deemed to be made at the seat of the arbitration and on the date of their signature after scrutiny by the Court.

**22.3** They shall be signed by the arbitrator having regards, where necessary, to the provisions of article 4[3] and 4[4] above.

If three arbitrators were appointed, the award shall be made by a majority decision. Failing a majority decision, the Chairperson of the arbitral tribunal shall decide alone.

The arbitral award shall be signed, as the case may be, by the three members of the arbitral tribunal, or by the Chairperson alone.

Where the arbitral award is made by a majority decision, refusal by the dissenting arbitrator to sign same shall not affect the validity of the award.

**22.4** Any member of the arbitral tribunal may hand his personal opinion to the Chairman for the purpose of being attached to the award.

## **ARTICLE 23- Prior scrutiny of the award by the Court**

**23.1** Draft awards on jurisdiction, partial awards that determine some claims of the parties, and final awards shall be submitted to the Court for scrutiny, before signature.

The other awards shall not be submitted for prior scrutiny, but shall be forwarded to the Court for information only.

**23.2** The Court may only propose modifications as to the form of the award. Besides, it shall give necessary directions to the arbitrators on the fixing of the cost of arbitration, and shall in particular, fix the fees of the arbitrators.

## **ARTICLE 24 Decision as to the costs of the arbitration.**

**24.1** The final award of the arbitrator, other than the decision on the merits, shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

**24.2** The costs of arbitration shall include:

a) the fees of the arbitrator and the administrative expenses fixed by the Court, expenses incurred by the arbitrator, the running costs of the arbitral tribunal, fees and expenses of experts appointed by the arbitral tribunal.

The fees of arbitrators and the administrative expenses of the Court shall be fixed in accordance with the scale schedule of fees established by the General Assembly of the Court and approved by the Council of Ministers of OHADA, in accordance with Article 4 of the Treaty.

b) Costs incurred by the parties for the defence of their claims, as assessed by the arbitrator upon the application therefor by the parties.

**24.3** Where prevailing circumstances so exceptionally require, the Court may fix the fees of the arbitrator at an amount inferior or superior to that indicated on the scale of fees.

## **ARTICLE 25 - Notification of the arbitral award.**

**25.1** Once the arbitral award has been made, the Secretary General shall notify on the parties the text signed by the arbitrator after the costs of the arbitration referred to in Article 24.2(a) have been fully paid to the Secretary General by the parties or by one of them.

**25.2** Additional copies certified true by the Secretary General of the Court shall be made available at any time to the parties upon their request but to no one else.

**25.3** By virtue of the notification thus made, the parties waive any other form of notification or deposit on the part of the arbitrator.

## **ARTICLE 26 Correction and interpretation of the arbitral award**

Any application for the correction of clerical errors in the arbitral award, or for its interpretation, or for an additional award as to claims presented in the arbitration but not determined in any

award, shall be submitted to the Secretary General of the Court within 45 days of notification of the arbitral award.

The Secretary General shall upon receipt of the application forward same to the arbitrator and to the opposite party while giving the latter a time limit of 30 days within which to serve his comments on the applicant and on the arbitrator.

Where, for whatever reason, the Secretary General is unable to forward the application to the arbitrator who had ruled on it, the Court shall after consultation with the parties appoint another arbitrator.

After examining the arguments and documents submitted by both parties in an adversary proceeding, the draft arbitral award shall within 60 days of the arbitrator being seized, be forwarded for the prior scrutiny provided for in article 23.

Except in the case provided for in subsection 3 above, the preceding procedure shall attract no fees. Costs, if any, shall be borne by the party who made the application, if the said application is dismissed in its entirety. Otherwise, costs shall be shared between the parties in the proportions fixed for the costs of the arbitration in the arbitral award, in respect of which the application is made.

#### **ARTICLE 27 Res judicata**

Arbitral awards rendered in compliance with the provisions of the present rules shall have res judicata effect on the territory of each member state, in the same way as decisions given by national courts.

They may be subject to compulsory enforcement measures on the territory of any of the member Parties.

#### **ARTICLE 28 - Miscellaneous**

The original copy of any award made in accordance with the present rules shall be filed at the Secretariat of the Court

In all other cases not expressly provided for by the present rules, the Court and the arbitrator shall act in accordance with the spirit of these rules and shall make every effort to ensure that the award is enforceable at law.

### CHAPTER III RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

#### ARTICLE 29 Challenge of validity

**29.1** Any party who intends to challenge the recognition of the award and its binding and res judicata effects which apply by operation of the provisions of article 27 above shall apply to the Court by a motion on notice served on the other party.

**29.2** The challenge of the validity of the award shall only be admissible if the parties have not waived this possibility in their arbitration agreement.

It may only be based on one or several of the grounds enumerated hereafter in article 30 (6) for the challenge of an exequatur.

**29.3** The application shall be filed as soon as the award is rendered. It shall no longer be admissible if it is not filed within two (2) months of notification of the award as provided for in article 25 above.

**29.4** The Court shall hear and determine the matter in accordance with its rules of procedure.

**29.5** If the Court refuses the recognition and the res judicata effect of the award, it shall annul the award.

It shall re-hear the matter on the merits if the parties have so requested.

If the parties have not requested the Court to re-hear the matter on the merits, the proceeding shall, upon the application of the most diligent party, resume before the arbitral tribunal, where necessary, from the last act of the arbitral tribunal considered valid by the Court.

#### ARTICLE 30 - Exequatur

**30.1** The exequatur shall be requested for by application filed ex parte before the Court.

**30.2** The exequatur is granted by a ruling of the President of the Court or the judge designated for this purpose and shall render the arbitral award enforceable in all the States Parties.

This procedure shall be non-contentious.

**30.3** The exequatur shall not be granted if an ex parte application has already been filed to the Court, on the basis of the same award, pursuant to Article 29 above. In such case, the Court shall order a joinder of the two proceedings.

**30.4** Where the exequatur is refused for some other reason, the applicant may apply to the Court within fifteen (15) days of the refusal .

**30.5** Where the ruling of the President of the Court or the judge designated for that purpose has granted the exequatur, the applicant shall serve same on the other party.

The other party may, within fifteen (15) days of service, file an application to set aside, which shall be heard in the presence of all the parties at one of the ordinary sessions of the Court in accordance with its rules of procedure.

**30.6** An exequatur may not be refused and the application to set aside shall be admissible only in the following cases:

- 1 - if the arbitrator has ruled without an arbitration agreement or on the basis of an arbitration agreement which is null and void or has expired;
- 2 - if the arbitrator has not ruled within the scope and terms of his mission;
- 3 - where the principle of adversary proceeding has not been respected;
- 4 - if the award is contrary to international public policy.

#### **ARTICLE 31 Executory formula**

**31 .1** The Secretary General of the Court shall deliver to the party who applies, a certified true copy of the original of the award filed in conformity with the provisions of article 28, and which shall bear on it the attestation of exequatur.

The attestation shall state that exequatur has been granted to the arbitral award, either by a ruling of the President of the Court, which has been duly served and has become final, in the absence of an application to set aside filed within 15 days as provided herein above, or by a ruling of the Court annulling a decision whereby exequatur was refused.

On the basis of the certified true copy of the arbitral award bearing the attestation of the Secretary General of the Court, the national authority designated by the state for which the exequatur is destined, shall affix the executory formula as is customary in the said state.

#### **ARTICLE 32 - Application for review**

Application for a retrial brought against the arbitral awards and the decisions of the Court where the Court ruled on the merits of the dispute in accordance with article 29 (5)(1) above, shall be filed only in the cases and under the conditions provided in article 49 of the rules of procedure of the Court.

#### **ARTICLE 33 – Application to set aside filed by third parties**

Any application to set aside filed by a third party against the arbitral awards and the decisions of the Court where the court has ruled on the merits of the dispute in accordance with article 29.5(1) above, shall be filed, only in the cases and under the conditions provided for in article 47 of the rules of procedure.

#### **ARTICLE 34 - Final provisions**

These arbitration rules shall come into force thirty (30) days from the date of signature. They shall be published in the Official Gazette of OHADA. They shall also be published in the Official Gazette of the States Parties or by any other appropriate means.

Done on 11 march 1999

# **UNIFORM ACT ON ARBITRATION**



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The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA),

Considering the Treaty for the Harmonization of Business Law in Africa, in particular Article s 2, 5 to 12 thereof;

Considering the report by the OHADA Permanent Secretariat and the observations of the States Parties;

Considering the opinion of the Common Court of Justice and Arbitration dated 3 December 1998;

Having deliberated thereon, adopt by unanimous vote of the States Parties present and voting, the Uniform Act set out below:

## **CHAPTER I SCOPE OF APPLICATION**

### **ARTICLE 1**

This Uniform Act shall apply to any arbitration when the seat of the arbitral tribunal is in one of the States Parties.

### **ARTICLE 2**

Any natural or legal person may resort to arbitration with respect to any rights that may be freely disposed of.

States and other local governments as well as State-owned entities may also be parties to arbitration without being able to rely on their national laws to contest the arbitrability of the dispute, their capacity to be parties to arbitration or the validity of the arbitration agreement.

### **ARTICLE 3**

Every arbitration agreement shall be in writing, or in any other form evidencing its existence, in particular, by reference in a contract to a document containing an arbitration clause.

### **ARTICLE 4**

The arbitration agreement shall be independent of the main contract.

Its validity shall not be affected by the nullity of the contract, and it shall be interpreted in accordance with the common intention of the parties, without necessarily referring to national law.

In any case, the parties may, by mutual agreement, resort to an arbitration agreement, even when proceedings are already pending before another jurisdiction.

## CHAPTER II COMPOSITION OF ARBITRAL TRIBUNAL

### ARTICLE 5

Arbitrators shall be appointed, removed or replaced in accordance with the agreement of the parties.

Failing such arbitration agreement, or where the arbitration agreement is insufficient:

- a) in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators thus appointed shall choose the third arbitrator; if a party fails to appoint an arbitrator within a period of thirty (30) days from the receipt of a request to do so from the other party, or if the two arbitrators fail to agree upon the third arbitrator within a period of thirty (30) days from their appointment, the appointment shall be made, upon request of a party, by the competent judge in the State Party;
- b) in an arbitration with a sole arbitrator, if the parties fail to agree upon appointment of the arbitrator, the latter shall be appointed, upon request of a party, by the competent judge in the State Party.

### ARTICLE 6

Only a natural person may be an arbitrator.

The arbitrator must have full capacity to exercise his civil rights, shall remain independent and impartial in relation to the parties.

### ARTICLE 7

The person who accepts to be an arbitrator shall communicate his acceptance to the parties by any means evidenced in writing.

Where the arbitrator is aware of any ground for his recusal, he shall so inform the parties and may accept his mission only with the written consent of the parties.

In case of a dispute, and where the parties have not agreed on the procedure for recusal, the recusal may be brought before the competent judge in the State Party, whose decision shall not be subject to appeal.

Any ground for recusal shall be raised without delay by the party who intends to rely on such ground.

The recusal of an arbitrator shall be admissible only on grounds disclosed after his appointment.

### ARTICLE 8

The arbitral tribunal shall be composed of either a sole arbitrator or three arbitrators.

Where the parties appoint an even number of arbitrators, the arbitral tribunal shall be completed by an arbitrator chosen either in accordance with the agreement of the parties or, in the absence of such agreement, by the appointed arbitrators or, failing an agreement between the appointed arbitrators, by the competent judge in the State Party.

The same procedure shall apply in case of recusal, incapacity, death, resignation or removal of an arbitrator.

### CHAPTER III ARBITRAL PROCEEDINGS

#### ARTICLE 9

The parties shall be accorded equal treatment and each party shall be given full opportunity of presenting his case.

#### ARTICLE 10

Where the parties have agreed to submit to arbitration by an arbitration institution, they shall be deemed to have submitted to the rules of the said institution unless they have expressly agreed to exclude some of the rules.

Arbitral proceedings shall be deemed to commence when one of the parties refers the dispute to the arbitrator or arbitrators in accordance with the arbitration agreement or in the absence of such appointment, as soon as one of the parties commences the procedure for the composition of the arbitral tribunal.

#### ARTICLE 11

The arbitral tribunal shall rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

An objection that the arbitral tribunal lacks jurisdiction shall be raised before the submission of the statement of defence except the facts on which it is based were revealed subsequently.

The arbitral tribunal may rule on its own jurisdiction in an award on the merits or in a partial award subject to recourse for annulment.

#### ARTICLE 12

If the arbitration agreement is silent on the time-limit, the mission of the arbitrators shall not exceed six months from the date on which the last of the arbitrators accepted his mission.

The legal or agreed time-limit may be extended, either by agreement of the parties, or by the competent judge in the State Party at the request of one of the parties, or by the arbitral tribunal itself.

### ARTICLE 13

Where a dispute, pending before an arbitral tribunal in accordance with an arbitration agreement, is submitted to a national court, the latter shall, upon request of one of the parties, decline its jurisdiction.

Where the dispute has not yet been referred to an arbitral tribunal, the national court shall nonetheless decline jurisdiction unless the arbitration agreement is manifestly null and void.

In any event, the national court shall not of its own motion decline jurisdiction.

However, the existence of an arbitration agreement shall not prevent a court, upon request of one party, in the event of recognised urgency or where the measures shall be executed in a State which is not a party to OHADA, from ordering interim or conservatory measures, as long as this does not involve the hearing on the merits of the substantive dispute, over which the arbitral tribunal has exclusive jurisdiction.

### ARTICLE 14

The parties may, directly or by reference to a set of arbitration rules, determine the rules of procedure; they may also subject this procedure to a procedural law of their choice.

Failing such agreement, the arbitral tribunal may conduct the arbitration in such a manner as it considers appropriate.

The burden of proof shall lie on the parties to establish the facts relied on in support of their claim or defence.

The arbitrators may request the parties to furnish an explanation of the facts in issue and to adduce by any legally admissible means, any evidence which they consider necessary in support of their claim or defence.

They shall not in their decisions rely on grounds, explanations or documents referred to or tendered by the parties unless each party has been given an opportunity of presenting its observations thereon.

They shall not base their decision on grounds raised of their own motion without having invited the parties to present their observations in relation thereto.

Where the assistance of the court is necessary to obtain evidence, the arbitral tribunal may of its own motion or upon application, request the assistance of the competent judge in the State Party.

A party who, knowingly, fails to raise, without delay, an irregularity and proceeds with the arbitration, shall be deemed to have waived the right to raise it.

Unless agreed otherwise, the arbitrators shall equally have jurisdiction to rule upon objections relating to handwriting verification or a forgery.

#### **ARTICLE 15**

The arbitrators shall apply the law designated by the parties as applicable to the substance of the dispute or failing such designation, the arbitrators shall, where applicable apply, the law considered most appropriate taking into account international trade customs and usages applicable to the transaction.

They shall also decide as amicable compounders where the parties have given them such powers.

#### **ARTICLE 16**

The arbitral proceedings shall terminate upon the expiration of the time limit for the arbitration, except in case of extension by agreement of the parties or by order of the arbitral tribunal.

The arbitral proceedings shall also terminate where the claim is admitted, in case of withdrawal by the claimant or an amicable settlement or when a final award is made.

#### **ARTICLE 17**

The arbitral tribunal shall fix the date to which the matter may be adjourned for deliberation. After this date, no claims or further submissions may be made.

No observations may be made or documents produced unless expressly requested in writing by the arbitral tribunal.

#### **ARTICLE 18**

The deliberations of the arbitral tribunal shall be in secret.

### **CHAPTER IV THE ARBITRAL AWARD**

#### **ARTICLE 19**

The arbitral award shall be made in accordance with the procedure and form agreed upon by the parties.

In the absence of such agreement, the award shall be made by a majority of the arbitrators when the arbitral tribunal is composed of three arbitrators.

#### **ARTICLE 20**

The arbitral award shall contain the following particulars:

- the full names of the arbitrator (s) who made the award;
- the date of the award,

- the seat of the arbitral tribunal;
- the full names or company name of the parties as well as, their residence or registered office.
- where applicable, the full names of counsel or any person who represented or assisted the parties;
- a summary of the respective claims and defences of the parties, their submissions as well as the stages of the proceedings.

The arbitral award shall state the reasons upon which it is based.

#### **ARTICLE 21**

The arbitral award shall be signed by the arbitrator or arbitrators.

However, where a minority of the arbitrators refuses to sign the arbitral award, mention shall be made of such refusal and the arbitral award shall have the same effect as if it had been signed by all the arbitrators.

#### **ARTICLE 22**

The award renders the arbitrator *functus officio* in relation to the dispute.

However, the arbitrator has the power to interpret the award or to correct material errors and omissions in the award.

Where the arbitrator omits to rule on any aspect of the claim, he may do so in an additional award.

In either of the above mentioned cases, the application shall be filed within 30 days of notification of the award. The tribunal shall rule within 45 days.

Where the arbitral tribunal can no longer be convened, the action shall be brought before the competent judge of the State Party.

#### **ARTICLE 23**

The award has, from the moment it is made, *res judicata* effect with respect to the dispute which it decides.

#### **ARTICLE 24**

The arbitrators may grant provisional enforcement of the arbitral award if such provisional enforcement has been requested, or they may reject such request, by a reasoned decision.

## CHAPTER V APPEAL AGAINST THE ARBITRAL AWARD

### ARTICLE 25

An arbitral award shall not be subject to opposition, or appeal in a Court of Appeal or to the Highest Appellate Court.

It may be subject of an application for annulment filed before the competent judge in the State Party.

The decision of the competent judge in the State Party shall only be appealable before the Common Court of Justice and Arbitration.

The arbitral award may be the subject of an intervention filed before the arbitral tribunal by any natural or corporate person who was not given notice of the proceedings and whose rights are imperilled as a result of the award.

It may also be subject to an application for review before the arbitral tribunal upon the discovery of facts which may decisively influence the award but which at the time of the award were unknown to the arbitral tribunal and to the party applying for the revision.

### ARTICLE 26

- An application for annulment shall be admissible only in the following cases:
- if the arbitral tribunal has ruled without an arbitration agreement or on the basis of a void or expired agreement;
- if the arbitral tribunal was improperly constituted or the sole arbitrator was irregularly appointed;
- if the arbitral tribunal failed to comply with its assigned mission ;
- if the principle of adversary proceeding has not been respected;
- if the arbitral tribunal has violated a rule of international public policy of the States signatories of the Treaty;
- if the award does not state the reasons on which it is based.

### ARTICLE 27

The application for annulment shall be admissible immediately the award is rendered. It shall no longer be admissible if it is not brought within one month of the date of notification of the award bearing an exequatur.

## ARTICLE 28

Except where provisional enforcement has been ordered by the arbitral tribunal, an application for annulment of the arbitral award shall stay the execution of the award, pending the determination of the application by the competent judge in the State Party.

The competent judge shall also have jurisdiction to rule over disputes relating to provisional enforcement.

## ARTICLE 29

Where the arbitral award has been declared null and void, it shall be incumbent on the most diligent party, if he so desires, to commence fresh arbitration proceedings in conformity with the provisions of this Uniform Act.

## CHAPTER VI RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

### ARTICLE 30

The arbitral award may be forcefully executed only by virtue of an order of exequatur granted by the competent judge of the State Party.

### ARTICLE 31

Recognition and exequatur of the arbitral award presuppose that its existence is proven by the party relying thereupon.

The existence of the arbitral award is established by the production of the original together with the arbitration agreement, or by copies of the said documents accompanied by proof of their authenticity.

If the said documents are not in French, the party shall produce a translation certified by a translator registered on the list of experts established by the competent courts.

The recognition and exequatur shall be refused only where the arbitral award is manifestly contrary to a rule of international public policy of the States Parties.

### ARTICLE 32

The decision to refuse the exequatur shall only be subject to appeal before the Common Court of Justice and Arbitration sitting as the Highest Appellate Court.

The decision to grant the exequatur shall not be subject to any appeal.

However, the application for annulment shall ipso facto be deemed to be an appeal against the decision granting the exequatur, within the limits of the terms of the action brought before the competent judge of the State Party.

**ARTICLE 33**

The dismissal of the application for annulment shall automatically validate the arbitral award as well as the decision granting the exequatur.

**ARTICLE 34**

Arbitral awards rendered on the basis of rules other than those of the present Uniform Act shall be recognized in the States Parties in accordance with any international conventions that may be applicable and, failing any such conventions, in accordance with the provisions of this Uniform Act.

**CHAPTER VII  
FINAL PROVISIONS**

**ARTICLE 35**

This Uniform Act shall be the law governing arbitration in the States Parties.

This Uniform Act shall apply only to arbitral proceedings, instituted after its entry into force.

**ARTICLE 36**

This Uniform Act shall be published in the OHADA Official Gazette and the Official Gazette of the States Parties.

It shall enter into force in accordance with the provisions of Article 9 of the Treaty relating to the Harmonization of Business Law in Africa.

Done at Ouagadougou, on 11 march 1999



**UNIFORM ACT OF 24 MARCH 2000 ON THE  
HARMONIZATION OF THE ACCOUNTS OF  
ENTERPRISES**



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**PART ONE**  
**THE PRIVATE ACCOUNTS OF ENTERPRISES**  
**(NATURAL AND CORPORATE PERSONS)**

**CHAPTER I**  
**GENERAL PROVISIONS**

**ARTICLE 1:** Any enterprise as defined by article . 2 below shall have accounts for its own information and that of the public.

For that purpose:

- it shall classify, keyboard and register in its accounts all stock transactions with third parties or reported or carried out in the course of its internal management;
- it shall after the proper recording of those transactions, furnish the statements of accounts which by law or by its article s of association it is obliged to furnish, as well as all necessary information needed by various users.

**ARTICLE 2:** The following shall be bound to keep accounts termed “general accounts” – enterprises subject to the provisions of Commercial Law, public, para-public, mixed enterprises, cooperatives, and more generally, structures which produce goods and services for commercial or non-commercial purposes insofar as the main or secondary economic activities carried out whether lucrative or not are based on acts performed repeatedly. Enterprises subject to the rules of public accounting shall be exempted.

**ARTICLE 3:** While proper care shall be taken in drawing them up, accounts shall comply with the requirements of regularity, genuineness and transparency which are the necessary ingredients in the upkeep, control, presentation and the communication of the information that has been recorded.

**ARTICLE 4:** To guarantee reliability, clarity and the possibility to compare information, the accounts of every enterprise shall take into consideration:

- the respect of terminology and guiding principles common to all the enterprises concerned in the States Parties signatories of the Treaty on the Harmonisation of Business law in Africa;
- The implementation of conventions, methods and procedures standardized according to the professional sectors;
- An organization which shall at all times respond to the necessity to collect, keep, control, present and communicate accounting information relating to the operations of the enterprises referred to in article 1.

**ARTICLE 5:** The compliance with the objectives assigned to accounting for the collection, keeping, control, presentation and communication by enterprises of information established

under the same conditions of reliability, understanding and comparability, shall be assured by the correct application of an accounting system common to all the States Parties named OHADA Accounting System and attached as an annexure to the present Uniform Act on the Organization of Accounting of Enterprises. However, banks, financial institutions and insurance companies shall apply specific accounting plans.

**ARTICLE 6:** The implementation of the OHADA accounting System shall ensure that:

- caution shall be the rule in all cases, from a reasonable appreciation of the events and operations to be registered for that year;
- the enterprise shall operate in all good faith conforming to the rules and following the procedure which are applicable;
- those responsible for the accounts shall put in place and implement internal control procedures which are indispensable for the knowledge which they shall normally have of the actual situation and the importance of the events, operations and situations relating to the activities of the enterprise;
- all information be clearly presented and communicated with no intention of concealing the exact situation of the enterprise.

**ARTICLE 7:** The summary financial statement shall set-out all accounting information at least once a year within a period of twelve months called a fiscal year; these shall be known as annual financial statements.

The fiscal year shall coincide with the calendar year.

The duration of the fiscal year shall exceptionally be less than twelve months for the first fiscal year which starts within the first semester of the calendar year. The said duration may exceed twelve months for the first fiscal year which started within the second semester of the year. Where activities are stopped for any reason whatsoever the duration of liquidation proceedings shall be for only one fiscal year subject to the establishment of provisional annual accounts.

**ARTICLE 8:** Annual financial statements shall include the Balance sheet, Income account, Table of income and expenditure as well as the attached statement.

They shall form an indivisible whole and shall describe in a regular and genuine manner the events, operations and the state of the fiscal year in order to give a true picture of the assets, financial situation and the income of the enterprise.

These shall be made and presented in accordance with the provisions of articles 25 to 34 below in a manner to allow their being compared at every stage fiscal year by fiscal year, and their being compared with the annual financial statements of other enterprises prepared under the same conditions of regularity, accuracy and comparability.

**ARTICLE 9:** The regularity and accuracy of information contained in the annual financial statements of the enterprise shall be the result of an adequate, accurate, clear, precise and complete presentation of the events, operations and situations relating to the fiscal year.

The possibility of comparing annual financial statements in the course of successive fiscal years requires a permanent terminology and permanent methods to be used in recording the events, operations and the situation set-out in these statements.

**ARTICLE 10:** any enterprise that correctly applies the OHADA Accounting System shall be deemed to show in its financial statements an accurate picture of its situation and operations in accordance with the provisions of article 8 above.

Where the application of an accounting rule appears insufficient or ill-adapted to portray this picture, supplementary information or an explanation shall be made in the attached financial statement.

**ARTICLE 11:** Annual financial statements shall as a matter of obligation be given in full or in part depending on the size of the enterprise which shall be determined from the turnover of the fiscal year.

Every enterprise shall, with the exception of those exempted for reasons relating to their size, be subjected to the “normal system” of presenting financial statements and keeping of accounts.

However, where the turnover does not exceed one hundred million (100.000.000) FCFA the enterprise may use the “simplified system”.

**ARTICLE 12:** In the normal system it shall be an obligatory to establish financial statements called ‘the statistical supplementary statement’ which shall give additional information.

**ARTICLE 13:** Very small enterprises whose annual income does not exceed the above minimum fixed in paragraph 2 of this article shall, except where they apply either of the two systems provided for in article 11 above, apply the “minimum cash system” as a dispensation from the general provisions of this Uniform Act.

The following shall be the thresholds:

- thirty million (30.000.000) FCFA for trading companies,
- twenty million (20.000.000) FCFA for handicraft and related enterprises,
- ten million (10.000.000) FCFA for enterprises providing services.

## **CHAPTER TWO ORGANIZATION OF ACCOUNTS**

**ARTICLE 14:** The accounting system put in place in the enterprise shall fulfill the requirements of regularity and accuracy in order to ensure the authenticity of what is written so that the accounts may serve both as an instrument to gauge the rights and obligations of members of the enterprise and proof of information given to third parties and management.

**ARTICLE 15:** The accounting system shall ensure:

- an exhaustive and prompt registration on a day to day basis of all basic data;
- the treatment at the appropriate time all registered data;
- the putting at the disposal of the users, required documents within the time-limits fixed by law for such publication.

**ARTICLE 16:** In order to ensure the availability of information at all times, every enterprise shall make available documents describing the accounting procedures and organization.

Such documents shall be kept for as long as they shall be required for the presentation of successive financial statements to which they relate.

**ARTICLE 17:** The accounting system shall at least satisfy the following conditions of regularity and security:

- 1- the keeping of accounts in the official language and in the legal tender of the country;
- 2- the use of the technique of double entry whereby accounts shall be in at least two entries one showing debit and the other credit. Where an operation is registered, the sum total of sum registered in the debit section of the accounts shall be equal to the sum total of sums registered in the credit section of other accounts;
- 3- the justification of the entries by documents dated, kept and filed in a defined order in compliance with the accounting procedures and organization likely to serve as means of proof and bearing the references of their registration in the account books;
- 4- the respect of the chronological registration of operations.

Any transaction affecting the assets of the enterprise shall be entered in the accounts books in a chronological order on the dates on which it qualified for registration as an accounting detail. This date shall be the date of issue by the enterprise of the documents to justify the transaction, or the date the document coming from outside was received. Transactions of the same nature carried out at the same place and in the course of the same day may be summarized in a single supporting document.

A periodic summary of the transactions shall be drawn up for a predetermined period not exceeding one month.

A procedure shall be laid down for the purpose of ensuring that recording of such transaction is in a final form;

- 5- the identification of each of the entries precisely setting out its origin and its legal liability, the content of the operation to which it relates as well as the references of the supporting document;
- 6- control by drawing up an inventory of the existence and value of the assets, claims and debts of the enterprise. This operation shall consist in setting out all items of the assets of the

enterprise stating their nature, quantity, and the value of each of them on the date the inventory was drawn up.

The data for the inventory shall be organized and kept in a manner likely to clarify the content of each of the items listed in the assets;

7- the use of an approved accounting plan listed in the OHADA Accounting System for the purpose of keeping the accounts of the enterprise;

8- the compulsory keeping of books or other authorized back-ups as well as the putting into place agreed treatment processes which shall make it possible for the drawing up of annual financial statements referred to in article 8 above.

**ARTICLE 18-** The accounts of the OHADA Accounting System shall be in groups of homogeneous categories called classes.

For general accounts, the classes shall comprise:

- Classes of situation accounts;
- Classes of management accounts.

Each class shall be subdivided into accounts identified by numbers of two or more figures within the decimal codification following their degree of dependence in relation to the accounts of a higher level.

The accounting plan of each enterprise shall be sufficiently detailed so as to allow the registration of operations.

The enterprise may open all the necessary subdivisions where the accounts provided for by the OHADA Accounting System are not enough to enable it distinctly register all its operations.

Conversely, where the accounts provided for by the OHADA Accounting System are too detailed in relation to the needs of the enterprise, the said enterprise put them together in global accounts of the same level, more contracted, following the possibilities offered by this accounting system on condition that the grouping carried out at least allows the establishment of annual financial statements in the prescribed conditions.

The operations shall be registered under accounts headings corresponding to their nature.

**ARTICLE 19:** Accounting books and other back-ups which shall as an obligation be kept are:

- The Journal, in which all transactions registered for accounting for the fiscal year are entered under the conditions outlined in paragraph 4 of article 17 above;
- The Ledger made up of all the accounts of the enterprise in which are stated or entered at the same time as in the Journal account by account the different transactions of the fiscal year;

- General balance of accounts, a summary financial statement of accounts showing the end close of the fiscal year for each account, the debit or credit balance at the opening of the fiscal year, accumulation since the opening of the fiscal year loss-making transactions and the accumulation of profit-making transactions, the debit account and credit account on the date under consideration;
- The Inventory book in containing the Balance sheet, performance account of each fiscal year as well as a summary of inventory operation.

The opening of the Journal and the Ledger may be facilitated by the opening of journals and auxiliary books, or back-ups taking into account the size and needs of the enterprise. In that case, the totality of the back-ups shall periodically and at least once a month be centralized in the Daybook and in the Ledger respectively.

**ARTICLE 20:** The accounting books and other back-ups shall be kept without blank space or alteration.

Any correction of error shall be made exclusively by posting the opposite information of the erroneous item; a correct entry shall then follow.

**ARTICLE 21:** The enterprises/firms referred to in article 13 above which fall under the minimum cash system keep simple cash accounting under the conditions fixed by the OHADA Accounting System. Financial statements and the rules governing their establishment shall be the subject of a separate edition.

**ARTICLE 22:** Where the accounting system relies on computer processing it shall have recourse to procedures that fulfill the obligations of regularity and security required, such that;

- 1- the data relating to any operation which give rise to registration into the accounts shall comprise at the time they are processed in a computer an indication of their origin, the content and legal liability of the said operation. The data may be reproduced on paper or in directly intelligible form;
- 2- the irreversibility of the processing shall forbid any suppression, addition or subsequent modification of the registration; all processed data shall form the subject of validation in order to ensure the final nature of the entry into the corresponding account; this validation procedure shall be implemented at the end of each period which shall not exceed one month;
- 3- the chronology of operations shall be such that it shall be impossible to insert or add any data; to freeze this chronology, the system processing data in the computer shall provide for a periodic procedure (named "closure of data processing") at every quarter and implementation latest at the end of the quarter following the end of the period under consideration;
- 4- the registrations of various accounts for the period just ended are classified in a chronological order from the date of book value corresponding to the relevant period; however, where the date of book value corresponds to a period which is already closed, the operation concerned shall be registered on the first day of period not yet closed; in such case the date of the book value of the operation shall be clearly stated;

- 5- the durability of the registered data offers conditions of guaranty and conservation in conformity with the regulation in force. More particularly, any indelible transcription of data resulting in an irreversible modification of back-ups shall be deemed durable;
- 6- the organization of accounts guarantees every possibility of an eventual verification by allowing the reconstitution or the restitution of the revision procedure and giving the right to access information relating to the analysis, programming and procedure used for processing, with a view particularly to proceeding to the tests necessary for the execution of such control;
- 7- the periodic financial statements produced by the processing system shall be numbered and dated. Each registration shall be backed by a supporting document set up on paper or on a back-up which ensures reliability, preservation and the clear restitution of its content during the required time-limit.

All data entered into the processing system by transmission from another processing system shall be backed by a reliable supporting document.

**ARTICLE 23:** The annual financial statements shall be closed latest within four months following the closing date of the fiscal year. Their closing date shall be mentioned in all documents forwarding them elsewhere.

**ARTICLE 24:** The accounting books or the documents kept for the purpose of accounting as well as the supporting documents shall be preserved for ten years.

### CHAPTER THREE ANNUAL FINANCIAL STATEMENTS

**ARTICLE 25:** With the exception of the attached financial statement, annual financial statements referred to in article 8 above shall be presented in accordance with the models of which the data contained in them shall be classified under successive heads which are themselves divided into items.

These models shall be made according to the accounting system provided for in article 11 above and shall be presented in accordance with the layout appearing in the OHADA Accounting System.

**ARTICLE 26:** The normal system shall include the establishment of a Balance sheet, Income account for the fiscal year, Financial table (list) of resources and employment for the fiscal year, as well as the attached statement whose main components are set out in the OHADA Accounting System. It shall also comprise the establishment of a supplementary statistical statement.

**ARTICLE 27:** The simplified system shall comprise the establishment of the Balance sheet, Income account for the fiscal year and the Statement attached, simplified in accordance with the conditions laid down by the OHADA Accounting System.

**ARTICLE 28:** The minimum cash system referred to in article 13 above shall be based on the establishment of the statement of receipts and expenses showing the income (net receipt or net

loss), drawn up from the cash accounts which shall be kept by enterprises falling under this system in accordance with article 21 above.

The purpose of the Minimum cash system shall be to enable the enterprise to take into account in calculating its income and in the establishment of the state of the assets the following elements where they are significant:

- variation of stocks;
- variation of claims and commercial debts;
- variation of equipment and loans;
- variation of the initial capital.

**ARTICLE 29:** The Balance sheet shall describe separately the assets and liabilities that constitute the estate of the enterprise. It shall bring out clearly the shareholder's equity.

The income account shall recapitulate the returns on assets and the charges which bring by differentiation the net profit or net loss of the fiscal year.

The Financial table of income and expenditure shall retrace the flow of income and expenditure in the fiscal year.

The attached financial statement shall complete and contain details given by the other annual financial statements.

**ARTICLE 30:** The Balance sheet of the fiscal year shall bring out in a distinct manner on assets: fixed assets, working assets attached to normal activities of the enterprise, assets not in use for any normal activity, liquid assets; on liabilities: shareholder's equity and assimilated resources, financial debts, working debts attached to normal activities of the enterprise, debts not attached to any normal activity and liquid debts.

**ARTICLE 31:** The income account of the fiscal year shall bring out the produce and the charges, distinguished depending on whether they concern work operations attached to the normal activities of the enterprise, financial operations, and operations outside the normal activities.

The classification of the returns on assets and the charges shall make it possible to establish the management accounts balance under the conditions laid down in the OHADA Accounting System.

**ARTICLE 32:** The Financial table of income and expenditure of the fiscal year shall bring out for that year the flow of investment and financing, the other expenditures, financial resources and the cash variation.

**ARTICLE 33:** The annual financial statements defined above shall be accompanied by an attached Statement which shall be simplified where the enterprise falls under the simplified system.

The attached statement shall comprise all the significant elements not shown in the other financial statements but are likely to influence the opinion the recipient s may have of the assets, financial situation and the income of the enterprise.

This shall be true especially for the amounts of the financial commitments made and received of which the enterprise shall follow-up within the framework of its accounting system.

Any modification in the presentation of annual financial statements or in the method of evaluation shall be pointed out in the attached statement.

**ARTICLE 34:** The annual financial statements of the various enterprises shall comply with the following requirements:

- the balance at the opening of a fiscal year shall correspond to the balance at the close of the previous year;
- any compensation which has no juridical foundation between the items on assets and the items on liabilities in the balance sheet and between the items on charges and the items on returns in the Income account shall be prohibited;
- the presentation of financial statements each fiscal year shall be identical;
- each item of the financial statements shall bear the same code number as a corresponding item bore in the previous fiscal year.

Where one of the numbered items of a financial statement shall not be comparable to that of the previous year, the latter shall be adapted. The absence of comparability or adaptability of numbers shall be pointed out in the attached statement.

## **CHAPTER FOUR**

### **RULES OF EVALUATION AND DETERMINATION OF THE INCOME**



**UNIFORM ACT ON THE CONTRACT FOR THE  
CARRIAGE OF GOODS BY ROAD**



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The Council of Ministers of the Organisation for the Harmonization of Business Law in Africa (OHADA),

- Considering the Treaty for the Harmonization of Business Law in Africa, in particular Article s 2, and 5-10 thereof;
- Considering the report by the Permanent Secretariat and the observations of the State Parties;
- Considering the opinion of the Common Court of Justice and Arbitration dated 17 December 2003;

Having deliberated thereon, adopt by unanimous vote of the State Parties present and voting, the Uniform Act set out below.

## **CHAPTER I SCOPE OF APPLICATION AND DEFINITIONS**

### **Scope of application**

#### **ARTICLE 1**

- 1- This Uniform Act shall apply to every contract for the carriage of goods by road, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are either situated in the territory of an OHADA State Party or on the territory of two different States, of which at least one is an OHADA Member. The Uniform Act shall apply irrespective of the place of residence and nationality of the parties to the contract of carriage.
- 2- The Uniform Act shall not apply to the carriage of dangerous goods, funeral consignments, furniture removal, or to carriage performed under the terms of any international postal conventions

### **Definitions**

#### **ARTICLE 2**

In this Uniform Act, the following words shall have the following meanings:

- a) “notice”: an oral or written notice, unless a provision in this Uniform Act requires a written notice or unless provided otherwise by the persons concerned ;
- b) “contract for the carriage of goods”: any contract under which a natural person or legal person called the carrier, undertakes, principally and in return for remuneration to convey by road

from one place to another , by means of a vehicle, goods entrusted to him by another person, known as the sender.

- c) “written document”: a series of letters, characters, figures or any other signs or symbols with a meaning, which are either put on paper or on a medium using information technologies.

Unless otherwise agreed by the persons concerned, the requirement for a written document is met whatever the medium and the method of transmission provided the integrity, stability and durability of the written document are guaranteed.

- d) the “consignment note” is the written document which confirms the contract for the carriage of goods.

- e) “goods”: any movable property;

- f) “dangerous goods ”: goods which, generally, given their composition or condition, present a risk to the environment, to the safety or integrity of persons or goods

- g) “furniture removal”: the carriage of used movable property from and to a residential premise or premises for professional, commercial, industrial, handicraft or administrative use, where the packing is done by the carrier and the movement does not constitute the principal service;

- h) “funeral consignment”: the carriage of the body of a deceased person;

- i) “successive carriage” : carriage in which several road carriers perform various stages of a single contract of carriage by road ;

- j) “combined transport” : carriage in which, for the purposes of performing one single contract of carriage , a road vehicle containing goods is carried over part of the journey, in or on a non road vehicle without transshipment;

- k) “carrier”: any natural or legal who undertakes to carry goods from the place of departure to the place designated for delivery, by means of a road vehicle;

- l) “vehicle”: any motorised road vehicle or any trailer or semi-trailer with a rear axle, with its front part resting on the towing vehicle, and which is designed to be hitched up to such a vehicle.

**CHAPTER II**  
**CONTRACT OF CARRIAGE AND TRANSPORT DOCUMENTS**  
**FORMATION OF THE CONTRACT OF CARRIAGE**

**ARTICLE 3**

A contract for the carriage of goods exists as soon as the sender and the carrier reach an agreement concerning the carriage of goods in consideration of an agreed price.

**Consignment Note**

**ARTICLE 4**

1- The consignment note shall contain:

- a) the date of the consignment note and the place at which it was drawn up;
- b) the name and address of the carrier;
- c) the names and addresses of the sender and of the consignee;
- d) the place and the date of taking over of the goods and the place designated for delivery;
- e) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;
- f) the number of packages and their special marks and numbers;
- g) the gross weight of the goods or their quantity otherwise expressed;
- h) the requisite instructions for Customs and other formalities;
- i) charges relating to the carriage (carriage charges, supplementary charges, Customs duties and other charges incurred from the making of the contract to the time of delivery);

2- Where applicable, the consignment may contain:

- a) a statement that trans-shipment is not allowed;
- b) the charges which the sender undertakes to pay;
- c) the amount of “cash on delivery” charges;
- d) a declaration by the sender, against payment of a surcharge agreed upon, of the value of the goods or an amount representing special interest upon delivery;
- e) the sender’s instructions to the carrier regarding insurance of the goods;

- f) the agreed time limit within which the carriage is to be carried out; and
  - g) the grace period for the payment of vehicle immobilisation charges;
  - h) a list of the documents handed to the carrier.
- 3- The contracting parties may enter on the consignment note any other particulars which they deem useful.
- 4- The absence or irregularity of the consignment note or of particulars referred to in paragraphs 1 or 2 in this article , as well as the loss of the consignment note, shall not affect either the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Uniform Act.

### **The probative value of the consignment note**

#### **ARTICLE 5**

- 1- In the absence of proof to the contrary, the consignment note shall be prima facie evidence of the conditions of the contract and the taking over of the goods by the carrier.
- 2- The consignment note shall be made out in one original copy and at least two copies, and the number of copies shall be mentioned. The original copy shall be handed to the sender, one copy shall be retained by the carrier, and another copy shall accompany the goods to their destination.

### **Customs Documents**

#### **ARTICLE 6**

- 1- In inter-States carriage, for the purposes of Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all useful information.
- 2- The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of the documents referred to in the above paragraph. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act on the part of the carrier.
- 3- The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent; provided that, the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.

**CHAPTER III**  
**PERFORMANCE OF THE CONTRACT OF CARRIAGE –**  
**PACKING OF THE GOODS**

**ARTICLE 7**

- 1- Unless provided otherwise in the contract or by trade usages, the sender shall pack the goods in an appropriate manner. He shall be liable to the carrier or to any other person whose services the carrier made use of for the performance of the contract of carriage, for damage to persons, equipment or other goods, as well as for any expenses incurred by reason of the defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.
- 2- If, at the time the goods are taken over, a defective packing which is apparent or known to the carrier presents an obvious risk to the safety or integrity of persons or goods, the carrier shall notify the person in charge of the packing, and invite him to remedy the defect. The carrier shall not be required to carry the goods if, following such notice, the defective packing is not remedied within a reasonable period of time, having regards to the circumstances of the case.
- 3- In the event of breakage of the packing during carriage, the carrier shall take the measure, which appear to him to be most appropriate in the interest of the person entitled to make a claim for any loss or damage caused thereby of the goods and shall inform him thereof. If the broken package or the goods it contains present a risk to the safety or integrity of persons or goods, the carrier may through appropriate means, immediately unload the goods on the account of the person entitled to make a claim for any loss or damage caused thereby and shall notify him thereof. After such unloading, the carriage shall then be deemed to be at an end. In such a case, the carrier shall hold the goods on behalf of the claimant. He may, however, entrust them to a third party, and shall then be liable only for the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.

**Particulars and Liability of the Sender**

**ARTICLE 8**

- 1- The sender shall furnish the carrier with the information and instructions referred to in Article 4, paragraph i (c) to (h) above, and, where applicable, those provided for in paragraph 2 of the same Article .
- 2- The sender shall be liable for any damage incurred by the carrier or by any other person whose services he makes use of for the performance of the contract of carriage, if the damage results either from inherent vice of the goods or from the omission, insufficiency or inaccuracy of the information furnished or instructions relating to the goods carried.
- 3- The sender, who hands goods of a dangerous nature to the carrier, and fails to inform him of the exact nature of the goods, shall be liable for any damage resulting from their carriage. In particular, the sender shall pay the storage costs and the expenses incurred by these goods,

and shall bear the risks thereof. The carrier may, through appropriate means and without compensation, unload, destroy or render harmless goods of a dangerous nature which he would not have accepted to take over had he known been aware of their nature or character.

- 4- The sender, who hands over documents, cash or goods of substantial value, without informing the carrier beforehand of the nature or value, shall be liable for any damage resulting from the carriage. The carrier shall not be under any duty to carry documents, cash or goods of substantial value. If he does carry them, he shall be liable for the loss thereof only if the nature or value of the goods was declared to him. A false declaration as to the nature or value of the goods shall relieve the carrier from any liability.

### **Period of Carriage**

#### **ARTICLE 9**

The carriage of goods covers the period from the taking over of the goods by the carrier with a view to carrying them, to the delivery of said goods.

### **Taking over of the Goods**

#### **ARTICLE 10**

- 1- On taking over the goods, the carrier shall check:
  - a) the accuracy of the particulars in the consignment note as to the number of packages and their marks and quantities; and
  - b) the apparent condition of the goods and their packaging.
- 2- Where the carrier has no reasonable means of checking the accuracy of the particulars referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.
- 3- The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking from the sender. The result of the checks shall be entered in the consignment note.
- 4- If the carrier fails to enter his reservations in the consignment note, together with the reasons on which they are based, it shall be presumed that the goods and their packaging were in apparent good condition when the carrier took them over and that the number of packages, their marks and quantities corresponded to the statements in the consignment note.

## **Right to dispose of the goods in transit**

### **ARTICLE 11**

- 1- The sender has the right to dispose of the goods in transit, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.
- 2- The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.
- 3- The exercise of the right of disposal shall be subject to the following conditions:
  - a) that the sender or, in the case referred to in paragraph 2 of this article , the consignee who wishes to exercise this right produces the original copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;
  - b) that the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not either interfere with the normal working of the carrier's undertaking or prejudice the senders or consignees of other consignments;
  - c) that the instructions do not result in a division of the consignment.
- 4- When, by reason of the provisions of paragraph 3 b) of this article , the carrier cannot carry out the instructions which he receives, he shall immediately notify the person who gave him such instructions.
- 5- A carrier who has not carried out the instructions given under the conditions provided for in this article or who has carried them out without requiring the original copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

## **Inability to carry and deliver the goods**

### **ARTICLE 12**

- 1- The carrier shall immediately notify and ask for instructions from:
  - a) the claimant if, before the goods reach the place designated for delivery, it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note;
  - b) the sender if, after the goods reach the place designated for delivery, for any reason and without any fault from the carrier, the carrier is unable to deliver the goods.

- 2- In the situation provided in paragraph 1 a) above, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time from the claimant, he shall take such steps as seem to him to be in the best interests of the said person.
- 3- If the delivery could not take place because the consignee neglected or refused to take delivery of the goods, the consignee may nevertheless require delivery so long as the carrier has not received instructions to the contrary.
- 4- The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act of the carrier.
- 5- With effect from the notification provided for in paragraph 1 above, the carrier may unload the goods on account of the claimant and thereupon the carriage shall be deemed to be at an end. The carrier shall thereafter hold the goods on behalf of the claimant, and shall be entitled to reasonable compensation for keeping or storing the goods. The carrier may, however, entrust the goods to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.
- 6- The carrier may sell the goods, without awaiting instructions, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may proceed to the sale of the goods in the other cases if he did not receive any instructions within fifteen days of the notice. The procedure in the case of sale shall be determined by the law or custom of the place where the goods are found. The proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the claimant. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.

### **Delivery of the goods**

#### **ARTICLE 13**

- 1- The carrier is required to deliver the goods to the consignee at the place designated for delivery, and to hand him a copy of the consignment note accompanying the goods, against a receipt. Delivery must be done at the agreed time or, failing an agreed time-limit, within the time-limit it would be reasonable to require a diligent carrier to deliver, having regard to the circumstances of the case.
- 2- After arrival of the goods at the place designated for delivery, the carrier is required to notify the consignee of the arrival of the goods and of the time-limit for collecting them, unless the goods are delivered at the residence or place of business of the consignee.
- 3- Before taking delivery of the goods, the consignee shall pay the charges shown to be due on the consignment note, but in the event of dispute on this matter the carrier shall not be required to deliver the goods unless security has been furnished by the consignee.

- 4- Without prejudice to the rights and obligations of the sender, the consignee through his express or tacit acceptance of the goods or the contract of carriage, acquires the rights arising from the contract of carriage and may avail himself of them in his own name against the carrier. However, the carrier shall not indemnify both the sender and the consignee in respect of the same loss or damage.

### **Condition of the Goods and Delay in Delivery**

#### **ARTICLE 14**

- 1- When the carrier and the consignee agree on the condition of the goods at the time of delivery, they may draft a joint written statement. In such a case, evidence contradicting the result of this statement shall only be admissible in the case of loss or damage which is not apparent and provided that the consignee has duly sent a written notice mentioning the nature of the loss or damage to the carrier within seven days following the drafting of such joint statement, Sundays and public holidays excepted.
- 2- When there is no joint written statement on the condition of the goods at the time of delivery, the consignee shall send to the carrier a written notice indicating the nature of the loss or damage:
- a) not later than on the first business day following delivery in the case of apparent loss or damage; or
  - b) within seven days following the time of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent.
- 3- Failing a notice within the aforesaid time-limits, it shall be presumed that the goods were received in the condition described in the consignment note. Written indication of the loss or damage on the consignment note or on any other carriage documents at the time of delivery fulfils the notice requirements provided in this paragraph.
- 4- No compensation shall be payable for delay in delivery unless a written notice has been sent to the carrier, within twenty-one days following the date of the notice of arrival of the goods at the place designated for delivery, or, where applicable, the date of the arrival of the goods at the place of residence or place of business of the consignee where the goods are to be delivered there.

## **Payment of the charges shown to be due on the consignment note**

### **ARTICLE 15**

- 1- Unless provided otherwise on the consignment note, the charges shown to be due on the consignment note are payable by the Principal before delivery.
- 2- If the goods are not of the same kind as that described in the contract or if the value of the goods is higher than the declared value, the carrier shall be entitled to claim payment of the price he could otherwise have requested for such carriage.
- 3- In accordance with paragraph 3 of Article 13 above, the carrier shall be entitled to retain the carried goods until payment of the charges shown to be due on the consignment note. If the consignment note shows those charges are due by the consignee, the carrier who fails to claim payment thereof before delivery loses his right to claim payment from the Principal. Should the consignee refuse to pay, the carrier shall inform the Principal thereof and ask him for instructions.
- 4- The carrier shall have a lien on the goods carried in relation to any sum payable to him, provided there is a causal link between the goods carried and the sums due.

## **CHAPTER IV LIABILITY OF THE CARRIER BASIS OF LIABILITY**

### **ARTICLE 16**

- 1- The carrier shall deliver the goods at the place designated for delivery. The carrier shall be liable for damage to the goods or for the total or partial loss thereof occurring during the time of carriage, as well as for any delay in delivery.
- 2- Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time limit or, failing an agreed time-limit, within the time-limit it would be reasonable to allow a diligent carrier, having regard to the circumstances of the case.
- 3- The claimant may, without furnishing further proof, treat the goods as totally or partially lost, as the case may be, if they have not been delivered or have been only partially delivered thirty days after expiry of the agreed time limit for delivery or, if there is no agreed time limit, within, sixty days from the time the carrier took over the goods.
- 4- The carrier shall be responsible for the acts and omissions of his agents and servants and of any other persons whose services he makes use of for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

## Exemption from Liability

### ARTICLE 17

- 1- The carrier shall be relieved of liability if he proves that the loss, damage or delay was caused by a wrongful act or instruction by the claimant, inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.
- 2- The carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one or more of the following circumstances:
  - a) use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;
  - b) the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not properly packed or when not packed ;
  - c) handling, loading, stowage or unloading of the goods by the sender, the consignee or a person acting on behalf of the sender or the consignee;
  - d) the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage , especially through breakage, rust, decay, desiccation, leakage or normal wastage;
  - e) insufficiency or inadequacy of marks or numbers on the packages;
  - f) the carriage of livestock.
- 3- The carrier shall not be relieved of his liability by reason of the defective condition of the vehicle used to perform the carriage.
- 4- When the carrier proves that in the circumstances of the case, the loss or damage could be attributed to one or more of those special risks; it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks. The presumption shall not apply in the circumstances set out in paragraph 2 above if there has been an abnormal shortage, or a loss of any package.
- 5- If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of the exemption from liability provided in paragraph 2 d) above, unless he proves that all steps incumbent on him, having regard to the circumstances of the case, with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.
- 6- The carrier shall not be entitled to claim the benefit of paragraph 2(f) of this article , unless he proves that all steps normally incumbent on him, having regard to the circumstances of the case, were taken and that he complied with any special instructions issued to him.

- 7- If the carrier is not liable in respect of some of the factors causing the loss, damage or delay, he shall only be liable to the extent that those factors for which he is liable have contributed to the damage.

### **Limits of Liability.**

#### **ARTICLE 18**

- 1- The compensation in respect of damage, or of total or partial loss of the goods, shall be calculated by reference to the value of the goods, and shall not exceed CFAF 5,000 per kilogram of gross weight of the goods. However, where the value of the goods or a special interest in delivery has been declared by the sender in the consignment note, the compensation for the loss suffered shall not exceed the amount declared.
- 2- If a declaration of a special interest in delivery has been made, compensation equivalent to the additional loss or damage proved may be claimed, up to the total amount of the special interest declared, independently of the compensation provided for in paragraph 1 above.
- 3- In the case of delay, independently of the compensation provided for in paragraph 1 of this article in respect of loss or damage to the goods, and if the claimant proves that additional loss or damage has resulted from such delay, the carrier shall pay compensation for such damage not exceeding the carriage charges.

### **Calculation of compensation**

#### **ARTICLE 19**

- 1- The value of the goods shall be fixed according to the current market price of goods of the same kind and quality at the place and time at which the goods were taken over by the carrier. For the purposes of calculating the compensation, the value of the goods shall also include the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods, which shall be refunded in full in case of total loss and in proportion to the loss sustained in case of damage or partial loss.
- 2- In case of damage, the carrier shall pay the amount by which the goods have depreciated, calculated by reference to the value of the goods. However, the compensation for damage may not, exceed:
  - a) the amount payable in the case of total loss, if the whole consignment has been depreciated by damage;
  - b) the amount payable in the case of loss of the depreciated part, if part only of the consignment has been damaged.

- 3- The claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per cent per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which judicial proceedings were instituted or on which arbitration was requested.
- 4- In the event of inter-States carriage, when the amounts on which the calculation of the compensation is based are not expressed in CFA Francs, conversion shall be at the rate of exchange applicable on the day and at the place of payment of compensation or, where applicable, the date of the judgment or arbitral award.

### **Extra-contractual liability**

#### **ARTICLE 20**

- 1- The exemptions and limits of liability provided for in this Uniform Act shall apply to any action brought against the carrier for damage resulting from loss of or damage to the goods or from a delay in delivery, whether the action is based on contractual or extra-contractual liability.
- 2- Where the action for loss, damage or delay is brought against a person for whom the carrier is responsible under Article 16 paragraph 4 above, such person may also avail himself of the exemptions and limits of liability provided for the carrier in this Uniform Act.

### **Loss of right of exemption and limitation of liability**

#### **ARTICLE 21**

- 1- The carrier shall not be entitled to avail himself of the exemption and limitation of liability provided for in this Uniform Act, nor to the period of limitation of action laid down in Article 25 below, if it is proved that the loss, damage or delay results from an act or omission of the carrier, which was done with intent to cause such loss, damage or delay, or recklessly and with the knowledge that such loss, damage or delay would probably result.
- 2- Notwithstanding the provisions of Article 20, paragraph 2 above, a servant or an agent of the carrier or any other person whose services he makes use of for the performance of the contract of carriage, shall not be entitled to avail himself of the exemption and or limitation of liability laid down in this Uniform Act, nor to the period of limitation of action provided in Article 25 below, if it is proved that the loss, damage or delay results from an act or omission of the agent or servant in the performance of his duties, which was done either with intent to cause such loss, damage or delay, or recklessly and with the knowledge that such loss, damage or delay would probably result.

## **Liability in case of combined transport**

### **ARTICLE 22**

This Uniform Act shall apply to all combined transport. However, where damage, loss or delay occurs during the portion of carriage not by road without the carrier by road being at fault, the liability of the carrier by road shall be determined in accordance with the mandatory rules of the law governing that other means of transport. In the absence of such rules, the liability of the carrier by road remains governed by this Uniform Act.

## **Liability in case of successive carriage**

### **ARTICLE 23**

- 1- In successive carriage, each succeeding carrier becomes a party to the contract of carriage by reason of his acceptance of the goods and the consignment note.
- 2- In case of successive carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the carrier who was performing that portion of the carriage during which the event causing the damage occurred, or the last carrier. An action may be brought against several of these carriers, their liability being joint and several.
- 3- In case of apparent loss or damage, the intermediate carrier shall enter in the consignment note handed to him by the other carrier a reservation that is analogous to the one provided in Article 10, paragraph 2 above. He shall then immediately inform the sender and to the carrier who issued the consignment note of the reservation he has entered.
- 4- The provisions of Articles 4, 5 (paragraph 2) and 10 (paragraph 4) above shall apply between successive carriers.

## **CHAPTER V DISPUTES - Actions between carriers**

### **ARTICLE 24**

- 1- A carrier who has paid compensation in compliance with the provisions of this Uniform Act, shall be entitled to recover the principal, together with interest thereon and costs incurred by reason of the claim, from the other carriers who have taken part in the carriage, in accordance with the following provisions:
  - a) the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;

- b) when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;
  - c) if it cannot be ascertained to which carrier liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in paragraph 1(b) above;
- 2- If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.
  - 3- Carriers shall be free to agree among themselves on provisions other than those laid down in this article .

### **Time-limit for claims and actions**

#### **ARTICLE 25**

- 1- The period of limitation for any action arising out of a carriage under this Uniform Act shall be one year from the date of delivery or, in case of non-delivery from the date on which the delivery should have taken place. However, in the case of wilful misconduct, or such default considered as equivalent to wilful misconduct, the period of limitation shall be three years.
- 2- The action shall be admissible only if a written claim has been made to the first carrier or the last carrier no later than sixty (60) days after the date of delivery of the goods or, failing delivery, not later than six (6) months after the date on which the goods were taken over.

### **Arbitration**

#### **ARTICLE 26**

Any dispute arising from a contract of carriage governed by this Uniform Act may be settled by way of arbitration.

### **Competent Jurisdiction in matters of inter-States Carriage**

#### **ARTICLE 27**

- 1- In any legal proceedings arising out of inter-States carriage under this Uniform Act, where the parties did not designate an arbitral tribunal or national court, the plaintiff may bring an action in the courts or tribunals of a country within whose territory:

- a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made;
  - b) the goods were taken over by the carrier or the place designated for delivery is situated.
- 2- Where an action is pending before a competent court, or where a judgment has been entered by such court, no new action may be brought between the same parties on the same grounds unless the judgment of the court before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.
- 3- When a judgment entered by a court of a State Party has become enforceable in that State, it shall also become enforceable in each of the other States Parties, as soon as the formalities required in the State concerned have been complied with. These formalities shall not constitute a basis for the review of the case.
- 4- The provisions of paragraph 3 of this article shall apply to judgments delivered after full hearing, judgments by default and settlements confirmed by an order of the court. They shall not apply to interim judgments or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

## CHAPTER VI

### Miscellaneous Provisions

#### NULLITY OF STIPULATIONS CONTRARY TO THE UNIFORM ACT

##### ARTICLE 28

- 1- Subject to the provisions of Article s 2 c), 15 paragraph 1, 24 paragraph 3 and 27 above, any stipulation which would directly or indirectly derogate from the provisions of this Uniform Act shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.
- 2- In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.

### Currency conversion

##### ARTICLE 29

For States outside the CFA zone, the sums mentioned in Article 18 above shall be converted into the national currency according to the exchange rate on the date of the judgment or arbitral award or on a date agreed upon by the parties.

**CHAPTER VII**  
**TRANSITIONAL AND FINAL PROVISIONS**

**ARTICLE 30**

Contracts for the carriage of goods by road, which were concluded prior to the entry into force of this Uniform Act, shall remain governed by the laws which were applicable at the time they were concluded.

**ARTICLE 31**

This Uniform Act shall be published in the OHADA Official Gazette; it shall also be published in the Official Gazette of the States Parties or by any equivalent means.

**It shall come into force on 1 January 2004.**

Adopted on 22nd March 2003 IN Yaoundé and published in the OHADA Official Gazette No. 13 dated

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