

**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.