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UNIFORM ACT ON BANKRUPTCY PROCEEDINGS



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THE COUNCIL OF MINISTERS

UNIFORM ACT ON BANKRUPTCY PROCEEDINGS

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

Having regard to the Treaty on the Harmonization of Business Law in Africa, signed in Port Louis on 17 October 1993, and revised in Quebec on 17 October 2008, especially its articles 2, from 5 to 10, and 12,

Having regard to the report of the Permanent Secretary and comments by States Parties,

Having regard to Opinion N° 02/2012 dated 9 November 2012 of the Common Court of Justice and Arbitration,

After deliberations, States Parties present and voting unanimously adopt the Uniform act worded as follows:

PRELIMINARY TITLE: GENERAL PROVISIONS

Article 1

The purpose of this Uniform act is to:

- To organize pre-insolvency procedures of conciliation, preventive settlement and rehabilitative proceedings of reorganization and assets liquidation so as to preserve the economic activities and employment of debtor companies, quickly rehabilitate healthy companies and liquidate distressed ones in such a way that the debtors' assets will be maximized for the purpose of increasing receivables to be recovered by creditors and establish a specific order of payment to secured or unsecured collateral securities;
- To define rules applicable to judicial administrators;
- To set proprietary and professional sanctions as well as criminal proceedings related to the default of the debtor, applicable to the debtor company top executives and individuals involved in the proceedings management.

Article 1-1

This Uniform act shall govern any individual who is self-employed or engaged in a civil, commercial, handicraft or agricultural activity, a private legal entity as well as any state controlled entity formed as a private legal entity.

Conciliation, preventive settlement, reorganization and assets liquidation proceedings shall govern legal entities under private law engaged in an activity regulated by a special regime when it is not otherwise regulated by specific rules governing such activity. Activities under special regulations within the meaning of this Uniform act and texts governing them are, inter alia, those carried out by lending institutions within the meaning of the Banking Law, micro finance institutions and stakeholders in the financial markets as well as activities of insurance and reinsurance companies of the States party to the OHADA Treaty.

Article 1-2

Without prejudice to the application of proceedings referred to in article 1 above, any company may petition for the commencement of a mediation procedure, before becoming insolvent, pursuant to the legal provisions of the State Party in interest.

Furthermore, small enterprisees, as defined in article 1-3 hereinafter, may petition for a simplified procedure of preventive settlement, reorganization or assets liquidation.

Article 1-3

For the purpose of this Uniform act, the following expressions shall be defined as follows:

- “insolvency”: the status of the debtor who is unable to pay its due debts out of its available assets, excluding situations where reserves of credit or payment moratoria granted by creditors enable the debtor to settle due debts;
- “dispute”: any difficulty, conflict, dispute, litigation, claim or demand of commercial or civil nature, namely in terms of contracts arising between parties with respect to their contractual relations;
- “company”: any natural person or legal entity subject to the provisions of this Uniform act pursuant to Article 1-1 above;
- “establishment”: any place of exploitation or operations where the debtor carries out, in a non-transitory manner, an economic activity of production, processing, marketing or supply of goods or services with human and physical resources;
- “foreign State”: any State not party to the OHADA Treaty;

- “State party”: any State party to the OHADA Treaty;
- “Legal notice gazette”: on the one hand, the official gazette, newspapers authorized for this purpose by competent authorities, the national Register of Commerce and Securities and, on the other hand, national daily newspapers showing actual subscriptions, depositaries or vendors, under additional conditions for publications for more than six (06) months and evidence of nationwide circulation;
- “foreign jurisdiction”: authority, judicial or otherwise, empowered to oversee, monitor or acquaint with a bankruptcy proceedings undertaken in a foreign State;
- “Judicial administrator”: the expert in preventive settlement cases and trustee in reorganization or assets liquidation;
- “Small enterprise”: any sole proprietorship, company or other legal entity governed by private law whose number of employees is less than or equal to twenty (20), turnover does not exceed fifty million (50,000,000) CFA francs, excluding taxes for twelve (12) months prior to the action before the competent court pursuant to this Uniform act;
- “foreign bankruptcy procedure”: bankruptcy judicial, administrative or other proceedings, including an interim proceedings governed by insolvency law or foreign state bankruptcy procedures in the framework of which the assets and affairs of the debtor are subject to oversight or monitoring by a foreign court for the purposes of reorganization or assets liquidation of the debtor;
- “secondary foreign bankruptcy procedure”: a foreign bankruptcy, other than the main foreign bankruptcy procedure open in a foreign State where the debtor has an establishment, as defined above, without making it its main business center;
- “main foreign bankruptcy procedure”: a foreign bankruptcy procedure in a foreign State where is located the debtor’s main business center, including its registered office, its center of operations, its principal place of business or, where appropriate, his principal residence;
- “main bankruptcy procedure”: a bankruptcy procedure undertaken pursuant to this Uniform act on the territory of a State party where the debtor has his principal place of business, or the legal entity, its registered office;
- “secondary bankruptcy procedure”: a bankruptcy procedure undertaken pursuant to this Uniform act in the territory of a State party where the debtor has no principal place of

business or the legal entity, its registered office, after the opening of a main bankruptcy procedure in the territory of a State party;

- “territorial bankruptcy procedure”: a bankruptcy procedure undertaken pursuant to this Uniform act on the territory of a State Party where the debtor has no principal place of business or the legal entity, its registered office, insofar as the main bankruptcy procedure is not open on the territory of a State party;
- “foreign representative”: a person or a body, appointed on an interim basis, authorized in a foreign bankruptcy proceedings to administer the reorganization or assets or business liquidation of the debtor, or to act as a representative of the foreign bankruptcy procedure;
- “super priority salaries”: compensation of any kind, irrespective of their name, which, within the limit of the elusive fraction defined by the laws and regulations of each State Party, are payable to workers and apprentices for twelve (12) months of work preceding the decision to open reorganization or assets liquidation proceedings.

Article 2

Conciliation is a preventive, consensual and confidential procedure intended to shun the debtor company’s payment failure in order to restructure, in whole or in part, its finances or operations so as to save it. Such restructuring is carried out through private negotiations and the conclusion of a conciliation agreement negotiated between the debtor and its creditors, or at least its major creditors with the support of a neutral, independent and impartial third party called conciliator.

Preventive settlement is a bankruptcy preventive procedure designed to avoid insolvency by the debtor company and to allow the discharge of its debts through a arrangement.

Reorganization is a bankruptcy procedure for the rescue of the debtor company in insolvency, but which situation is not irremediably compromised, and whose debts settlement is performed through a composition.

The assets liquidation is a bankruptcy procedure for the realization of the assets of the insolvent debtor company whose situation is irremediably compromised and impossible to wipe off its debts.

Article 3

Conciliation, preventive settlement, reorganization and assets liquidation fall under the jurisdiction of the court that deals with bankruptcy proceedings.

This court shall also be empowered to collect information on all disputes arising out of the bankruptcy procedure, those on which the bankruptcy proceedings have a legal influence as well as those related to personal bankruptcy and other sanctions with the exception of disputes which are exclusively within the jurisdiction of the administrative, criminal and social courts.

Each State party shall be responsible for designating, as appropriate, the courts that have jurisdiction to adjudicate procedures governed by this Uniform act.

Article 3-1

The court territorially competent to adjudicate all procedures covered by this Uniform act shall be within the jurisdiction of which:

- the individual debtor has its principal establishment on the national territory;
- Or
- The debtor company's registered office is located in the national territory.

If the principal place of business or registered office is abroad, the procedure shall take place before the court in the jurisdiction where the main center of operations of the individual debtor or company is located on the national territory.

The court where is located the registered office or principal place of business of the legal entity shall have jurisdictional competence to rule on the preventive settlement, reorganization or assets liquidation of jointly and severally liable individuals for its debts.

Article 3-2

Any dispute regarding the jurisdiction of the court seized shall be decided thereby within fifteen (15) days from the filing and, in the event of appeal, within thirty (30) days by the Court of Appeal.

If a court declares itself competent, it shall also rule on the merits of cases in the same decision, which may be attacked on jurisdiction and merits only through the appeal process.

TITLE I: JUDICIAL ADMINISTRATOR

CHAPTER I: GENERAL PROVISIONS

Article 4

Each State party shall adopt, as necessary, rules for the application of the provisions of this Title. It shall provide, under suitable arrangements, regulation and supervision of judicial administrators acting on its territory, if need be, by appointing a national official for whom it shall prescribe the organization, composition and operation.

CHAPTER II: ACCESS TO THE FUNCTIONS OF JUDICIAL ADMINISTRATOR

Article 4-1

No one shall be appointed expert in preventive settlements or trustee in preventive settlement, reorganization or assets liquidation proceedings unless he is not registered on the national list of judicial administrators.

Article 4-2

To be registered on the national list of judicial administrator of a State Party, all individuals shall meet the following conditions:

- 1) have the full exercise of civil and civic rights;
- 2) had never been subject to disciplinary sanction other than a warning or never been sentenced to imprisonment for a crime under common law, or to at least three (3) month-imprisonment without suspension for an offence against assets or for economic or financial felonies, which is incompatible with the functions of a judicial administrator;
- 3) be certified public accountant or be empowered by national legislation;
- 4) have a tax residence in the State party in which one seeks registration and be up to date with tax obligations;
- 5) Provide moral collateral securities deemed sufficient by the authority or the competent jurisdiction of the State Party.

Each State party may add other conditions to the above list.

Article 4-3

The national list of judicial administrators shall be published in the Official Gazette of each State Party and in the OHADA Official Gazette. It shall be communicated to the courts of the State Party concerned, without delay.

Decisions to admit or deny admission shall state the reason(s) for such decisions and may be subject to appeal filed before the competent court of that State.

CHAPTER III: CONDITIONS FOR PERFORMING THE DUTIES OF JUDICIAL ADMINISTRATOR

Article 4-4

Appointed judicial administrators shall provide all collateral securities of independence, neutrality and impartiality in any bankruptcy proceedings. They shall not have or gain a personal, moral or

financial interest from the mandate entrusted to them, except as expressly provided for in this Uniform act.

Apart from the duties stipulated in this Uniform act, no judicial administrator may represent or advise one of the parties, either the debtor or his creditors in bankruptcy proceedings in which he is appointed.

The following individuals may not be expert in preventive settlements or trustee in a bankruptcy procedure:

- 1) parents or relations of the debtor or creditors to the fourth degree inclusive, as well as top executives of the legal entity which is under bankruptcy proceedings;
- 2) the public accountant, lawyer, chartered accountant or auditor of the debtor or of one his creditors;
- 3) individuals who have previously had or currently have a dispute with the debtor or one of his creditors;
- 4) individuals who, during the three (03) years preceding their appointment, have received in any way whatsoever, directly or indirectly, compensation from the debtor or his creditors.
- 5) individuals who are subordinates or have economic ties with the debtor or one of his creditors.

When an individual is approached for a possible appointment as judicial administrator in bankruptcy proceedings, he shall disclose to the president of the competent court, without delay, any circumstance that may raise legitimate doubts about his independence, neutrality and impartiality under the incompatibilities set forth in this Article as well as those referred to in article 4-5 hereinafter.

In this regard, any judicial administrator shall sign a declaration of independence, neutrality and impartiality before taking office in a bankruptcy procedure and shall undertake to assume full responsibility.

Before taking office, the judicial administrator shall take the oath before the president of the designated court for that purpose and it shall be worded as follows:

“I swear I will perform my mission with honor, conscience, honesty and probity, will observe the respect due to judges and public authorities, will always conform to applicable law and will invest all I can to achieve the objectives of my mission.”

Article 4-5

The performance of the duties of expert in preventive settlement or trustee is incompatible with any other activity that may undermine his independence, neutrality and impartiality.

CHAPTER IV: OVERSIGHT AND DISCIPLINE OF JUDICIAL ADMINISTRATORS

Article 4-6

Each State party shall ensure oversight of judicial administrators in the performance of their duties. This supervision shall infer a general power of investigation and verification including enabling audit of accounts and any document held by a judicial administrator without professional secrecy being enforceable to the latter.

The judicial administrator may be assisted by any individual of his choice.

Article 4-7

Any violation of the laws and professional rules or any repugnant act to probity, honor or delicacy committed by a judicial administrator in the performance of his duties may lead to disciplinary proceedings.

The disciplinary action shall lapse after three (03) years from the facts-finding exercise.

Article 4-8

The debtor and creditors, in all bankruptcy proceedings, may forward to the authority, the competent court or the public prosecutor of the State party concerned, any document or information that may lead to the opening of a disciplinary action against a judicial administrator.

Article 4-9

In addition to the provisional prohibition which may be pronounced against the judicial administrator, the following disciplinary measures may be taken:

- 1) warning;
- 2) reprimand with an entry in his file;

- 3) suspension for a period which cannot exceed three (03) years;
- 4) Removal from the national list of judicial administrators and permanently barred from performing those duties.

These sanctions shall be notified to the judicial administrator concerned as well as to his representative body, the National Order of Certified Accountants and, where applicable, to the order in which he is registered, as well as any other professional organization to which he is a member and to the public prosecutor of the State party concerned.

Article 4-10

The replacement Judicial Administrator shall be appointed under the same conditions as the suspended or dismissed judicial administrator was hired.

Article 4-11

Shall be null and void all acts or agreements that may allow, directly or indirectly, the judicial administrator to perform his duties during his suspension or after his removal.

CHAPTER V: RESPONSIBILITY AND PROFESSIONAL INSURANCE OF JUDICIAL ADMINISTRATORS

Article 4-12

The judicial administrator shall be civilly liable to the debtor, creditors and third parties, without prejudice to his criminal responsibility.

When the judicial administrator requests, in the performance of his duties, the intervention of a third party, he shall remain jointly and severally liable for misconduct and negligence committed by the latter.

Article 4-13

The civil liability suit against the judicial administrator shall fall within the jurisdiction of the State Party in charge of bankruptcy proceedings of the place where the receiver is established. This suit shall be brought during the proceedings or within a period of three (3) years from the end of the procedure or the end of the execution of the composition.

Article 4-14

Any individual registered on the national list of judicial administrators is required to purchase an insurance policy from an insurance company regularly established in the State Party concerned; such policy shall cover damages caused in the performance of his duties pursuant to this Uniform act.

He shall be required to show proof of a valid and effective insurance coverage at any time.

Article 4-15

Each judicial administrator shall keep the accounts of the bankruptcy proceedings he is appointed for separate from his personal accounts.

He is required, at any time, to present to the auditor in charge both his personal and that separate accounts.

CHAPTER VI: REMUNERATION OF JUDICIAL ADMINISTRATORS

Article 4-16

Judicial administrators shall be paid on the estate of the debtor for services provided in connection with of bankruptcy proceedings they are involved in.

The compensation of judicial administrator shall be exclusive of any other compensation and reimbursement of expenses for the same duties.

Article 4-17

The compensation of the expert in preventive settlement shall be determined by the competent court in the decision approving or rejecting the creditors or, where applicable, putting an end to the preventive settlement in the absence of an arrangement, according to the scale fixed by the regulations of each State Party.

Such scale shall take into account namely:

- hours worked and possible difficulties;
- number of creditors concerned by the preventive settlement.

Each State party may add additional criteria to this list.

For simplified preventive settlements, the State Party may fix a lump sum for the compensation of the expert in preventive settlements.

Article 4-18

The decision of the competent court may add, for the expert in preventive settlement, a provision on his compensation which cannot exceed forty percent (40%) of the estimated amount thereof. In any case, a portion of this compensation at least equal to sixty percent (60%) may be paid only from the time he submits his report as stipulated in article 19 hereinafter.

Article 4-19

The compensation of the trustee, in his capacity as controller of the arrangement, either as a trustee of the judicial reorganization, or as a trustee in assets liquidation, shall be fixed by the competent court in its decision to close the bankruptcy proceedings, or confirming the composition pursuant to the scale fixed by the regulations of each State Party.

Such scale shall take into account namely:

- the turnover of the debtor during the fiscal year prior to the opening of bankruptcy proceedings;
- the number of workers employed by the debtor during this same period;
- recovery of claims ratio;
- time spent and possible difficulties;
- Speed of services provided.

Each State Party may add additional criteria to this list.

In case of liquidation of assets, except when the compensation was fixed at a standard rate in accordance with the last paragraph of this Article, the total amount of the compensation of the trustee cannot exceed twenty percent (20%) of the total amount generated by the realization of the assets of the debtor. Wages paid by the trustee to chartered accountants, financial or any other experts involved who were commissioned by the trustee shall be included in the calculation of this ceiling of twenty percent (20%) unless the competent court provides otherwise when one of these parties is appointed.

For simplified reorganization and simplified assets liquidation, the State party may fix a lump sum to remunerate the trustee.

Article 4-20

The competent court may add the trustee, in the decision appointing him or in a subsequent decision, a provision on his compensation which cannot exceed forty percent (40%) of the estimated amount thereof. In any case, a portion of the compensation at least equal to sixty per cent (60%) may not be paid until the judicial composition is confirmed or, where appropriate, at the close of the procedure of liquidation of assets.

Decisions rendered by the competent court in respect of articles 4-17 to 4-20 shall be that may be brought for appeal before the competent court of the State Party within fifteen (15) days of their pronouncement at the request of the debtor, the judicial administrator or the prosecutor.

CHAPTER VII: OPENING AND PROCEEDINGS OF THE SPECIAL ACCOUNT

Article 4-22

Each State Party may provide that the authority or the competent court select the bank (s) in which trustees are bound to open a special account for the purpose of depositing proceeds from the reorganization and liquidation of assets proceedings. Unless authorized by the receiver in case the bankruptcy proceeding is too complex, only one special account shall be open for each separate bankruptcy proceeding.

Article 4-23

Financial proceeds generated by the each debtor account (s) shall be used, as need be, to rescue the company or to pay its creditors under the supervision of the receiver.

TITLE II: PREVENTIVE PROCEDURES

Article 5

This Title shall govern preventive procedures, namely conciliation and preventive settlement, in order to safeguard distressed companies and audit their liabilities before they become insolvent pursuant to the provisions of this Uniform act.

CHAPTER I: CONCILIATION

Section 1: Commencement of conciliation

Article 5-1

Conciliation is open to individuals referred to in article 1-1 above experiencing difficulties, which are proved or predictable, but who have not yet reached insolvency.

The conciliation overarching objective is to find an amicable agreement with major creditors and co-contractors of the debtor in order to relieve him of his difficulties.

Any person who has knowledge of the conciliation shall be bound by confidentiality.

Article 5-2

The debtor or one or more of its creditors shall file a petition or a joint petition before the president of the competent court. This petition shall outline the difficulties as well as the means to cope therewith.

The request shall be accompanied by the following documents dated less than thirty (30) days:

- 1) a certificate of incorporation, registration or declaration of an activity in the Register or in a professional association or order or any other documents proving that the activity was actually carried out by the debtor;
- 2) where applicable, the summary financial statements containing the balance sheet, income statement, a financial table of supplies and jobs, the annex statement and, in any case, the turnover amount and a statement of profits or losses for the last three years;
- 3) cash position and a state of the exact amount of claims and debts with their maturity dates;
- 4) a document stating the number of workers declared and registered as of the date of the petition;
- 5) a certificate from the debtor in which he declares in honor that he is not insolvent and specifies, furthermore, that he is not subject to a preventive settlement, reorganization or liquidation of assets proceedings that is pending;
- 6) if the debtor proposes a conciliator, a document stating the full names, title and domicile of the proposed person and a certificate of his professional credentials;
- 7) Where appropriate, a document stating the full names and domicile of the creditors who join the debtor's petition, the amount of their claims and possible related securities.

These documents shall be dated, signed and certified compliant and true by the applicant. Where one of the above documents cannot be provided, or may be only provided incompletely, the petition shall state the reasons thereof.

Article 5-3

The conciliation procedure shall be opened by the president of the competent court, acting behind closed doors, for a period not exceeding three (3) months but can be extended for one (1) additional month by a specifically reasoned decision at the request of the debtor, following a written notice

of the conciliator. At the expiry of these time limits, the conciliation shall end automatically and a new conciliation procedure may be opened prior to the end of the three (3) months.

The decision to open the conciliation or to reject the opening petition shall not be subject to publicity.

Article 5-4

In the opening decision, the president of the competent court shall appoint a conciliator.

The conciliator shall fully exercise his civil rights, prove his professional qualifications and shall remain independent and impartial with regard to the parties involved in the conciliation. He should not have received, in any capacity whatsoever, directly or indirectly, compensation or payment from the debtor in interest, any creditor of the debtor or a person who supervises him or is supervised by him in the twenty-four (24) months preceding the conciliation opening decision. Parents or relations of the debtor to the fourth degree inclusive shall not be appointed conciliator. The same shall apply to any public prosecutor in office or who has resigned in the last five (5) years.

Upon notification of his appointment, the conciliator shall certify that, to his knowledge, he meets the above mentioned conditions. At any time during the conciliation, if it appears to him that he is no longer able to meet such conditions, he shall forthwith notify the president of the competent court who, if need be, may terminate his mandate and appoint a replacement.

The compensation terms of the conciliator shall be determined by the president of the court with the consent of the debtor on the day of the opening of the conciliation. The basic criteria for fixing the compensation, the maximum amount allowed and the amount shall be stated in a document signed by the debtor and the conciliator and appended to court decision appointing the conciliator. During his mandate, where the conciliator considers that the original amount is insufficient, he should notify the president of the court who shall set new terms with the consent of the debtor. In the absence of agreement on the terms of the compensation, the mandate of the conciliator shall be terminated. The compensation of the conciliator shall be borne by the debtor and is tax deductible.

Section 2: Execution and outcome of the conciliation

Article 5-5

The conciliator shall be mandated to foster the conclusion of an amicable agreement between the debtor and its principal creditors as well as, where appropriate, his customary contractors intended to put an end to the company's troubles.

To this end, the conciliator shall obtain all relevant information from the debtor.

Article 5-6

The conciliator shall send regular progress reports on his mission to the president of the competent court and formulate constructive observations. If it occurs to him that the debtor becomes insolvent, he shall immediately inform the president of the competent court.

In the event of default, the debtor shall immediately inform the president of the competent court.

At any time, if he is informed of the occurrence of the insolvency under the conditions provided for in the previous two paragraphs or by any other means, the president of the competent court shall forthwith terminate the conciliation and the conciliator's mandate after hearing the debtor and the conciliator.

Article 5-7

If the debtor is given formal notice or issued by a creditor called upon to the conciliation during efforts to reach an agreement as defined in article 5-3 above, the president of the court may, at the request of the debtor, and after receiving the opinion of the conciliator, defer the payment of sums due and order the stay of proceedings brought by a creditor. These measures shall expire automatically at the end of the conciliation, and in any case, at the expiry of the period stipulated in article 5-3, paragraph 1 above. The order of the president of the court imposing these measures shall be filed at the court registry and shall not be subject to any publicity. It shall be communicated to the creditor in interest, without delay, and shall remind him the confidentiality onus.

Article 5-8

In the event an agreement cannot be reached, the conciliator shall present forthwith a written report to the president who shall terminate the Conciliator's mandate and terminate the conciliation after hearing from the debtor.

Absent insolvency, the debtor may, at any time, request the end of the conciliator's mandate and the conciliation, in which case the president of the competent court shall terminate all without delay.

Article 5-9

The decision ending the conciliation and the conciliator's mandate, absent insolvency, shall be notified to the debtor, the conciliator as well as to creditors and subcontractors called upon to the conciliation, without delay. Such decision shall not be subject to any publicity.

Article 5-10

At the request of the earliest petitioner, the signed agreement shall be:

- filed in the original documents of a notary;
- or confirmed or enforced by the court or the competent authority ruling behind closed doors; without prejudice to the application of Article 5-11, the confirmation or enforcement is automatic and may only be refused if the agreement is not consistent with public policy; the court registrar shall append the order of enforcement to the decision; copies of the enforcement order shall be provided to the parties to the agreement; the approval or the exequatur decision shall not be subject to publicity and shall not include the content of the agreement which remains confidential.

The confirmation or exequatur decision shall not be appealed. It shall terminate the conciliation. Where necessary, the conciliation shall close with the signing of the agreement and, in any event, at the expiry of the time limit specified in paragraph 1 of Article 5-3 above.

Article 5-11

In case the court or the competent authority opens assets liquidation proceedings following the conclusion of an confirmed or exequatur conciliation agreement, individuals who consented therein to new cash contributions for the debtor so as to ensure the continuation of business activities of the distressed company and its sustainability shall be paid with respect to the ranks provided for in articles 166 and 167 hereinafter.

Individuals who furnished a new good or provided a new service so as to ensure the continuation of business activities of the debtor company and its sustainability shall enjoy the same privilege for the price of such good or service.

This provision shall not apply to contributions consented for the share capital increase of the debtor.

The creditors of the debtor may not benefit from this privilege for claims incurred prior to the opening of the conciliation.

Without prejudice to the application of Article 5-10, the court or the competent authority called upon to rule on confirmation or enforcement shall check in this case that the conditions above are met and that the granting of such privilege is not detrimental to the interests of creditors not party to the agreement. The decision of confirmation or enforcement of the agreement shall not reproduce the content of the agreement, but shall mention such privilege and the amounts

guaranteed. It shall be notified by the court registry to the public prosecutor as well as to creditors and contracting parties signatory to the agreement. It shall be published under the conditions set forth in article 36 and 37 hereinafter. The publicity shall be carried out by the conciliator, in accordance with Article 38 hereinafter.

By way of derogation from Article 5-10 above, the confirmation or enforcement decision taken pursuant to this Article may be opposed before the competent court by any individual concerned within 15 days of its publication. Where applicable, an appeal may be filed against the decision within 15 days following the pronouncement of the decision.

Article 5-12

Throughout its execution, the agreement shall stay or prohibit any court action and shall stop and prohibit any individual attempt to seize both personal and real assets of the debtor so as to obtain the payment of claims attached to them. The agreement shall stay, for the same duration, time limits allotted to creditors parties to the agreement, under pain of forfeiture or cancellation of related rights to claims mentioned in the agreement.

Individuals, who have given a personal security or transferred or assigned property as collateral as well as joint debtors may use the provisions of the agreement.

Article 5-13

The court or the competent authority who heard the conciliation shall be the only competent body to be informed of any breach of the agreement and to pronounce the cancellation thereof. It shall be seized by one of the parties to the agreement.

If cancellation is pronounced, creditors shall recover all their claims, minus sums already received.

Article 5-14

Opening a preventive settlement, reorganization or assets liquidation proceedings shall automatically terminate the conciliation and, where appropriate, the agreement.

In this case, creditors shall recover all their claims, minus sums already received.

CHAPTER II: PREVENTIVE SETTLEMENT

Section 1: Commencement the preventive settlement

Article 6

Preventive settlement shall be open to the debtor who, without being insolvent, shall confirm financial or serious economic problems.

The debtor shall file a petition alone or a joint petition with one or several of its creditors before the competent court; such petition shall be filed at the court registry against a receipt.

In such petition, the debtor shall explain his financial or economic difficulties and the prospects for the company recovery and settlement of its liabilities.

The debtor shall not file a petition for a preventive settlement where:

- the preventive or judicial composition is being executed;
- prior to the expiry of a period of three (03) years from the confirmation of a previous arrangement;
- Prior to the expiry of a period of eighteen (18) months from the winding-up of a preventive settlement that did not result in a arrangement.

Article 6-1

The debtor's petition shall include the following documents, dated from less than thirty (30) days:

- 1) a certificate of incorporation, registration or declaration of activity in a Register or a professional order or, any other documents which prove the regularity of the debtor's activity;
- 2) summary financial statements comprising the balance sheet, the income statement, a supply and use table, the state annexed and, in any case, the turnover amount and profits or losses of the last three (03) years or, any other document establishing the financial and economic position of the debtor if the petition is filed by a debtor meets the definition of small enterprise pursuant to Article 1-3 above.
- 3) cash flow situation and the exact amount of claims and debts with names, titles and addresses of creditors and maturity dates or, any other document capable of establishing the ability of the debtor to pay its due debts out its available assets if the petition is filed by a debtor meets the definition of small enterprise in accordance with Article 1-3 above.

- 4) a document stating the number of employees and their salaries and employer's contributions at the date on which the petition is filed or, any other document capable of identifying and counting the debtor's employees and estimating the amount of their wages and contributions where the motion is introduced by a debtor meets the definition of small enterprise in accordance with Article 1-3 above.
- 5) a certificate from the debtor whereby he declares on honor that he is not insolvent;
- 6) detailed statement of assets and liabilities, personal and actual securities given or received by the company and its top executives;
- 7) a certificate of the debtor stating that he is not party to a conciliation agreement in progress and, in any case, that he is not subject to a preventive settlement, reorganization or liquidation of assets proceedings that is pending and that he meets the conditions of the last paragraph of Article 6 above;
- 8) the inventory of the assets of the debtor stating movable assets subject to claims by their owners and those affected by a retention of title clause or, alternatively, a provisional inventory if the petition is filed by a debtor meets the definition of small enterprise in accordance with Article 1-3 above;
- 9) a document stating the,full names and addresses of employees' representatives;
- 10) where it is a legal entity, the list of members jointly and severally liable for the debts thereof, stating their full names and addresses, as well as the names and addresses of its top executives;
- 11) where the debtor proposes a person as an expert to the preventive settlement in accordance with the first paragraph of Article 8 hereinafter, a document stating the full name, qualifications and domicile of that individual and a certificate of the latter stating that he meets the conditions set forth in articles and 4-1 and 4-2 above;
- 12) where appropriate, a document stating the full names, qualifications and domicile of individuals who are planning to make new cash contributions or provide new goods or services under the conditions of Article 11-1 hereinafter, with the amount of the contribution or the value of goods or services;
- 13) a proposed arrangement;

- 14) Where applicable, a document stating the full names and domiciles of the creditors who cosigned the petition of the debtor, and the amount of their claims and any security interest attached to them.

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

Documents referred to subparagraphs 1 ° to 5 ° and subparagraphs 7 °, 8 °, 10 ° and 13 ° must be provided otherwise the petition will be inadmissible as a matter of law.

In case one of the documents referred to subparagraphs 6 °, 9 ° and 11 ° cannot be provided, or may be provided only incompletely, the petition shall state the reasons thereof.

Article 7

The proposed arrangement shall stipulate measures envisioned for the restructuring of the company, including:

- terms for continuing the company business such as the request for time extensions and debt reduction, partial assignment of assets with a specific indication of assets to be assigned; assignment or lease-management of a branch of activity forming business assets; assignment or lease-management of part or the entire company, without these terms being restrictive and exclusive on each other;
- the full names, titles and addresses of individuals mandated to execute the arrangement and all their undertakings for the restructuring of the company;
- terms for maintaining and financing the company, settlement of claims contracted prior to the decision to open a preventive settlement as well as, where applicable, collateral securities provided to ensure execution; these undertakings and collateral securities may consist, inter alia, of subscriptions for an increase of share capital by new or former partners, debt-for-equity swaps, appropriations by banking or financial institutions or by any other person, including any new cash or service contributions under the conditions set forth in article 11-1 hereinafter as well as the amount of the contribution or the value of the goods or services; continuation of the execution of contracts entered into prior to the petition, provision of securities;
- level and job prospects, as well as layoffs for economic reasons which should be exerted within the conditions set forth in the provisions of the Labor Law;
- Replacement of top executives.

Article 8

Where the proposed arrangement appears reasonable to the president of the competent court, he shall open the procedure and appoint an expert in preventive settlement who meets the conditions and description of Article 4-2 above. He shall be tasked with drafting a report on the financial and economic situation of the debtor company and the prospects for recovery, taking into account the time extensions and debt reduction consented or that may be consented by creditors and all other measures contained in the proposed arrangement.

The appointed expert shall be governed by the provisions and requirements of Title I of this Uniform act.

He shall be notified, without delay, of his appointment by the president of the competent court by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any traceable written means.

The president of the competent court may provide for his compensation in the appointment decision pursuant to Article 4-18 above.

Article 8-1

As soon as he is informed of his appointment, the expert in preventive settlement shall certify that he meets the requirements set out in articles 4-4 and 4-5 above. At any time during the course of the preventive settlement, if it appears that he no longer meets these conditions, he shall immediately inform the president of the competent court, who shall terminate his mandate and appoint a replacement.

The debtor or any creditor may petition, at any time, to the president of the competent court for the replacement of the expert who falls within one of the incompatibilities set forth in articles 4-4 and 4-5 above, or who is not assiduous in the performance of his duties. In this instance, the president of the competent court, upon receipt of the objection, shall hold a closed doors session to hear the explanations of the petitioner (s) and the expert. His decision pronounced in open court shall be subject to a provisional enforcement of the judgment. It shall be subject to appeal within fifteen (15) days from the date of the decision. The registry of the competent court shall communicate, where appropriate, this decision to the national authority as stipulated in article 4 above, who may initiate disciplinary proceedings pursuant to this Uniform act.

The departing expert shall, without delay, give a report to his successor, and pass on all documents in his possession in the presence of the debtor and the president of the competent court.

Article 9

The decision to open a preventive settlement shall stay or prohibit all individual lawsuits for the purpose of obtaining payment of claims contracted prior to the said decision for a maximum period of three (03) months, which may be extended by one (01) month under the conditions set forth in article 13, paragraph 2, without prejudice to the application of the third paragraph of Article 14 hereinafter.

The suspension of individual lawsuits shall also apply to both enforcement proceedings and precautionary measures, including any measure of extrajudicial execution.

It shall apply to all unsecured claims and those guaranteed by a general lien, a special personal property lien, a pledge, collateral security or mortgage, with the exception of claims on wages and maintenance.

It shall not apply to actions for recognition of disputed rights or claims, or to legal actions against the signatories of bills of exchange other than the beneficiary of the suspension of individual lawsuits.

Individuals who are joint debtors or have consented to a personal security, or have assigned a transferred a property as collateral security, may be entitled to have the provisions of this Article apply to them.

Deadlines allotted to creditors under penalty of forfeiture, limitation or cancellation of their rights shall be stayed for the duration of the current procedure.

When the preventive settlement winds-up under the conditions of Article 9-1 hereinafter and, in any case, at the expiry of the time limits referred to in the first paragraph of this Article, the suspension of individual lawsuits shall cease automatically, without prejudice to the application of Article 14 hereinafter.

Article 9-1

The expert in preventive settlement shall report regularly to the president of the competent court on the progress of his assignment and shall formulate all constructive observations. If he is made aware of the occurrence of insolvency, he shall immediately inform the president of the competent court.

In the event of occurrence of insolvency, the debtor shall immediately inform the president of the competent court.

Any interested party who has knowledge of the insolvency of the debtor may notify the president of the competent court.

At any time, if he is informed of the occurrence of insolvency under the conditions provided for in the previous three paragraphs or by any other means, the president of the competent court shall forthwith close the preventive settlement and terminate the conciliator's mandate after having heard or duly called upon the latter and anybody whose statement he finds material.

Where he believes that it is impossible to adopt an arrangement, the expert in preventive settlement shall inform the president of the competent court. After hearing the expert and the debtor and, if he deems necessary, the creditors or some of them, the president of the competent court shall decide to continue or terminate the proceedings.

Article 10

Unless creditors reduce the debt, legal or conventional interests and default interests and surcharges shall continue to run, but they shall not be due.

Article 11

Unless the president of the competent court grants a reasoned authorization, the decision to initiate the preventive settlement shall prohibit the debtor, on pain of becoming null and void:

- from paying, in whole or in part, claims incurred prior to the decision of opening;
- From undertaking something foreign to the normal operation of the company or to grant a security provision.

It shall also be prohibited to the debtor to pay off joint debtors and individuals who have granted a personal security or assigned or transferred property as collateral when they paid claims incurred prior to the opening decision.

Article 11-1

In the event of an opening of a assets liquidation proceedings following the confirmation of the arrangement by the competent court under the conditions set forth in article 15 hereinafter, individuals who, in this composition, had consented to bring a new cash contribution to the debtor to ensure the continuation of the business activity of the debtor company and its sustainability shall be paid in respect of the privilege according to the ranks provided by articles 166 and 167 hereinafter.

Individuals who provide, under the same conditions, a new good or service to ensure the continuation of the business activity of the debtor company and its sustainability shall enjoy the same priority for the price of such good or service.

This provision shall not apply to contributions made for the increase of share capital of the debtor.

The creditors of the debtor cannot benefit from that privilege for claims incurred prior to the commencement of the preventive settlement.

Article 12

The preventive settlement expert shall appraise the situation of the debtor. For this purpose, he may, notwithstanding any repugnant statutory or regulatory provision, obtain records from auditors, accountants, employees' representatives, public administrations, social security and welfare agencies, banking or financial institutions as well as services in charge of centralizing banking risks and incidents of payment, information that may give accurate information on the financial and economic position of the debtor.

The expert shall report breaches to Article 11 above to the competent court.

He shall hear the debtor and the creditors and lend them his good offices to facilitate negotiations between them so as to reach an agreement, based on the draft arrangement proposed by the debtor at the outset of the opening request.

In the report provided for in article 13 hereinafter, the expert should disclose, for each creditor:

- whether he has been actually contacted and on which date;
- whether he has consented to a debt reduction or payment time extension and, where applicable, how much or how long;
- Whether he has declined to grant time extension and debt reduction, and the reasons thereof.

Article 13

The expert shall prepare a report containing the agreement entered into by the debtor and its creditors as well as the proposed arrangement.

This report shall be prepared within three (03) months from the opening of the preventive settlement decision. This time limit may be extended exceptionally only once for a period of one (01) month on a specially reasoned decision of the president of the competent court at the request of the expert or the debtor.

The expert is required to comply with the time limits specified in the paragraph above or become liable to the debtors or creditors.

In the allotted period, the expert shall deliver a copy of his report to the debtor and file two with the registry of the competent court. One of the two deposited copies shall be transmitted to the prosecutor by the court registrar.

Article 14

Upon filing the report of the expert, the president of the competent court shall convene the debtor to appear at a non-public hearing to be heard without delay. He shall also call the expert to the hearing as well as any creditor he deems necessary. The debtor may petition the competent court himself.

The debtor and the creditor (s) shall be convened by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any means leaving a written record three (03) days at least prior to the hearing.

The court shall rule immediately or at the latest within thirty (30) days from the date on which the case was brought on. Preventive settlement shall remain in force, in particular, concerning the suspension of individual creditors' lawsuits until the decision of the court. Where the case is not brought to court under the conditions of the 1st paragraph or where it does not rule within thirty (30) days from date of the filing, the preventive settlement shall automatically close; creditors shall exercise all their rights and the debtor shall recover the full administration of its assets.

Article 15

The competent court shall rule in a non-public hearing.

1. In case of payment failure, it shall, ex officio, ordain reorganization or liquidation of assets without prejudice to the provisions of articles 29 and 33 hereinafter.
2. When the situation of the debtor so justifies, the court shall confirm the arrangement by recording time extensions and debt reduction consented by creditors and by providing the debtor with proposed measures for the restructuring of the company. Time extensions and debt reduction granted by creditors may vary.

The competent court shall confirm the proposed arrangement if:

- it meets the conditions of validity of the proposed arrangement;
- no ground from the public interest or public policy seems to encumber the composition;
- The granted time extensions do not exceed three (03) years for all the creditors and one (1) year for salaried creditors.

Where individuals enjoy the privilege of Article 11-1 above, the court which confirms the arrangement shall check whether it meets the conditions set forth therein, and whether the granting of this priority does not affect the interests of the creditors. It shall state in its decision the said privilege and the guaranteed amounts.

In case creditors reportedly refused to extend the deadlines and reduce the debt of the debtor, the president of the competent court shall lend his good offices to the creditors and the debtor. He shall hear their ground for refusal and initiate negotiations between the parties to enable them to reach an agreement.

Where despite the good offices of the president, the parties fail to reach an agreement and in case the arrangement provides for only one time extension not exceeding two (02) years, the competent court may make this enforceable against creditors who refused any time extension and any debt reduction unless such extension jeopardizes these creditors' company.

Creditors of wages and maintenance shall neither agree to any debt reduction, nor be imposed a time extension that they have not consented thereto.

3. If the competent court considers that the situation of the debtor does not fall within any bankruptcy proceedings or if it rejects the arrangement proposed by the debtor, the preventive settlement shall cease without delay. This decision shall make the parties resume the initial situation.

Article 16

The decision of the competent court confirming the arrangement shall terminate the mandate of the expert and the preventive settlement procedure, subject to the formalities set forth in article 17 hereinafter. However, the competent court may appoint, ex officio or at the request of the debtor or a creditor, a trustee or controllers mandated to monitor the execution of the confirmed arrangement under the same conditions as those laid down for the confirmed composition of the reorganization. The competent court may appoint the expert in preventive settlement as a trustee.

It shall also appoint a receiver. The latter shall oversee the activities of the trustee or controllers responsible for monitoring the performance of the confirmed arrangement, where one has been appointed, and write reports for the competent court every three (03) months and anytime at the request of the court.

Article 17

The decision to open a preventive settlement that shall be terminated under the conditions of Article 9-1 above and implemented pursuant to Article 15 hereinafter shall be notified by the registrar to the public prosecutor and creditors concerned.

The three (03) decisions shall be published under the conditions set forth in articles 36 and 37 above hereinafter.

Publicity shall be verified in accordance with Article 38 hereinafter by the expert to the preventive settlement.

Section 2: Effects of the Arrangement

Article 18

The confirmation of the arrangement shall be binding to all prior creditors to the decision to open a preventive settlement, whether their claims are unsecured or secured by a security interest under the conditions of time extensions and debt reduction which they have granted to the debtor without prejudice to the provisions of Article 15 above. The confirmation of the composition shall also obligate joint debtors or individuals who have consented to personal security or allotted or assigned a property as collateral security when they paid the claims of the debtor incurred prior to the decision.

Creditors with a general privilege, a special property lien, a pledge, a suretyship or a mortgage shall not lose their collateral securities. However, they may only realize them in case of annulment or cancellation of the composition to which they consented or which has been imposed.

With the exception of natural persons, joint debtors or individuals who have consented to a personal security or allotted or assigned a property as collateral security may use time extensions and debt reduction from the arrangement.

The prescription shall remain stayed for all creditors who, pursuant to the arrangement, may not exercise their rights or actions, including any measure of extrajudicial execution.

The arrangement shall also suspend, for the same period, deadlines set for creditors who are party to the composition. Failure to do so shall cause forfeiture or cancellation of claims stated in the said arrangement.

As soon as the decision confirming the arrangement enters into force of res judicata, the debtor shall recover the freedom to administer and dispose of assets

Article 19

The expert appointed under the conditions set in article 8 above shall submit reports on his mission to the president of the competent court within one (1) month of the decision to confirm the arrangement or the judgment terminating the preventive settlement pursuant to Article 9-1, above.

The president of the competent court shall approve the report.

Where the debtor fails to withdraw documents and assets which he gave the expert, the latter shall become their custodian for two (02) years from the date on which he presented his report.

Article 20

The trustee or the controllers appointed pursuant to Article 16 above shall oversee the execution of the arrangement. They shall report any failure to the receiver without delay.

Every (03) months, they shall send progress reports to the receiver on the conduct of the operations and copy the debtor. The latter shall have fifteen (15) days to formulate, if need be, his observations and objections.

The trustee or the controller (s) whose appointment ends shall file their reports with the court registry within thirty (30) days following such termination.

The compensation of the trustee acting as controller shall be fixed by the court which appointed him pursuant to the scale stipulated in article 4-19 above.

Article 21

At the request of the debtor and based on the report of the trustee in charge of auditing the execution of the arrangement, if one was appointed, the competent court may decide of any changes that may curtail or promote such implementation.

The provisions of articles 139-143 hereinafter shall be applicable to the annulment and cancellation of the arrangement.

Section 3: Enforcement Proceedings

Article 22

The decision of the competent court relating the preventive settlement shall be provisionally enforceable.

Provisions of Article 218 hereinafter related to the calculation of time extensions shall be applicable.

Article 23

Decisions rejecting the petition to open a preventive settlement or closing a preventive settlement pursuant to Article 9-1 above, or rejecting the confirmation of the arrangement may likely be appealed by the debtor before the Court of Appeal within fifteen (15) days from the date of the judgment.

The decision to open a preventive settlement may likely be appealed by the creditors and the public prosecutor before the Court of Appeal within fifteen (15) days from the first publicity pursuant to Article 37 hereinafter if they believe that the company is insolvent.

The decision confirming the arrangement may be appealed by the public prosecutor and creditors before the Court of Appeal, within (15) days from the judgment for the former and from the date of the first publicity pursuant to Article 37 hereinafter for the latter.

The Court of Appeal shall open proceedings and render decision within a period of thirty (30) days from the filing of the petition.

If the Court of Appeal takes notice of the insolvency, it fixes a provisional date of the insolvency and order the reorganization or assets liquidation proceedings and is obligated to refer the matter to the competent court for the ruling, inter alia, on the appointment of a receiver.

Within three (03) days of the decision of the Court of Appeal, the registrar of this court shall send an excerpt to the registrar of the court of first instance which shall proceed with publicity formalities pursuant to Article 17 above.

Article 23-1

The decisions rendered by the president of the competent court pursuant to Article 11 above may only be contested before the same court within eight (08) days from the date of the judgment

These decisions shall be lodged with the court registry on the day the judgment is delivered. They shall be notified without delay to the debtor by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any means leaving a written record.

The competent court shall rule within eight (08) days from the day on which the opposition is filed. The opposition shall be made in the form of a statement to the court registry. The latter shall convene the opposing party by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any means leaving a in written record, to the closest hearing so as to be heard in the legal counsel chamber.

Section 4: Simplified preventive settlement

Article 24

The simplified preventive settlement shall be governed by the rules applicable to preventive settlement, subject to the provisions of this Article.

Article 24-1

Any debtor, who meets the definition of small enterprise under Article 1-3 above, may file a petition for simplified preventive settlement procedure set forth in this section.

Article 24-2

The debtor wishing to benefit from a simplified preventive settlement shall submit a petition under the conditions set forth in article 6 above, taking into account derogations granted to small enterprises.

Notwithstanding the foregoing provision, the procedure may be opened even when an arrangement is not proposed.

In conjunction with the petition stipulated in article 6 above, the debtor who meets the conditions for implementing the simplified preventive settlement shall provide a sworn statement so attesting.

Article 24-3

The decision of the competent court ordering a simplified preventive settlement is not subject to appeal.

Article 24-4

The three (03) months and one (01) month time limits provided for in articles 9 paragraph 1 and Article 13 paragraph 2 above shall be respectively reduced to two (02) months and fifteen (15) days.

Article 24-5

Where the proposed arrangement provided for in article 13 has not been filed by the debtor at the time of the opening petition, it shall be drawn by him with the assistance of the expert in preventive settlements.

Such proposed shall prescribe measures and conditions envisioned for the restructuring of the debtor company, including the terms and conditions of debts settlement and, in particular, the request for time extensions and debt reduction, individuals required to execute the arrangement as well as, where applicable, collateral securities provided to ensure execution.

In any case, such draft shall identify requisites for establishing the financial and economic viability of the debtor.

TITLE III: REORGANIZATION AND ASSETS LIQUIDATION

CHAPTER I: OPENING OF REORGANIZATION AND ASSETS LIQUIDATION

Article 25

Reorganization and judicial assets liquidation shall be opened for any debtor who finds himself in a insolvency.

Insolvency means that the debtor is unable to pay its due claims out of its available assets except in situations where credit reserves or payment deadline extensions consented by creditors enable the debtor to deal with current debts.

The debtor who becomes insolvent shall make a statement in order to obtain the opening of a reorganization or assets liquidation proceedings regardless of the nature of its debts.

The statement of insolvency shall be made by the debtor no later than thirty (30) days following the occurrence of the insolvency and lodged at the registry of the competent court against a receipt.

Without prejudice to the provisions of Article 33 hereinafter, the debtor shall specify in his statement whether he is petitioning for the opening of reorganization or assets liquidation proceedings.

Article 26

The following documents dated from less than thirty (30) days shall be attached to the statement provided for in article 25 above:

- 1) a certificate of incorporation, registration or declaration of activity in a Register or a professional order or, any other documents which prove the regularity of the debtor's activity;
- 2) summary financial statements comprising the balance sheet, the income statement, a supply and use table, the status annexed thereto and, in any case, the turnover amount and profits or losses of the last three (03) years or any other document capable of establishing the financial and economic position of the debtor if the petition is filed by a debtor meeting the definition of small enterprise pursuant to Article 1-3 above;
- 3) cash flow statement and the exact amount of claims and debts stating names, titles and addresses of creditors and the maturity dates;
- 4) detailed statement of assets and liabilities, real or personal granted by or received from the company and its top executives;
- 5) inventory of the assets of the debtor stating movable assets subject to claims by their owners and those affected by a retention of title clause or, alternatively, a provisional inventory if the petition is filed by a debtor who meets the definition of small enterprise in accordance with Article 1-3 above;
- 6) a list of employees stating their salaries and employer's unpaid contributions at the date on which the petition is filed or any other document identifying and counting the debtor's employees and estimating the amount of their wages and contributions if the petition is introduced by a debtor who meets the definition of small enterprise in accordance with Article 1-3 above.
- 7) a document stating the full names and the address of the employees' representatives;
- 8) a certificate of the debtor stating that he is not party to a conciliation agreement in progress and, in any case, that he is not subject to a preventive settlement, reorganization or assets liquidation procedures that is pending; where appropriate, if the debtor has benefitted from conciliation or arrangement, the amounts of claims due to creditors benefitting from the privilege of Article 5-11 and Article 11-1 above as well as their names and residence;
- 9) in case of a legal entity, the list of members jointly and severally liable for the debts thereof, stating their full names and addresses as well as the names and addresses of its top executives;

10) where appropriate, a document stating the full names, titles and domiciles of individuals who are planning to make new cash or service/good contributions under the conditions of Article 11-1 hereinafter, with the amount of the contributions or the value of goods or services;

11) a proposed arrangement without prejudice to the application of Article 27 hereinafter;

All these documents shall be dated, signed and certified true by the individual making the statement.

In case any of these documents may is not provided, or otherwise incomplete, the statement shall include the reasons thereof.

Article 27

As the statement provided for in article 25 above or, later on, within sixty (60) days following the opening decision of reorganization, the debtor shall file a drat composition.

Such proposed shall demonstrate judicial reorganization prospects of the debtor company with respect to business opportunities and activities, the market status and available financing resources; it shall as well specify envisioned measures and conditions for its restructuring namely:

- requisites for enabling the financial and economic viability of the debtor company;
- terms for continuing the company business activities such as the request for time extensions and debt reduction, partial assignment of assets with a specific indication of assets to be assigned; assignment or lease-management of a branch of activity forming business assets; assignment or lease-management of part or the entire company, without these terms being restrictive and exclusive on each other;
- the full names, titles and addresses of individuals mandated to execute the composition and all their undertakings for restructuring the company;
- terms for maintaining and financing the company, settlement of claims contracted prior to the decision to open the reorganization as well as, where applicable, collateral securities provided to ensure execution; these undertakings and collateral securities may consist, inter alia, of subscriptions for an increase of share capital by new or former partners, debt-for-equity swaps, appropriations by banking or financial institutions or by any other person, including any new cash or service contributions under the conditions set forth in article 33-1 hereinafter as well as the amount of the contribution or the value of goods or services; the continuation of the execution of contracts entered into prior to the opening decision, provision of securities;

- the level and prospects of employment, as well as layoffs for economic reasons which will take place within the conditions set forth in the provisions of articles 110 and 111 hereinafter

The proposed judicial composition may determine a differential treatment of creditors where situational differences so justify.

Article 28

The reorganization and assets liquidation proceedings may be opened at the request of a creditor, irrespective of the nature of its claim, provided that it is certain, of a fixed amount and due.

To this effect, the creditor's petition shall state the nature and amount of claim and proof of debt.

Article 29

The competent court shall rule on the matter, ex officio, namely based on information furnished by the representative of the public prosecutor, auditors of legal entities governed by private law, members of such legal entities or institutions representative of the staff who bring on information susceptible for motivating such action.

The competent court may also be seized by the public prosecutor. In this instance, he shall furnish all supporting documents for the petition.

The president of the competent court shall convene the debtor through a registrar's notice served by a bailiff's writ or any other notification through any means proving reception in writing by the addressee to appear before the competent court holding a hearing behind closed doors. The notification shall contain a full reproduction of this Article, and failure to reproduce this Article shall render such notification null and void.

Where the debtor appears, the president shall inform him of the facts motivating the court action and shall note his comments. Where the debtor acknowledges the insolvency or the president is deeply convinced that the debtor is in such predicament, he shall grant a time limit not exceeding thirty (30) days to produce documents listed in article 26 above. The same time limit shall be granted to members of a legal entity who are indefinitely, jointly and severally liable for claims thereof. After such time limit, the competent court shall rule in open court.

Should the debtor fail to appear, the competent court shall rule in first public hearing and decree a decision deemed adverse to the debtor.

Article 30

When the debtor dies insolvent, the competent court shall be seized for the purpose of opening a reorganization or assets liquidation proceedings within one (1) year from the date of death, based on either an heir's statement or a creditor's petition or a public prosecutor's petition.

The competent court may take action ex officio within the same time limit, provided that the known heirs of the debtor have been duly summoned and heard. In this case, or in case of a public prosecutor's petition, the procedure stipulated in article 30 above shall be applied.

In case of action by the competent court by the heirs, they shall complete an insolvency statement under the conditions set forth in article 25, 26 and 27 above.

Article 31

The opening of a reorganization or assets liquidation proceedings may be petitioned within one (1) year from the removal of the debtor from the Registry of Commerce and Securities, or from the time he becomes insolvent. The insolvency must occur prior to either said removal or the insolvency of activities, or result in whole or in part from the activities carried out heretofore.

The opening of a reorganization or assets liquidation proceedings may also be petitioned against a partner of a legal entity governed by private law who is indefinitely, jointly and severally liable for claims thereof within one (1) year from the removal from the Registry of Commerce and Securities when insolvency occurred prior to the removal or the insolvency of activities, or result in whole or in part from the activities carried out heretofore.

In these two (2) cases, the competent court shall be petitioned by a creditor's summons at the request of a public prosecutor or shall take action at its own initiative under the conditions set forth in article 28 and 29 above.

Article 32

At the first public hearing, the competent court shall rule in favor of opening a reorganization or assets liquidation proceedings after hearing or duly summoning the debtor, delegates or staff representatives, the public prosecutor and, where appropriate, the creditor petitioner pursuant to the law of the concerned State party.

The competent court shall hear any other person whose hearing he deems material.

Prior to delivering his judgment, the court may appoint a sitting judge or any other individual deemed qualified to write a report on the debtor's economic and social position within an allotted timeframe, but which cannot exceed one (1) month.

When the debtor exercises a regulated liberal profession, the competent court shall make a ruling, after duly summoning and hearing the representative of the professional order or the competent regulator of the debtor.

The competent court petitioned shall not refer the matter to the docket.

Article 33

The competent court, which concludes that there is indeed insolvency, shall decide on the opening of either reorganization or judicial assets liquidation proceedings.

It shall declare reorganization:

- if it appears that the debtor has proposed a sustainable composition within the meaning of Article 27 above or that such an arrangement may likely succeed;
- Or, where an overall insolvency is realistically foreseen.

Otherwise, the court shall decide the opening of assets liquidation proceedings. In the decision opening the assets liquidation proceedings, the competent court shall set the time period at the end of which the closing of the proceedings is examined provided that such time period may not exceed eighteen (18) months from the opening of the procedure. If the closing of the proceedings cannot be ruled at the end of such period, the competent court may extend the term by six (06) months only once by a specially reasoned decision, after hearing the justifications of the trustee. Passed this deadline, the competent court shall order the completion of the assets liquidation, ex officio, or at the request of any interested party.

The decision to open a reorganization or assets liquidation of a legal entity shall remain in force with respect to all its members who are indefinitely and severally liable for the claims of such entity and shall pronounce against each one of them, either the reorganization or the liquidation of the assets depending on their situation.

At any time during the reorganization proceedings, the competent court may convert it to assets liquidation if the conditions in paragraph 2 above are no longer met. The provisions of articles 36 to 38 hereinafter shall be applied.

In any case, at the expiry of the six (06) month-period from the decision to open the reorganization proceedings, which may be extended only once by the competent court, ex officio or at the request of the debtor or the trustee for a duration of three (03) months, the court shall convert the reorganization into assets liquidation, ex officio or at the request of any interested party.

The decision of the competent court may be appealed. The Court of Appeal which cancels or reverses or upholds the decision of the Court of first instance may rule, ex officio, for reorganization or assets liquidation and refer the case to the Court of First Instance so as to continue the process, including the appointment of the receiver.

Article 33-1

In the case of conversion of a reorganization into an assets liquidation proceedings, individuals who, in the judicial composition, had consented to a new cash contribution for the debtor to ensure the continuation of the business activity of the debtor company and its sustainability shall be paid in respect to the privilege according to ranks provided for in articles 166 and 167.

Individuals who provide a new goods or services to ensure the continuation of the business activity of the debtor company and its sustainability shall benefit from the same privilege for the price of such good or service.

This provision does not apply to contributions made for an increase of the share capital of the debtor.

The creditors of the debtor may not benefit from this privilege for claims incurred prior to the opening of the reorganization.

Article 34

The competent court shall set the provisional date for the insolvency, otherwise, such insolvency shall be deemed to have occurred on the date on which the decision was recorded.

The date on which payments ceased shall not be eighteen (18) months prior to the pronounced opening decision. Except in cases of fraud, it shall not be extended to a date prior to the final decision which has confirmed the arrangement.

The competent court which modifies, in the limits set out in the paragraph above, the date of the insolvency by a subsequent decision to the opening decision, shall rule by a specially reasoned decision.

Any request to set the date for insolvency to any other date other than the one set by the opening decision or a subsequent decision shall not be admissible after the convening of the bankruptcy meeting stipulated in article 122 hereinafter or after the expiry of a period of one year from the decision on assets liquidation.

Article 35

In the decision to open the reorganization or assets liquidation proceedings, the competent court shall appoint the receiver among the sitting judges of the court hearing the case, excluding its president, unless the latter is a single judge. It may also, if it deems necessary, appoint a deputy receiver.

The competent court shall also appoint no more than three (3) trustee(s). The appointed expert for preventive settlements of a debtor may not be appointed trustee.

The court registry shall send, without delay, a copy of the decision to the public prosecutor.

Article 36

The registry of the competent court shall make an entry of the decision of commencement of bankruptcy proceedings in the Registry of Commerce and Securities, without delay.

Where the debtor is a non-commercial legal entity governed by private law, the entry shall be made in the chronological register; in addition, a file is established on behalf of the debtor in the alphabetical record with reference to the decision thereof; it shall state the full names and addresses of the top executives as well as the registered office of the legal entity.

Where the debtor is a natural person or an entity exercising a regulated liberal profession or activity, the decision, at the behest of the registrar, shall be notified to the legal representative of the professional order or its competent authority.

Article 37

The decision to open the reorganization or assets liquidation proceedings shall be published, at the behest of the registrar of the competent court, in a newspaper authorized to publish legal notices distributed at the location of the registered office of the competent court. Without prejudice to this publication, an additional publicity may also be carried out in all other media outlets.

Such publicity shall, in addition, feature in a newspaper authorized to publish legal notices at the location of each secondary establishment of the debtor if the newspaper empowered to publish legal listings is not distributed in the area the registered office is located.

It shall contain the following information: the name of the debtor; its domicile or registered office; its incorporation number in the Registry of Commerce and Securities or number of activity statement; the date of the decision to open the proceedings and the type thereof. It must also state the name and address of the trustee with whom creditors must file their claims, the time limit for filing such claims and a full reproduction of Article 78 above.

A second publicity shall be carried out, under the same conditions, at the behest of the registrar of the competent court, as soon as within fifteen (15) days and no later than thirty (30) days from the date on which the first publicity formality was performed.

Article 38

The trustee shall verify that the statements and publicity provided for in articles 36 and 37 above have been completed.

Failing this, he shall be responsible for completing these formalities at the earliest convenience.

Furthermore, it is mandatory to publish the decision to open the reorganization of assets liquidation proceedings in accordance with the provisions organizing land registration if the debtor also owns immovable property.

CHAPTER II: REORGANIZATION AND ASSETS LIQUIDATION OFFICERS

Section 1: Receiver

Article 39

The receiver shall ensure, under the authority of the competent court, regular and rapid progress of reorganization or assets liquidation proceedings, protection of the interests at stake and achievement of the objectives pursued.

The duties of the receiver shall be exclusive of exercise of any other jurisdictional assignment in the bankruptcy procedure for which he has been mandated.

The receiver shall collect all information he deems relevant. He may namely hear the debtor or the top executives of the legal entity, their subordinates, the creditor or any other person, including the spouse or known heirs of the debtor who died insolvent.

Notwithstanding anything to contrary in any other statutory or regulatory provision, the receiver may obtain information from auditors, accountants, staff representatives, administrations and public agencies, pension and social security agencies, banks and financial institutions as well as services in charge of centralizing the banking risks and incidents of payment. He shall collect information that may give him accurate economic, financial and social position of the company.

He shall also oversee the activities of the trustees and send progress reports to the competent court every three (03) month and any time, at the request of the latter.

The receiver shall report all dissents or disputes arising out of the bankruptcy procedure to the competent court.

The competent court may, at any time, replace the receiver and the trustee.

Article 40

The receiver shall have eight (08) days to rule on petitions, disputes and claims falling within his purview from the filing date. If the receiver fails to rule within such period, he shall be deemed to have rejected the petition.

The receiver's decisions shall be immediately delivered to the court registrar, who shall communicate them, without delay, to the president of the competent court and notify them by hand-delivered letter against a receipt, by registered mail against acknowledgement of receipt or by any means proving receipt in writing to all individuals who may be affected by such decisions.

These decisions may be subject to opposition expressed in a simple statement filed with the registry of the competent court within eight (08) days of their delivery or of their notification or following the time limit set in the first paragraph of this Article. Within this timeline, the competent court may take action ex officio to amend or cancel such decisions.

The competent court shall rule at the first useful hearing.

Section 2: Trustee

Article 41

As soon as the trustee is informed of his appointment, he shall certify that he meets the requirements set out in articles 4-4 and 4-5 above. At any time during the course of reorganization or assets liquidation proceedings, if he feels that he no longer meets such conditions, he shall immediately inform the president of the competent court, who shall terminate his mandate and appoint a replacement.

The debtor or any creditor may, at any time, petition the president of the competent court for the replacement of the trustee if he falls within one of the incompatibilities set forth in articles 4-4 and 4-5 above, or if they feel he no longer performs his duties diligently.

Article 42

The receiver shall collect the claims of the debtor or creditors who request the removal of the trustee and the appointment of his replacement. The receiver shall rule within eight (08) days from the date the request is filed. His order shall be accompanied by a provisional enforcement of the law. The receiver's decision may be objected within eight (8) days from the date thereof.

Where he has not ruled in eight (08) days from the filing of the petition, the receiver shall be deemed to have rejected the request. The petition may then be brought before the competent court by filing an objection under the conditions set forth in article 40 above.

The competent court hearing the opposition shall hold closed doors sessions to hear the explanations of the petitioner (s) and the trustee. Its decision, in a public hearing, shall be accompanied by a provisional enforcement of the law. It shall be subject to appeal within fifteen (15) days from the date of the decision.

The registrar of the competent court shall communicate, where appropriate, such decision to the national authority of the concerned State party which may initiate disciplinary proceedings in accordance with this Uniform act.

Article 43

The receiver shall oversee the trustee's mission during reorganization or assets liquidation proceedings.

Trustees shall be liable for damage caused by their misconduct pursuant to the provisions of articles 4-12 to 4-15 above.

Where several trustees have been appointed, they shall act collectively. However, the receiver may, depending on the circumstances, empower one or several of them to act individually. In this case, only trustees so empowered shall be liable for their own misconduct.

Where a grievance is filed against one of the trustees' dealings, the receiver shall be informed and shall act under the conditions set forth in article 40 above.

The trustee shall submit a written report to the receiver on his mission and the implementation of the reorganization or assets liquidation proceedings at least once every two (2) months and, whenever the receiver so requests. Furthermore, he shall state in his report the amount of money deposited in the account of the bankruptcy proceedings opened under the conditions set forth in article 4-22 above.

Remuneration of trustees shall be governed by articles 4 (19) and 4 (20) above.

Article 44

At the end of his mandate, the trustee shall present a report to his successor, without delay, in the presence of the receiver, the debtor and controllers convened by the registry of the competent court.

Article 45

Without prejudice to the rights of claimant creditors, proceeds eventually collected by the trustee, regardless of their origin, shall be deposited immediately under his watch in the account opened pursuant to Article 43 above. The trustee shall be liable, personally, for the interest at the legal rate plus eight (08) points on the amounts not deposited in the account, without prejudice to disciplinary sanctions.

If some funds owed to the debtor were deposited in a separate account by third parties, they shall be transferred to the account opened by the trustee for the bankruptcy procedure. He shall be responsible for obtaining the withdrawal of any opposition.

No opposition on proceeds deposited in the special account for reorganization or assets liquidation proceedings shall be admissible. Funds thus paid may be withdrawn only by a decision of the receiver.

However, the trustee shall comply with the accounting requirements set forth in article 4-15 above

Article 46

The trustee shall be responsible for the books, documents and assets received from the debtor or belonging to him as well as from creditors or any petitioner for five (05) years from the date of the transmission of the accounts.

Section 3: Public Prosecutor

Article 47

The receiver shall keep the public prosecutor informed on the progress of the reorganization or assets liquidation proceedings. He may, at any time, require transmission of all deeds, books or documents related to the proceedings.

Failure to communicate information or transmit documents may be invoked only by the public prosecutor.

The public prosecutor shall inform the receiver, upon request or ex officio, all information relevant to the administration of the procedure, including any information from a criminal procedure regarding the debtor, notwithstanding the confidentiality of the investigation.

Section 4: Controllers

Article 48

Throughout the reorganization or assets liquidation proceedings, one (01) to five (05) controllers may be appointed by the receiver among non-salaried creditors. Within a period of one (01) month from the pronouncement of the decision to open the proceedings and, at the request of creditors representing at least one third of the total of the same claims even unverified, the appointment of creditor controllers shall be mandatory. At the expiry of this period, any creditor may apply to be appointed controller, while the total number of controllers cannot exceed five (05). In case of plurality of applications, the receiver shall ensure that at least a creditor controller is selected among secured creditors and another one among unsecured creditors.

When the number of salaried staff exceeds ten (10) during the six (06) months preceding the petition to the competent court, the trustee shall convene the company committee, or otherwise, staff delegates, in order to appoint one employee as controller within twenty (20) days from the day the decision to open the proceedings was taken. Within the same period, absent a company committee and staff delegates, the trustee shall invite the employees to elect one individual among them. The person so designated or elected shall be appointed by the receiver as a controller representing the staff. For companies that do not reach the above threshold, the receiver shall designate one employee as controller representing the staff.

No parent or relations of the debtor or top executives of the legal entity, to the fourth degree inclusive, or nobody owning directly or indirectly all or part of the share capital or the voting rights of that individual shall be appointed controller or representative of a legal entity.

Controllers appointed by the receiver may be removed by the competent court at the request thereof or of the public prosecutor. After removal, alternates shall be appointed as set forth in paragraphs 1 to 3 of this Article.

When the debtor exercises a regulated liberal profession, the professional order or the supervisory body shall automatically become controller, without prejudice to the appointment of five (05) controller creditors and a staff representative controller.

Article 49

Controllers shall assist the trustees in the performance of their duties and the receiver in his mandate to oversee the implementation of the reorganization or assets liquidation proceedings and to further the interests of the creditors.

They shall always be entitled to verify the books and the state of affairs presented by the debtor, enquiry about the progress of the procedure, the trustee's activities as well as proceeds and payments made.

Controllers shall be compulsorily consulted for the continuation of the business activity of the company while they are verifying claims and on the occasion of the realization of the assets of the debtor.

Without prejudice to privileges they enjoy pursuant to Article 72 hereinafter, controllers may inform the receiver on all disputes, who shall act in accordance with the provisions of Article 40 above.

The duties of controllers shall be performed pro-bono and personally by the controllers.

Controllers shall be liable for their misconduct.

Section 5: General Provisions

Article 50

When the debtor lacks sufficient funds to immediately cover expenses incurred with respect to the decision of reorganization and assets liquidation proceedings, such as, postings and publication of decisions in a newspaper of legal notices, seals, custody and removal of seals or exercise of the right of non-opposability, debts settlement, extension of bankruptcy proceedings and personal bankruptcy of the top executives of legal entities, the Treasury shall give advances following a decision of the receiver. They shall be reimbursed as a priority on the first collections, notwithstanding the provisions of articles 166 and 167 hereinafter.

Such provision shall be applicable to the appeal procedure of the decision pronouncing the reorganization or assets liquidation.

Article 51

The trustee and all parties who participated in the administration of the proceedings are prohibited from purchasing personally, either directly, indirectly, or amicably or through a court-ordered sale, all or part of the movable or immovable assets of the debtor who is under preventive settlement, reorganization or assets liquidation proceedings.

CHAPTER III: EFFECTS OF THE DECISION TO OPEN A REORGANIZATION ON THE DEBTOR

Section 1: Assistance or Divestiture of the Debtor

Article 52

The decision ordering reorganization shall automatically entail, from the date it is made until the confirmation of the judicial composition or the conversion of the reorganization into assets liquidation, mandatory assistance of the debtor for all the undertakings related to the administration and disposal of assets. All acts taken in violation of this provision shall be unenforceable against third parties.

However, the debtor may validly carry out alone conservatory acts and daily management duties, which are parts of the usual company activities as practiced in the particular profession. He shall report to the trustee.

If the debtor or the top executives of a legal entity refuse to perform any act necessary for the safeguarding of the estate, the trustee shall act without delay. The same shall apply particularly when he has to take protective measures or collect assets and due debts.

If authorized by the receiver, the trustee shall also proceed without delay to the sale of expensive items for safeguard or items ready to wither away or subject to imminent depreciation. The authorization of the receiver shall also be necessary bring any personal or real property action, as a plaintiff or defendant.-

If the trustee refuses the debtor's or the legal entity representatives' assistance in the performance of administrative acts or disposal, they shall, along with the controllers, compel him to cooperate by a decision of the receiver obtained under the conditions provided for in articles 40 and 42, paragraphs 2 and 3 above.

Article 53

The decision to liquidate assets of a legal entity shall entail the automatic dissolution thereof.

The liquidation of assets proceedings shall entail, as a matter of law, until the closing of the proceeding, an automatic divestiture of the debtor, from the commencement to the close, of the administration and disposal of known assets and those that can be thereafter acquired by any means whatsoever. All acts taken in violation of this provision, with the exception of conservatory acts with the exception of conservatory acts, shall be unenforceable against third parties.

Acts, rights and actions of the debtor concerning his estate shall be performed or exercised for the entire duration of assets liquidation by the trustee acting alone and representing the debtor.

If the trustee declines to perform an act or to exercise a right or a claim related to the estate of the debtor, the latter and the top executives of the legal entity or the controllers, where one was appointed, may compel him to act following a decision of the receiver obtained under the conditions set forth in articles 40 and 42, paragraphs 2 and 3 above.

Article 54

Upon taking office, the trustee is required to perform all acts necessary for the preservation of the rights of the debtor against the debtor's debtors.

He shall, inter alia, on behalf of the union, require the registrations of personal and real property security interests subject to publicity that were not required by the debtor himself. The trustee shall attach his appointment certificate to the request.

Article 55

Within three (03) days of the decision to open a reorganization or assets liquidation, the debtor shall hand over to the trustee books and records to be reviewed and closed.

Any third party owner of these books shall deliver them to the trustee on his request.

The debtor or the third party owner may be represented upon good cause showing of legitimate reasons for his absence.

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Failing to hand over the balance sheet by the debtor shall prompt the trustee to prepare an assessment of the situation using books, accounting documents and information obtained.

Article 56

The competent court, in the decision pronouncing the assets liquidation, or subsequently the receiver may order that during all the procedure, mail addressed to the debtor shall be sent to the trustee. The debtor may assist in remitting his mail to the trustee if he so requests. All personal mail shall immediately be delivered or returned to the debtor.

Under the same conditions, the trustee may be permitted to access the debtor's non-personal email account.

When the debtor carries out an activity for which he is bound by professional secrecy, the provisions of this Article shall not apply.

Article 57

From the decision to open reorganization or assets liquidation proceedings against a legal person, the ipso jure or de facto top executives, salaried or not, under penalty of nullity, shall assign equity

interests, capital securities or securities giving access to capital of the legal entity which are part of the proceedings only with the approval of the receiver and under conditions that he sets forth.

The competent court shall rule on non-assignability of ownership interests of any person who was involved in the management of the legal entity at any time such involvement was recorded.

Securities giving ownership interests shall be handed to the trustee. Absent voluntary delivery, the trustee shall give formal notices to the top executives so as to personally deliver them. Failure to deliver such titles shall be deemed an offence provided for in article 233 (6) hereinafter.

Where appropriate, the trustee shall state the non-assignability of the top executives' ownership interests in the legal entity records and in the Register of Commerce and Securities.

The trustee shall provide a statement of ownership interests and deliver to the top executives a certificate of deposit or non-transferable registration to enable them to participate in the meetings of the legal entity.

Article 58

The trustee shall be responsible for safekeeping securities entrusted to him by the top executives under the conditions set forth in article 57 above.

He may return them only after confirmation of the judicial composition or after the close of the assets liquidation, unless he is ordered by the court to return them to another party.

Article 59

In the decision to open reorganization and assets liquidation proceedings, or in a subsequent decision, the competent court may order the affixing of seals on cash boxes, safes, portfolios, books, documents, objects, storages and debtor's counters and, in the case of a legal entity with members jointly and severally liable, on each member's assets. The affixing of seals may also be ordered on the assets of the legal entity's top executives.

The register shall send, without delay, the notice of the receiver's decision.

Even before such decision is taken, but only in case the debtor disappears or embezzles part or all his assets, the president of the competent court may appoint, among its members, either ex officio or at the request of one or several creditors, a judge who shall affix the seals.

The receiver or the appointed judge shall give, without delay, notice of the affixing of seals to the president of the court which gave the order.

Article 60

If the competent court ordered the affixing of seals, the receiver may waive it or authorize the trustee who so proposes to remove them on:

- 1) movables and indispensable items for the debtor and his family, as they are, when submitted;
- 2) items about to wither away or depreciate;
- 3) Necessary items to the business of the debtor or his company where the continuation of the business activity is authorized.

The trustee shall inventory these items without delay in the presence of the receiver who shall sign the minutes.

Article 61

Books and accounting documents shall be extracted from the seals and delivered to the trustee by the receiver after checking them out and noting in brief minutes the state in which he found them.

Bills held in the portfolio with short maturity or that may be accepted or for which safeguarding acts have to be performed shall also be extracted from the seals by the receiver, who inventories and delivers them to the trustee for collection.

Article 62

Within three (03) days of their affixing, the trustee shall remove the seals for inventory purposes.

Article 63

As soon as the reorganization and assets liquidation proceedings commence, the trustee shall inventory the debtor's estate as well as security interests encumbering them either in the presence of the debtor or by sending him the inventory list by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing.

When the debtor exercises a regulated liberal profession, the inventory shall be prepared in the presence of the representative of that professional order or the competent authority thereof. The inventory shall never compromise the professional secret if the debtor is subject thereof.

The debtor shall deliver to the trustee a list of its creditors stating the amount of their claims, their names and addresses, and the list of running contracts. He shall also state the current legal proceedings to which he is party.

While the inventory is underway, personal property forgotten during affixing of seals or extracts thereof shall be put together.

In reorganization, when there is plan to assign an asset, it shall be appraised prior to the assignment. In liquidation of assets, all assets shall be appraised at the same time as the inventory exercise.

If authorized by the receiver, the trustee may be assisted by any person of his choice in the preparation of an inventory and appraisal of assets.

Goods placed under customs inspections shall get a special reference if the trustee is aware of their existence.

When the reorganization and assets liquidation proceedings are initiated against a debtor after his death and no inventory was established, the inventory shall be prepared or continued in the presence of known or duly called upon heirs by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any written means.

The public prosecutor may be present at the inventory.

The inventory list shall be prepared in duplicate copies: one shall immediately be submitted to the registry of the competent court; the other shall remain in the hands of the trustee.

In the event of liquidation of assets, once the inventory is completed, goods, cash, values, trade payables and debt securities, books and documents, furniture and the debtor's possessions shall be delivered to the trustee who shall add them at the bottom of the inventory.

The absence of inventory shall not preclude the exercise of actions for claims or refunds.

Article 64

The debtor may obtain from the assets, for him and for his family, relief determined by the receiver. He shall make his decision after hearing the trustee.

Article 65

In the event of reorganization, the trustee must immediately require the debtor to subscribe all statements he is responsible for with respect to tax, customs and social security. He shall oversee the preparation of these statements.

In the event of assets liquidation, the trustee shall immediately require the debtor to provide him with all information, outside the business accounts, which is necessary to the determination of all due taxes, charges and social security contributions. The trustee shall transmit elements of information provided by the debtor and what is available to him to tax, customs and social security administrations.

In each case described above, if the debtor does not yield to the request of the trustee within twenty (20) days, the latter shall record that failure and notify the receiver; within ten (10) days; he shall inform the tax, customs and social security administrations while providing them with information collected on the debtor's business dealings and payment of wages.

Article 66

Without prejudice to the social and economic assessment provided for in article 119-1 hereinafter, the trustee shall present a summary report to the receiver on the apparent situation of the debtor within thirty (30) days from taking office. The receiver shall promptly formulate observations on the report and transmit them to the public prosecutor.

If the receiver does not receive the report within the prescribed period, he shall notify the public prosecutor by explaining the causes of the delay.

Where the reorganization or assets liquidation proceedings are opened against an individual engaged in a liberal profession subject to regulated articles of Association, the report shall also be presented to the professional order or the competent authority of the debtor.

Section 2: Acts unenforceable to the body of creditors

Article 67

The suspect period shall begin from the date of the insolvency and shall end on the date of the decision to initiate the reorganization or assets liquidation proceedings.

Article 68

The following acts shall be unenforceable against the body of creditors where they are carried out during the suspect period:

- 1) gratuitous transfer of deeds of personal and real property;
- 2) any commutative contract in which the obligations of the debtor exceed significantly those of the other party;
- 3) any payment, irrespective of the method, of debts not due, except it is a payment of a trade negotiable;
- 4) any payment of due debts, made otherwise than in cash, trade negotiables, transfer, levy, payment card or credit card or legal, judicial or conventional set-off of debts having a connection between them or any other ordinary payment method or commonly accepted in business exchanges in the sector of activity of the debtor;
- 5) any real conventional security pledged as a collateral security for a debt previously contracted, unless it replaces a prior security interest of a nature and extension at least equivalent or that it is granted in pursuance of a previous agreement in insolvency;
- 6) Any provisional registration of a court-ordered conservatory mortgage or conservatory pledge.

Article 69

The following acts may be declared unenforceable to the creditors' union if they had prejudice to:

- 1) gratuitous transfer of title of movable or immovable property made within six (06) months prior to the suspect period;
- 2) onerous transactions if those dealing with the debtor had knowledge of the debtor's insolvency at the time of their conclusion;
- 3) Voluntary payments of due debts if the beneficiaries had knowledge of the debtor's insolvency at the time of payment.

By way of derogation to the third point of paragraph 1 of this Article, payment to the diligent bearer of a bill of exchange, a promissory note or a check shall be enforceable to the union, except in the following cases where suit can be filed against:

- 1) the drawer or the order giver when drawing in the name of somebody who has had knowledge of the drawee's insolvency, either at the time of drawing or at the time of payment of the bill of exchange to him made by the drawee;

- 2) the beneficiary of the promissory note had knowledge of the subscriber's insolvency, either at the time of the confirmation of the note by him, or at the time of payment to him made by the subscriber;
- 3) the check drawer had knowledge of the drawee's insolvency at the time of the issuance of the check;
- 4) the beneficiary of a check had knowledge of the drawer's insolvency at the time of the issuance of the check;
- 5) The beneficiary of a check had knowledge of the drawee's insolvency either at the time of the issuance of the check, or at the time of the payment of the check.

Article 70

The action for a declaration of non-enforceability shall be exercised only by the trustee, without prejudice to the application of Article 72 (2) hereinafter. It shall fall under the jurisdiction of the court having initiated the reorganization or liquidation of the assets proceedings.

Under penalty of inadmissibility, this action may be brought after the approval of the judicial composition or after the closing of the assets liquidation proceedings.

Article 71

Unenforceability shall benefit the union.

- 1) the union shall be ranked subordinate of the creditor whose security was declared unenforceable;
- 2) The gratuitous act declared unenforceable shall not be effected where it has not been implemented. On the contrary, the beneficiary of the gratuitous act shall return the asset for which ownership was transferred free of charge.

In the case of a gratuitous subsequent transfer, the sub-buyer, even in good faith, shall be subject to enforceability and shall return the property or pay its net value, unless the property has disappeared from the estate as a result of a force majeure.

In case of an onerous subsequent transfer, the sub-buyer shall be bound to return the asset or pay its net value only if, at the time of the purchase he had knowledge of the debtor's insolvency.

In any rate, the main beneficiary of the gratuitous act shall be compelled to pay the net value of the asset if the sub-buyer cannot or should not return the property.

- 3) payment declared unenforceable must be reported by the creditor who shall put it on the debtor's claims.
- 4) If the impaired commutative contract declared unenforceable has not been executed, it shall no longer be executed.

If it was executed, the creditor may only put it on the debtor's claims for the fair value of the service he provided.

With regards to an executed disposal, the purchaser shall report the asset and declare his claim in the debtor's liabilities; if there was gratuitous subsequent transfer, the sub-buyer is required to return the property without appealing to the union of creditors; if the subsequent transfer was paid for, the sub-buyer is required to return the asset and to declare his claim in the debtor's liabilities if, at the time of the acquisition of the property, he had knowledge of the unenforceable nature of the act of its author.

If the debtor has received a portion or all the benefits of the other contractual party that cannot be returned in kind, the creditor must file his claim for the value of the service provided.

CHAPTER IV: EFFECTS OF REORGANIZATION OPENING ON CREDITORS

Section 1: Constitution of the body of creditors and suspensive effects

Article 72

The decision to open reorganization or assets liquidation proceedings shall institute creditors into a body represented by the trustee who, alone, shall act in its name and in the public interest and may commit it.

However, in case of the trustee's shortcoming, a creditor controller may act in the public interest, after a formal notice to the trustee has remained unsuccessful for twenty-one (21) days. The controller shall bear the costs of the action, but if the latter result in gains for the union, his expense shall be reimbursed from the sums obtained. The civil liability suit against a top executive may be brought by two (02) creditor controllers at least.

The body shall be constituted by all creditors whose claim was incurred prior to the decision to open the reorganization, even where the due date of the claim was fixed at a date subsequent to such decisions, provided that such claim is not enforceable pursuant to articles 68 and 69 above.

Article 73

The decision to open reorganization or assets liquidation proceedings shall put an end to the ongoing registration of all personal and realsecurities.

Article 74

The decision to open reorganization or assets liquidation proceedings shall imply a mortgage which the court registrar is required to register immediately on the immovable property of the debtor and on all property that he will acquire subsequently as he acquires assets.

Such mortgage shall be registered in accordance with the provisions related to land registration. It shall be ranked on the day when it was entered on the debtor's properties.

The trustee shall ensure compliance with this formality and, where necessary, he shall execute it himself.

Article 75

The decision to initiate reorganization or assets liquidation proceedings shall stay or prohibit individual lawsuits from all creditors who are part of the body that may:

1. order the debtor to pay sums of money;
2. Terminate the contract due to a failure to pay a sum of money.

The opening decision shall stop or prohibit any procedure execution from these creditors either on movable or immovable property as well as any procedure of distribution having not produced a distributive impact before the decision to open the reorganization.

Deadlines to creditors under penalty of forfeiture, limitation or termination of their rights shall, therefore, be stayed for the duration of the suspension of the lawsuits.

The current lawsuits shall be interrupted until the pursuing creditor has filed his claim. They shall then be recorded automatically, but shall only determine the claims and fix their amount with the trustee being duly called upon.

Legal actions and enforcement proceedings other than those mentioned above may not be exercised or prosecuted during the reorganization and assets liquidation proceedings against the debtor, who shall be assisted by the trustee in reorganization or represented by the trustee in assets liquidation.

Article 75-1

The opening of the reorganization decision shall stay any action against natural persons who are joint debtors or those who had granted a personal security or assigned or ceded an asset as collateral security from the day the judgment was made and during execution of the judicial composition.

However, creditors benefiting from such collateral securities may take conservatory measures.

Article 76

The decision to open the proceedings shall render debts not due only in assets liquidation and against the debtor.

Article 76-1

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

Article 77

The decision to open reorganization or assets liquidation proceedings shall stop the accruing of legal and contractual interests, all interests and service charges for late payment of all claims whether they are secured or not. However, with regards to interests from loan agreements entered into for a duration equal to or longer than one (1) year or loan agreements with a deferred payment of one year or more, interest shall continue to accrue during the reorganization proceedings.

Section 2: Lodgement and verification of claims

Article 78

From the date on which the decision to open reorganization and assets liquidation proceedings was taken and up to the expiry of a period of sixty (60) days following the second publication of the decision in a newspaper empowered to publish legal notices provided for in article 36 above, all creditors in the body, except creditors of maintenance claims shall, under penalty of foreclosure, lodge their claims with the trustee.

Creditors residing outside the national territory where the proceedings has been open shall enjoy a time limit of ninety (90) days to file their claims.

The same shall apply to a creditor who, before the decision to open, has introduced an order for a deed or, failure to have a deed, to ascertain his right.

The lodgement of a claim shall stop the extinctive prescription thereof.

Article 79

Creditors who have a security that went through publicity or have entered into a published contract with the debtor shall receive a note from the trustee who informs them of the need to lodge their claims by hand-delivered letter against a receipt or by registered mail with acknowledgment of receipt or by any means in writing sent, where necessary, to their elected residence. The deadline for lodging their claims shall commence on the date of the notification of the trustee.

Known creditors, including those listed on the balance sheet or appearing on the list provided for in article 63 above, shall be notified without delay by the trustee, if they did not file their claims within fifteen (15) days of the first publication of the decision to open the proceedings in a newspaper of legal notices of the State party concerned. This warning shall take the form of a hand-delivered letter against a receipt or registered mail with acknowledgement of receipt or a notice sent by any means leaving a record in writing.

The same notice shall be addressed, as soon as possible and in all the cases, to the controller representing the staff where one was appointed.

Article 80

Creditors shall send to the trustee, directly or by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing, a statement showing the amount of the receivables on the day of the decision to initiate proceedings, the sums accruing and their maturity dates.

The statement shall specify the kind of security in line with the debt. Furthermore, the creditor shall provide all information that may prove the existence and the amount of the claim in the absence of a legal title, evaluate the claim where it is not in cash and indicate the court hearing the claim in litigation.

Supporting documents shall be appended in a note to the statement that can be photocopied. The creditor or any representative or proxy of his choice shall do the filing.

The trustee shall issue the creditors a receipt for their file.

Article 81

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

Claims shall be accepted provisionally where they are the result of an automatic taxation or redress, even where they are disputed by the debtor under the conditions set forth in article 85 hereinafter.

Article 82

After the bankruptcy meeting in the case of reorganization or after the close of operations in the case of assets liquidation, the trustee shall, at the request of the creditors, return the documents entrusted to him.

With regards to bills of exchange, the return may be done upon the close of the verification where the creditor intends to lodge appeals against signatories other than the debtor.

Article 83

Where creditors do not file their claims within the period set forth in articles 78 and 79 above and were not released from their foreclosure, they shall not be included in the distributions and dividends. Their claims shall not be enforceable to the union and the debtor during the reorganization or assets liquidation proceedings, including during the execution of the judicial composition.

Defaulting creditors may only be released from foreclosure by a reasoned decision of the receiver insofar as the claims status has not been determined and lodged under the conditions set forth in article 86 hereinafter and only if they are not responsible for the default.

The release from foreclosure shall be formed only by a petition addressed to the receiver.

Where the receiver releases the defaulting claimants from foreclosure, the court registrar shall check it in the statement of receivables. Costs of proceedings related to the release from foreclosure shall fully be borne by the claimants.

The defaulting creditors released from foreclosure may rank equally with other creditors only for the sharing of subsequent dividends to the decision on foreclosure release.

Article 84

Verification of receivables shall be mandatory irrespective of the amount of assets and liabilities of the debtor, subject to the provisions of Article 146-1 and 173 hereinafter.

It shall be carried out within four (4) months following the second publication of the decision to open reorganization and assets liquidation proceedings in a newspaper empowered to publish legal notices of the State party concerned.

Verification shall be conducted by the trustee as the claims are filed, in the presence of the debtor and controllers, where appointed or, in their absence, where they have been duly summoned by hand-delivered letter against a receipt or by registered mail or by any means in writing.

Article 85

Where the claim or security is challenged or disputed in whole or in part, the trustee shall notify, on the one hand, the receiver and on the other hand, the creditor concerned, by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing. Such notice shall state the object and reason for the challenge or dispute, and the amount

of the claim for which acceptance has been proposed, and shall contain a full reproduction of this Article.

The creditor shall have thirty (30) days effective on the date of receipt of such notice to give his written or verbal explanations to the receiver. Passed this deadline, he may no longer challenge the trustee's proposal. That time limit shall be extended to sixty (60) days for creditors who reside outside the national territory where the bankruptcy proceedings have been initiated.

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

Article 86

Upon expiry of the deadline set in article 78 above, in the absence of a challenge or dispute, or the time limit set in article 85 above, paragraph 2, where there has been a challenge or dispute, the trustee shall prepare a statement of claims containing his proposals for final or provisional acceptance or rejection of claims, with an indication as to whether they are unsecured or secured, guaranteed by a security and the nature thereof.

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

The statement of claims shall be deposited at the court registry after verification and signature by the receiver who shall state the following on each claim: the amount and the final or provisional nature of the acceptance; its nature- whether it is unsecured or guaranteed by a security the nature of which shall be specified; whether there is a proceedings underway or whether the dispute does not fall within his competence.

The receiver may reject a debtor claim in whole or in part or declare himself incompetent only after having heard or duly summoned the creditor, the debtor and the trustee by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing.

Article 87

The court registrar shall immediately notify the creditors of the deposit of the statement of claims through a publication in one or more newspapers empowered to publish legal notices of the State party concerned.

He shall, in addition, forward an excerpt of the statement of claims to the creditors.

He shall also inform the creditors about the rejection in part or in whole of their claim by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing. Such notice shall be received within fifteen (15) days at least before the expiry of the deadline set in article 88 hereinafter so as to enable them to lodge an objection. Such notice shall contain a full reproduction of the provisions of Article 88 hereinafter.

Article 88

Every creditor mentioned on the balance sheet and whose security is duly published or whose claim has been filed shall be admissible, during a period of fifteen (15) days with effect from the date of the publication in a newspaper empowered to publish legal notices or of receipt of the notice provided for in article 87 above, to formulate their opposition. The opposition shall be formed directly at the court registry or by an extrajudicial act addressed to the court registry by any means proving actual receipt by the addressee, sent to the court registrar against the decision of the receiver. This opposition shall have no admissibility if it is filed by a creditor whose claims or security has been discussed or disputed and who did not provide any explanations to the receiver within the deadline set in article 85 (2) above.

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

The decision of the receiver shall be irrevocable for individuals who have not filed an opposition.

Article 89

Claims disputed or admitted provisionally shall be transferred to the competent court dealing with bankruptcy proceedings, by the court registrar, at the first hearing, to be adjudicated, based on the report of the receiver, where the matter falls within the competence of the said court.

The court registrar shall notify the parties of the transfer by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing at least eight (8) days before the court session.

Where the competent court cannot decide on the merits of the claims before the close of the bankruptcy proceedings, the creditor shall be accepted provisionally.

The court registrar shall notify the parties, within three (3) days, by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing, of the decision taken by the competent court in their respect. It shall also mention the decision of the competent court on the statement of claims.

Article 90

Where the competent court dealing with bankruptcy proceedings establishes that the claim of the creditor falls under the jurisdiction of another court, it shall declare itself incompetent and admit the claim provisionally.

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

Where the creditor fails to refer the matter to the competent court within a period of one (1) month from the date of reception of the registrar's notice provided for in the last paragraph of Article 89 above, he shall be foreclosed and the receiver's decision shall be come irrevocable with respect to his claim.

Notwithstanding any repugnant provision, individual disputes falling within the jurisdiction of labor courts shall not be subject to the attempts of conciliation stipulated in the laws of each State party.

Section 3: Guarantors and joint debtors

Article 91

A creditor with subscribed, confirmed or guaranteed commitments jointly and severally by two (2) or more joint debtors who have stopped payments may file claims in all the creditors' unions up to the full amount of his receivables and participate in distributions until full payment of his claim where he has not received any partial payment thereof before the opening of the bankruptcy proceedings of the debtor and his joint debtors.

Article 92

Where the creditor holder of commitments jointly and severally subscribed by the debtor and other joint debtors in a situation of reorganization or assets liquidation has received an advance on his claim before the decision to open the proceedings, he shall be included in the union of creditors only after deduction of such payment and shall retain, on the balance due to him, his rights against the joint debtor or guarantor.

A joint debtor or the advance applied as partial payment shall be included in the same union for all he has paid and what was to be borne by the debtor.

Article 93

Notwithstanding the composition, creditors shall retain their action for their entire claim against the joint debtors of their debtor, except those who benefit from the suspension.

Article 94

Where a creditor has been paid a dividend in the assets of one or more joint debtors in a situation of reorganization or assets liquidation, the latter shall not be entitled to any recourse against one another, except where the dividends generated by the said proceedings exceed the total amount of the principal and surcharges of the claim; in this case, the excess shall be attributed, according to the order of commitments to those joint debtors who have other joint debtors as guarantors and, where there is no order, the assets shall be distributed on a pro rata basis amongst them.

Section 4: Super priority of wage-earners

Article 95

Claims resulting from a contract of employment or apprenticeship shall be guaranteed by the super priority of wages in reorganization or assets liquidation.

Article 96

The trustee shall, within a period of ten (10) days following the decision to open the proceedings and upon a mere decision of the receiver, pay super priority claims of workers after deduction of advances already received.

Absent necessary funds for this purpose, such claims shall be settled with the first funds collected before any other claim notwithstanding the provisions of articles 166 and 168 hereinafter.

The trustee or any other individual or organization that supports all or part of the wages in case of reorganization or liquidation of assets, if such a body exists in the State party concerned, which has made an advance to pay claims arising out of contracts of employment or apprenticeship, shall be subrogated to the rights of the workers and should be refunded as soon as funds are collected without any obstacles from any other claim.

Section 5: Right of termination and lien of the property lessor

Article 97

Notwithstanding any statutory provision or any contractual clause, no indivisibility, termination or cancellation of the lease of buildings used in the business of the debtor, including premises, which, depending on the buildings, used as dwelling for the debtor or his family, may be caused by the mere opening of the reorganization or assets liquidation proceedings.

articles 108 (2) and 109 hereinafter shall not apply to the lease of buildings used in the business of the debtor, including the premises which, depending on the buildings, are used as dwellings of the debtor or his family.

The trustee, in case of assets liquidation, or the debtor assisted by the trustee, in case of reorganization, may continue the lease or may assign it under the conditions set forth in the contract entered into with the lessor and all rights and obligations relating thereto.

If the trustee, in the instance of assets liquidation, or the debtor assisted by the trustee in the event of reorganization, decides not to continue the lease contract, it shall be terminated by simple notification of the bailiff or notification by any means proving actual receipt by the addressee. The termination shall take effect on the expiry of the period notified in this Act, which shall not be less than thirty (30) days.

The lessor who intends to request or wishes to record the termination for reasons related to cases prior to the opening decision shall, if he has not already done so, introduce his request within thirty (30) days following the second publication of legal notices in the State party concerned.

The lessor who intends to apply for termination of the lease for reasons subsequent to the opening decision shall introduce his request within fifteen (15) days from the day he is informed by the lessee of the reasons thereof. Such decision shall be pronounced when collateral securities offered to secure the priority of the lessor are considered insufficient by the competent court.

Article 98

The lessor has priority for the last twelve (12) months of rents accrued before the opening of the bankruptcy proceedings as well as for the twelve (12) months due or accruing subsequent to such decision.

If the lease is terminated, the lessor shall also have priority for damages and occupation allowance, which may be allocated to him; he may request the payment as soon as the decision to terminate is pronounced. Furthermore, he is the union's creditor for accrued rents and damages or compensation awarded following the opening decision.

If the lease is not terminated, the lessor shall not claim payment of accruing rents. He is the union's creditor for accrued rents after the opening of the procedure as they fall due, only if the securities he enjoyed before the decision to open the proceedings are maintained and they retain the same threshold or if securities granted since the opening decision are considered sufficient.

In addition, the receiver may authorize the trustee to sell the furniture that is inside the rented premises if they are facing imminent depreciation or if they are too expensive to maintain. The same shall apply to furniture for which sale shall not call into question the existence of the Fund or the maintenance of sufficient collateral securities for the lessor.

Absent such authorization, if the lease is not terminated and furniture inside the rented premises is sold or removed, the lien of the lessor shall collateral security the same claims and shall be exercised in the same way as in the case of termination; the lessor may, in addition, request the termination of the lease that is legally binding.

If conflict arises between the lien of the lessor and the privilege of the seller of business assets, the privilege of the latter shall prevail.

Section 6: Spouse's rights

Article 99

The content of the personal property of the spouse of the debtor declared in a situation of reorganization or assets liquidation shall be established by the debtor in accordance with the rules of his matrimonial regime.

The body of creditors could request that purchases so made be added to the assets of the debtor by exhibiting all evidence by all means that the property acquired by the spouse of the debtor was purchased with assets provided by the latter.

Property recovered in pursuance of these rules shall be claimed by the spouse concerned only from debts and securities they are encumbered therewith.

Article 100

The spouse of the debtor, who at the time of the celebration of their marriage within a year of the celebration or the following year, performed some professional independent, civil, commercial, handicraft or agricultural activity, shall not exercise any action in relation with benefits granted by one spouse to the other in the marriage contract or during the marriage in bankruptcy proceedings. Creditors shall not avail themselves of the benefits made by one spouse to the other.

Article 100-1

The spouse of the debtor, in reorganization or assets liquidation, shall be heard or duly summoned by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means leaving a written record before any decision authorizing the sale of community property.

Section7: Rights of furniture seller and claims

Article 101

Notwithstanding the provisions of this Uniform act, the claim on furniture may be exercised only within ninety (90) days following the second publication of the decision to open the reorganization and assets liquidation proceedings in a newspaper of legal notices in the State party concerned.

Article 101-1

The claim on a property referred to in this section shall be addressed to the trustee within the time limit set forth in article 101 above by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any written means.

The trustee may acquiesce to the claim.

Where the trustee fails to respond within thirty (30) days from the day the request was received or in the event of refusal, the receiver may be seized by the claimant within thirty (30) days from the expiry of the first deadline or from the date of the refusal so as to rule on the claimant's rights and the status of the contract based on the observations of the claimant, the debtor and the trustee.

The receiver shall then issue an order within eight (08) days from the date of referral and his order filed without delay with the court registry which shall communicate it to the trustee and notify the parties. At the request of the receiver, the decision shall be communicated without delay to the public prosecutor.

Article 101-2

Within eight (08) days of notification or his communication, the order rendered by the receiver pursuant to Article 101-1 above may be appealed before the competent court under the conditions set forth in article 40 above.

The public prosecutor's office may also seize the competent court, by a reasoned request, within eight (08) days from the day he was informed about the order.

If the receiver has not given a ruling at the expiry of the deadline referred to in the fourth paragraph of Article 101-1 above, the competent court may be seized under the same conditions, at the request of a party or of the public prosecutor.

Examination of the appeal or the petition shall be exercised at the first useful hearing of the court concerned; the interested parties and the trustee shall be notified.

Article 101-3

The owner of a property shall be exempt from asserting his property right when the contract on such property was subject to publicity.

He may demand the restitution of his property by hand-delivered against a receipt or by registered mail with request for acknowledgement of receipt or by any written means addressed to the trustee who is entitled to grant such request.

Failing to reach an agreement within thirty (30) days from the receipt of the request or in case of dispute, the owner may petition the receiver to make a ruling on his rights. Even in the absence of a prior request for restitution, the receiver may also be seized by the trustee for the same purpose.

Article 102

If trade negotiables handed over for collection or other unpaid securities submitted by their owner to be specially attached to specific payments still appear on the portfolio of the debtor, they may also be claimed.

Article 103

May also be claimed, provided that they are in nature, consigned goods and movables delivered to the debtor, either to be sold on behalf of the owner, or as a deposit, loan, trust or rental or any other contract for restitution, including any property subject to a leasing agreement.

In case of goods and movable assets disposal, the price or the portion due may be claimed against the sub-buyer if its value has neither been paid nor offset between the debtor and the sub-buyer on the day of the decision to open the proceedings.

Goods and movable assets subject to retention of title clause may also be claimed in accordance with conditions and effects laid down in the Uniform act on Securities Interests.

However, with regard to goods and movable assets consigned to the debtor in order to be sold or sold with retention of title clause, a claim shall not be lodged where, prior to the return of goods and movable assets, the price is fully and immediately paid by the trustee following the authorization of the receiver.

Article 104

Goods and movable assets that are not delivered or shipped to the debtor or a third party acting on his behalf may be retained by the seller.

Such exception shall be admissible even if the price is stipulated payable on credit and the transfer of property made before delivery or shipment.

Article 105

Goods and movable assets shipped to the debtor but not yet delivered to his stores or to the stores of the broker in charge of selling them on behalf of the debtor or of an agent in charge of receiving them may be claimed.

Nevertheless, the claim shall not admissible if, before their arrival, the goods and movable assets were resold, without fraud, against invoices or regular transportation documents.

Article 106

Goods and movable assets may be claimed if they exist in nature in whole or in part, whose sale has been carried out successfully prior to the decision to open the proceedings, either by a court decision, or pursuant to an exception or a granted condition subsequent.

Likewise, the claim may be partially admitted, although the decision to sell has been pronounced or recorded subsequently to the decision to open the proceedings when the action for termination was brought to court prior to the opening decision by the seller who is not paid yet.

However, a claim shall not be filed if, before the restitution of goods and movable assets, in addition to the pronouncement of costs and damages, the price is paid fully and immediately by the trustee following the authorization of the receiver.

Section 8: Running contracts and layoffs

Article 107

Notwithstanding any statutory provision or contractual clause or indivisibility, the mere opening of the reorganization or assets liquidation proceedings shall not cause the abrogation or termination of a running contract.

articles 107 to 109 shall not apply to contracts of employment.

Article 108

Only the trustee shall have the option to demand the execution of running contracts.

He may be formally notified by the other contractual party by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any written means to take action on the pursuance of running contracts. Such formal notice shall be valid for thirty (30) days from the receipt thereof by the trustee.

Where the trustee requires the pursuance of a running contract, he shall provide the service promised to the other party and the latter shall fulfill his obligations despite failure of the debtor to fulfill his commitments prior to the decision to open the bankruptcy proceedings. Subject to this, the contract shall be executed under the conditions in force on the day of the opening of bankruptcy proceedings notwithstanding any repugnant clause.

Article 109

The receiver shall record the automatic termination of the contract at the request of the other party:

- if the trustee does not comply with the formal notice under Article 108 above within the time limit, while highlighting that providing the service promised to the other party before the expiry of such period shall mean the decision to pursue the contract;
- if the trustee, after requiring the pursuance of the contract does not provide the promised service to the other party or in the event of default of a due payment where the contract execution or payment in installments over time.

The receiver may declare the termination of the contract at the request of the trustee:

- provided that it does not excessively damage the interests of the other contractual party, when the trustee decides not to pursue the contract, in the absence of any formal notice or when, after requiring the execution of a running contract, he notices that this contract is not or is no longer useful for the pursuit of the activity or the safeguard of the debtor company;
- If after requiring the execution of a running contract in which the debtor shall pay a sum of money, the trustee notices that he may not render the promised service or he does not dispose of the necessary funds to meet the obligations of the next installment.

The termination may give rise to damages for which amount is marked on the liabilities of reorganization or assets liquidation proceedings. The other party shall have thirty (30) days from the realization of assets to file his claim. These damages may be offset against claims arising out of the breach of contract, prior to the opening of the bankruptcy proceedings decision.

Article 110

When layoffs for economic reasons are urgent and indispensable, the receiver may authorize the trustee to carry them out pursuant to the procedure set forth in this Article and the following one, notwithstanding any repugnant provision but without prejudice to the right to notice and severance package related to the employment contract.

Before informing the receiver, the trustee shall establish the order of dismissals in accordance with the provisions of the applicable Labor Law.

First, he shall propose the dismissal of workers with lower skills for jobs that are maintained and, in the event of equivalent professional skills, workers with less seniority in the debtor company; seniority is being calculated according to the provisions of the applicable Labor Law.

In order to collect their opinions and their suggestions, the trustee shall write to the staff delegates and the controller staff representative about the measures to be implemented by providing the list of workers he plans to lay off and by explaining criteria for such selection. The staff delegates and the controller staff representative shall respond in writing within eight (08) days from the receipt of the proposal.

The trustee shall forward the letters he sent to staff delegates and controller staff representative, as well as their written response, or remarks on their failure to respond within eight (08) days as provided in the paragraph above, to the Labor Inspection.

Article 111

The layoffs order established by the trustee, the opinion of staff delegates and that of the controller staff representative, where they have been given and the information letter to the Labor Inspection shall be sent to the receiver.

The receiver shall authorize the proposed layoffs or some of them depending on their materiality to the restructuring of the debtor company by a decision notified to workers whose dismissal is authorized and to the controller staff representative if appointed.

The decision authorizing or rejecting the layoffs proposal shall be subject to opposition before the court that ruled on layoffs within fifteen (15) days at the same court, which must make its decision within fifteen (15) days also.

Section 9: Continuation of the business activity

Article 112

In reorganization proceedings, the activity of the company shall continue with the assistance of the trustee.

In the report provided for in article 43 (5) above, the trustee shall communicate the results of the operations of the company to the receiver and send a copy to the public prosecutor.

The competent court, seized by the trustee, a creditor controller, or by the public prosecutor, may, at any time and following the report of the receiver, apply Article 33 (5) above. Where appropriate, it may hear the creditors and controllers who have filed the request with a reasoned statement deposited to the court registry. If the court deems it necessary, it shall convene, through the court registrar, those creditors and controllers, at the latest within eight (08) days, by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any written means. A hearing shall be held and minutes of their statements drawn.

The competent court shall rule the latest within eight (8) days following the hearing of the receiver, the creditors and the controllers.

Article 113

The liquidation of assets shall put an end to the business activity of the debtor company.

Exceptionally, if the public interest or that of creditors so requires, the competent court may authorize, in the judgment ordering the liquidation of assets, a provisional continuation of the business for a maximum of sixty (60) days. It can renew that period once (01), for the same duration, at the request of the trustee and after receiving the opinion of the public prosecutor.

If case of a provisional continuation of the business, Article 112 (2) above shall apply, but the trustee must then submit a report each month to the receiver and the public prosecutor.

Article 114

In reorganization, the debtor or the top executives of the legal entity shall participate in the continuation of operations, unless otherwise decided by the competent court that shall rule on the trustee's request, by a specially reasoned decision and after the public prosecutor has weighed in. Where they must be involved in the continuation of the operations, the receiver shall set the terms of their compensation.

In assets liquidation, the debtor or the top executives of a legal entity shall be consulted only for the purpose of assisting in the management with the authorization of the competent court and under the conditions prescribed by such court.

Article 115

In reorganization, the competent court may, at the request of the public prosecutor, the trustee or the controller, if appointed, authorize the conclusion of a leasing business contract when the

disappearance or insolvency of activity, even provisional, of the company is that may jeopardize its restructuring or to cause serious trouble to the national, regional or local economy in the production and distribution of goods and services.

The conclusion of a leasing business contract shall be permitted even in the presence of a repugnant clause in the lease of the property.

The competent court shall refuse authorization where it believes that collateral securities offered by the lessee-manager are not sufficient or if the latter is not sufficiently independent from the debtor.

The conditions of the duration of the exploitation of business assets by the debtor for the conclusion of a leasing business contract shall not apply.

The duration of the leasing business contract may not exceed two (2) years; it shall be renewable once for the same duration.

The ruling on the authorization of the leasing business contract shall be communicated and published as stipulated in articles 36 and 37 above.

Article 116

The trustee shall ensure that the lessee-manager respects his commitments. He may request the lessee-manager hands him all documents and information relevant to his mission. He shall report to the receiver on the lessee-manager performance of his duties at least every three (3) months, stating the amount of money received and deposited into the account of the reorganization proceedings, any deficiencies in items leased and measures addressing any difficulty in the execution of the contract.

The competent court may decide, at anytime, to terminate the leasing business contract, either ex officio, or at the request of the trustee or the public prosecutor, or at the request of a controller, based on the report of the receiver, where the lessee, by his own act, reduces the collateral securities he had given or compromises the value of the business or fails in his commitments.

Article 117

All debts arising naturally, after the decision to open the proceedings, out of the continuation of the business activities and from any regular activity of the debtor or the trustee shall be receivables of the body of creditors, with the exception of claims from the operations of the leasing business contract by the lessee-manager, which shall be borne exclusively by him without joint and several liability with the owner of the business.

Section 10: Liability of third parties

Article 118

Third parties, be creditors or not, who, due to their wrong doings, contributed to delay the insolvency, to reduce assets or to worsen liabilities of the debtor may be ordered to make good losses suffered by the body of creditors by a suit filed by the trustee acting in the common interest of the creditors.

The competent court shall, to make good the losses suffered, choose the most appropriate solution, either authorizing payment of damages or forfeiture of their securities for creditors who hold such collateral securities.

CHAPTER V: SOLUTIONS OF REORGANIZATION AND ASSETS LIQUIDATION

Section 1: Solution of receivership

Subsection 1: Development of the judicial Composition

Article 119

The debtor shall propose a proposed judicial composition under the conditions set forth in articles 26 (11) and 27 above.

Once the debtor files the proposed judicial composition, the court registrar shall inform the trustee who shall seek the opinion of the controllers, if appointed. The court registrar shall notify creditors thereof through publicity in a journal of legal notices of the State party concerned, and at the same time, through the filing of the statement of claims under the conditions set forth in article 87 above.

In addition, the court registrar shall immediately notify creditors with a special security to respond no later than at the expiry of the deadline set in article 88 above by indicating whether they accept the proposed composition or whether they intend to grant time extensions and debt reductions different from those proposed and by submitting their own proposals.

A copy of the proposed composition shall be sent to each creditor by registered mail with acknowledgement of receipt or by any means which leaves a written record. The deadline set in article 88 above shall be effective from the date on which the notice is received.

The trustee shall build upon such deadlines for filing and verifying claims to reconcile the positions of the debtor and creditors on the development of the proposed composition and to carry out the economic and social assessment referred to in article 119-1 hereinafter. In this context, he shall transmit to the receiver, prior to convening the bankruptcy meeting, a report outlining, for each creditor, if he was actually contacted and on what date; whether he agrees with the proposed

composition and whether he favors its adoption; whether he has an adverse opinion thereof and the reasons thereof.

Article 119-1

With the assistance of the debtor, the trustee shall prepare an economic and social assessment which explains the origin, the seriousness, and the nature of the difficulties of the debtor company. To this end, the receiver shall send him all useful information and documents and he shall hear any individual keen on providing any useful information.

When the debtor exercises a regulated liberal profession, the trustee shall consult the professional order or the competent supervisory body of the debtor in that profession, where appropriate.

Article 119-2

When the proposed judicial composition provides for a change of share capital, the trustee shall ask the board of directors of the debtor legal entity, the president of the simplified public limited company and its top executives, as the case may be, to convene the extraordinary general meeting or shareholders' meeting. If the convening notice is not sent within fifteen (15) days following the request of the trustee, the latter shall convene the meeting.

Commitments made by shareholders or partners or by new subscribers shall be subordinate in their execution to the confirmation of the judicial composition by the competent court.

Shareholders or partners who contribute to the share capital increase provided in the proposed judicial composition may be eligible for compensation up to the amount of their approved claims and within the limits of reductions to which they are subject in the proposed.

The clauses of approval shall be deemed to be unenforceable.

Article 119-3

The proposed judicial composition may include proposals for debt-for-equity swap giving or that may give access to the share capital of the debtor company. These swaps cannot be imposed on creditors. The trustee shall record in writing the agreement of each creditor whose claim is admitted and who accepts such a swap.

Article 120

Creditors with special secured debts as well as those with general privileges, even if their security, whatever it is, is disputed, shall respond to the notice provided for in article 119 above to the court

registry or send it by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means leaving a written record.

The court registrar shall forward certified copies of the statements of creditors, as they are received, to the receiver and trustee.

Article 121

Creditors whose debt is guaranteed by a special security or a general privilege shall retain the benefit of their security, whether or not they have subscribed to the statement provided for in article 120 above and regardless of the content of such statement, except where otherwise provided by this Uniform act or express waiver of their own security.

Creditors with general privileges shall take part in the vote under the same conditions as unsecured creditors, but without losing the benefit of their liens.

Article 122

The receiver shall, within fifteen (15) days following the expiry of the deadline provided for in article 88 above, refer the matter to the president of the competent court who shall convene the creditors whose claims have been admitted as unsecured claims definitively or provisionally, through a notice published in newspapers and by hand-delivered letter against receipt or by registered mail with acknowledgement of receipt or by any means leaving a written record addressed individually by the court registrar.

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

- a statement drawn up by the trustee and deposited at the court registry showing the assets and liabilities of the debtor with a valuation of his personal and real assets and preferential debts or secured and unsecured debts;
 - o the final text of the proposed composition stating collateral securities offered and restructuring measures as provided namely in Article 27 above;
 - o the opinion of the controllers, if appointed;
 - o an indication that each creditor with a secured debt has made or not the declaration provided for in articles 119 and 120 above and, whether they have, the exact consented extensions and reductions.

Article 123

On the day and time fixed by the competent court, the bankruptcy meeting shall convene in the presence of the receiver and the public prosecutor who shall be heard.

Creditors who have been admitted shall attend the meeting in person or shall be represented by an authorized agent with a special power of attorney.

A creditor whose secured debt only, whatever it maybe, is challenged shall attend the meeting as an unsecured creditor.

The debtor or the top executives of legal entities invited to such meeting by the court registrar by hand-delivered letter against receipt or by registered mail with acknowledgement of receipt or by any means leaving a written record addressed individually shall attend in person; they may be represented at the meeting only for legitimate grounds so recognized by the competent court.

Article 124

At the meeting, the trustee shall submit a report on the proposed judicial composition and the economic and social assessment, formalities which have been fulfilled, the operations carried out as well as the results obtained during the continuation of the business.

A financial statement drawn up at the close of the last day of the elapsed month shall be appended to the report. The statement shall state the available or realizable assets, the unsecured debts and those guaranteed by a special secured debtor a general lien.

The trustee's signed report shall be submitted to the competent court which shall receive it after hearing the receiver's observations on the nature of the reorganization and on the admissibility of the composition.

The public prosecutor shall present his oral or written conclusions.

Article 125

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

Mail ballots and proxy voting shall be admitted.

Creditors holding a special secured debt and who have not made the declaration provided for in Article 120 above may take part in the vote without renouncing their security and granting different extensions and reductions from those proposed by the debtor.

Unsecured and secured creditors who have not made the declaration provided for in Article 120 above shall be deemed to have accepted the composition where, having been duly summoned, they do not vote at the bankruptcy meeting.

The proposed judicial composition shall be voted by the majority in number of creditors definitively or provisionally admitted representing, at least, half of the total number of claims.

Where only one of these two conditions is met, the deliberations shall continue a week from the day of the meeting and without any other formality. In this case, the creditors present or duly represented who signed the minutes of the first meeting shall not be required to attend the second meeting; their resolutions and their adherence remain valid.

Article 126

The competent court shall prepare minutes of the deliberations and decisions taken during the meeting; the signature by the creditor or his representative, the ballot papers appended to the minutes shall be equivalent to the signature of the minutes.

Establishment by the competent court of the fulfillment of all the conditions provided for in Article 125 above shall be equivalent to ratification of the judicial composition.

Otherwise, the decision shall record the rejection of the composition and shall convert the reorganization into assets liquidation without prejudice to the application of Article 33 and 119 above.

Article 127

The competent court shall ratify the proposed judicial composition only where:

- 1) the conditions of validity of the composition are met;
- 2) there is no ground to believe that the common interest or public policy will likely hinder the composition;
- 3) in case of reorganization of a legal entity, it shall no longer be managed by its top executives whose replacement is proposed in the proposed composition or by the trustee or against executives whom personal bankruptcy has been pronounced;
- 4) the composition shall offer substantial opportunities for the debtor company restructuring, debt settlement and adequate collateral securities for its execution;
- 5) The conditions set forth in article 33-1 above are met where individuals benefit from a privilege provided for in this Uniform act and secured amounts are expressly stated.

Unless otherwise provided, the confirmation of the judicial composition may not validate special benefits as defined and suppressed in articles 244 and 245 hereinafter. The extensions and reductions granted by creditors, holders of special secured debts or general privileges under the conditions set forth in articles 120 and 125 above shall not be deemed special benefits.

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

Article 127-1

When the survival of the debtor company so requires, the competent court, ex officio or upon the trustee's request, may subordinate the adoption of the judicial composition to the replacement of one or several top executives with regards to point 3 °) of paragraph 1 of Article 127 above.

To this end, the competent court may, on the request of the trustee, decree the non-assignability of equity interests, capital securities or securities giving access to capital, held by one (01) or several top executives, de jure or de facto, salaried or not, and decide that the attached voting right shall be exercised by the trustee or by a representative ad hoc appointed by the competent court for a period which it shall determine. It may also order the assignment of these equity interests, capital securities or securities giving access to capital, the assignment price shall be fixed by experts.

For the application of this Article, the top executives and representatives of the company committee, or failing that, staff representatives as well as creditor controllers and controller staff representative shall be heard or duly summoned.

The provisions of this Article shall not apply to a debtor engages in a regulated liberal profession.

Article 128

The competent court may appoint controllers or keep them in office to monitor the execution of the judicial composition, or in the absence of controllers, the trustee. The duties of the controllers shall be gratuitous except when performed by the trustee.

The compensation of the trustee in charge of monitoring the execution of the judicial composition shall be governed by articles 4-9 and 4-20 above.

Article 129

The decision to confirm the judicial composition shall be subject to communication and publicity as provided for in articles 36 and 37 above. The excerpt published in a newspaper empowered to publish legal notices shall state the name and address of the composition controllers or the trustee appointed as such. The composition may only be subject to appeal filed by the trustee, a representative mandated by the majority of staff, a creditor controller or the public prosecutor within fifteen (15) days from the publication date.

The decision rejecting the judicial composition shall be subject to communication and publicity provided in Articles 36 and 37 above. Such decision may be appealed against by the debtor or the public prosecutor within fifteen (15) days from the date on which it was pronounced.

The decision of the Court of Appeal shall be communicated and published as provided for in this Article.

Article 130

When a legal entity comprising members who are indefinitely and jointly and severally liable for the debts of the company is admitted for reorganization, the creditors may only accept the composition in favor of one or several members.

Where the judgment of assets liquidation of a legal entity is passed, the company assets shall remain under the administration of the union. Personal property of those who have been admitted in the composition shall be excluded therefrom and the composition may prescribe a commitment to pay a dividend only on assets outside the company's assets. A member who has obtained a special composition shall be discharged of all obligations attached to the debts of the company as long as he has paid the promised dividends.

Sub-section 2: Composition with partial or total assignment of assets

Article 131

Where the judicial composition comprises offers for the total or partial assignment of assets, the deadline provided for in Article 122 (1) above for the convening of a bankruptcy meeting shall be one (1) month.

The total or partial assignment of assets may concern all or a number of tangible or intangible or movable or immovable property.

The assignment of a company or institution shall mean any assignment of assets that may be operated autonomously so as to maintain an economic activity, jobs relating thereto and to pay off debts.

When the total or partial assignment of assets or a company or an institution is proposed in the judicial composition, the trustee shall draw up a descriptive statement of the personal and real assets for such assignment, a list of jobs attached to those assets, secured debts attached to them and the percentage of each asset in the assignment price. Such statement shall be appended to the individual notice provided for in Article 122 above.

The trustee shall be responsible for making these assignment proposals known, in particular through legal notices, as soon as they have been definitively adopted by the trustee and the debtor and approved by a decision of the receiver.

Article 132

Bids shall be received by the debtor assisted by the trustee and communicated to the bankruptcy meeting which shall decide, under the majority conditions provided for in Article 125 above, to accept the most advantageous purchase offer.

The competent court may ratify the partial assignment of asset only where:

- proceeds shall be sufficient to pay creditors with special secured debts on the assigned assets, except when they reject that condition and accept the provisions of Article 168 hereinafter;
- payment in cash or, in case where the buyer is granted extensions for payment, the said extensions shall not exceed two (2) years and shall be guaranteed by a joint suretyship of a banking institution.

The debtor shall, with the assistance of the trustee, complete all the assignment formalities.

Where no bid is made before the bankruptcy meeting or is deemed satisfactory by the meeting, the debtor may withdraw his assignment offer. Where he maintains the offer, the assignment shall be carried out later under the conditions provided for in articles 160 and seq. hereinafter.

Article 133

The total or partial asset assignment price shall be paid into the debtor's assets.

When the assigned package is encumbered by a special security, the assignment entails the sale of the security only in case of full payment and relief of a secured creditor.

The buyer shall not assign, under penalty of nullity, items of the assets purchased, with the exception of goods insofar as payment is not received in full. The non-disposal of such items shall be published in the Registry of Commerce and Securities under the same conditions set forth for the privilege of the seller of trade negotiables and the land register in accordance with the provisions on land registration for immovable components.

The preference right of creditors with special securities rights on the price of assigned goods shall be exercised in the order provided for in articles 166 and 167 hereinafter.

In the event of failure to pay the full price, the debtor may petition the receiver to cancel the assignment or to implement the collateral security provided for in article 132 (2) above.

Sub-section 3: Effects and execution of the composition

Article 134

The approval of the judicial composition shall become compulsory to all creditors with claims incurred prior to the opening decision of proceedings, regardless of their nature, unless otherwise provided for in a statutory provision prohibiting the administration to grant time extensions and debt reduction.

However, creditors with real special secured debts shall only be obligated to extensions and reductions they consented; if the composition includes extensions not exceeding two (02) years, creditors may file an opposition against them where their extensions are less.

Workers cannot be imposed extensions and reductions exceeding two (02) years without prejudice to the provisions of Article 96 above.

Secured creditors shall not lose their collateral securities but they shall realize them only in the event of annulment or cancellation of the composition to which they have agreed or that was imposed on them, without prejudice to their right to act against a third party in order to preserve their rights.

The judicial composition granted to the principal debtor or his joint debtor shall not benefit the other joint debtors or individuals who consented to a suretyship, granted or assigned an asset as collateral.

Article 135

Unless otherwise prescribed in the judicial composition regarding the debtor's properties, the confirmation shall preserve for each of the creditors, the mortgage registered pursuant to Article 74 above. In this case, the trustee shall be required to demand pursuant to the confirmation decision, a new registration of the same property specifying the sums guaranteed, in accordance with land registration regulations.

Article 136

As soon as the ratification decision becomes *res judicata*, the debtor shall be free to administer and dispose of his assets, with the exception of assets assigned pursuant to articles 131 to 133 above.

Article 137

The trustee shall prepare a report on his mission to the receiver.

The receiver shall approve the report; the receiver and the trustee's mandates shall end at that moment, unless otherwise stipulated in the last paragraph of Article 132 above that provides for the maintenance of the assignment of assets.

In the event of a dispute, the competent court shall rule within thirty (30) days from the date of its filing.

Article 138

Where one or several controllers have been appointed for the execution of the composition, pursuant to Article 128 above, they shall immediately submit a report, without delay, on any delay or other wrong doings in the execution of the composition to the president of the competent court who may order the trustee to investigate and report to him thereon.

When their mission involves payment of dividends to creditors, the controllers of the execution of the composition should open a special deposit account for the composition or for each composition if they are appointed to several bankruptcy proceedings in a bank designated under section 4-22 above, in their name and in their capacity as controller of the execution of the composition.

Controllers shall forward to the president of the competent court at the end of each half calendar year, the credit balance statements in their possession for the compositions under their control.

The controllers, due to their functions, shall hold an insurance policy covering their civil liability; they shall show proof of coverage to the President of the competent court.

Article 138-1

At any time during the execution of the judicial composition, the debtor, the receiver, based on the report of the trustee or the creditors representing more than half of the value of the total claims, may petition the president of the competent court to modify the composition for a better execution.

The president shall hold hearings with the trustee on his report, the debtor and the creditors before his ruling. It may be appealed only before the competent court of the State party concerned within fifteen (15) days following the ruling.

The decision to amend the judicial composition entails its confirmation. It shall be subject to publicity provided for in articles 36 and 37 above.

Sub-section 4: Cancellation and annulment of the preventive or receivership composition

Article 139

The cancellation of the composition may be pronounced:

- 1) in case of non-observance by the debtor of his bankruptcy commitments or time extensions and debt reductions; however, the competent court, following the opinion of the public prosecutor and the controllers, shall determine whether these breaches are serious enough to definitively compromise the execution of the composition; and, in the contrary, it may extend the payment deadlines which shall not exceed more than six (6) months the extensions already granted by creditors;
- 2) when the debtor is prohibited, for whatever reason, from engaging in a professional independent activity, a commercial, civil, handicraft or agricultural activity unless the duration and nature of the said prohibition are compatible with the pursuance of the business activity of the company under a leasing business contract, for the purposes of a possible assignment of the company under satisfactory conditions for common interests;
- 3) when, in the case of a legal entity to which the composition is granted, the top executives who have been declared bankrupt, resume the management of the legal entity de jure or de facto; if these top executives have been prohibited from managing the company during the execution of the composition, the latter shall be cancelled unless the top executives stop performing the duties which have been prohibited; however, the competent court may grant a reasonable deadline, which shall not exceed three (3) months, to replace those top executives.

A creditor or controllers, party to the composition may file a petition with the competent court in that regard; the said court may also examine the matter on its own after hearing or duly summoning the debtor.

The cancellation of the composition shall not release the securities attached to collateral security its full or partial execution.

Article 140

The composition shall be annulled in case of fraud involving a concealment of assets or an exaggeration of debts where the fraud was uncovered after the confirmation of the preventive or judicial composition.

The annulment shall automatically release individuals who consented a suretyship, granted or assigned an asset as collateral except where they had knowledge of the fraud at the time of their commitments.

Only the public prosecutor or the controllers are entitled to file an action for annulment after assessing the relevance or non-relevance of instituting thereof. It may be instituted only within one (1) year following the discovery of the fraud.

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

The decision to annul the composition shall be subject to appeal by the debtor, the public prosecutor or the controllers within fifteen (15) days from the date of the judgment.

Article 141

In case of cancellation or annulment of the arrangement, the competent court shall pronounce reorganization or assets liquidation where it establishes insolvency.

In case of cancellation or annulment of the judicial composition, the competent court shall convert the reorganization into assets liquidation and shall appoint a trustee. Only one body of creditors shall be constituted before and after the composition.

With the assistance of the receiver, the trustee shall proceed, without delay, on the basis of the former inventory and, where seals had been affixed in accordance with Article 59 above, to check the assets, shares and documents; where necessary, he shall prepare an inventory and draw up a supplementary assessment.

He shall immediately have the court registrar publish an excerpt of the decision and a convening notice to new creditors, if any, to produce their debt securities for verification under the conditions provided for in articles 78 and seq. above.

The new debt securities shall be verified immediately.

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

Article 142

Where, before the cancellation or annulment of the composition, the debtor has paid no dividend, the bankruptcy extensions thereof shall be destroyed and prior creditors to the composition shall recover all their rights.

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

Holders of claims against the first union shall retain their preferential right over creditors comprising this union.

Article 143

Acts achieved by the debtor between the confirmation of the composition and its cancellation or annulment may be declared unenforceable only in case of fraud committed to the rights of creditors and in accordance with provisions related to paulian action.

Sub-section 5: Occurrence of a second collective proceeding

Article 144

The provisions of articles 141, 142 and 143 above shall govern a second reorganization or assets liquidation pronounced after the annulment or cancellation of the composition.

Article 144-1

Without prejudice to articles 139 (2) and 141 above, the competent court shall convert the reorganization into assets liquidation where an individual is unable to continue his activity due to ineligibilities.

The decision converting the reorganization into assets liquidation in accordance with Article 141 above shall be subject to publicity rules set forth in articles 36 to 38 above.

Sub-Section 6: Simplified reorganization

Article 145

The simplified reorganization procedure shall be subject to rules applicable to reorganization subject to the provisions of this sub-section.

Article 145-1

Any debtor meeting the definition of small enterprise referred to in article 1-3 above may petition for the simplified reorganization proceedings under conditions set in this sub-section.

Article 145-2

The debtor wishing to benefit from the simplified reorganization shall submit the statement provided for in articles 25 and 26 above taking into account derogations granted to small enterprises.

He shall, at the same time, produce a statement on his honor certifying that he meets the conditions of a simplified reorganization.

Article 145-3

With the statement referred to in articles 25 to 26 above or, the latest within forty-five (45) days following the statement, the debtor, with the assistance of the trustee, shall file a proposed judicial composition.

Article 145-4

The proposed judicial composition may be limited to payment moratoria, debt reductions as well as potential collateral securities to which the business leader must subscribe to so as to ensure execution.

In the simplified judicial composition, the economic and social situation shall not be assessed.

Article 145-5

The competent court shall demand the application of the simplified judicial composition once the opening decision of the proceedings is pronounced. However, it may be seized subsequently by the debtor within a period of thirty (30) days from the opening decision if it is established that the conditions for the implementation of this procedure are met. The court shall then rule after hearing the trustee.

Article 145-6

The decision of the competent court to apply the simplified reorganization shall not be appealed.

Article 145-7

At any time, and until the decision confirming the judicial composition, the competent court may decide not to apply the simplified procedure by a specially reasoned decision, at the request of the debtor, the trustee, the public prosecutor or ex officio. It shall act after hearing the debtor, the trustee, and controllers.

Article 145-8

At least fifteen (15) days before the competent court rules on the confirmation of the proposed composition, the trustee shall send the proposed to creditors by hand-delivered letter against a receipt or by registered mail with request for acknowledgement of receipt or by any means leaving a written record.

If the proposed composition provides for debt reductions, the agreement of each creditor concerned is required. The same shall apply if it provides for payment deadline extensions for a period exceeding two (02) years.

Failure to reply within fifteen (15) days from the receipt of the trustee's letter shall entail rejection.

Article 145-9

Given the creditors' responses, the trustee shall complete, with the assistance of the debtor, the final proposed composition which includes:

- debt reductions accepted by creditors;
- payment deadline extensions accepted by creditors;

- Payment deadline extensions which may not exceed two (02) years for creditors who refused to extend any payment period.

The competent court may then give a ruling on the confirmation of the final composition, in accordance with the provisions of articles 126 and 127 above without creditors being called to vote.

Section 2 : Assets liquidation solution

Article 146

Once the judgment on assets liquidation is pronounced, the creditors shall form a union.

Unless already done pursuant to Article 124 above, the trustee shall, within one (1) month of taking office, submit to the receiver a statement drawn up based on available information containing an assessment of available or realizable assets, unsecured debts and debts guaranteed by a real special security or a privilege with, in case of legal entity, all information on possible pecuniary liability of its top executives(s).

When the judgment decrees the conversion of a reorganization to assets liquidation proceedings, the trustee shall commence the liquidation operations at the same time that he completes, where appropriate, the verification of claims and establishes the order of creditors. He shall continue activities commenced before the decision to open the assets liquidation proceedings.

Article 146-1

Unsecured claims shall not be verified if it appears that proceeds from the realization of assets shall be completely absorbed par priority debts in the meaning of articles 5-11, 11-1 or 33-1, as well as by court fees and super priority claims unless, in case of a legal entity, it is possible to make top executives, de jure or de facto, liable for a portion or all the debts under the conditions of Article 183 above.

Sub-section 1: Realization of assets

Article 147

The trustee shall, alone, sell the debtor's goods and personal property, collect debts owed him and settle the debts he owes.

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

Proceeds from sales and debt recoveries shall, after deduction of sums fixed by the receiver for expenses and costs, be immediately deposited into an account specially opened under the conditions set forth in article 45 above. The trustee shall show proof of such deposits to the receiver.

Article 148

Where authorized by the receiver, the trustee may reach agreements and settle all disputes related to the entitlements of the union of creditors, even those related to real estate entitlement and stocks.

Where the object of the settlement or the transaction is of an unspecified value or falls outside the jurisdiction of the competent court of last resort, the settlement or transaction shall, moreover, be confirmed by a decision of the competent court.

In any case, the court registrar shall, three (3) days before the decision of the receiver, summon the debtor by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing. The notice shall state the scope of the planned settlement or the transaction, as well as the conditions and legal and economic reasons thereof.

Article 149

Where authorized by the receiver, the trustee may, when reimbursing the debt, withdraw for the benefit of the union, the pledge, collateral security or contractual retention charge formed on a debtor's asset.

Where, within three (3) months following the assets liquidation judgment, the trustee has not withdrawn the pledge or collateral security or initiated the sale of the pledge or collateral security, the pledgee or secured creditor may exercise or recover his right to individual lawsuit and shall report to the trustee thereon.

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

Paragraph 1: Common provisions for the sale of immovable assets

Article 150

The sale of immovable property shall take place following the conditions prescribed for repossession of property except in case where such repossession is subject to extrajudicial execution clause in accordance with the Uniform act on Security Interests. However, the receiver shall, after receiving the observations of the controllers, where they have been appointed, and hearing the debtor and the trustee duly summoned to give explanations, shall set the price and the main conditions of sale and determine the terms and conditions of publicity.

The receiver may, under the same conditions, where the content of the property, its location and bids received enable an amicable assignment, authorize the sale, either by amicable auction on the upset price which he shall fix under conditions which he shall determine.

Where, within a period of three (3) months following the assets liquidation judgment, the trustee has not initiated the procedure for the sale of the immovable property, a secured creditor may exercise or recover his right to institute an individual lawsuit and shall report to the trustee thereon.

The Public Treasury, customs services and security and social insurance agencies shall have the same right to recover their preferential claims which they shall exercise under the same conditions as the mortgagees.

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

The trustee shall distribute the proceeds of the sales and arrange order among the creditors subject to disputes brought before the competent court.

Article 151

At the request of the trustee or the proceedings creditor, the receiver authorizing the sale of immovable property pursuant to Article 150 above shall state in the decision:

- 1) the upset price of each property for sale and the conditions of sale; where the sale is proceeded by a creditor, the upset price shall be determined in an agreement with the proceedings creditor, after duly hearing the trustee.
- 2) the number(s) of property titles and the location of the immovable property being sold or, in case of immovable property not yet registered, their precise description as well as a copy of the decision or act authorizing the proceedings creditor to request the registration;
- 3) publicity terms considering the value, nature and location of the property.
- 4) The commissioned notary, where necessary.

The receiver may specify that in the event auction sales do not reach the upset price, the sale could be carried at a lower upset price which he shall fix. He may, where the value and content of the property so justify, carry out a total or partial appraisal of the property.

Article 152

The receiver's decision shall replace the summons to the order seeking the actual repossession.

It shall be notified, by a bailiff or by any means proving the actual receipt by the addressee, at the behest of the court registrar, to the custodian of the real estate, the debtor, the trustee and the registered creditors, at their elected residence if they are named in the decision.

It shall be published by the custodian of the real estate under the conditions prescribed in the order seeking the actual repossession.

The custodian of the property shall publish the decision even where summons to seek actual repossession had been published earlier, which summons shall cease to be effective from the date of the publication of the decision.

He shall deliver a statement on rights registered on the property titles to the trustee, the proceedings creditor or to the notary where necessary.

Article 153

The proceedings creditor or the commissioned notary shall establish the terms of reference which state the decision authorizing the sale, the upset price, and the conditions of sale and payment methods.

Paragraph 2: Special provisions for foreclosure sale

Article 154

Unless otherwise provided for in this Uniform act, the foreclosure sale shall be subject to the provisions thereof.

The decision authorizing foreclosure sale shall comprise, apart from the information mentioned in article 151 above:

- a statement of the competent court before which the expropriation shall be proceeded;
- the briefing of the lawyer whose chambers will automatically be the elected residence of the proceedings creditor and where acts related to the opposition to the order, property offers and all sale notifications may be sent.

The receiver may authorize the trustee or the creditor to proceed simultaneously with the sale of several or all of the property, even where they are located within the jurisdictions of different courts.

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

Article 154-1

When foreclosure proceedings or extrajudicial execution undertaken before the opening of the reorganization or assets liquidation proceedings has been stayed due to the effect of the latter, the trustee's rights may be subrogated to the rights of the execution creditor for the acts he carried out.

These acts shall be deemed completed for the trustee who may proceed with the sale of the property. Repossession or extrajudicial execution can then resume its course when the opening of bankruptcy proceedings decision had stayed it.

Paragraph 3: Special provisions governing the sale of property by amicable tendering

Article 155

Unless otherwise provided for in this Uniform act, a mutual agreement property sale shall be subject to the provisions thereof.

The decision authorizing the mutual agreement private sale shall appoint the notary mandated to carry out the sale.

The notary shall inform, by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing, the registered creditors listed on the property rights delivered following the publication of the decision to consult the terms of reference sent to his chambers at least two (2) months before the date set for the sale and to have their contentions and observations entered on it at least one (1) month before such date. The notary shall summon the creditors to the sale using the same methods.

The trustee and the debtor shall be invited to the sale by the notary at least one (1) month in advance.

Article 156

Sales by auction may be carried out without the service of a legal counsel.

Failure to recoup the amount of the upset price during the public auction, the notary shall record the highest bid and may award the property provisionally for the amount of such bid. The receiver who fixed the upset price, to whom the matter is brought at the request of the notary or any interested party, may either declare the award final and the sale completed, or he may order that a new sale take place pursuant to terms provided for in article 150 above. Where the new sale is an auction, he shall prescribe the time limit for the new sale without such time being less than fifteen (15) days, the upset price and the terms and conditions of publication.

Article 157

Within ten (10) days following the auction sale, any individual may make a maximum bid of one-tenth on the price by filing a statement with the court registry within the jurisdiction in which resides the notary who made the sale. The court registrar shall immediately forward the declaration to the receiver.

The maximum bidder shall denounce such statement by a bailiff writ or by any means proving actual receipt of the communication by the addressee or sent at the residence of the bidder within ten (10) days and shall inform the notary of the statement.

The receiver shall, through a decision approving the maximum bid, refer the new bid to the same notary who shall carry out the sale according to the terms of reference previously drawn.

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

Article 158

Where there has been an irresponsible bid, the procedure shall be ruled before the competent court within the jurisdiction in which the notary who made the sale resides. The certificate establishing that the highest bidder has not fulfilled the clauses and conditions of the sale shall be issued by the trustee.

The minutes of the tender shall be deposited at the registry of the competent court.

Paragraph 4: Special provisions for the property private sale

Article 159

The decision authorizing the private sale of one or more properties shall prescribe the price of each item and the basic sale conditions.

The decision shall be notified by the court registrar by a bailiff's writ or by any means proving actual receipt by the addressee to the debtor and the registered creditors named in the decision at their elected residence.

Where the price is low and unable to cover payment of all registered creditors, they shall have thirty (30) days following notification of the decision to make a maximum bid of one-tenth on the price to the trustee by hand-delivered letter against a receipt, or by registered mail with acknowledgement of receipt or by any means in writing addressed.

Passed this deadline, the trustee shall carry out the sale, either with a buyer of his choice where there is no maximum bid or with the highest bidder in case of a maximum bid.

Paragraph 5: Overall assignment of assets

Article 160

All or part of the personal and real assets comprising, possibly, operation units, may be subject to an overall assignment.

For that purpose, the trustee shall launch takeover bids and their timeframe. Any interested party may submit a bid to the trustee, with the exception of the top executives of a legal entity under liquidation, their relatives or relations, up to the fourth degree including, of the debtor who is a natural person.

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

- 1) the price and payment methods; where payment extensions are requested, they may not exceed twelve (12) months and shall be guaranteed by a joint security of a banking institution;
- 2) the date of the realization of the assignment;

The bid shall be deposited at the registry of the competent court where any interested party may consult and communicate it to the trustee, the receiver and the public prosecutor.

Article 161

The trustee shall consult the debtor and the controllers, if appointed, to collect their opinions on the proposed takeover bids.

The bids may or may not contain a commitment to maintain part or all employments. This should be taken into account in the selection of the bid that seems the most attractive.

The trustee shall examine the bid(s) received as well as the opinions of the debtor and the controllers and submit them to the receiver.

Article 162

The receiver shall order the assignment by allocating a percentage of the assignment price to each of the assigned assets with a view of allotting the price and exercising preferential rights.

The trustee shall draw up the necessary deeds for the assignment.

Paragraph 6: Effects of assets realization

Article 163

The effects of the overall assignment shall be those defined by article 133 above.

The trustee shall carry out formalities for the removal of security registrations.

Sub-section 2: Settlement of debts

Article 164

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

As soon as the distribution is ordered, the trustee shall pay a dividend to each approved creditor by check to his name drawn on the account opened under the conditions of Article 45 above.

Article 165

Proceeds from assets realization, after making allowance for assets liquidation expenses and charges as well as financial relief granted to the debtor or his family, shall be distributed among all the creditors whose claim is verified and approved.

The share corresponding to claims admitted but not given final decision, including the compensation of the top executives of a legal entity insofar as a ruling has not been pronounced on their case, shall be kept aside.

Expenses and charges related to assets liquidation, including the trustee's fees, shall be deducted from the assets in proportion to the value of each item of the assets in relation to the entire estate.

Article 166

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

- 1) to creditors with privilege provided for in articles 5-11, 11-1 and 33-1 above;

- 2) to creditors with court fees incurred for the purpose of the realization of a sold asset and the distribution of proceeds;
- 3) to creditors with super priority salaries in proportion of the value of the property in relation to the entire estate;
- 4) to creditors holders of a conventional or judicial mortgage and individual creditors registered within the statutory period, each according to the rank of his registration in the land register to creditors of the union as defined in article 117 above;
- 5) to creditors of the union as defined in Article 117 above;
- 6) to creditors with a general privilege according to the order established by the Uniform act on Security Interests, namely creditors with a general privilege subject to publicity, each according to the rank of registration in the Register of Commerce and Securities and to creditors with a general privilege not subject to publicity pursuant to the order laid down in article 180 of this Uniform act;
- 7) to unsecured creditors with an enforceable title;
- 8) To unsecured creditors devoid of an enforceable title.

Where the proceeds are insufficient to fully pay off the creditors of any of the categories mentioned in points 1°, 2°, 4°, 5° and 6° of this Article and the said creditors have equal rank, the funds shall be distributed proportionately to their total debts.

Article 167

Without prejudice to a potential right of retention or exclusive right on the payment, proceeds from the sale of movable property shall be distributed as follows:

- 1) to creditors with privilege provided for in articles 5-11, 11-1 and 33-1 above;
- 2) to creditors with court fees incurred for the purpose of the realization of a sold asset and the distribution of proceeds;
- 3) to creditors with charges for the preservation of the property of the debtor in the interests of the creditor whose securities were subscribed at an earlier date;
- 4) to creditors with super priority salaries in proportion of the value of the property compared to the entire estate;

- 5) to creditors guaranteed by a general privilege subject to publicity, pledge or suretyship, each according to the date of enforceability against third parties;
- 6) to creditors with a special property lien, each according to the property to which the lien is attached;
- 7) to creditors of the union as defined in article 117 above;
- 8) to creditors with a general privilege according to the order established in the Uniform act on Security Interests;
- 9) to unsecured creditors with an enforceable title;
- 10) to unsecured creditors devoid of an enforceable title.

Where funds are insufficient to fully pay off the creditors of any of the categories mentioned in 1°, 2°, 3°, 4°, 7°, 8° and 9° of this Article and the said creditors have equal rank, the funds shall be distributed proportionately to their total debts on a pro rata basis.

Article 168

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

Article 169

Without prejudice of the provisions of Article 43 (5) above, the trustee shall draw up every semester a report on the status of the assets liquidation. The report shall be deposited at the court registry and, save a waiver by the receiver, a copy thereof shall be forwarded to the debtor, all the creditors and to the controller, if appointed.

The trustee shall give an update to the debtor and the creditor controllers of the liquidation operations as they are being carried out.

Sub-section3: Closure of the union

Article 170

At the end of the assets liquidation operations, and at the expiry of the time limit set in article 33 (3) above, even if assets have not been fully realized, the trustee, in the presence of debtor or after he has been duly summoned by the court registrar by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing, shall submit his accounts to the receiver who shall draw minutes to record the end of the liquidation operations.

The minutes shall be forwarded to the competent court which shall decree the end of the assets liquidation and, at the same time, settle disputes related to the accounts of the trustee filed by the debtor or the creditors.

The Union shall automatically be dissolved and the creditors shall recover their individual right only on assets that could not be realized during the liquidation.

Article 171

Where the creditors' claims have been verified and approved, the president of the competent court ruling on the close of the proceedings, without prejudice to the application of Article 174 above, shall approve the final admission of creditors, the dissolution of the Union, the amount of receivables and the balance due.

The decision shall carry an enforceable formula pursuant to conditions set forth in article 174 hereinafter.

The decision shall not be appealed.

Article 172

The court registrar shall immediately forward an extract of the decision to close the assets liquidation to the public prosecutor.

The decision to close the assets liquidation shall be published under the conditions set forth in articles 36 and 38 above.

Section 3: Closure for insufficient assets

Article 173

Where due to insufficient funds the assets liquidation operations are not undertaken or completed, the competent court, based on the report of the receiver, may, at any time, decree the close of operations due to insufficient assets, at the request of any interested party or even on his own motion.

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

Article 174

Subject to the application of the last paragraph of Article 170 above, the decision to close due to insufficient assets shall not give creditors the opportunity to recover the individual right to file suits against the debtor, unless the debt is the result of a criminal conviction of the debtor or charges attached to the creditor as an individual. The guarantor of the debt of others or the joint debtor who paid in lieu and place of the debtor shall recover his right to file suit against the latter.

As an exception, all creditors approved or not, shall recover their rights to sue:

- in cases of judgment of personal bankruptcy of the debtor;
- in case of conviction of a debtor in bankruptcy;
- if the competent court finds fraud by the debtor with respect to one or more creditors;
- if the debtor or the legal entity of which he was the top executive has been subjected to assets liquidation proceedings closed due to insufficient assets less than five (05) years before the opening of the one to which he is subjected now;
- if the procedure is a liquidation of assets against the executive convicted in debt settlement;
- If the bankruptcy proceedings has been opened pursuant to Article 189 hereinafter.

In the event of resumption of individual lawsuits, Article 171 shall apply to creditors admitted in the bankruptcy proceedings. For creditors not admitted or having not filed their claims, common law shall govern their action.

Article 175

The decision may be rescinded at the request of the debtor or any other interested party on the ground that the funds needed to defray expenses relating to operations have been entrusted to the trustee.

Article 176

In all cases where suits for civil liability had to be instituted, the trustee shall be authorized to request legal aid by a decision of the receiver taken upon a request outlining the purpose of the aid and the means to be used before the decision to close the assets liquidation.

Article 177

The trustee shall deposit his accounts at the court registry three (3) months following the closing of proceedings due to insufficient assets.

The court registrar shall immediately notify the debtor, against receipt, that he has eight (8) days to file his objections, if need be.

In the event of a dispute, the competent court shall give a ruling.

Section 4: Closure due to payment of debts

Article 178

After settlement of claims and insofar as the reorganization proceedings are not closed by a decision ratifying the judicial composition or the body of creditors by a decision taken under the conditions set forth in Article 170 above, the competent court shall, at any time, rule, at the request of the debtor, the trustee or a creditor controller, even ex officio, on the closure of the collecting proceedings where all due debts have been paid up or where the trustee has enough funds or where the sums due in capital, interest and expenses have been deposited.

In the event of disappearance, absence or refusal of one or several creditors, the sums due shall be deposited into an account specially opened under the conditions set forth in article 45 above; the deposit slip shall be as good as a receipt.

Creditors entitled to do so may not claim more than three (3) years of interest at the legal rate due effective on the date of the judgment on opening the bankruptcy proceedings.

This closure shall be pronounced in the report of the receiver establishing the existence of the conditions provided for in paragraphs (1) and (2) of this Article.

The decision shall be notified, published and verified as provided for in articles 36 and 37 above.

Article 178-1

After full payment of the entire due claims, the trustee shall report under the conditions set forth in article 177 above.

Section 5: Simplified assets liquidation

Article 179

The proceedings of the simplified assets liquidation shall be subject to assets liquidation regulations of this Uniform act, subject to the provisions of this Article.

Article 179-1

Any debtor meeting the definition of small enterprise referred to in article 1-3 above, provided that he does not own an immovable asset, may petition for the simplified assets liquidation proceedings governed by this Article.

Article 179-2

The debtor wishing to benefit from the simplified assets liquidation shall submit the statement provided for in article 25 above under the conditions set forth in article 26 above, taking into account, inter alia, derogations granted to small enterprises.

Along with the statement provided for in articles 25 to 26 above, the debtor who meets the conditions for petitioning for simplified assets liquidation proceedings shall produce a declaration on his honor certifying so.

Article 179-3

After opening the assets liquidation proceedings, the trustee may, within thirty (30) days of his appointment, prepare and submit a report to the competent court.

The competent court may, ex officio, on the basis of the report, request the simplified assets liquidation proceedings after hearing or duly calling the debtor.

Article 179-4

The competent court which intends to pronounce a simplified liquidation of assets shall state in its decision:

- the nature of “small enterprise” of the debtor in accordance with the definition of Article 1-3 above;
- And the lack of immovable assets.

The competent court shall reserve the option to refuse the simplified procedure of liquidation of assets despite all the conditions being met.

Article 179-5

The decision of the competent court to grant a simplified liquidation of assets shall not be subject to appeal.

Article 179-6

By derogation from the provisions of Article 147 above in the decision related to the request for simplified assets liquidation, the competent court shall determine the assets of the debtor that can be the subject of a private sale. The trustee shall execute the sale within ninety (90) days from the date of such decision. At the end of this period, the remaining assets shall be sold in auction.

Goods which could not be sold privately in the decision on the simplified assets liquidation shall be auctioned without delay.

Article 179-7

By way of derogation from the provisions of Article 146 above, only claims susceptible to be ranked in the distribution and wage claims are verified.

Article 179-8

Once the claims are verified and approved and the assets realized, the trustee shall prepare a proposed distribution that he files with the registry of the competent court. The filing of the proposed shall be subject to publicity under the conditions set forth in the first two paragraphs of Article 37 above, carried out by the court registry.

Any individual may check the proposed distribution and, at the exclusion of the trustee, and challenge it before the receiver, within ten (10) days from the date of the publicity referred to in the foregoing paragraph.

The receiver shall rule on the disputes through a decision which is subject to a notification to be communicated to the creditors concerned by any means to establish actual receipt by the addressee. Such decision shall not be subject to appeal.

The trustee shall undertake the distribution pursuant to the proposed or, if it was disputed, the final decision.

Article 179-9

No later than one hundred and twenty (120) days after the opening or decision on the simplified liquidation of assets, the competent court shall pronounce the close of the liquidation of assets, after hearing or duly calling the debtor.

The competent court may, by a specially reasoned decision, extend the duration of the simplified liquidation of assets proceedings for a period not exceeding sixty (60) days.

Article 179-10

At any time during the conduct of the simplified liquidation of assets, the competent court may rule that it will no longer apply the derogations provided for in this Article by a specially reasoned decision.

CHAPTER VI: SPECIAL PROVISIONS GOVERNING TOP EXECUTIVES OF LEGAL ENTITIES

Article 180

The provisions of this chapter shall govern the top executives de jure or de facto, salaried or no and natural persons representative of the managing legal entities in case of insolvency of a legal entity.

Article 181

Members who are indefinitely and jointly and severally liable for the debts of the company, where they are not top executives, shall be subject to reorganization or assets liquidation proceedings in accordance with Title III above.

Article 182

Provisions related to seals and relief to the debtor shall be extended to top executives of legal entities subject to the provisions of this chapter.

Section 1: Debts settlement

Article 183

Where reorganization or assets liquidation of a legal entity shows insufficient assets, the competent court may, in case mismanagement has contributed to the insufficiency, may decide, at the request of the trustee, the public prosecutor or two controllers under conditions of Article 72 (2) above, even ex officio, that the legal entity debts shall be paid, in whole or in part, with or without joint and several liability, by all or some of the top executives.

The trustee or the controllers' summons or the public prosecutor's petition shall be notified to each accused executive at least eight (8) days before the court hearing. Where the competent court is examining the matter on its own petition, the president of the court shall summon the parties by a bailiff's writ or by any means proving actual receipt by the addressee, at the behest of the court registrar, within the same period.

The competent court shall take a decision at the earliest opportunity, after hearing the receiver's report behind closed doors.

Article 184

The court shall be the competent jurisdiction to rule on the reorganization or assets liquidation of the legal entity.

Article 185

The competent court may enjoin the top executives liable, in whole or in part, for the debts of the legal entity to assign their equity interests, capital securities or securities giving access to capital thereof or order compulsory assignment by the trustee, where necessary, after valuation. The proceeds of the sale shall be allocated to the payment of some of the debts of the legal entity incurred by its top executives.

Article 186

Debts settlement shall be prescribed for three (3) years from the date on which the final statement of claims is drawn up. In the case of cancellation or annulment of the arrangement of the legal entity, the prescription, suspended during the duration of the composition, shall begin to run again. However, the trustee shall again have a time limit which may not be less than one year, to institute the action.

Article 187

Where an executive of the legal entity is already under a reorganization or assets liquidation proceedings, the amount of the debts he is liable for shall be determined by the competent court which pronounced the reorganization or assets liquidation of the legal entity.

In this case, the trustee of the bankruptcy proceedings of the legal entity shall file the executive's assets under reorganization or assets liquidation.

Article 188

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

The publicity of the decision shall be executed at the behest and under the responsibility of the trustee.

The publicity shall also be carried out through the filing at the Registry of Commerce and Securities with regards to members liable for the debts or top executives of the commercial legal entity, and if they are traders, under the personal number of the top executives.

The trustee shall also have the decision published in a newspaper of legal notices in the State party concerned within thirty (30) days from the day the decision was made.

Section 2: Extension of reorganization and assets liquidation proceedings to top executives of legal entities

Article 189

In case of reorganization or assets liquidation of a legal entity, any top executive who, without being insolvent, has:

- engaged in an independent professional, civilian, commercial, handicrafts or agricultural activity either through an intermediary or under cover of the legal entity concealing his dealings;
- used the creditor assets of the legal entity as if they were his own;
- Abusively operated, in his personal interest, a failing business which could but lead to the insolvency of the legal entity.

The competent court may also pronounce reorganization or assets liquidation of the top executives who are liable for all or part of the debts of a legal entity and who fail to pay such debts.

Article 190

The competent court shall be the one to pronounce the reorganization or assets liquidation of the legal entity.

Article 191

Creditors admitted in bankruptcy proceedings initiated against the legal entity shall automatically be admitted in the reorganization or assets liquidation of the top executive. The debts shall comprise, apart from the personal debts of the executive, those of the legal entity.

Article 192

The date on which the insolvency is declared may not be after the date stated in the decision pronouncing the reorganization or assets liquidation of the legal entity.

Article 193

The provisions of Article 188 above shall govern the decision pronouncing the extension of bankruptcy proceedings to top executives of the legal entities.

TITLE IV: PERSONAL BANKRUPTCY AND REHABILITATION

Article 194

The provisions of this Article shall apply:

- 1) to natural persons engaged in an independent professional, civil, commercial handicraft or agricultural activity;
- 2) to natural persons who are top executives of legal entities subject to reorganization or assets liquidation proceedings;
- 3) to natural persons who are permanent representatives of legal entities referred to in no.2° above.

The top executives of legal entities referred to in this Article are top executives, de jure or de facto, whether salaried or not.

Article 195

The public prosecutor shall monitor the implementation of the provisions of this Title and shall ensure their execution.

CHAPTER 1: PERSONAL BANKRUPTCY

Section 1: Cases of personal bankruptcy

Article 196

In reorganization and assets liquidation proceedings, the competent court shall, at any time, pronounce the personal bankruptcy of an individual who has:

- 1) hidden the accounts of their company, embezzled or hidden part of its assets or fraudulently recognized debts which did not exist;
- 2) engaged in an independent professional, civilian, commercial, handicrafts or agricultural activity either through an intermediary or under cover of the legal entity concealing his dealings;
- 3) used the creditor assets of the legal entity as if they were his own;
- 4) by fraudulent misrepresentation, obtained for themselves or for their company, a arrangement which was later annulled;
- 5) Committed acts in bad faith, inexcusable misdeeds or serious offences against trade rules and practices such as defined in Article 197 hereinafter.

Top executives of a legal entity convicted for fraudulent bankruptcy or personal bankruptcy shall also be declared in personal bankruptcy.

Article 197

The following shall be deemed fraudulent acts, inexcusable misdeeds or serious offences against trade rules and practices:

- 1) to engage in an independent professional, civil, commercial handicraft or agricultural activity or performance of the duties of manager, director, president, chief executive officer or liquidator in violation of a prohibition provided for in this Uniform act or by each State Party law;
- 2) Inexistence of an accounting system compliant with recognized accounting rules and practices in the profession taking into account the importance of the debtor company;
- 3) Purchases for resale at lower prices with intent to delay the insolvency or use, with the same intent, of damaging practices to obtain funds;

- 4) subscription, for the account of third parties, without collateral security, of commitments deemed too important at the time of their conclusion, having regard to the position of the debtor or his company;
- 5) Abusively operated a distressed business which could only lead to the insolvency of the debtor company.

Article 198

The competent court may pronounce the personal bankruptcy of top executives who:

- 1) Have committed serious misconduct other than those referred to in Article 197 above illustrating a manifest incompetence;
- 2) Have not declared, within a period of thirty days, the insolvency of the legal entity;
- 3) Have not paid their share of the company's debts for which they are liable.

Article 199

The personal bankruptcy of top executives of legal entities shall deprive them of the right to vote at the meetings of the legal entities against which bankruptcy proceedings are initiated.

Such right shall be exercised by an agent appointed by the receiver or at the request of the trustee or any member of the legal entity.

Section 2: Procedure

Article 200

Where the trustee has knowledge of facts that may justify personal bankruptcy, he shall immediately inform the public prosecutor and the receiver and submit a report thereon to them within ten (10) days.

The receiver shall forward the report to the president of the competent court. Failing that, the receiver may himself make a report to the president of the competent court.

As soon as the report of the trustee or the receiver is submitted to the president of the competent court, he shall immediately have the court registrar summon by extrajudicial act at least eight (8) days in advance, the debtor or the top executives of the legal entity to appear before the court on a certain day in order to be heard by the competent court behind closed doors in the presence of the trustee or after he has been duly summoned by the court registrar by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means leaving a written record. A copy of the report shall be appended to the summons under penalty of nullity.

Article 201

The accused debtor or top executives of the legal entity shall appear before the court in person; in case they are unable to appear on grounds deemed duly plausible, they may be represented by a proxy with a power of attorney enabling him to represent the parties before the court seized.

Where the debtor or the top executives of the legal entity do not appear before the court or are not represented, the competent court shall again summon them to appear in the same forms and time limits as those provided in Article 200 above.

In case of repeated default, the competent court shall give an adverse ruling to them.

Article 202

Independently of information provided in the criminal record, decisions pronouncing personal bankruptcy shall be entered in the Register of Commerce and Securities.

With regards to top executives of non-commercial legal entities, such decisions shall be entered in the Registry as well as on the margin of the entry stating the reorganization or assets liquidation.

Such decisions shall, furthermore, be published by the court registrar in the newspaper empowered to publish legal notices within the jurisdiction of the court that gave the ruling under the conditions set forth in articles 36 and 37 above.

Section 3: Effects of personal bankruptcy

Article 203

The decision pronouncing personal bankruptcy shall automatically:

- prohibit any commercial act namely to lead, manage, administer or control a personal business or any legal entity with an economic activity;
- prohibit holding an elective public office or being a candidate for such public office;
- prohibit performing any administrative, legal or professional representation duties.

Where a competent court pronounces personal bankruptcy, it shall fix the duration thereof, which may not be less than six (6) months and exceed ten (10) years.

Forfeitures, incapacities and bans resulting from personal bankruptcy shall automatically cease at the appointed time of expiry.

CHAPTER II: REHABILITATION

Section 1: Cases of rehabilitation

Article 204

The decision to close due to debts write-off shall entail the rehabilitation of the debtor where debts are written off under the conditions set forth in Article 178 above.

To be automatically rehabilitated, the member who is jointly and severally liable for the debts of a legal entity declared insolvent shall demonstrate that he has paid off, under the same conditions, all the debts of the legal entity, even where a special arrangement had been granted.

Article 205

Where integrity is recognized, the following may be discharged:

- any individual who has obtained a special arrangement from creditors and who has fully paid up the promised dividends;
- Any individual who proves that creditors have consented to full debt forgiveness or to their unanimous consent to his rehabilitation.

Top executives of legal entities may also be rehabilitated:

- Against whom reorganization or assets liquidation has been pronounced and who find themselves meeting the conditions provided for in the first paragraph of Article 204 (1) above, and
- Against whom only personal bankruptcy has been pronounced where the legal entity in respect of which reorganization or assets liquidation has been pronounced who find

themselves meeting the conditions provided for in the first paragraph of Article 204 (1) above.

Article 206

An individual declared personally bankrupt may be discharged after his death where, during his lifetime, he met the conditions set forth in articles 204 and 205 above.

Article 207

Individuals convicted of a felony or misdemeanor insofar as the conviction leads to being banned from engaging in a commercial, industrial or handicraft activity shall not be admitted for rehabilitation.

Section 2: Procedure

Article 208

Every rehabilitation request shall be addressed, together with receipts and supporting documents, to the president of the competent court that declared the personal bankruptcy.

The latter shall forward the request and all supporting documents to the public prosecutor serving in the area where the applicant resides.

The president of the competent court and the public prosecutor shall collect all possible and useful information to confirm the accuracy of the facts in interest.

The trustee shall receive the same documents and shall embark on the same mission, ordered by the public prosecutor, with the obligation to submit a report within thirty (30) days effective on the date the matter was referred to him.

Article 209

Notice of the request shall be given by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means leaving a written record by the registrar of the competent court to each of the creditors approved or recognized even by a subsequent court decision.

Article 210

Any creditor who has not been fully paid under the conditions set forth in articles 178 and 204 above may, during the one month period with effect from the date of the notice, file an opposition to the rehabilitation, along with supporting documents, by a mere declaration to the court registry.

The opposing creditor may also intervene in the rehabilitation proceedings by lodging a petition with the president of the competent court and notifying the debtor.

Article 211

After the expiry of the time limits provided for in articles 208 and 210 above, the findings of the inquiries and reports prescribed above and the opposition lodged by creditors shall be forwarded to the representative of the public prosecutor to whom the request is referred who shall send them to the competent court together with his written demands.

Article 212

The competent court shall, where necessary, summon the applicant and the opposing parties and hear them behind closed doors.

Article 213

Where the rehabilitation request is rejected, it may be renewed only after one (1) year from the moment the decision was rejected.

Where it is admitted, the decision shall be entered in the Register of Commerce and Securities.

The debtor may, where possible, notify the rehabilitation decision to the legal representative of his professional order and have it published in a newspaper empowered to publish legal notices in the State party concerned.

Article 214

Rehabilitation proceedings shall be exempt from stamp duty and registration as well as any other tax and charges.

Section 3: Effects of rehabilitation

Article 215

A rehabilitated debtor shall regain all the rights he had been deprived of by the decision pronouncing his personal bankruptcy.

TITLEV: APPEALS IN REORGANIZATION AND ASSETS LIQUIDATION

Article 216

The following shall not be subject to opposition or appeal:

- 1) decisions related to the appointment or replacement of the receiver, the appointment or dismissal of trustees, and the appointment or dismissal of controllers;

- 2) decisions by which the competent court rules on a petition against decisions given by the receiver within the limits of his powers, with the exception of decisions ruling on claims and decisions provided for in articles 162 and 164 above;
- 3) a decision taken by the competent court in pursuance of the last paragraph of Article 111 above;
- 4) decisions authorizing the continuation of company operations, except in the case provided for in paragraph 2 of Article 113 above.

Article 217

Decisions rendered in matters of reorganization or assets liquidation shall be provisionally enforceable, notwithstanding any opposition or appeal, with the exception of a decision confirming a judicial composition as well as decisions on personal bankruptcy.

By exception and in case of appeal, the provisional enforcement of the decision on assets liquidation may be stayed par the president of the Court of Appeal at the request of the public prosecutor or the debtor and only in case of obvious violation of the applicable law.

Article 218

Within the time limits provided in preventive settlement, reorganization, assets liquidation and personal bankruptcy, the day of the act, event or decision which effected them, on the one hand, and the last day, on the other hand, shall not be tallied.

Any deadline which would normally expire on a Saturday, Sunday or on a public holiday shall be extended to the following first business day. The same shall apply for notifications to be served at the city hall or the prosecutor's office when services are closed to the public on the last day of the deadline.

Article 219

An opposition, where it is admissible, shall be instituted against decisions on reorganization or assets liquidation through a declaration at the court registry within fifteen (15) days effective on the date of notification of such decision.

For decisions subject to publication formalities in newspapers empowered to publish legal notices, such deadline shall start running only on the day when the last formality is carried out.

A ruling on the opposition shall intervene within thirty (30) days.

Article 220

An opposition, where it is admissible, shall be instituted against decisions rendered on personal bankruptcy through a declaration filed with the court registry within fifteen (15) days following the publication of the decisions.

The debtor or the top executives of legal entities shall be summoned to appear before the court in the forms, time limits and under the conditions set forth in articles 200 and 201 above.

A ruling on the opposition shall intervene within thirty (30) days.

Article 221

Appeal, where it is admissible, against a decision on reorganization, assets liquidation or personal bankruptcy shall be filed within fifteen (15) days with effect from the date on which the decision is given unless otherwise provided for in this Uniform act.

The appeal shall be tried on presentation of documents, by the Court of Appeal within thirty (30) days from the date of the court registry's statement. However, interested parties shall request to be heard in appeal; such request shall be appended to the appeal statement and may not delay the decision beyond the allotted time.

The appeal decision shall be enforceable immediately.

Article 222

In matters of personal bankruptcy, the court registrar shall notify, within a period of three (3) days, the public prosecutor about the ruling.

The public prosecutor may, within fifteen (15) days following such notification, lodge an appeal against the decision.

The public prosecutor's appeal shall be filed as a declaration at the court registry which rendered the decision. The court registry shall notify, against receipt, the debtor and the trustee about the decision.

Article 223

In case of personal bankruptcy or other sanctions, the appeal of the debtor or the top executives shall be instituted by a petition addressed to the president of the Court of Appeal.

The trustee shall be summoned to the suit by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means leaving a written record addressed to him by the registrar of the Court of Appeal.

Article 224

Where all or parts of the liabilities of a legal entity are borne by one or all of its top executives, the appeal shall be lodged pursuant to Article 221 above.

Article 225

The registrar of the Court of Appeal shall forward a copy of the decision to the competent court registry so as to enter it on the margin of the decision and for the execution, where necessary, of publicity formalities stipulated in Article 202 above.

TITLE VI: BANKRUPTCY AND OTHER OFFENCES

CHAPTER I: BANKRUPTCY AND RELATED OFFENCES

Article 226

Individuals found guilty of bankruptcy and misdemeanors related to bankruptcy shall incur penalties reserved for such offenses in the provisions of each State party in accordance with Article 5 of the OHADA Treaty.

Section 1: Negligent bankruptcy and fraudulent bankruptcy

Article 227

The provisions of this section shall govern:

- natural persons referred to in article 1-1 above;
- Partners of commercial companies who have the status of trader.

Article 228

Every natural person in a situation of insolvency who meets one of the following criteria shall be guilty of negligent bankruptcy:

- 1) Where he has contracted, without receiving securities in exchange, commitments deemed too important for his situation when he contracted them;
- 2) where, with intent to delay the insolvency situation, made purchases for resale at lower prices or where, with the same intent, used ruinous means to obtain funds;
- 3) where, without a lawful excuse, he failed to declare insolvency to the registry of the competent court within thirty (30) days of its occurrence;
- 4) where his accounting is incomplete or irregularly kept or where his books did not comply with accounting regulations and practices in the profession given the importance of the company;
- 5) Where, having been declared insolvent three (3) times within five (5) years, such proceedings were closed due to insufficient assets.

Article 229

Every natural person referred to in Article 227 above who, in case of insolvency, is guilty where he has:

- 1) Hidden his accounts;
- 2) Embezzled or concealed all or part of his assets;
- 3) fraudulently declared himself liable for sums not owed either in his accounting records or by public acts or commitments under private deed or in his balance sheet;
- 4) engaged in an independent professional, civil, commercial, handicraft, or agricultural activity in violation of a ban provided for in one Uniform act or in a statutory or regulatory provision of a State party;
- 5) after insolvency, has paid a creditor to the detriment of the body of creditors;
- 6) Has granted special benefits to a creditor because of his vote during the deliberations of the body of creditors or has entered into a special agreement with a creditor stipulating that the latter shall enjoy a benefit to be borne by the assets of the debtor with effect from the date of the decision to initiate proceedings.

Shall also be guilty of fraudulent bankruptcy, any natural person referred to in Article 227 above who, during the preventive settlement, reorganization or assets liquidations proceedings, has:

- 1) In bad faith, presented or permitted the presentation of an income statement, a balance sheet, a statement of claims and debts, or a statement of preferential claims and securities that is inexact and incomplete;
- 2) Without the authorization of the president of the competent court, performed one of the acts prohibited in Article 11 above.

Section 2: Bankruptcy related offences

Article 230

The provisions of this Article shall govern:

- 1) Natural persons who are top executives of legal entities referred to in article 1-1 above;
- 2) Natural persons who are permanent representatives of managing legal entities of legal entities referred to in point 1° above.

The top executives referred to in this Article mean all the de jure or de facto top executives and, in general, any individual having directly or through an intermediary, administered, managed or liquidated the legal entity under cover or in the lieu and place of its legal representatives.

Article 231

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

- 1) used money belonging to the corporate body by carrying out mere chance operations or fictitious operations;
- 2) with intent to delay the insolvency situation of the legal entity, made purchases with a view to reselling them at lower prices or, with the same intent, used ruinous means to obtain funds;
- 3) after insolvency by the legal entity, paid or permitted a credit or to be paid to the detriment of the body of creditors;
- 4) made the legal entity enter into contract, on behalf of third parties, without receiving securities in exchange, for undertakings deemed too important for his position when they were contracted;
- 5) kept or permitted to be kept or allowed to be kept irregularly or incompletely the accounts of the corporate body under the conditions laid down in article 228-4° above;
- 6) failed to make at the registry of the competent court, within a period of thirty (30) days , the declaration of the situation of cessation of payments of the corporate body

shall be punished with the penalties of bankruptcy

Article 232

In legal entities comprising partners who are indefinitely, jointly and severally liable for its debts, the legal or de facto representatives shall be found guilty of negligent bankruptcy and where, without lawful excuse, they fail to make a statement of insolvency at the registry of the competent court, within thirty (30) days, or where such declaration does not include the list of jointly and severally liable partners with their full names and residences.

Article 233

Shall be found guilty of fraudulent bankruptcy, the top executives referred to in Article 230 above who have fraudulently:

- 1) hidden the books of the legal entity;
- 2) embezzled or concealed part of its assets;
- 3) declared the legal entity debt or of sums of money that it did not owe either in its books or by public acts or commitments under private deed or in the balance sheet;
- 4) performed the duties of top executives in violation of a ban provided by the Uniform acts or by the law of each State party;

- 5) stipulated with a creditor, on behalf of the legal entity, special benefits because of his vote during the deliberations of the body of creditors or who have concluded with a creditor a special agreement under which the creditor would enjoy a benefit to be borne by the assets of the legal entity, with effect from the date of the decision declaring insolvency;
- 6) Embezzled or concealed, attempted to embezzle or conceal part of their assets or have declared themselves debtors fraudulently of sums not owed in order to hide all or part of their estate from the prosecution of the insolvent legal entity, partners or creditors of the legal entity.

Shall also be found guilty of fraudulent bankruptcy, top executives referred to in article 230 who, due to the preventive settlement proceedings, have:

- 1) In bad faith, presented or permitted the presentation of an income statement, a balance sheet, a statement of claims and debts, or a statement of preferential claims and securities that is inexact and incomplete;
- 2) Without the authorization of the president of the competent court, performed one of the acts prohibited in Article 11 above.

Section 3: Prosecution of bankruptcy offences and related offenses

Article 234

The public prosecutor or the trustee shall seize the criminal court.

It may be seized by two controllers under the conditions set forth in article 72 (2) above.

Article 235

The trustee shall forward to the public prosecutor supporting documents, titles and information in his possession.

Supporting documents and titles from the trustee are required, during the proceedings, to be kept at the court registry for consultation.

Such consultation shall take place at the request of the trustee who may make copies of the documents, or request the true originals which shall be sent to him by the court registrar.

Supporting documents and titles for which judicial deposit was not ordered shall, after the decision, be returned to the trustee who shall acknowledge receipt thereof.

Article 236

Conviction for negligent or fraudulent bankruptcy or for misdemeanor related to negligent or fraudulent bankruptcy may be pronounced even where the insolvency has not been established under the conditions laid down by this Uniform act.

Article 237

Court fees for proceedings instituted by the public prosecutor shall not be borne by the body of creditors.

In the case of conviction, the Public Treasury may institute a recovery action for costs against the debt or only after the execution of the composition agreement in case of reorganization or after the dissolution of the body of creditors in case of assets liquidation.

Article 238

Court fees for proceedings instituted by the trustee on behalf of the creditors shall be borne by the body of creditors, in case of discharge and, in case of conviction, by the Public Treasury unless the latter files suit against the debtor under the conditions set forth in paragraph 2 of Article 237 above.

Article 239

Court fees for proceedings instituted by a creditor controller shall be borne by him in case of discharge and ,in case of conviction, by the Public Treasury unless the latter files suit against the debtor under the conditions set forth in paragraph 2 of Article 237 above.

CHAPTER II: OTHER OFFENCES

Article 240

The following shall be found guilty of fraudulent bankruptcy:

- 1) Individuals whose list of felonies includes having, in the interest of the debtor, hidden, concealed or covered up all or part of personal and real assets, without prejudice to the criminal provisions related to complicity;
- 2) Individuals whose list of felonies includes having fraudulently filed, in bankruptcy proceedings, either in their name or through an intermediary or impersonation, fictitious claims;
- 3) Individuals who, engaged in an independent professional, civil, commercial, handicraft, or agricultural activity under the name of another person or under a false name or have, in bad faith, embezzled or concealed, attempted to embezzle or conceal part of their property.

Article 241

The spouse, descendants, ascendants or relatives of the debtor or his relations by marriage up to the fourth generation included who, unknown to the debtor, have embezzled, misappropriated or stolen negotiable pertaining to the assets of an insolvent debtor, shall incur the penalties provided for in the criminal law in force in each State party for offences above-mentioned.

Article 242

Even in case of discharge in the situations stipulated in articles 240 and 241 above, the court before which the matter is brought, shall rule on damages and on the re-incorporation, into the estate of the debtor, of the hidden assets, rights or stocks.

Article 243

Any judicial administrator of a bankruptcy proceedings shall incur penalties provided in criminal law in force for the following offenses:

- engages in a personal undertaking under the cover of the company of the debtor to conceal his dealings;
- uses the debtor's creditor property like his own;
- conceals the debtor's assets;
- pursues abusively and in bad faith and his own interest, either directly or indirectly, a distressed operation of the company of the debtor;
- In violation of the provisions of Article 51 above, becomes buyer for his own account, directly or indirectly, of the debtor's assets.

Article 244

Any creditor of a bankruptcy proceedings shall incur penalties provided in criminal law in force for the following offenses unless otherwise provided for in this Uniform act where he:

- has obtained from the debtor or other individual special benefits due to his vote in the deliberations of the majority of creditors;
- Entered into a special agreement from which would derive in his favor a benefit to be borne by the debtor's assets with effect from the date on which the decision to open bankruptcy proceedings was rendered.

Article 245

The agreements stipulated in the foregoing Article shall, in addition, be declared null and void by the Criminal Court of the State concerned.

Where a suit for civil liability is filed for the annulment of the said agreements, it shall be brought before the competent court which initiated the bankruptcy proceedings.

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

The annulment of a special benefit shall not entail the annulment of the conciliation, arrangement or judicial composition agreement properly entered into in accordance with this Uniform act, subject to the provisions of Article 140 above.

Article 246

Without prejudice to the criminal provisions applicable in each State party, any conviction decision rendered pursuant to the provisions of this Title shall, at the expense of the convicts, be posted and published in a newspaper empowered to publish legal notices in the concerned State party.

TITLE VII: INTERNATIONAL BANKRUPTCY PROCEEDINGS

CHAPTER I: RECOGNITION OF BANKRUPTCY PROCEEDINGS OPEN IN STATES PARTIES

Article 247

Where they are enforceable, decisions to initiate and close bankruptcy proceedings as well as decisions settling disputes arising out of the said proceedings and decisions on which bankruptcy proceedings have legal impact, pronounced in the territory of a State party in accordance with this Uniform act, shall be res judicata on the territory of the other States parties.

The provisions of the first paragraph of this Article shall also govern any decision recognized by the competent court of the State Party pursuant to Chapter II of this Title.

Notwithstanding any provision of this Article, execution measures require exequatur.

Article 248

The trustee shall publish, in the forms stipulated in article 36 and 37 above, in any State party, where such publication may be useful to the legal security or the interests of creditors, the essential content of decisions related to bankruptcy proceedings and, where necessary, the decision appointing him.

The same publicity may be decided ex officio by the competent court which initiated the bankruptcy proceedings.

The trustee may also publish, where necessary, decisions related to the bankruptcy proceedings in the land register, the Register of Commerce and Securities or in any other public register kept in the States parties.

Article 249

The trustee appointed by a competent court may exercise all the powers conferred to him by this Uniform act on the territory of another State party insofar as no other bankruptcy proceedings have been initiated in that State.

The appointment of the trustee shall be established upon presentation of a certified true copy of the original 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 trustee needs to work may be required.

Article 250

The creditor who, after the opening of reorganization or assets liquidation proceedings by the competent court of a State party, obtain, by any means, the complete or partial payment of his debt out of the debtor's assets located on the territory of another State party, shall return to the trustee whatever he has obtained, without prejudice to retention of title clauses and actions for recovery.

Whoever, on the territory of a State party, performs an act in favor of a debtor who is subject to bankruptcy proceedings open in another State party while he ought to have done so in favor of the trustee of the said bankruptcy proceedings, shall be discharged where he executed the said commitment before the publication formalities provided for in Article 248 of this Uniform act, except where it is proved that he otherwise had knowledge of the proceedings.

Article 251

The recognition of the effects of bankruptcy proceedings open by the competent court of a State Party in accordance with this Uniform act shall not preclude the opening of another bankruptcy proceedings, including a secondary proceedings by the competent court of another State party insofar as the opening request complies with all requirements of this Uniform act.

Effects of the main bankruptcy proceedings, as defined in article 1-3 above shall apply to all the assets of the debtor located in the territory of States Parties.

Effects of a secondary bankruptcy proceedings, as defined in article 1-3 above shall be limited to the assets of the debtor located in the territory of the State Party in which such proceedings is open.

Effects of a territorial bankruptcy proceedings, as defined in article 1-3 above shall also be limited to the assets of the debtor located in the territory of the State Party in which such proceedings is open.

Article 252

The trustees of the main and secondary bankruptcy proceedings are bound by a mutual information exchange duty. They shall exchange all information, without delay, which may be useful for other proceedings, in particular the status on filing and verifying claims and measures aimed at putting an end to the bankruptcy proceedings for which they are appointed.

The trustee of the secondary bankruptcy proceedings shall, at the right time, enable the trustee of the main bankruptcy proceedings to present proposals on the close of the secondary bankruptcy proceedings or any use of assets of the secondary bankruptcy proceedings.

Non-compliance with these obligations shall put the trustees at risk of civil liability suits.

Article 252-1

In the event of the opening of bankruptcy proceedings in several States parties against a debtor, the competent courts shall cooperate as much as possible either directly or through a trustee.

Article 253

Any creditor may file his claim at the main bankruptcy proceedings and at any secondary or territorial bankruptcy proceedings.

The trustees of main and secondary bankruptcy proceedings shall also be empowered to file, in other proceedings, claims already produced in proceedings for which they had been appointed, subject to creditors opposing such filing or withdrawing the claims they filed.

The provisions of this Article shall apply subject to those of Article 255 hereinafter.

Article 254

Secondary bankruptcy proceedings may be closed by a arrangement or a reorganization or assets liquidation composition only after the trustee of the main bankruptcy proceedings gives his consent. Such consent shall be given within thirty (30) days effective on the date of receipt of the request for notification made by the trustee of the secondary bankruptcy proceedings by hand-delivered letter against a receipt or by registered mail with acknowledgment of receipt or by any means leaving a written record.

If the trustee of the main bankruptcy proceedings remains silent for thirty (30) days, the silence shall be deemed to be consent.

The trustee of the main bankruptcy proceedings may decline to give his consent only where he establishes that the solution proposed jeopardizes the financial interests of the creditors of the proceedings for which he is appointed.

In case of disputes, the competent court shall rule in the same manner as in arrangement or reorganization or assets liquidation composition to close the secondary bankruptcy proceedings.

Article 255

A creditor who obtained in bankruptcy proceedings a dividend on his claim shall take part in open distributions in other proceedings only where the creditors with the same rank have obtained, in such other proceedings, an equivalent dividend.

CHAPTER II: RECOGNITION OF BANKRUPTCY PROCEEDINGS OPEN OUTSIDE OHADA SPACE

Section 1: Purpose, scope and general provisions

Article 256

This chapter aims at providing effective ways to deal with foreign bankruptcy proceedings within the meaning of Article 1-3 above in order to promote the following objectives:

- ensure cooperation between courts and other competent authorities of States Parties and those of foreign States, as defined in article 1-3 above, intervening in foreign bankruptcy proceedings;
- ensure greater legal security in trade and investments;
- administer fairly and efficiently the bankruptcy proceedings so as to protect the interests of all creditors and other interested parties, including the debtor;
- protect all the debtor's assets and optimize their value;
- Facilitate the restructuring of distressed companies so as to protect their investment and preserve employment.

Article 256-1

The provisions of this chapter shall apply when:

- 1) assistance is sought in a State Party by a foreign court or a foreign representative, as defined in article 1-3 above, in relation to a foreign bankruptcy proceedings;
- 2) assistance is sought in a foreign State in relation to a bankruptcy proceedings open pursuant to this Uniform act;
- 3) a foreign bankruptcy proceedings and a collecting proceedings open pursuant to this Uniform act in relation with the same debtor are open concurrently;
- 4) Creditors and other interested parties of a foreign State need to open a bankruptcy proceedings, or be part of such procedure pursuant to this Uniform act.

The provisions of Chapter II of Title VI of this Uniform act shall not govern a bankruptcy proceedings in relation with debtors engaged in an activity referred to paragraph 2 of Article 1-1 above.

Article 256-2

In the event of conflict between the provisions of this chapter and an obligation of a State Party arising out of an international treaty or any other form of international agreement to which that State is party with one or more other foreign States, the provisions of this chapter shall prevail, in accordance with the Treaty on the Harmonization of Business Law in Africa.

Article 256-3

Provisions referred to in this chapter related to the recognition and the effects of foreign bankruptcy proceedings as well as cooperation with foreign jurisdictions shall be under the competent court within the meaning of articles 3, 3-1 and 3-2 above.

Article 256-4

Any trustee is authorized to act in a foreign State in respect of a bankruptcy proceedings in application of this Uniform act to the extent permitted by the applicable foreign law.

Article 256-5

No provision in this chapter shall preclude the competent court from refusing to take action governed by this chapter when the measure is manifestly repugnant to the public policy of the State party concerned.

Article 256-6

No provision of this chapter does limit the authority of the competent court, or a trustee, to provide additional assistance to a representative in the framework of foreign bankruptcy proceedings.

Article 256-7

For the purpose of the interpretation of the provisions of this chapter, its international origin, the need to promote uniformity in its application and the observance of good faith in States parties shall be taken into account.

Section 2: Access of foreign Representatives and foreign creditors to the competent courts of State parties

Article 256-8

A foreign representative shall be authorized to communicate directly with a court in the States parties.

Article 256-9

The mere fact that a foreign representative, pursuant to this chapter, presents a request before a court of one of the States parties shall not subject such representative, or the assets or affairs of

the debtor outside the OHADA space, to the jurisdiction of the courts of the States parties for purposes other than those indicated in such request.

Article 256-10

A foreign representative shall be empowered to petition for the opening of bankruptcy proceedings pursuant to this Uniform act where conditions for opening such a procedure are met.

Article 256-11

Upon recognition of a foreign bankruptcy proceedings, the foreign representative shall be empowered to participate in any bankruptcy proceedings in relation with the debtor pursuant to this Uniform act.

Article 256-12

Subject to the provisions of paragraph 2 of this Article, creditors domiciled in a foreign State, with respect to the opening of bankruptcy proceedings and their participation in such procedure pursuant to this Uniform act shall have the same rights as creditors residing in any State party.

The first paragraph of this Article shall not affect the priority rank of claims referred to in articles 166 and 167 above in a bankruptcy proceedings opened pursuant to this Uniform act, nor the exclusion of such procedure on foreign tax and company receivables.

Article 256-13

Any notification which, under this Uniform act, is given to creditors resident in a State party in the context of bankruptcy proceedings initiated pursuant to this Uniform act shall also be given to known creditors domiciled in a foreign State. The competent court having opened the bankruptcy proceedings pursuant to this Uniform act may order that appropriate measures be taken to notify any creditor whose address is not yet known.

Notwithstanding any provision of this Uniform act, the notification referred to in the above paragraph shall be addressed individually to creditors domiciled in a foreign State, unless the court having opened the bankruptcy proceedings pursuant to this Uniform act believes, depending on circumstances, that another form of notification is more appropriate. No rogatory commission or other similar formality is required.

When the notification of bankruptcy proceedings must be given to creditors domiciled in a foreign State, the notification shall:

- state the time limit provided for in article 78 above for the filing of claims and specify the filing location;
- state that creditors whose claim is subject to a security should prove such claim;
- Contain any other information required for the notification to creditors pursuant to this Uniform act and to decisions of the competent court.

Section 3: Recognition of foreign bankruptcy proceedings and available measures

Article 256-14

A foreign representative may apply to the competent court within the meaning of articles 3, 3-1 and 3-2 above for the recognition of the foreign bankruptcy procedure under which he has been appointed representative.

An application for recognition shall be accompanied by the following documents:

- 1) a certified copy of the decision to open the foreign bankruptcy proceedings and appointment of the foreign representative;
- 2) a certificate of the foreign jurisdiction certifying the opening of the foreign bankruptcy proceedings and the appointment of the foreign representative;
- 3) in the absence of documents referred to in points 1 °) and 2 °) of this Article, any other evidence of the opening of the foreign bankruptcy proceedings and the appointment of the foreign representative may be accepted by the competent court within the meaning of articles 3, 3-1 and 3-2 above.

The application for recognition shall also be accompanied by a statement identifying all bankruptcy foreign proceedings concerning the debtor known by the foreign representative.

All the documents provided in support of the application for recognition of this Article shall be written or translated into the official language or one official language of the State party concerned.

Article 256-15

Notwithstanding any provision of this chapter, the competent court, before which an application for recognition of a foreign bankruptcy proceedings was made, may take into account the assumptions set out in this Article.

In particular, if the certified copy of the decision or the certificate referred to in article 256-14 state that the foreign proceedings is a foreign bankruptcy procedure, as defined in article 1-3 above, and that the representative of that procedure is a foreign representative, as defined in article 1-3, the competent court may assume that it is so.

The competent court shall also be empowered to presume that documents submitted in support of the application for recognition of the foreign bankruptcy proceedings are genuine, whether they have been certified or not.

Unless evidence to the contrary, in the case of a legal person, the registered office, or, in the case of an individual, the habitual residence of the debtor, shall be presumed to be the center of its principal interests.

Article 256-16

Subject to the provisions of Article 256-5 hereinafter, a foreign bankruptcy proceedings is recognized if:

- it is a foreign bankruptcy proceedings as defined in article 1-3;
- the representative requesting the recognition is a foreign representative, as defined in article 1-3;
- the application complies with the requirements of paragraph 2 of Article 256-14;
- The application was submitted to the competent court referred to in article 256-3.

The foreign bankruptcy proceedings shall be recognized:

- as a main foreign bankruptcy procedure if it takes place in the foreign State where the debtor has its main operations center;
- As a secondary foreign bankruptcy proceedings if the debtor has an establishment as defined in article 1-3 above, in the foreign State.

The decision regarding an application for recognition of foreign bankruptcy proceedings shall be rendered within a short period.

The provisions of articles 256-13 to 256-17 shall not prevent modification or cessation of recognition of foreign bankruptcy proceedings if it appears that the grounds for such recognition were totally or partially non-existent or that they have ceased to exist.

Article 256-17

As of the date of submission of the application for recognition of the foreign bankruptcy proceedings, the foreign representative shall inform without delay, the competent court of:

- any substantial change in the status of the recognized foreign bankruptcy proceedings or the status of the appointment of the foreign representative;

- Of any other foreign bankruptcy proceedings in respect of the debtor that has been communicated to him.

Article 256-18

Between the date of the submission of an application for recognition of the foreign bankruptcy proceedings before the competent court and the date on which the recognition is decided, when there is an urgent need to take measures to protect the assets of the debtor or the interests of creditors, the competent court may take, at the request of the foreign representative, the following provisional measures:

- prohibit or stay measures of execution against the debtor's assets, including any extrajudicial execution;
- entrust the administration or realization of all or part of the debtor's assets located in the territory of the competent court to the foreign representative or a trustee appointed by the latter, in order to protect and preserve the value of these assets when, by their nature or because of other circumstances, they are perishable, susceptible to depreciation or otherwise under threats;
- Grant all measures referred to in points 3 °, 4 ° and 7 ° of the first paragraph of Article 256-20 hereinafter.

Unless extended pursuant to point 6 ° of the first paragraph of Article 256-20 hereinafter, measures granted pursuant to this Article shall cease as soon as a ruling is pronounced on the application for recognition of the foreign bankruptcy proceedings.

The competent court may refuse to grant measures referred to in this Article if they are that may hinder the administration of the main foreign bankruptcy proceedings.

Article 256-19

From the date of the decision of the recognition of a main foreign bankruptcy proceedings:

- 1) the opening of actions, execution procedures or individual judicial and extrajudicial proceedings with respect to assets, rights or obligations of the debtor are prohibited and the continuation of such actions, procedures and enforcement suspended;
- 2) judicial and extrajudicial enforcement procedures against the assets of the debtor are prohibited or suspended;

- 3) The right to transfer the assets of the debtor, constitute security interests thereon or otherwise dispose of them is suspended.

The scope and the modification or termination of the prohibition and suspension measures referred to in the first paragraph of this Article shall be subordinate to any other provision of this Uniform act.

The provisions of no. 1 °) of the first paragraph of this Article shall not affect the right to initiate actions and procedures for individual judicial and extrajudicial executions, insofar as this is necessary to preserve a claim against the debtor.

The first paragraph of this Article shall not affect the right to request the opening of bankruptcy proceedings pursuant to this Uniform act or the right to lodge claims in such proceedings.

Article 256-20

Where protecting the debtor's assets or the creditors' interests is important, the competent court may, from the date of the decision of recognition of a foreign main or secondary bankruptcy proceedings, take, at the request of the foreign representative, any appropriate measures, including:

- 1) prohibit actions, procedures, execution procedures and individual judicial and extrajudicial proceedings with regards to the debtor's assets, rights or obligations of the debtor or suspend such actions, procedures, execution procedures and prosecution insofar as such prohibition or suspension does not comply with point no. 1 °) of the first paragraph of Article 256-19 above.
- 2) prohibit or stay the judicial and extrajudicial execution procedures against the assets of the debtor, if such prohibition or suspension does not comply with point no. 2 °) of the first paragraph of Article 256-19 above.
- 3) stay the right to transfer the assets of the debtor, constitute securities on such assets or otherwise dispose of them insofar as such right has not been suspended pursuant to point no. 3 °) of the first paragraph of Article 256-19 above.
- 4) organize the interrogation of witnesses, collect evidence or provide information regarding the assets, the business, the rights or obligations of the debtor;

- 5) entrust the administration or the realization of part or all the assets of the debtor, situated in the territory of the competent court to the foreign representative or any other individual appointed by the said court;
- 6) extend measures taken pursuant to the first paragraph of Article 256-18 above;
- 7) Grant any other measure that may be taken by the trustee pursuant to this Uniform act.

Effective on the date on which the decision of recognition of a main or secondary foreign bankruptcy proceedings was rendered, the competent court may, at the request of the foreign representative, entrust the distribution of all or part of the assets of the debtor situated in the territory of the competent court to the foreign representative, or to a trustee appointed by the latter, if it considers that the interests of creditors resident in its territory are adequately protected.

When granting a measure pursuant to this Article to the foreign secondary bankruptcy proceedings' representative, the competent court must ensure that granted measures relate to assets which, pursuant to this Uniform act, should be administered in the foreign secondary bankruptcy procedure, or that the measure relates to information required in this procedure.

Article 256-21

When it grants or denies any measure in accordance with Article 256-18 or to article 256-20 above, or when it changes or actually stops measures granted pursuant to paragraph 3 of this Article, the competent court shall ensure that the interests of creditors and other interested parties, including the debtor, are adequately protected.

The competent court may add to such conditions deemed appropriate any other measure in accordance with articles 256-18 or 256-20 above.

The competent court, acting at the request of the foreign representative or any individual or entity affected negatively by any measure granted in application of articles 256-18 or 256-20, or acting ex officio, may modify or terminate such measure.

Article 256-22

Effective on the date of the decision of recognition of a foreign bankruptcy proceedings, the foreign representative shall be able to engage all actions for unenforceability stipulated in articles 67 et seq. above.

When the foreign bankruptcy proceedings are a secondary foreign bankruptcy proceedings, the competent court shall ensure that the action relates to assets which, pursuant to this Uniform act, should be administered in this procedure.

Article 256-23

Effective on the date on which the decision of recognition of a foreign bankruptcy proceedings was rendered, the foreign representative may, if the conditions laid down by this Uniform act are met, intervene in any bankruptcy proceedings in which the debtor is party.

Section 4: Cooperation with foreign courts and foreign representatives

Article 256-24

The competent court shall cooperate to the extent possible with foreign courts or foreign representatives, either directly, or through a trustee.

The competent court shall be empowered to communicate directly with foreign courts or foreign representatives, or ask them directly for information or assistance.

Article 256-25

In the exercise of his functions and subject to the oversight of the competent court, the trustee shall cooperate to the extent possible with foreign courts or foreign representatives.

He shall also be empowered to communicate directly with foreign courts or foreign representatives.

Article 256-26

The cooperation referred to in articles 256-24 and 256-25 above may be warranted by any means appropriate, including:

- the appointment of an individual or body entitled to act following the instructions of the competent jurisdiction;
- communication of information by any appropriate means by the competent court;
- coordination of the administration and monitoring of assets and affairs of the debtor;
- approval or application by any court of agreements with respect to the coordination of bankruptcy procedures;
- The coordination of concurrent bankruptcy proceedings regarding the same debtor.

Section 5: Concurrent collective proceedings

Article 256-27

After recognition of a main foreign bankruptcy proceedings, a bankruptcy procedure may not be opened pursuant to this Uniform act in the State party where the foreign bankruptcy proceedings has been only recognized if the debtor has assets in that State party.

The effects of bankruptcy proceedings pursuant to this Uniform act shall be limited to the assets of the debtor that are located in that State and, to the extent necessary, in order to give effect to the measures of cooperation and coordination referred to in articles 256-24 to 256-26 above, other assets of the debtor which should be administered in that proceedings pursuant to this Uniform act.

Article 256-28

When foreign bankruptcy proceedings and bankruptcy proceedings opened in application with this Uniform act shall take place simultaneously against the same debtor, the competent court shall endeavor to ensure cooperation and coordination, referred to in articles 256-24 to 256-26 above, pursuant to the following conditions:

- 1) when the bankruptcy proceedings in a State party is underway at a time the application for recognition of the foreign bankruptcy proceedings is submitted:
 - a) any measure taken in application of articles 256-18 to 256-20 above shall comply with the bankruptcy proceedings opened in the State party pursuant to this Uniform act;
 - b) if the foreign bankruptcy procedure is recognized by the competent court as a main foreign bankruptcy procedure main, Article 256-19 above does not apply.
- 2) When bankruptcy proceedings are opened in a State party after recognition of the foreign bankruptcy proceedings or after the introduction of the request for recognition of such procedure:
 - a) any measures taken pursuant to articles 256-18 or 256-20 above shall be reviewed by the competent court and amended or thrown out if they do not comply with the bankruptcy proceedings opened by the court pursuant to this Uniform act;

- b) if the foreign bankruptcy proceedings is a main foreign bankruptcy proceedings, measures of prohibition and suspension referred to in the first paragraph of Article 256-19 above are modified or removed in accordance with paragraph 2 of Article 256-19 if they do not comply with the bankruptcy proceedings opened by the court;
- 3) When it grants, extends or modifies a measure granted to the representative of secondary foreign bankruptcy proceedings, the competent court shall ensure that the measure concerns assets which, pursuant to this Uniform act, should be administered in the secondary bankruptcy foreign procedure, or that the measure relates to the information required under this procedure.

Article 256-29

When several foreign bankruptcy proceedings were opened against the same debtor, the competent court shall endeavor to ensure cooperation and coordination referred to articles 256-24 to 256-26 above pursuant to the following conditions:

- 1) any measure granted pursuant to articles 256-18 to 256-20 above to the foreign representative of a secondary foreign bankruptcy proceedings after recognition of main foreign bankruptcy proceedings must comply with the main foreign bankruptcy proceedings;
- 2) a main foreign bankruptcy proceedings is recognized after the recognition of a secondary foreign bankruptcy proceedings or after the introduction of an application for recognition of such a bankruptcy proceedings, any measures taken pursuant to articles 256-18 to 256-20 above shall be reviewed by the competent court and modified or removed, if they do not comply with the main foreign bankruptcy proceedings;
- 3) If, after recognition of a secondary foreign bankruptcy proceedings, another secondary bankruptcy foreign proceedings is recognized, the competent court shall grant, modify, or actually stop measures granted to facilitate the coordination of concurrent bankruptcy procedures.

Article 256-30

Unless proved otherwise, the recognition of a main foreign bankruptcy proceedings shall certify, for the purposes of opening bankruptcy proceedings for reorganization or assets liquidation, pursuant to this Uniform act, that the debtor is insolvent.

Article 256-31

Without prejudice to the rights of holders of claims guaranteed with securities or actual charges, a creditor having been partially paid in a bankruptcy proceedings open pursuant to a law related to insolvency or bankruptcy proceedings in a foreign State, may not be paid for the same claim in a bankruptcy proceedings regarding the same debtor open pursuant to this Uniform act insofar as long as the payment granted to the other creditors of the same rank is proportionately lower than what was already paid to that creditor by a foreign jurisdiction.

TITLE VIII: TRANSITIONAL AND FINAL PROVISIONS

Article 257

All previous provisions repugnant to those of this Uniform act are hereby repealed. This Uniform act shall apply only to bankruptcy proceedings initiated after its entry into force.

Article 258

This Uniform act shall be published in the Official Gazette of OHADA and in the States Parties within sixty (60) days from the date of its adoption. It shall enter into force ninety (90) days following the date of its publication in the OHADA Official Gazette pursuant to Article 9 of the Treaty on the Harmonization of Business Law in Africa.

Done at Grand Bassam on 10th of September 2015

On behalf of the Republic of **Benin**

On behalf of **Burkina Faso**

On behalf of the Republic of **Cameroon**

On behalf of the Republic of **Central African Republic**

On behalf of the Union of **Comoros**

On behalf of the Republic of **Congo**

On behalf of the Republic of **Côte d'Ivoire**

On behalf of the Republic of **Gabon**

On behalf of the Republic of **Guinea**

On behalf of the Republic of Bissau Guinea

On behalf of the Republic of **Equatorial Guinea**

On behalf of the Republic of **Mali**

On behalf of the Republic of **Niger**

On behalf of the **Democratic Republic of Congo**

On behalf of the Republic of **Senegal**

On behalf of the Republic of **Chad**

On behalf of the Republic of **Togo**