

UNIFORM ACT ON SIMPLIFIED DEBT COLLECTION PROCEDURES AND ENFORCEMENT PROCEEDINGS



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The Council of Ministers of OHADA;

Having regard to the Treaty on the Harmonization in Africa of Business Law, notably its articles 2 and 5 to 12;

Having regard to the report of the office of the Permanent Secretary and the comments of States Parties;

Having regard to the notice dated 23 March 1998 of the Common Court of Justice and Arbitration;

After having deliberated, adopted unanimously by the States Parties present and voting, the Uniform Act worded as follows:

BOOK I – SIMPLIFIED RECOVERY PROCEDURES

TITLE I – ORDER FOR PAYMENT

CHAPTER I – CONDITIONS

Article 1: The recovery of a claim that is certain, of a fixed amount and due may be requested pursuant to the order for payment procedure.

Article 2: The order for payment procedure may be introduced when:

- 1) the debt arises from a contract;
- 2) The commitment results from the issuance or acceptance of any negotiable instrument, or a check with no funds or insufficient funds.

CHAPTER II - PROCEDURE

SECTION I: REQUEST

Article 3: The request shall be addressed to the competent court of the domicile or the place where the debtor or one of them, in case of plurality of debtors, actually resides.

The parties may derogate from these rules of jurisdiction by electing a domicile to be provided for in the contract.

The lack of territorial jurisdiction may be raised only by the court before which the request was filed or by the debtor during the proceedings instituted by the opposing party.

Article 4: The request must be filed with or addressed to the registry of the competent court by the applicant or by his agent authorized to represent him in court in compliance with the law of each State party.

The request shall contain, under penalty of inadmissibility:

- 1) the full names, profession and domicile of the parties, or for legal entities, their form, name and registered office;
- 2) The specific amount of the claim with different elements of the claim and the basis thereof.

It shall be accompanied by the originals of the supporting documents or certified copies thereof.

When the request emanates from a person not domiciled in the State of the competent court, it must contain, under the same penalty, election of domicile within the jurisdiction of this court.

SECTION II: ORDER FOR PAYMENT DECISION

Article 5: If, in light of documents submitted, the request appears reasonably founded in whole or part, the president of the competent court shall render a decision on the order for payment for the amount that he sets.

If the president of the competent court rejects the request in whole or in part, his decision shall not be appealed by the creditor except if he proceeds in compliance with common law procedures.

Article 6: The application and the decision on the order for payment shall be kept as minutes by the clerk issuing a copy to the applicant. Original documents submitted in support of the application shall be returned to the applicant and their certified copies shall be kept at the registry.

Where the request is rejected, the application and the documents shall be returned to the applicant.

Article 7: At the initiative of the creditor, a copy certifying that the request and the decision on the order for payment issued pursuant to the provisions of the preceding article shall be served to each debtor by an extrajudicial act.

The decision for payment shall have no effect if it has not been served within three months of its issuance.

Article 8: Under penalty of nullity, the notification of the decision on the order for payment shall contain summons to:

- either pay the creditor the amount of money set out in the decision together with interests and registry charges for which the amount is specified;
- Or if the debtor intends to raise defense in opposition, and such opposition is aimed at seizing the court where the initial request of the creditor and the entire opposition was filed;

Under the same penalty, the notification shall:

- state the time limit within which the opposition must be formed, the court before which it must be brought and the way it shall be processed;
- notify the debtor that he may obtain the documents submitted by the creditor at the registry of the competent court in which the president made the decision on the order for payment, and, in the absence of an opposition within the prescribed time limit, he will no longer be allowed to appeal and may be obligated to all legal remedies to pay the amounts claimed.

SECTION III: OPPOSITION

Article 9: The ordinary appeal against the decision on the order for payment shall constitute the opposition. It shall be brought before the competent court of origin where the president made the order for payment decision.

The opposition shall be filed in an extrajudicial act.

Article 10: The opposition must be filed within fifteen days after service of the decision on the order for payment. The time limit may be extended on account of distance.

However, if the debtor has not personally received notification of the decision on the order for payment, the opposition shall be admissible until the expiration of the period of fifteen days following the first act served personally or, failing that, following the first enforcement proceeding whose effect is to render the debtor's assets beyond disposal in whole or in part.

Article 11: The opposing party shall, under penalty of forfeiture, and in the same act as that of the opposition:

- notify his appeal to all the parties and to the registry of the court that rendered the order for payment decision;

- Issue a subpoena to appear before the competent court at a set date that cannot exceed the period of thirty days from the opposition.

Article 12: The court hearing the opposition shall make conciliation attempts. If it succeeds, the president shall draw up conciliation minutes signed by the parties and sent with the seal of enforceability.

If the conciliation attempt fails, the court shall immediately rule on the application for recovery, even in the absence of the debtor who filed an opposition, by a decision which will have the effect of an adversarial decision.

Article 13: The individual who requested the order for payment decision shall bear the costs relating to the burden of proof of his claim.

Article 14: The decision of the court seized on opposition shall override the order for payment decision.

Article 15: The decision rendered on opposition may be appealed under the conditions prescribed in the national laws of each State party. However, the appeal time limit is thirty days from the date of such decision.

SECTION IV: EFFECTS OF THE ORDER FOR PAYMENT DECISION

Article 16: Absent an opposition within fifteen days from the notification of the decision on the order for payment or in case of withdrawal of the debtor who has filed a notice of opposition, the creditor may request the affixing of the seal of enforceability on such decision.

It shall produce all the effects of an adversarial decision and shall not be subject to appeal.

Article 17: The request to affix the seal of enforceability shall be sent to the registry in a simple written or oral statement.

The decision shall be void if the creditor's request has not been filed within two months of the expiration of the opposition period or the withdrawal of the debtor.

Certified copies of documents submitted by the creditor and temporarily kept at the registry shall be returned to him upon his request from the time the opposition was filed or the time the decision receives the enforceability seal.

Article 18: The registry of each court shall keep a register numbered and initialed by its president, and in which are registered the full names, professions and residences of creditors and debtors, the date of the order for payment or of the refusal to grant thereof, the amount and the cause of debt, the date on which it was delivered, the date of the opposition where it has been filed, the date of the meeting of the parties and the decision on the opposition.

TITLE II: SIMPLIFIED PROCEDURE FOR DELIVERY OR RESTITUTION OF TANGIBLE ASSETS

Article 19: The individual who claims to be a creditor of an obligation for delivery or restitution of a specific tangible asset shall petition the president of the competent court to order such delivery or restitution.

CHAPTER I – REQUEST

Article 20: Request for delivery or restitution shall be made through a petition filed or addressed to the registry of the competent court of the domicile or the place where the debtor actually resides. The parties may derogate from this rule of the competent court by an election of domicile set forth in the contract.

The incompetence shall not be raised by the court in which the request was filed or by the debtor during the proceedings instituted by his opposition.

Article 21: Under penalty of inadmissibility, the application shall contain:

- the full names, occupations and domiciles of the parties, and for legal entities, their name, form and registered office;
- The specific name of the asset for which restitution is being sought.

It shall be accompanied by the original or the certified copy of any supporting document to this request.

Article 22: If the court hearing the case rejects the request, the creditor has no right to appeal its judgment unless he proceeds under the rules of common law.

CHAPTER II – JUDGMENT ON THE ORDER FOR DELIVERY OR RESTITUTION

Article 23: If the request appears to be founded, the president of the competent court shall make a ruling on the merits of the request for the motion ordering delivery or restitution of the contentious asset.

The request and the ruling on an order shall be kept as minutes by the Registrar who delivers a copy to the applicant.

Original documents submitted in support of the request shall be returned to the applicant and certified copies shall be filed in the registry.

Article 24: If the request is rejected, the application and supporting documents thereof shall be returned to the applicant.

Article 25: The judgment on delivery or restitution, accompanied by certified copies of the supporting documents of the application that have been submitted shall be notified by an extrajudicial act to be delivered by the creditor.

The notification shall contain, on pain of nullity, summons to, within a period of fifteen days either:

- deliver, at own expense, the asset in interest to a designated place and under prescribed conditions; or
- if the asset holder has relevant defenses to assert his rights to file an opposition at the registry of the court that rendered the judgment by making a verbal or written declaration attested against a receipt or by registered mail with request for acknowledgement of receipt or by any written means; failing that, the judgment will become enforceable.

The judgment on the order for delivery or restitution of assets shall be void if it has not been served within three months of its issuance date.

CHAPTER III: EFFECTS OF THE JUDGMENT ON THE ORDER FOR DELIVERY OR RESTITUTION

Article 26: The opposition against the order for delivery or restitution judgment shall be subject to the provisions of Articles 9 to 15 of this Uniform Act.

Article 27: In the absence of an opposition within the time limit prescribed in Article 16 above, the applicant may petition the president of the competent court to append the enforcement order to the judgment.

Conditions applied to the application are those set forth in the provisions of Articles 17 and 18 of this Uniform Act.

BOOK II – ENFORCEMENT PROCEEDINGS

TITLE I: GENERAL PROVISIONS

Article 28: Absent voluntary enforcement, any creditor may, irrespective of the nature of his claim, under the conditions provided by this Uniform Act, compel his defaulting debtor to perform his obligations towards him or may implement an interim measure for the protection of his rights.

Unless it is a mortgage or preferential debt, enforcement measures shall first be applied against

personal property, and in the event personal property is insufficient to cover the debt, the creditor may proceed against the real property.

Article 29: The State shall assist in the execution of judgments and other enforceable instruments.

The enforcement order entails direct requisition by the enforcement authority.

The State shall be liable for its inaction or failure to assist.

Article 30: The enforcement and precautionary measures shall not be applicable to individuals who enjoy immunity from execution.

However, claims that are certain, of a fixed amount and due by legal entities governed by public law or State enterprises, irrespective of their form and corporate purpose, shall give rise to compensation with debts that are also certain, of a fixed amount and due to anyone liable to them, subject to reciprocity.

The debts of individuals or legal entities referred to in the preceding paragraph may be deemed certain within the meaning of the provisions of this Article only where they have been recognized as such by those entities or through an instrument of a binding nature on the territory of the State where such individuals reside and such entities are located.

Article 31: The enforcement shall apply to a creditor of a certain debt that is of fixed amount and due subject to the provisions relating to the seizure and claim of personal property.

Article 32: With the exception of judicial sale of real property, the enforcement may be performed until its completion by virtue of a provisional enforceable instrument.

Enforcement shall then be performed at the risk of the creditor, provided that he repairs all damage caused by such enforcement without any fault on his part, if the instrument is later amended.

Article 33: Shall constitute enforceable instruments:

- 1) court decisions marked with the enforcement order and those decisions which are enforceable immediately;
- 2) foreign acts and court decisions, as well as arbitral awards declared enforceable by a court decision, without appeal with stay of execution of the State in which such instrument is invoked;
- 3) conciliation minutes signed by the judge and the parties;
- 4) notarized deeds bearing the enforcement order;

- 5) Decisions to which the domestic law of each State party attaches the effects of a judicial decision.

Article 34: When a court decision is raised against a third party, a certificate of no objection and no appeal must be produced and it shall state the date of the notification of the decision to the convicted party, from the court Registrar who rendered the decision in interest.

Article 35: Any individual who avails himself of a document for a measure taken to ensure enforcement or protection of a debt, is required to communicate it or give copy thereof if it is not a case where he would have been notified previously, unless otherwise provided by this Uniform Act.

Article 36: In case tangible assets are the ones to be seized, the debtor or the third party holder in whose hands the seizure was made shall be deemed custodian of the items seized under violations prescribed in criminal law.

The writ of attachment shall render the targeted assets beyond disposal.

The debtor, whose assets have already been seized, shall, under penalty of damages, and within five days of his knowledge of the seizure, communicate to any new creditor who seizes the same assets, the existence of a previous seizure and the identity of the person who has carried it out. In addition, he should show the writ of attachment.

The same obligation shall apply to the third party that holds the asset on behalf of the debtor.

The creditor, thus informed, shall send to other creditors, parties to the procedure, all deeds and information bound to be communicated pursuant to this Uniform Act in its Articles 74 to 76 below.

Article 37: The notification of the writ of attachment to the debtor shall interrupt the statute of limitation, even if it is a conservatory seizure.

Article 38: Third parties shall not preclude proceedings for enforcement or protection of claims. They must provide assistance when they are required by law. Failure by them to comply with these obligations may result in them being charged to award damages. The third party by whom the seizure is carried out may also, under the same conditions, be sentenced to pay for the causes of the seizure, unless he is appealing against the debtor.

Article 39: The debtor shall not force the creditor to accept partial payment of a debt, even a divisible one.

However, given the situation of the debtor and taking into account the needs of the creditor, the competent court may, except for maintenance and bill debts, postpone, or spread out the payment of the amounts due within the limits of a year. It may also decide that payments will be charged first on the capital.

Furthermore, the court may condition these measures to the undertaking by the debtor of acts to facilitate or guarantee the payment of the debt.

Article 40: The filing or recording of amounts, effects or values, ordered by the court as collateral or as a precaution shall confer the preferential right of the secured creditor.

Article 41: When the legal conditions are met, the bailiff or the enforcement officer may enter a place used as a residence or not and, where applicable, open doors and furniture.

Article 42: If the occupant of the premises is absent, or if he refuses to grant access thereto, the bailiff or the enforcement officer may place a guard at the gates to prevent entertainment. He shall need the competent administrative authority or a law enforcement officer to assist in the operations.

Under the same conditions, the assets may be opened.

Article 43: When the bailiff or the enforcement officer carries out a seizure in the absence of the debtor or anyone who stays in the premises, they shall make sure to close the door used to get in.

Article 44: The bailiff or the enforcement officer may always act with the assistance of one or two major witnesses, who are not directly related to or are not friends of the parties or who are not at their service. In this case, they shall state their full names, occupation and domicile in the minutes. The witnesses shall sign the original and the copies of the minutes.

Article 45: The bailiff or the enforcement officer may photograph the items seized. They shall keep the photographs as proof of the seized assets. They may be exhibited only during disputes brought before the competent court.

Article 46: No enforcement act may be performed on a Sunday or a public holiday unless if it is necessary and has been specially authorized by the president of the competent court in the jurisdiction where the enforcement is effected.

No enforcement acts may commence before 8 a.m. or after 6 p.m., except when it is necessary and they have been authorized by the competent court and are carried out only in places not used for residential purposes.

The claimant shall not participate in the seizure procedures, unless there is a need ascertained by the competent court.

Article 47: The enforcement costs shall be borne by the debtor, unless it is manifest that they were not necessary at the time they have been stated.

Recovery charges collected without an enforceable instrument shall be borne by the creditor unless they relate to an act performed pursuant to the provisions of the national law of each State party or by this Uniform Act or authorized by the competent court. At the request of the creditor, the competent court may, however, order partial or full payment of the costs incurred by the debtor in bad faith.

Article 48: The bailiff or the enforcement officer may always take the initiative to seize the competent court, when he encounters any difficulty in the execution of an enforceable instrument.

The bailiff or the enforcement officer shall leave summons to appear in court to the parties, at the expense of the debtor, by informing them of the day, time and place of the hearing where the case will be heard. He shall inform the parties that a judgment may be rendered by default.

Article 49: The competent entity to rule on any dispute or any request relating to a forced execution measure or a conservatory seizure shall be the president of the court ruling on any urgent matter or the judge delegated by him. His judgment shall be subject to appeal within fifteen days of its pronouncement.

The appeal time limit as well as the performance of such remedy does not have a stay effect, unless the president of the competent court presents a specially reasoned decision.

Article 50: Seizures may be effected on all assets belonging to the debtor even though they were held by third parties, unless they have been declared exempt from seizure by the national law of each State party.

Seizures may also be effected on contingent, term or successive performance claims. The terms and conditions for these obligations shall apply to the garnishing creditor.

Article 51: Assets and rights exempt from seizure shall be defined by each of the States parties.

Article 52: Debts exempt from seizure whose amount is paid into an account shall remain that way.

Article 53: When an account, even joint, filled by earnings and wages of a spouse in community property, is subject to any forced execution measure or a conservatory seizure for the payment or guarantee of a debt contracted by the spouse, an equivalent sum to the amount of earnings and salaries paid within the month preceding the seizure or equivalent to the average amount of monthly earnings and salaries paid in the twelve months preceding the seizure, shall be left immediately at the disposal of the spouse in community property.

TITLE II: CONSERVATORY SEIZURES

CHAPTER I: GENERAL PROVISIONS

Article 54: Anyone, whose tenets of claim appear founded, may petition the competent court of the domicile or the place where resides the debtor, for the authorization to implement a protective measure on all real tangible or intangible assets of his debtor, without prior order, if he can demonstrate that due to circumstances, he may likely not recover the debt.

Article 55: Prior authorization of the competent court is not necessary when the creditor is in possession of an enforceable instrument.

The same shall apply in case of default of payment, duly demonstrated, of an accepted letter of exchange, a promissory note, a cheque, or of unpaid rent after the order insofar as the latter is due pursuant to a written leasing contract on a property.

Article 56: The conservatory seizure shall apply to all personal property, real tangible or intangible assets belonging to the debtor. It shall make them beyond disposal.

Article 57: When the seizure concerns a debt subject to a sum of money, the writ of attachment shall make it beyond disposal proportionally to the amount authorized by the competent court or, when such authorization is not necessary, up to the amount for which the seizure is carried out.

The seizure shall automatically entail recording sums that became beyond disposal and shall confer the garnishing individual the right of lien.

Article 58: When the seizure is effected by a banking institution or a similar financial institution, the provisions of Article 161 shall apply.

Article 59: The decision authorizing the seizure shall, on pain of nullity, specify the security amount of money for which the protective measure is authorized and shall clarify the nature of the assets to which it relates.

Article 60: The authorization of the competent court shall be null and void if the conservatory seizure has not been carried out within a period of three months from the decision authorizing the seizure.

Article 61: If it is not the case where the conservatory seizure has been carried out without the enforceable instrument, the creditor must, within the month following the said seizure, introduce a procedure or complete the necessary formalities for obtaining an enforceable instrument or else the seizure will no longer be valid.

If the seizure is carried out by a third party, copies of supporting documents of such procedures shall be addressed to the third party within eight days from their date.

CHAPTER II: DISPUTES

Article 62: Even when prior authorization is not required, the competent court may, at any time, on the request of the debtor and the creditor heard or called, remove the conservatory measure if the garnishing party fails to prove that the conditions set forth in Articles 54, 55, 59, 60 and 61 above are met.

Article 63: The application for removal is brought before the competent court which cleared the measure. If it was taken without permission, the application is brought before the court of the domicile or the place where the debtor lives.

Translation subject to further correction (December 2016)

Other disputes, including those relating to the implementation of the measure, shall be brought before the competent court of the place where the seized assets are located.

CHAPTER III: CONSERVATORY SEIZURE OF REAL TANGIBLE ASSETS

SECTION I: SEIZURE PROCEEDINGS

Article 64: After the bailiff or the enforcement officer has reminded the debtor that he is required to point out the assets forming the subject of a previous seizure and to communicate the minutes thereof, the bailiff or the enforcement officer shall draw up minutes of the seizure that contain, on pain of nullity:

- 1) a statement on the authorization of the competent court or the instrument by virtue of which the seizure was effected; these documents shall be appended to the original or the certified copy of the instrument;
- 2) the full names and domiciles of the garnishee and the garnishing party or, in case of legal entities, their form, name and registered office;
- 3) election of domicile in the territorial jurisdiction where the seizure takes place if the creditor does not reside there; any notification or offer may be sent to that address;
- 4) the detailed description of the seized assets;
- 5) if the debtor is present, his statement about a possible previous seizure on the same assets;
- 6) a statement, in bold characters, indicating that the seized assets are beyond disposal, that they are placed in the custody of the debtor or a designated third party agreed by the parties or, otherwise, by the court ruling expeditiously that they can be neither disposed of nor moved, if it is not the case provided for in Article 97 below, under penalty of criminal sanctions, and that the debtor is required to tell any creditor who would carry out a new seizure on the same asset about this seizure;
- 7) a statement, in bold characters, indicating the right of the debtor to request the cancellation thereof to the competent court of the place of his domicile, if the conditions of validity of the seizure are not met;
- 8) the designation of the court that will hear other disputes, including those relating to the enforcement of the seizure;
- 9) mention, where appropriate, of the full names and qualifications of those who were present at the seizure procedures, and who must sign the original and the copies thereof; in case they refuse, the minutes shall contain an indication thereof;

10) The reproduction of the criminal provisions punishing the misappropriation of assets seized as well as the stipulations of Articles 62 and 63 above.

The provisions of Article 45 above may apply.

Article 65: If the debtor is present during the seizure procedures, the bailiff or the enforcement officer shall remind him verbally of the content of the stipulations of paragraphs 6 and 7 of Article 64 above.

A copy of the minutes bearing the same signatures as the original shall be immediately delivered to the debtor; such provision entails notification.

When the debtor is not present during the seizure proceedings, a copy of the minutes shall be served to him, and he shall be given eight days to disclose any information on any potential previous seizure to the bailiff or the enforcement officer, and he shall send the minutes thereof to either the bailiff or the enforcement officer.

Article 66: The provisions of Articles 99 and 103 hereinafter shall govern the conservatory seizure when it is carried out by the debtor.

Article 67: If the conservatory seizure is carried out by a third party, the latter shall apply the process stipulated in Articles 107 to 110 and 112-114 below inclusive.

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

The minutes of the seizure shall be served to the debtor within a period of eight days. They shall further contain, on pain of nullity:

- 1) a copy of the authorization of the competent court or the instrument, where appropriate, under which the seizure has been carried out;
- 2) a statement, in bold characters, indicating the right of the debtor to request the cancellation thereof to the competent court of the place of his domicile, if the conditions of validity of the seizure are not met;
- 3) Reproduction of Articles 62 and 63 above.

Article 68: Incidents related to the enforcement of the seizure shall be subject, where appropriate, to the provisions of Articles 139 to 146 below

SECTION II: CONVERSION IN SEIZURE FOR SALE

Article 69: A creditor, in possession of an enforceable instrument evidencing the existence of his claim, shall show the debtor a conversion deed that contains, on pain of nullity:

- 1) the full names, and domicile of the garnishee and garnishing party, or in case of legal entities, their form, name and registered office;
- 2) the reference to the minutes of conservatory seizure;
- 3) a copy of the enforceable instrument unless it has already been communicated in the minutes of the seizure, in which case it shall only be referenced to;
- 4) the separate count of sums payable in principal, fees and accrued interests, as well as the interest rate;
- 5) An order to repay this sum within a period of eight days, failing which the sale of the seized property shall be carried out.

The conversion may be notified in the document containing the enforceable instrument.

If the seizure was carried out by a third party, a copy of the conversion deed shall be sent to the latter.

Article 70: At the expiration of a period of eight days from the date of the conversion deed, the bailiff or the enforcement officer shall audit the seized asset. He shall prepare minutes on missing or damaged assets.

In such minutes, the debtor is informed that he is given one month to hold a private sale of the seized assets under the conditions prescribed in Articles 115 to 119 below.

Article 71: If most of the assets are not found at the location where they were seized, the bailiff or the enforcement officer shall order the debtor to disclose, within eight days, their location and, if they have been the subject of a seizure for sale, to provide either the name and address of either the bailiff or the enforcement officer who has carried out the sale, or the creditor on behalf of whom the sale was conducted.

Absent a reply, the creditor shall seize the competent court which may order the imparting of such information under penalty, without prejudice to a criminal action for misappropriation of the seized items.

Article 72: Failing to conduct a private sale within the prescribed time limit, a forced sale of the seized asset shall be carried out under the procedure for the seizure for sale.

SECTION III: FAIRGROUND SEIZURE

Article 73: When the debtor has no fixed address or his domicile or place of business is located in a foreign country, the competent court that may authorize and settle disputes relating to the seizure of his assets shall be the court where the creditor resides.

The garnishing party is the custodian of the assets, if they are in his hands; otherwise, he will be made custodian.

The applicable procedure shall be the one prescribed for conservatory seizures.

SECTION IV: PLURALITY OF SEIZURES

Article 74: The bailiff or the enforcement officer, who carries out a conservatory seizure on assets that are beyond disposal due to one or several previous seizures, shall serve a copy of the minutes of the seizure to each of the creditors whose claims are prior to their own.

If assets seized as a precaution become subject to a seizure for sale, the bailiff or the enforcement officer shall send the minutes of the seizure to creditors who carried out previous seizures.

Likewise, the conversion deed of a conservatory seizure into a seizure for sale must be served to creditors who, prior to such conversion, seized the same asset as a precaution.

Article 75: If the debtor submits private sale proposals, the garnishing party who accepts them shall communicate the content thereof, by registered mail with acknowledgement of receipt or by any written means, to creditors who seized the same assets as a precaution, either before the writ of attachment, or before the conversion deed, as the case may be. Under penalty of nullity, the letter or the means used shall reproduce, in bold characters, the three paragraphs that follow.

Each creditor shall, within fifteen days from the receipt of the registered mail or the means used, examine the private sale proposals and communicate the nature and the amount of his claim to the garnishing creditor.

Absent a reply within the time limit, the creditor is deemed to have accepted the sale proposals.

If, within the same time limit, he fails to communicate the nature and the amount of his claim, he shall lose the right to participate in the distribution of the proceeds of the private sale, except to assert his rights on a potential balance after the distribution.

Article 76: The garnishing creditor who ordered the removal of assets for a forced sale shall notify, by registered mail with acknowledgement of receipt or by any written means, the creditors who have carried out a seizure on the same asset before the writ of attachment or the

conversion deed, as the case may be. Under penalty of nullity, this letter or medium used shall indicate the name and address of the court officer in charge of the sale and reproduce, in bold characters, the following paragraph.

Every creditor shall, within a period of fifteen days from the receipt of the registered mail or the means used to communicate the removal of the assets for sale, inform the court officer responsible for the sale of the nature and the amount of his claim on the day of removal. Absent a response within the time limit, he shall lose the right to participate in the distribution of the proceeds of the forced sale, except to assert his rights on a potential balance after the distribution.

CHAPTER IV: CONSERVATORY SEIZURE OF DEBTS

SECTION I: SEZEIRE OPERATIONS

Article 77: The creditor shall carry out the seizure with the bailiff's writ or the enforcement officer's deed served to the third party in accordance with the provisions of Articles 54 and 55 above.

Such writ/deed shall contain, on pain of nullity:

- 1) the full names and domiciles of the debtor and the creditor or, in case of legal entities, their name, form and registered office;
- 2) the election of domicile in the territorial jurisdiction where the seizure should be carried out if the creditor does not reside there; any offer or notification may be made at that elected domicile;
- 3) mention of the authorization of the court or the instrument under which the seizure is carried out;
- 4) the count of the sums for which the seizure is effected;
- 5) prohibition to the third party to dispose of sums claimed within the limits of what he owes the debtor;
- 6) Reproduction of the provisions of paragraph 2 of Article 36 above and those of Article 156 below.

Article 78: Failing an amicable agreement, any interested person may request through a motion that the seized amounts be entrusted to a receiver appointed by the court of the domicile or the place where the debtor lives.

Payment of funds to the receiver shall stop the running of interests owed by the third party garnishee.

Article 79: Within a period of eight days, under penalty of invalidity, the conservatory seizure shall be communicated to the debtor by a bailiff's writ or an enforcement officer's deed.

Such deed shall contain, on pain of nullity:

- 1) a copy of the authorization of the court or the instrument under which the seizure has been carried out;
- 2) a copy of the minutes of the seizure;
- 3) a statement, in bold characters, on the rights of the debtor to petition the court of the place where he lives for the cancellation of the seizure if the conditions of the validity of the seizure are not met;
- 4) the designation of the court before which will be brought other disputes, including those relating to the enforcement of the seizure;
- 5) Reproduction of the provisions of Articles 62 and 63 above.

Article 80: The third party garnishee is obligated to provide the bailiff or the enforcement officer with the information specified in Article 156 below and to give copies of all supporting documents. The information shall be stated in the minutes.

Article 81: The third party garnishee who, without legal grounds, does not provide the required information, shall be obligated to pay the amounts for which the seizure has been carried out if it is converted into a seizure for sale, except his appeal against the debtor.

He may also be fined for damages in the event of culpable negligence or inaccurate or misleading statement.

Absent any challenge to the statements of the third party before the conversion deed, they are deemed accurate for the sole purposes of the seizure.

SECTION II: CONVERSION IN SEIZURE-AWARD

Article 82: The creditor, carrying an enforceable instrument evidencing the existence of his claim, shall serve a conversion deed to the third party garnishee that contains, on pain of nullity:

- 1) the full names and domiciles of the garnishee and the garnishing party, or in case of legal entities, their form, name and registered office;
- 2) the reference to the minutes of the conservatory seizure;

Translation subject to further correction (December 2016)

- 3) the copy of the enforceable instrument unless it has already been communicated when the minutes of seizure were delivered, in which case it shall only be mentioned;
- 4) the separate count of amounts owed in principal, fees and accrued interests as well as the interest rate;
- 5) A request for payment of the amounts previously shown proportionally to those owed by the third party who acknowledged the debt or was declared debtor.

The deed informs the third party that, within such limit, the request shall entail immediate award of the claim seized for the benefit of the creditor.

Article 83: The copy of the conversion deed shall be served on the debtor.

From such notification, the debtor shall have a period of fifteen days to contest the conversion deed before the court of his domicile or the court located where he lives.

In the absence of a challenge, the third party shall pay the creditor or his representative, upon presentation of a certificate of the registry attesting the lack of challenge.

The payment may take place before the expiration of that period if the debtor has declared in writing that he will not challenge the conversion deed.

Article 84: The provisions of Articles 158 and 159, 165-168, paragraphs 2 and 3 of Article 170, 171 and 172 below shall be applicable.

CHAPTER V: CONSERVATORY SEIZURE OF THE RIGHTS OF PARTNERS AND SECURITIES

SECTION I: SEIZURE PROCEEDINGS

Article 85: The conservatory seizure of the rights of partners and securities shall be carried out when an instrument is served on the persons referred to in Article 236 below. Such instrument shall contain, on pain of nullity, the particulars provided for in Article 237 below subject to paragraph 3 where reference to the enforceable instrument may be replaced by the authorization of the competent court to carry out the conservatory seizure.

Article 86: Within a period of eight days, under penalty of invalidity, the conservatory seizure shall be served on the debtor by an instrument which contains, on pain of nullity:

- 1) a copy of the court authorization or the instrument under which the seizure is effected;

- 2) a copy of the minutes of the seizure;
- 3) a statement, in bold characters, on the rights of the debtor to petition for its cancellation at the court of the place of his domicile, if the conditions of validity of the seizure are not met;
- 4) the designation of the court before which will be brought other contests, including those relating to the enforcement of the seizure;
- 5) the election of domicile in the territorial jurisdiction where takes place the seizure if the creditor does not reside there; any notification or offer may be served at the elected domicile;
- 6) Reproduction of Articles 62 and 63 above.

Article 87: The provisions of Article 239 below shall apply.

SECTION II: CONVERSION OF A SEIZURE FOR SALE

Article 88: The creditor, carrying an enforceable instrument evidencing the existence of his claim, shall send the debtor a conversion deed that contains, on pain of nullity:

- 1) the full names and domiciles of the garnishee and the garnishing party, or in case of legal entities, their form, name and registered office;
- 2) the reference to the minutes of the conservatory seizure;
- 3) the copy of the enforceable instrument unless it has already been communicated when the minutes of seizure were delivered, in which case it shall only be mentioned;
- 4) the separate count of amounts owed in principal, fees and accrued interests as well as an indication of the interest rate;
- 5) an order to pay this sum, failing which the sale of the seized asset will be carried out;
- 6) the indication, in bold characters, that the debtor has a period of one month to conduct a private sale of the values seized under the conditions prescribed in Articles 115 to 119 below;
- 7) Reproduction of Articles 115 to 119 below.

Article 89: A copy of the conversion deed shall be served on the third party garnishee.

Article 90: The sale shall be conducted pursuant to Articles 240 to 244 below.

Translation subject to further correction (December 2016)

TITLE III: SEIZURE FOR SALE

Article 91: Any creditor in possession of a writ of execution showing a claim that is certain and due may, after notification of an order, cause the seizure and the sale of tangible assets belonging to his debtor, whether they are held or not by the latter in order to pay for the debt.

Any creditor meeting the same conditions may join the seizure proceedings by way of opposition.

CHAPTER I: PRIOR ORDER

Article 92: The seizure shall be preceded by an order for payment served at least eight days before the seizure to the debtor, which contains, on pain of nullity:

- 1) reference to the enforceable instrument under which legal proceedings are being instituted with the separate count of sums claimed in principal, fees and accrued interests as well as an indication of the interest rate;
- 2) Order to have to pay the debt within a period of eight days, failing which he may be compelled to conduct a forced sale of his tangible assets.

Article 93: The order shall contain the election of domicile until the end of the legal proceedings except a new election of domicile notified to the debtor in the territorial jurisdiction where the enforcement should be pursued if the creditor does not live there. Any notification or offer may be served at the elected domicile.

Article 94: The order shall be served in person or at home. It may not be served at the elected domicile. It may be issued in the notification deed of the enforceable instrument.

CHAPTER II: SEIZURE PROCEEDINGS

SECTION I: COMMON PROVISIONS

Article 95: All attachable personal properties belonging to the debtor may be subject to a seizure for sale, including those that were previously seized as a precaution. In the latter case, Articles 88 to 90 above shall apply.

Article 96: If no asset is liable for seizure or clearly has no market value, the bailiff or the enforcement officer shall draw up minutes of default unless the creditor demands the pursuit of the enforcement.

Article 97: The seized assets shall be beyond disposal. If there is legitimate ground to move them, the custodian shall inform the creditor prior to that, unless it is a serious urgent case.

In any event, he will disclose the location where the assets will be stored to the creditor.

Article 98: At the expiration of a period of eight days from the time the order for payment remained unanswered, the bailiff or the enforcement officer may, upon presentation of the enforceable instrument, enter a place used or not used for residential purposes pursuant to the conditions set forth in Articles 41 to 46 above.

SECTION II: SEIZURE PROCEEDINGS BY THE DEBTOR

Article 99: Before any seizure proceedings, if the debtor is present, the bailiff or the enforcement officer shall verbally repeat the request for payment and inform the debtor that he is required to disclose the assets that have been the subject of a previous seizure.

Article 100: The bailiff or the enforcement officer shall prepare an inventory of assets. The writ of attachment shall contain, on pain of nullity:

- 1) the full names and domiciles of the garnishee and the garnishing creditor or, in case of legal entities, their form, name and registered office; the potential election of domicile of the garnishing creditor;
- 2) reference to the enforceable instrument by virtue of which the seizure is carried out;
- 3) reference to the person entrusted to carry out the operation;
- 4) the detailed description of the seized assets;
- 5) if the debtor is present, his statement about a possible previous seizure on the same assets;
- 6) a statement, in bold characters, indicating that the seized assets are beyond disposal, that they are placed in the custody of the debtor or a designated third party agreed by the parties or, failing that, by the court ruling expeditiously that they can be neither disposed of, nor moved, if it is not the case provided for in Article 97 below, under penalty of criminal sanctions, and that the debtor is required to communicate this seizure to any creditor likely to carry out a new seizure on the same asset;
- 7) a statement, in bold characters, indicating that the debtor has a period of one month to conduct the private sale of the seized assets under the conditions provided for in Articles 115 to 119 herein;
- 8) the designation of the court that will hear challenges relating to the seizure for sale;

- 9) mention, where appropriate, of the full names and qualifications of those who were present at the seizure proceedings, and who must sign the original and the copies thereof; in case they refuse, the minutes shall contain an indication thereof;
- 10) Reproduction of the criminal provisions punishing the misappropriation of assets seized as well as the stipulations of Articles 115 to 119 below;
- 11) Reproduction of Articles 143 to 146 below.

Article 101: If the debtor is present at the seizure proceedings, the bailiff or the enforcement officer shall remind him verbally the content of statements of paragraphs 6 and 7 of the preceding article. He shall also remind him of the option given to him to conduct a private sale of the assets seized under the conditions prescribed in Articles 115 to 119 below.

Such statements shall be entered in the minutes. A copy of these minutes bearing the same signatures as the original shall immediately be delivered to the debtor; such delivery means a valid notification.

Article 102: If the debtor is not present at the seizure proceedings, a copy of the minutes of the seizure shall be served to the debtor, giving him eight days to inform the bailiff or the enforcement officer of the existence of a potential previous seizure and to hand in the minutes thereof.

Article 103: The debtor shall retain the use of assets made beyond disposal by the seizure unless they are consumables. In this case, he must respect the value thereof estimated at the time of seizure.

However, the competent court may order, on motion, at any time, even before the start of the seizure proceedings and after having heard the parties or those duly called, the restitution of one or more items to a receiver that it appoints.

If, among the seized assets, there is a land motor vehicle, the competent court may, after hearing the parties or those duly called, order its detention until its removal in order to sell it by any means not causing damage to the vehicle.

Article 104: Cash can be seized proportionally to the amount of the claim by the garnishing creditor. It shall be entrusted to the bailiff or the enforcement officer or the registry selected by the creditor.

This shall be mentioned in the minutes of the seizure, which shall further indicate, on pain of nullity, that the debtor has a period of fifteen days, from the notification of the said minutes, to appeal before the court of the place of the seizure that must be designated in the minutes.

In case of appeal, failing to order the payment to the creditor or the restitution to the debtor, the court may order the consignment.

Absent an appeal within the time limit, the money shall be immediately paid to the creditor. It shall be deducted from the amounts claimed.

SECTION III: SEIZURE PROCEEDINGS BY A THIRD PARTY

Article 105: When the seizure is effected on assets detained by a third party and in the residential premises of the latter, it shall be authorized by the court in which the assets are located.

Article 106: Upon presentation of the order for payment conform to Articles 92 to 94 above notified to the debtor, at the expiration of a time limit of eight days and upon a possible presentation of the authorization of the court provided for in the foregoing, the bailiff or the enforcement officer may seize assets held by a third party in the name of the debtor. Pursuant to the same procedure, the creditor may also effect a seizure on himself when he legally holds assets that belong to his debtor.

Article 107: The bailiff or the enforcement officer shall invite the third party to declare the assets that he holds on behalf of the debtor and, among these, those that have been the subject of a previous seizure.

In case he refuses to make such statement or in the event of an inaccurate or false statement, the third party may be fined to pay for the causes of the seizure, except for an appeal against his debtor. He may also be ordered to pay for damages.

Article 108: Where the third party declares that he does not hold any asset belonging to the debtor or where he refuses to respond, a deed thereof shall be drawn up. It shall be issued to the third party with a mention, in very bold characters, of the penalty referred to in the preceding article.

Article 109: Where the third party declares that he has the debtor's assets in his possession, an inventory that contains the following shall be drawn, on pain of nullity:

- 1) reference to the instrument under which the seizure is effected;
- 2) the date of the seizure, the full names of the garnishing creditor or, if it is a legal entity, its form, name and registered office; the possible election of domicile;
- 3) the full names and domicile of the debtor or, if it is a legal entity, its form, name and registered office;
- 4) the full names and domicile of the third party;
- 5) the statement of the third party and, in very bold characters, a statement stipulating that any inaccurate or false declaration shall be fined by the order to pay for the causes of the seizure without prejudice to award of damages;

- 6) a detailed description of seized assets;
- 7) a statement, in bold characters, indicating that the seized assets are beyond disposal, that they are placed in the custody of the debtor or a designated third party agreed by the parties or, failing that, by the court ruling expeditiously that they can be neither disposed of nor moved, if it is not the case provided for in Article 97 below, under penalty of criminal sanctions, and that the debtor is required to communicate this seizure to any creditor who would carry out a new seizure on the same asset;
- 8) an indication that the third party may use the provisions of Article 112 herein which is reproduced in the instrument;
- 9) mention of the fact that a third party may exercise his rights on the seized assets through a statement or a registered mail with acknowledgement of receipt or any written means addressed to the bailiff or the enforcement officer of the garnishing creditor;
- 10) the designation of the court before which challenges to the seizure for sale will be brought;
- 11) mention of, where applicable, full names and titles of individuals who were present at the seizure proceedings, who shall sign the original deed and the copies; in case they refuse, such incident shall be mentioned in the minutes;
- 12) Reproduction of criminal sanctions for misappropriation of seized assets.

Article 110: If the third party is present at the seizure proceedings, the bailiff or the enforcement officer shall remind him verbally the content of statements of paragraphs 5, 7 and 8 of Article 109 above. Such statement shall be mentioned in the minutes. A copy of the minutes of the seizure with the same signatures as the original shall immediately be given to him; handing over the minutes entails notification.

When the third party was not present during the seizure proceedings, the copy of the minutes of the seizure served thereto shall contain a stipulation that, within eight days, he shall inform the bailiff or the enforcement officer of the existence of a possible previous seizure on the same asset, and he shall forward the minutes thereof.

Article 111: A copy of the minutes shall be served on the debtor, eight days at the latest after the seizure.

Under penalty of nullity, it shall be stated that the debtor has a period of one month to conduct the private sale of the seized asset under the conditions prescribed in Articles 115 to 119 of this Uniform Act, which are reproduced.

Article 112: The third party may refuse custody of the seized asset. At any time, he may request to be discharged of. The bailiff or the enforcement officer shall appoint a custodian and remove the assets.

Article 113: Subject to the user authority that the third party could hold on a seized asset, the competent court may order on motion, at any time, even before the start of the seizure proceedings, and after hearing the parties or after duly calling them, the delivery of one or several assets to a receiver that it appoints.

If, among the seized assets, there is a land motor vehicle, it can be immobilized into the hands of the third party until its removal for sale purposes in any way not causing damage to the vehicle, and the parties having been heard or duly called.

Article 114: Where the third party avails himself of a right of retention on the seized asset, he shall inform the bailiff or the enforcement officer by a registered mail with acknowledgement of receipt or by any written means unless he has made the declaration thereof at the time of the seizure.

Within the period of one month, the garnishing creditor may challenge such right of retention before the competent court of the domicile or the place where the third party lives. The asset shall remain beyond disposal during the proceedings.

Absent a challenge within a period of one month, a third party's claim is deemed to be founded for the purposes of the seizure.

CHAPTER III: SALE OF SEIZED ASSETS

SECTION I: PRIVATE SALE

Article 115: The debtor against whom proceedings for enforcement of a forced sale have been initiated may voluntarily sell the seized assets to affect the proceeds to the pay of creditors under the conditions hereinafter defined.

Article 116: The debtor shall have a period of one month from the notification of the minutes of seizure to proceed with the sale of the seized asset.

The seized assets shall remain beyond disposal under the responsibility of the custodian. In no circumstance, they can be moved before the recording of the price provided for in Article 118 below except in absolute emergencies.

Article 117: The debtor shall inform the bailiff or the enforcement officer in writing of the proposals which were made to him indicating the full names and address of the prospective purchaser as well as the period within which the latter offers to record the proposed price.

The bailiff or the enforcement officer shall communicate such statements to the garnishing creditor and the opposing creditors by registered mail with acknowledgement of receipt or by any written means.

They shall have fifteen days to take action by either accepting the private sale, refusing it or by becoming purchasers.

Absent a reply, they shall be deemed to have agreed.

The forced sale may only be carried out after the expiration of the time limit of one month provided for in Article 116 above, increased, where applicable, of the fifteen day period extended to creditors to provide their response.

Article 118: The cost of sale shall be recorded by the bailiff or the enforcement officer or in the registry, according to the creditor's choice.

Transfer of ownership and delivery of assets shall be subject to price recording.

Absent a recording within the agreed period, the forced sale shall be carried out.

Article 119: Unless the debtor deliberately and out of malice refuses to sell, the responsibility of the creditor cannot be questioned.

SECTION II: FORCED SALE

Article 120: The sale shall be conducted at a public auction, by an auxiliary of justice empowered by the national law of each State party, either at the place where the seized assets are, in a room or at a public market situated in a geographical location suitable for competing at a lower cost.

In case of disagreement between the creditor and the debtor on the place where the sale shall be conducted, the competent court shall rule expeditiously on that dispute within five days of its filing by the earlier petitioner.

Article 121: The sale shall be advertised on posters indicating the place, day and time thereof and the nature of seized assets.

The posters shall be displayed at the city hall of the residence or the place where resides the debtor, at the nearby market, at all other appropriate locations as well as at the sale location if it takes place somewhere else.

The sale may also be announced in audio or print media.

Publicity shall be carried out at the expiration of the time limit provided for in the last paragraph of Article 117 above, and fifteen days at least before the date set for the sale.

Article 122: The bailiff or the enforcement officer shall certify the completion of publicity formalities.

Article 123: The bailiff or the enforcement officer shall notify the debtor of the place, day and time of the sale ten days at least before the sale date by registered mail with request for acknowledgement of receipt or by any written means. Mention of it shall be in the certificate provided for in Article 122 above.

Article 124: Before the sale, the content and nature of the seized assets shall be verified by the officer in charge of the sale. He shall draw up the minutes thereof. Only missing items and those that have deteriorated shall be mentioned therein.

Article 125: The award shall be extended to the highest bidder after three calls. Only cash shall be accepted, failing which, the asset shall be resold on re-auction of the highest bidder.

Article 126: The sale shall end when the price of the sold assets is sufficient for the payment of the amount of the causes of the seizure and the oppositions, in principal, interests and fees.

Article 127: Minutes of the sale shall be drawn. Such minutes shall contain the designation of the sold assets, the amount of the award, and the declaration of the full names of the highest bidders.

Article 128: The auctioneer or any other court officer in charge of the sale shall be personally responsible for the price of the auctions and shall not receive any money beyond the auction, without prejudice to criminal sanctions.

CHAPTER IV: SEIZURE INCIDENTS

Article 129: Disputes over the seizure and the sale shall be brought before the court of the place of the seizure.

SECTION I: OPPOSITION BY CREDITORS

Article 130: Any creditor who meets the conditions set forth in Article 91 of this Uniform Act may join a seizure proceedings already effected on the asset of the debtor through an opposition by carrying out a further seizure where applicable.

No opposition may be received after the verification of the assets.

Article 131: Under penalty of nullity, the notice of opposition shall mention the enforceable instrument under which it is formed, a separate count of the sums claimed in capital, fees and accrued interest as well as the interest rate.

The opposition deed shall be served on the first garnishing party creditor if he is not the one filing the opposition in order to add a new debt or extend the base of the previous seizure.

It shall also be served on the debtor.

The first garnishing creditor shall continue the sale alone.

Article 132: Any opposing creditor may extend the initial seizure to other assets. Minutes of an additional seizure shall be drawn up in accordance with conditions prescribed in Articles 100 to 102 above.

Such minutes shall be sent to the first garnishing creditor and the debtor.

The right to carry out a further seizure shall be exercised by the first garnishing creditor.

Article 133: If, on the occasion of a seizure, the debtor submits to the creditor the minutes drawn during a previous seizure, the creditor shall file an opposition as it is stipulated in Article 131 above. He may carry out a further seizure immediately under the conditions prescribed in Articles 100 to 102 above.

The minutes of the additional seizure shall be served on the first garnishing creditor at the same time as the notice of opposition; everything shall be served on the debtor.

Article 134: In case of extension of the initial seizure, a forced sale may be conducted on all of the seized assets only after the expiration of all time limits for their private sale.

However, a forced sale of assets for which the time limit for a private sale has expired may be carried out immediately, either with the agreement of the debtor or the authorization of the competent court, or when the publicity formalities were carried out at the time of the opposition.

Article 135: When the first garnishing creditor fails to have the formalities of the forced sale at the expiration of the deadlines carried out, any opposing creditor, after an unsuccessful order to do so within a period of eight days, shall be immediately subrogated.

The first garnishing creditor shall be discharged from his obligations. He shall be obligated to ensure that useful items are available to the subrogated creditor.

Article 136: The cancellation of the seizure for sale may only result from a decision of the competent court or the agreement of the garnishing creditor and dissenting creditors.

Article 137: The nullity of the first seizure does not entail lapse of oppositions unless it results from an irregularity in the conduct of the seizure proceedings.

Such nullity shall always have no consequences on the additional seizure.

Article 138: Only garnishing or dissenting creditors who made themselves known before the verification of the seized assets as prescribed in Article 124 above shall be allowed to enforce their rights on the proceeds of the sale and those who, before the seizure, carried out an interim measure on the same asset.

SECTION II: DISPUTES OVER SEIZED ASSETS

Article 139: Requests relating to ownership or distraint shall not preclude the seizure but shall stay the procedure for the seized assets of which they are subject.

Subsection I: Disputes over Ownership

Article 140: The debtor may request the nullity of the seizure on the asset that he does not own.

Article 141: The third party that claims to be owner of a seized asset may petition the competent court to order a diversion.

Under penalty of inadmissibility, the application must specify the elements on which is based the invoked right of property. It shall be notified to the garnishing creditor, to the garnishee and eventually to the custodian. The garnishing creditor shall challenge the opposing creditors by registered mail with acknowledgement of receipt or by any written means.

Only the debtor shall be heard or called.

Article 142: The action for diversion shall cease to be admissible after the sale of the seized assets; then, only a challenging action may be filed.

However, the third party acknowledged as the owner of an asset that is already sold may divert the full price until the distribution of the proceeds of the sale.

Subsection 2: Disputes over Distrain

Article 143: Disputes over the distraint of assets included in the seizure shall be brought before the competent court by the debtor, the bailiff or the enforcement officer acting in cases of enforcement problems.

When the seizure is invoked by the debtor, the procedure must be filed within a period of one month from the notification of the writ of attachment.

The creditor shall be heard or called.

SECTION III: DISPUTES OVER SEIZURE VALIDITY

Article 144: The nullity of the seizure for a defect in form or substance other than the lack of distraint of the assets included in the seizure may be requested by the debtor until the sale of the seized assets.

The garnishing creditor shall challenge dissenting creditors.

Where the seizure is declared void before the sale, the debtor may request the restitution of the seized asset if it is held by a third party, without prejudice to civil suits carried out pursuant to the terms of the common law.

If the seizure is declared void after the sale, but before the distribution of the proceeds, the debtor may request the restitution of the proceeds of the sale.

Article 145: The court which cancels the seizure may let the debtor bear all or a portion of the costs incurred if the debtor has refrained from requesting the annulment within the prescribed time limit.

Article 146: The request for nullity does not stay seizure proceedings, unless the court provides otherwise.

CHAPTER V: SPECIAL PROVISIONS TO THE SEIZURE OF GROWING CROPS

Article 147: Crops and fruits nearing ripeness may be seized before they are separated from the soil. The seizure is only authorized to the creditor who is entitled to the fruits. The seizure cannot be carried out, on pain of nullity, more than six weeks before the usual time of ripeness.

Article 148: Under penalty of nullity, minutes of the seizure shall be drawn in accordance with the provisions of Article 100 above, however with the exception of the provisions of paragraph 4 of this text, which shall be replaced by the description of the land where are located the crops, with their content, location and the nature of the fruit.

The minutes shall be signed by the mayor or the head of the administrative unit where the assets are located and copies thereof are left therefor.

Article 149: Crops shall be entrusted to the debtor as a custodian. However, at the request of the garnishing creditor, the competent court may appoint a manager for operations, the debtor having been heard or called.

Article 150: The sale shall be announced on displays posted at the city hall or the place where official acts are posted and at the nearest market of the place where the crops are found.

Posters shall indicate the date, time and place of the sale and the field where are located the crops, as well as their content and the nature of the fruits.

The posting of displays shall be recorded in the same manner as the seizure for sale.

Article 151: The sale shall be conducted, in accordance with the provisions of Article 120 et seq., at the place where the crops are or at the nearest market.

Article 152: All the formalities prescribed for seizures for sales will be observed.

TITLE IV: SEIZURE-AWARD OF DEBTS

Article 153: Any creditor who is in possession of an enforceable instrument with a claim that is certain, of a fixed amount and due may obtain payment thereof, seize from the hands of a third party, the debts of his debtor on a sum of money, subject to the provisions of the attachment of remunerations.

Article 154: The writ of attachment entails immediate award for the benefit of the garnishing party of the seized debt held by a third party of the sums of money for which it is effected and all incidental amounts, but for this amount only.

The writ of attachment shall render the seized sums beyond disposal.

Such deed shall make the third party personally debtor of the causes of the seizure within the limit of his obligation.

Article 155: The writ of attachments served on the same day by the same third party are deemed to have been made simultaneously. Where the sums available do not pay off all the garnishing creditors, the latter shall rank equally.

Subsequent notification of other seizures or any other attachment measure, even from preferred creditors, shall not call this attribution into question, without prejudice to the provisions on collective proceedings.

When a seizure of debts is deprived of effect, seizures and subsequent attachments shall take effect on the date they occur.

Article 156: The third party garnishee shall declare to the creditor the extent of his obligations towards the debtor as well as the terms and conditions that may affect them and, if possible, the assignments of debts, delegations or previous seizures. He shall forward a copy of the supporting documents.

These declaration and communication must be made immediately to the bailiff or the enforcement officer and shall be mentioned in the writ of attachment, or no later than within five days if the deed has not been notified to anyone. Any inaccurate, incomplete, or late statement shall cause the garnishee to be condemned to paying a fine for the causes of the seizure, without prejudice to triggering award of damages.

CHAPTER I: WRIT OF ATTACHMENT

Article 157: The creditor shall proceed with the seizure by a deed served to the third party by the bailiff or the enforcement officer.

This deed shall contain, on pain of nullity:

- 1) the full names and domiciles of the debtor and creditor or, if it is a legal entity, its form, name and registered office;
- 2) the enforceable instrument by virtue of which the seizure is effected;
- 3) the separate count of money claimed in principal, fees and accrued interest, plus an allowance for interests accruing within a period of one month scheduled for raising a challenge;
- 4) the indication that the garnishee is personally liable to the garnishing creditor and that he is prohibited from disposing of the seized monies in the limit of what he owes the debtor;
- 5) A verbatim reproduction of Articles 38 and 156 above and 169-172 below.

The deed shall specify the time at which it has been served.

Article 158: The seizure of debts that are in the hands of a person residing abroad shall be served in person or at home.

Article 159: When it is effected by collectors, depositaries or funds or public funds administrators, as such, the seizure is not valid if the writ of attachment is not issued to the person who is supposed to receive it or the individual delegated by that person, and if it is not stamped by that person on the original document or, in the event of refusal, by the public prosecutor who will immediately notify the heads of the concerned services.

Article 160: Within a period of eight days, under penalty of being declared void, the seizure shall be notified to the debtor by a bailiff's writ or the enforcement officer's deed.

Such writ/deed shall contain, on pain of nullity:

- 1) a copy of the writ of attachment;
- 2) In bold characters, the indication that disputes shall be filed, on penalty of inadmissibility, within a period of one month following the notification of the writ and the date of the expiration of that time limit as well as the name of the court before which the dispute could be brought.

Where the writ is issued to anyone, these particulars must also be verbally brought to the knowledge of the debtor. Such verbal declaration shall be indicated in the information kit.

The writ shall remind the debtor that he may authorize, in writing, the creditor to be reimbursed without delay by the garnishee, from the money or part of the sums owed to him.

Article 161: When the seizure is effected by a bank or a related financial institution, the institution shall declare the nature of the account of the debtor and its balance on the day of the seizure.

Within a period of fifteen business days following the seizure and during which the money left in the account was unavailable, this balance may be assigned for the benefit or to the detriment of the garnishing party by the following operations insofar that there is evidence that their date is prior to the seizure:

- a) credit:
 - remittances previously made to be cashed, cheque or negotiable instruments, not yet credited to the account;
- b) debit:
 - charge of cheque deposited for payment or credited to the account prior to the seizure and returned unpaid ;
 - Ticketing withdrawals effected prior to the seizure and card payments, insofar that their beneficiaries have actually been credited prior to the seizure.

By derogation from the provisions set forth in the second paragraph, negotiable instruments discounted and unpaid on their presentation or at their maturity when it occurred after the seizure can be reversed within a period of one month following the seizure.

The seized balance shall only be affected by these possible debit and credit operations when their cumulative result is negative and greater than the sums not affected by the seizure on the day of their payment.

In case of reduction in sums made unavailable, the institution must provide, by registered mail with acknowledgement of receipt or any written means sent to the creditor no later than eight days after the expiration of the period of reversal, a record of all transactions which have affected the accounts since the day of the seizure inclusive.

Article 162: If the debtor holds separate accounts, payment shall be made first from the funds available to view, unless the debtor orders the payment in another manner.

Article 163: When the seizure is effected on a joint account, it shall be reported to each of the account holders.

If the names and addresses of the other account holders are unknown to the bailiff or the enforcement officer, they shall ask the institution that holds the account to inform them immediately of the seizure and the amount of the sums claimed.

Article 164: The third party garnishee shall make payments upon presentation of a certificate of the registry attesting that no challenge was filed within one month after the end of seizure or upon presentation of the enforceable decision of the court dismissing the challenge.

The payment may also be made before the expiration of the time limit for the challenge if the debtor has declared in writing that he will not contest the seizure.

Article 165: Payment shall be made against receipt to the garnishing creditor or his specially empowered representative who shall immediately inform his principal thereof.

Within the limits of the sums paid, this payment shall discharge the obligation of the debtor and the third party garnishee.

Article 166: In case of dispute, any party may petition the competent court for the appointment of a receiver, to whom the third party garnishee will remit the seized monies.

Article 167: When the seizure is related to debts due on successive dates, the third party shall pay them accordingly as they reach their maturity under the conditions set forth in paragraph 1 of Article 165 above.

The third party garnishee shall be informed by the creditor of the extinction of his debt by registered mail with acknowledgement of receipt or any written means, even when the amounts were remitted to a receiver in accordance with Article 166 above.

The seizure shall no longer have an effect when the third party garnishee ceases to be liable to the debtor. The third party garnishee shall inform the creditor thereof by registered mail with request of acknowledgement of receipt or by any written means.

Article 168: In case of refusal of payment by the third party garnishee of the sums that he acknowledged to owe or which made him a debtor, the dispute shall be brought before the competent court which may issue an enforceable instrument against the third party garnishee.

Article 169: Disputes shall be brought before the court of the domicile or the place where the debtor lives. If he has no known address, they shall be brought before the court of the residence or the place where the third party garnishee resides.

Article 170: Under penalty of inadmissibility, disputes shall be brought before the competent court, by subpoena, within a period of one month from the time the seizure is notified to the debtor.

The third party garnishee shall be called to the dispute hearing.

The garnishee debtor who has not raised a challenge within the prescribed period may act for the recovery of sums paid but not due at the court of trial of the case according to the rules applicable to this action.

Article 171: The competent court shall authorize the seizure for the undisputed portion of the debt. Its decision shall be enforceable immediately.

If it appears that neither the amount of the claim of the garnishing party nor the debt of the third party garnishee is seriously questionable, the competent court may order the provisional payment of a sum that it determines by prescribing guarantees, where appropriate.

Article 172: The decision of the court ruling on the dispute may be appealed within fifteen days of its notification.

The time limit for the appeal and the statement of appeal shall stay the enforcement unless the competent court gives an otherwise specially reasoned decision.

TITLE V: SEIZURE AND ASSIGNMENT OF REMUNERATIONS

Article 173: Any creditor with an enforceable instrument indicating a debt of a certain amount and due may request the seizure of remunerations owed by an employer to his debtor.

Article 174: The seizure of the sums due as remunerations, irrespective of the amount, to all salaried or persons working in any capacity or in any place whatsoever, for one or more employers, may be carried out only after a conciliation attempt before the competent court located where the debtor resides.

Article 175: Remunerations shall not be the subject of a conservatory seizure.

Article 176: Each court registry shall keep a register numbered and initialed by the president of the court in which are recorded all acts of any nature, judgments and formalities to which give rise the assignments and seizures on remunerations for a job.

Article 177: Only proportions of remunerations determined by each State party may be assigned or seized.

The base used for the calculation of the attachable portion of the remuneration shall consist of the salary or global gross wages with all incidental amounts, netted to:

- taxes and compulsory legal deductions withheld at source;
- allowances representative of expenses;
- benefits, increases and supplements for family;
- Compensation declared un-attachable by the laws and regulations of each State party.

The total of the amounts seized or voluntarily assigned cannot, under any circumstances, -even for maintenance claims- exceed a threshold set by each State party.

Article 178: When a debtor perceives from several payers attachable or assignable amounts of money under the conditions set forth in this Title, the attachable portion shall be calculated on all these sums. Deductions shall be made according to rules set forth by the competent court.

CHAPTER I: SEIZURE OF REMUNERATIONS

SECTION I: CONCILIATION ATTEMPT

Article 179: The request for prior conciliation shall be filed in a petition form to the competent court by the creditor.

Such request shall contain:

- 1) the full names and address of the debtor;
- 2) the full names and address of his employer or if it is a legal entity, its form, name and registered office;
- 3) the separate count of the sums claimed in principal, expenses and accrued interests due as well as the interest rate;
- 4) the existence of a lien;
- 5) Particulars of the terms of payment of the amounts seized.

A copy of the enforceable instrument shall be attached to the request.

Article 180: The place, day and time of the conciliation attempt shall be notified to the creditor by registered mail with acknowledgement of receipt or by any other written means.

Article 181: The Registrar shall invite the debtor by registered mail with acknowledgement of receipt or by any other written means at least fifteen days before the hearing.

The convening notice shall:

- 1) mention the full names and address of the creditor or, if he is a legal entity, its name and its registered office as well as the place, day and time of the conciliation;
- 2) contain the purpose of the request and the status of the amounts claimed;
- 3) instruct the debtor that he must raise all challenges that could be argued at the hearing, and that a late challenge would not stay the course of the seizure proceedings;
- 4) Also indicate the terms of his representation at this hearing.

Absent a return of the acknowledgement of receipt and if the debtor fails to appear in court, the competent court shall make a ruling enabling the conduct of verifications provided for in Article 182 below if it considers that the circumstances do not require reconvening the concerned person. Such ruling, which cannot be challenged, may only be disputed through appeal.

Article 182: The president of the competent court, assisted by the Registrar, shall draw up minutes regarding the court appearance of the parties or the appearance of one of them, whether or not it is followed by conciliation.

In case there is conciliation, he shall mention the terms of the arrangement that puts an end to the procedure in the minutes.

Failing conciliation, the seizure shall be effected after the president checked the amount of the debt including the principal, interest and fees and, as the case may be, and after he had ruled on disputes raised by the debtor.

SECTION II: SEIZURE PROCEEDINGS

Article 183: Within eight days of the hearing on non-conciliation or within eight days of the expiration of the time limits prescribed for appeals, if a decision has been made, the Registrar shall send the writ of attachment to the employer by registered mail with acknowledgement of receipt or by any written means.

Article 184: The writ of attachment shall contain:

- 1) the full names and domiciles of the debtor and creditor or, if it is a legal entity, its form, name and registered office;
- 2) the separate count of the sums on which the seizure is executed, in principal, fees and accrued interest, as well as the indication of interest rates;
- 3) the calculation method of the attachable portion and its payment modalities;
- 4) The order to declare to the registry, within fifteen days, the situation of the existing right between himself and the garnishee debtor and possible ongoing assignments or seizures being enforced as well as any information allowing retention when the seizure is effected on the salary or wages paid from public funds;
- 5) Reproduction of Articles 185 to 189 below.

Article 185: The employer who, without legal grounds, failed to make the declaration provided for in Article 184, paragraph 4 above or, who has made a false statement, may be declared by the court competent, debtor of the deductions that should have been made and may be ordered to pay for the costs incurred without prejudice to awarding damages.

Article 186: The employer is required to inform the registry and the garnishing party, within eight days, of any change in its legal relations with the garnishee that would affect the current procedure.

SECTION III: EFFECTS OF SEIZURE

Article 187: The notification of the writ of attachment shall render the attachable portion of salary beyond disposal.

Article 188: Each month, the employer shall send to the registry or the agency specially designated for that purpose by each State party the amount of money deducted from the remunerations of the garnishee without exceeding the attachable portion.

It shall be duly paid on the single receipt of the Registrar or by the acknowledgement of receipt of the warrant issued by the postal administration.

The third party garnishee shall attach to each payment a note indicating the names of the parties, the amount paid, the date and possible references from the writ of attachment which has been notified to him.

Article 189: If the employer fails to make the payments, the competent court shall render an adverse judgment against him declaring him personally debtor. The judgment shall be notified by the Registrar or the creditor by registered mail with acknowledgement of receipt or by any other written means leaving written records within three days of the date thereof. Notice shall be given to the debtor and, where appropriate, to the creditor.

The third party garnishee shall have a period of fifteen days from the notification of the judgment to challenge it by making a statement at the registry.

The judgment which is unopposed within a period of two weeks shall become final. It shall be enforced at the request of the earliest petitioner as soon as it is issued by the Registrar and stamped with the enforcement seal.

SECTION IV: PLURALITY OF SEIZURES

Article 190: Any creditor in possession of an enforceable instrument may, without prior conciliation attempt, intervene in an ongoing remunerations seizure proceedings, in order to participate in the distribution of the seized money.

Such intervention shall be formed in a motion delivered or addressed to the competent court against a receipt.

The motion shall contain the particulars required in Article 179 above.

Article 191: The intervening creditor shall notify this intervention by registered mail with acknowledgement of receipt or by any other means leaving written records to the debtor as well as to creditors who are involved already in the procedure.

Article 192: The intervention may be challenged in a statement made at the registry of the competent court at any time of the seizure proceedings. In this case, the challenge shall be appended to the ongoing procedure.

Once the seizure is finished, the debtor may still act for the recovery of amounts paid but not due against the creditor who would have been unduly paid.

Article 193: A creditor party to the proceedings may get involved by claiming accrued interest and costs assessed or audited since the seizure.

SECTION V: DISTRIBUTION OF SEIZED AMOUNTS AND THEIR ALLOCATION

Article 194: Any movement of funds must be recorded in the register provided for in Article 176 above.

Article 195: When there is a single garnishing creditor, the Registrar shall pay him or his specially empowered representative, the amount deducted by the employer as soon as it is received. The register shall be signed as stipulated in Article 176 above.

Article 196: In case of plurality of seizures, creditors shall rank equally subject to legal causes of the charges.

Article 197: If there are several garnishing creditors, payments made to the third party garnishee shall be compulsorily deposited in an account opened by the Registrar in a bank, a postal institution or the Public Treasury.

Registrars shall make withdrawals for allocations purposes with the authorization of the president of the competent court.

Article 198: The president of the competent court shall allocate the amounts collected each quarter in the first week of February, May, August and November. He shall draw up minutes indicating the amount of fees to be collected, the amount of preferential claims, if any, and the amount of money allocated to other creditors.

The Registrar shall communicate the status of allocation to each creditor and shall pay the amount due to each one.

The amounts thus paid to creditors shall be recorded in the register provided for in Article 176 above.

Article 199: If an intervention has been challenged, the money due to the creditor who intervened shall be recorded. It shall be paid if the challenge has been rejected. Otherwise, such money shall be distributed to creditors or returned to the debtor as the case may be.

Article 200: The challenge to the status of allocation may be filed within fifteen days of the notification at the registry.

Article 201: The release of the seizure shall result either from an agreement of a single or several creditors, or from the finding by the president of the competent court of the extinction of the debt.

It shall be notified to the employer within eight days.

SECTION VI: MISCELLANEOUS PROVISIONS

Article 202: If the creditor moves or changes his residence, he shall inform the registry unless he has appeared in court through a proxy.

Article 203: When, without changing an employer, the debtor moves or changes his domicile and goes outside the area of the court seized of the proceedings, the proceedings shall take place before this court. Files of seizures likely to be used against the debtor shall be transmitted to him. The registry shall notify the creditors.

Article 204: In the event of change of employer, the seizure may be carried out from the new employer without prior conciliation, provided that the request is made within the year that

follows the notice given by the employer in accordance with Article 186 above. Otherwise, the seizure shall end.

Furthermore, if the debtor has moved or changed residence within the jurisdiction of one court other than the original one, the creditor shall also be exempt from prior conciliation provided that the request is made to the court registry within the period prescribed in the preceding paragraph.

CHAPTER II: ASSIGNMENT OF REMUNERATIONS

Article 205: Assignment of remunerations and salaries may only be granted, irrespective of the amount, by a declaration of the assignor, in person, at the court registry of the domicile or the place where he lives.

The statement must indicate the amount and cause of debt for the payment of which the assignment is granted and the amount of the deduction to be made for each salary pay cycle.

Article 206: After the competent court has verified that the assignment is within the limits of the attachable proportion, taking into account possible deductions already taken from the salary of the assignor, the Registrar shall mention the statement in the register provided for in Article 176 above and shall notify the employer indicating:

- the monthly salary of the assignor,
- The amount of the assignable portion as well as the amount of deductions for each salary in respect of the given assignment.

The statement shall be delivered or notified to the assignee.

Article 207: The employer shall directly pay to the assignee the amount of deductions upon submission of a copy of the assignment statement. In case of refusal, the employer may be obligated to pay the regularly assigned amounts under the conditions set forth in Article 189 above.

Article 208: In case of occurrence of a seizure, the assignee is automatically deemed a garnishing party for the amounts that remain due to him and shall rank with the other garnishing creditors.

Article 209: In the case of occurrence of a seizure, the Registrar shall communicate the writ of attachment to the assignee, inform him that he will rank with the garnishing creditor for the apportionment of the seized amount and invite him to submit a statement of what remains due to him.

The Registrar shall also inform the employer that the payments will now be made at the registry.

Article 210: If the seizure ends before the assignment, the assignee shall recover the rights held from the assignment deed.

The Registrar shall notify the employer and inform him that assigned amounts must be paid directly to the assignee. He shall also notify the latter.

Article 211: If fraud is strongly suspected in the assignment and one presumes that his rights have been eroded, any garnishing party, exerting the action for annulment, may obtain from the

court ruling expeditiously and urgently, the recording of the deductions in the hands of the Registrar until the final judgment on the merits of the case.

Article 212: The Registrar, ex officio or at the request of the earliest petitioner, shall remove the mention in the register provided for in Article 176 above, and shall immediately notify the assigned debtor and employer by registered mail with acknowledgement of receipt or by any other means leaving written records in case of:

- a court-ordered annulment of the assignment;
- amicable termination of the assignment by a statement of the assignee made pursuant to the guidance provided for in Article 205 above;
- Payment of the last mature installment for finalizing the assignment.

CHAPTER III: SIMPLIFIED PROCEDURE FOR MAINTENANCE DEBTS

Article 213: For the last due arrears and accruing arrears, maintenance creditors may, by virtue of an enforceable instrument, effect a simplified seizure on the attachable portion of salaries, remunerations, wages, salaries and pensions paid to the maintenance debtor from public or private funds.

Their claim is preferred to all others regardless of the lien associated to the latter.

Article 214: The request shall be notified to the third party by registered mail with acknowledgement of receipt or by any means leaving written records sent by the bailiff or the enforcement officer who shall notify the debtor by a simple letter.

The third party must, within eight days, acknowledge receipt of the request and indicate whether or not he is able to respond. He must also inform the debtor of the termination or suspension of the remuneration.

Article 215: The third party garnishee shall pay directly the amount of the maintenance debt to the garnishing party, against receipt.

Article 216: Disputes over this procedure shall not stay the enforcement.

They shall be filed in a written or verbal statement at the court registry of the domicile of the debtor of the pension.

Article 217: If a new judgment changes the amount of the alimony, deletes it or amends the terms of performance of the obligation, the direct payment request shall be amended accordingly and automatically from the notification of the amending judgment to the third party under the conditions set forth in Article 214 above.

TITLE IV: SEIZURE FOR APPREHENSION AND REPLEVIN OF TANGIBLE ASSETS

Article 218: Tangible assets that have to be delivered or returned may only be apprehended by virtue of an enforceable instrument made of, as the case may be, an order of the competent court that became enforceable.

These same assets may also become beyond disposal, before any apprehension, thanks to a replevin.

CHAPTER I: SEIZURE FOR APPREHENSION

SECTION I: APPREHENSION IN THE HANDS OF AN INDIVIDUAL LIABLE FOR RESTITUTION BY VIRTUE OF AN ENFORCEABLE INSTRUMENT

Article 219: An order for delivery or restitution shall be served on the individual obligated to return the asset. This order shall contain, on pain of nullity:

- 1) mention of the enforceable instrument under which the restitution is required and the full names and address of the creditor and the debtor of the restitution of the asset and, if it is a legal entity, its form, name and registered office;
- 2) an indication that the person liable for the restitution may, within a period of eight days, transport at his own expense the said asset to a designated location and under prescribed conditions;
- 3) the warning that, absent delivery within such time limit, the asset may be apprehended at his own expense;
- 4) the indication that disputes may be brought before the court of the residence or the place where resided the addressee of the instrument;
- 5) Election of domicile in the territorial jurisdiction where the seizure is carried out if the creditor does not reside there; any notification or offer may be sent to that elected domicile.

Article 220: The asset may also be apprehended immediately, without prior order and only upon presentation of the enforceable instrument, if the person liable for the restitution is present and, if, to the question that must be asked by the bailiff or the enforcement officer, he does not offer to transport the asset at his own expense.

In this case, the order provided for in Article 219 above shall mention that disputes may be brought before the court where lives the person from whom the asset is removed or where his domicile is located.

Article 221: A deed of voluntary return or surrender of an asset shall be drawn up.

This deed shall contain the detailed condition of the asset. Where applicable, the asset may be photographed; the photograph shall be attached to the deed.

Article 222: If the asset was apprehended for delivery to its owner, a copy of the deed provided for in Article 221 above shall be sent or notified by registered mail with request for acknowledgement of receipt or by any other written means to the liable individual, by virtue of an enforceable instrument to deliver or return the asset.

Article 223: In the particular case where the asset was apprehended for delivery to a secured creditor, the deed of restitution or apprehension is equal to seizure under the custody of the creditor and the sale shall be conducted in accordance with the terms applicable to the seizure for sale.

A deed shall be delivered or served to the debtor which contains, on pain of nullity:

- 1) a copy of the deed of restitution or apprehension, as the case may be;
- 2) the name of the place where the asset is situated;
- 3) a separate count of amounts claimed in principal, expenses and interest due as well as the interest rate;
- 4) the indication, in bold characters, that the debtor has a period of one month to conduct the private sale of the seized asset, in accordance with the provisions of Articles 115 to 119 above and the date from which, a forced sale in auction shall be conducted failing a private sale within this time limit;
- 5) Reproduction of Articles 115 to 119 above.

SECTION II: APPREHENSION IN THE HANDS OF A THIRD PARTY BY VIRTUE OF AN ENFORCEABLE INSTRUMENT

Article 224: When the asset is held by a third party, a summons to return such asset shall be served directly to him. It shall immediately be communicated, by registered mail with request for acknowledgement of receipt or by any other means leaving written records, to the person required to deliver or return the asset.

The summons shall contain, on pain of nullity:

- 1) a copy of the enforceable instrument which states that the asset must be returned and, if it is a court judgement, the operative provisions thereof and the full names and addresses of the creditor of the restitution and the third party holder of the asset and if it is a legal entity, its form, name and registered office;
- 2) an order to either return, within a period of eight days, the designated assets, or to communicate to the bailiff or the enforcement officer, under penalty of award of damages, where applicable, the reasons for which he is opposing the restitution;

- 3) mention of the fact that challenges will be brought before the court where is located the residence of the addressee of the deed or the place where he resides;
- 4) Election of domicile in the territorial jurisdiction where the seizure is carried out if the creditor does not reside there; any notification or offer may be sent to that elected domicile.

Article 225: Failing voluntary restitution within the time limit, the applicant may petition the competent court where is located the residence of the third holder of the asset or the place where he resides to order delivery thereof. The court may also be seized by the third party.

The summons referred to in Article 224 above and the protective measures that could have been taken shall lapse if the court is not seized within the month following the day when the order was served.

Article 226: Upon a simple presentation of the court decision requiring the delivery of the asset to the applicant, the asset may be apprehended. Minutes thereof shall be drawn up in accordance with the provisions of Article 221 above. A copy of that deed shall be delivered or notified to the third party by registered mail with request for acknowledgement of receipt or by any other means in writing.

After removal, the person liable for the restitution shall be informed as stipulated in Articles 222 and 223 above, as the case may be.

CHAPTER II: REPLEVIN

Article 227: Any individual who, apparently, is justified to require the delivery or restitution of a tangible asset may, pending the restitution, make it beyond disposal through a replevin.

With the exception of cases where the creditor uses an enforceable instrument or a court decision which is not yet enforceable, a prior authorization issued on request by the competent court is required.

The request shall be filed at the court of the place where the person required to deliver or return the asset resides.

The judgment granting the authorization shall name the asset which may be seized as well as the identity of the person required to deliver or return it. Such authorization shall be enforceable against any holder of the designated asset.

Article 228: The validity of the replevin shall be subject to the conditions prescribed for the provisional measures in Articles 60 and 61 above.

Where such conditions are not met, the cancellation of the seizure may be ordered at any time, even in cases where the applicant avails himself of an enforceable instrument or a court decision not yet enforceable.

The request for cancellation shall be filed at the court of the place where the debtor of the obligation to deliver or return resides.

The cancellation decision shall enter into force from the day of notification.

Article 229: Other disputes, including those relating to the enforcement of the seizure, shall be brought before the court of the place where the seized assets are located.

Article 230: Upon presentation of the authorization of the competent court or one of the instruments authorizing the seizure, a replevin may be carried out in any place and by any holder of the asset.

If the seizure is effected in the residence of a third party holder of the asset, a special authorization from the competent court is required.

Article 231: After reminding the holder of the asset that he is required to indicate whether such asset has been the subject of a previous seizure and, where appropriate, to provide in the minutes, the bailiff or the enforcement agent shall take a writ of attachment that contains, on pain of nullity:

- 1) the full names and domiciles of the creditors and debtors or, in case of legal entities, their form, name and registered office;
- 2) the reference to the authorization of the competent court that is appended to the deed or mention of the instrument by virtue of which the seizure is carried out;
- 3) the detailed description of the seized asset;
- 4) if the holder is present, his statement about a possible previous seizure on the same assets;
- 5) a statement, in bold characters indicating that the seized asset is placed under the custody of the holder who can neither dispose of nor move it except in the case provided for in Article 103 above on pain of incurring criminal charges and that he is required to disclose the replevin to any creditor who would want to seize the same asset;
- 6) a statement, in bold characters, indicating the right to challenge the validity of the seizure and to petition for the discharge thereof to the competent court of the domicile or the residence of the debtor;
- 7) the designation of the court that will hear disputes relating to the enforcement of the seizure;
- 8) mention, where appropriate, of the full names and qualifications of individuals who were present at the seizure proceedings, and who must sign the original and the copies thereof; in case of refusal, the minutes shall contain an indication thereof;
- 9) the election of domicile in the territorial jurisdiction where the seizure is effected if the creditor does not reside there; any notification or offer may be sent there;

- 10) Reproduction of the criminal provisions relating to misappropriation of assets seized as well as the stipulations of Articles 60, 61, 227 and 228 herein.

The bailiff or the enforcement officer may photograph the seized assets under the conditions prescribed in Article 45 above.

Article 232: The writ of attachment shall be delivered to the holder while reminding him verbally the mentions of paragraphs 5 and 6 of Article 231 above. There should be reference thereof in the deed.

Where the seizure has been effected by a third party, holder of the asset, the instrument shall also be served no later than eight days, to the individual who is required to deliver or return.

When the holder is not present at the seizure proceedings, a copy of the deed shall be served to him, and he shall have eight days to inform the bailiff or the enforcement officer of any situation relating to the existence of a possible previous seizure, and shall provide the minutes thereof.

Article 233: At any time, the president of the competent court may authorize, on a motion, the parties that have been heard or duly called, to return the asset to a receiver that it appoints.

Article 234: If the holder uses his own right on the seized asset, he shall inform the bailiff or the enforcement officer thereof by registered mail with acknowledgement of receipt or by any means leaving written record, unless he has made the statement at the time of the seizure. Within a month, the garnishing party may file the dispute at the court of the residence or the place where resides the holder.

The asset shall remain beyond disposal during the proceedings.

Absent a challenge within a period of one month, the unavailability shall become void.

Article 235: When the individual who carried a replevin holds an enforceable instrument prescribing the delivery or restitution of the seized asset, a seizure for apprehension may be carried out as stipulated in Articles 219 to 226 above.

TITLE VII: SPECIAL PROVISIONS TO THE SEIZURE OF THE RIGHTS OF PARTNERS AND SECURITIES

CHAPTER I: SEIZURE

Article 236: The seizure shall be effected either to the issuing company or legal entity, or to the agent in charge of keeping or managing titles.

Article 237: Eight days after an order for payment remains unanswered, the creditor shall proceed with seizure by virtue of a deed that contains, on pain of nullity:

- 1) the full names and domicile of the debtor and the garnishing party, or if it there are legal entities, their form, name and registered office;
- 2) election of domicile in the territorial jurisdiction where the seizure is effected if the creditor does not reside there; any notification or offer may be sent to the elected domicile;
- 3) the mention of the enforceable instrument by virtue of which the seizure is effected;
- 4) count of claimed amounts in principal, fees and accrued interests as well as the interest rate;
- 5) the indication that the seizure renders financial entitlements associated to the entire shares or securities owned by the debtor beyond disposal;
- 6) Summons to disclose, within eight days, the existence of possible pledges or seizures and to send copy of the Articles of Association to the garnishing party.

Article 238: Within eight days, on pain of invalidity, the seizure shall be communicated to the debtor through a deed that contains, on pain of nullity:

- 1) a copy of the minutes of the seizure;
- 2) in bold characters, the indication that disputes shall be filed, on pain of inadmissibility, within a period of one month following the notification of the deed with the expiration date;
- 3) the name of the competent court that is the one of the domicile of the debtor;
- 4) in bold characters, the indication that the debtor has one month to conduct a private sale of the seized assets under the conditions set forth in Articles 115 to 119 above;
- 5) Reproduction of Articles 115 to 119 above.

Article 239: The writ of attachment shall render the debtor's financial entitlements beyond disposal. He may obtain release thereof by posting a sufficient amount of money to pay off the creditor. Such amount shall be imputed to the benefit of the garnishing creditor.

CHAPTER II: SALE

Article 240: Failing to conduct a private sale under the conditions of Articles 115 to 119 above, the forced sale shall be conducted in the form of an invitation to tender procedure, at the request of the creditor, on the presentation of a certificate issued by the registry attesting that no dispute

was filed in the months following the communication on the seizure or, where applicable, a court decision dismissing the dispute raised by the debtor.

Article 241: The specifications, prepared for the sale, shall contain, in addition to the reminder of the previous procedure:

- 1) the Articles of Association of the company;
- 2) Any document required for the assessment of the content and the value of the rights put to sale.

Agreements establishing approval or creating a preferential right for the benefit of the partners shall apply to the highest bidder only if it is included in the specifications.

Article 242: A copy of the specifications shall be sent to the company which informs the partners.

The same day, a summons shall be sent, where necessary, to the other dissenting creditors advising them to go to the auctioneer or to any other court officer in charge of the sale in order to review the specifications.

Any interested party may comment on the specifications to the latter. The comments shall no longer be admissible at the expiration of a period of two months from the time of the notification provided for in the first paragraph.

Article 243: The date, time and place of the sale shall be advertised in the media and, where necessary, on posters, one month and fifteen days at least before the date set for the sale.

The debtor, the company and, where applicable, the other dissenting creditors shall be notified on the date of the sale.

Article 244: The possible legal and contractual procedures of the approval, preemption or substitution shall be implemented in accordance with the provisions specific to each one of them.

CHAPTER III: PLURALITY OF SEIZURES

Article 245: In case of plurality of seizures, the proceeds from the sale shall be distributed among the creditors who have carried out a seizure prior to the sale.

However, if a seizure has been carried out before the seizure that led to the sale, the creditor shall take part in the distribution of the proceeds, but the money owed to him shall be kept until he obtained an enforceable instrument.

TITLE VIII: FORECLOSURE

Article 246: The creditor may sell real properties belonging to his debtor only in accordance with formalities prescribed by the following provisions.

Any agreement to the contrary shall be void.

CHAPTER I: TERMS OF FORECLOSURE

Article 247: The forced sale of a real property may be carried out only by virtue of an enforceable instrument stating a claim of a fixed amount that is due.

The proceedings may also take place by virtue of a provisional enforceable instrument, or for a cash debt of an unspecified amount; but the auction may be carried out only by virtue of a final enforceable instrument and after the liquidation.

Article 248: The court in which the sale proceedings are being held shall be the one with full powers in the territorial jurisdiction where the real properties are.

However, the forced sale of real properties that depend on the same operation and located within the jurisdiction of several courts shall be proceeded before one of them.

SECTION I: CONDITIONS RELATING TO THE NATURE OF ASSETS

Article 249: The undivided share of a real property may be offered for sale before distribution or liquidation that may be caused by the creditors of a joint property.

Article 250: The forced sale of common real properties shall be proceeded against both spouses.

Article 251: The creditor may proceed with the sale of the real properties that are not mortgaged to him only in case insufficient real properties that are mortgaged to him, unless all these assets constitute a single and same operation and if the debtor requires so.

Article 252: The forced sale of real properties located in the jurisdictions of different courts may be prosecuted only successively.

However, and without prejudice to the provisions of Article 251 above, the forced sale may be proceeded simultaneously:

- 1) when the real properties are part of a single and same operation;
- 2) After authorization of the president of the competent court when the value of the real properties located in the same jurisdiction is less than the total of the amounts due to both the garnishing creditor and the registered creditors. The authorization may cover all or part of the real properties.

SECTION II: PRIOR REGISTRATION

Article 253: If the real properties subject to the proceedings are not registered and if the national law provides for such registration, the creditor is required to apply for the registration at the land conservation after receiving the authorization from a judgment rendered by the president of the competent court in charge of the assets on a motion and from which no appeal lies.

Under penalty of nullity, the order referred to in Article 254 below may only be served after the filing of the registration application and the sale may only take place after the issuance of the title deed.

CHAPTER II: REAL PROPERTIES IN COURT CUSTODY

SECTION I: THE ORDER

Article 254: Under penalty of nullity, any action for the forced sale of real properties must be preceded by an order for seizure purposes.

Under penalty of nullity, such order must be served to the debtor and, where appropriate, to the third party holder of the real property and shall contain:

- 1) the reproduction or the copy of the enforceable instrument and the debt amount, as well as the full names and address of the creditor and the debtor and, if it is a legal entity, its form, name and registered office;
- 2) the copy of the special powers to seize granted to the bailiff or to the enforcement officer by the garnishing creditor, unless the order contains, on the original and the copy, the mention good for power signed by the latter;
- 3) a warning indicating that, failing to pay within twenty days, the order may be transmitted to the land conservation and shall be equal to a seizure order from its publication;
- 4) mention of the court where the expropriation will be proceeded;
- 5) the land title number and the specific condition of the real properties subject to the proceedings; if it is an unregistered real property, the number of the requisition of registration; and, if it is about expenses incurred by the debtor on a land that he does not own, but was attributed to him by a decision of an administrative authority, its specific name as well as the reference of the assignment decision;
- 6) The briefing of the attorney located where the pursuing creditor elects domicile and where the acts of opposition to the order, actual offers and all notifications relating to the seizure shall be sent.

Article 255: Under penalty of nullity, the order shall be notified, where applicable, to the third party holder with summons, either to pay the entire debt with principal and interest, either to abandon the mortgaged property, or finally undergo the procedure of expropriation.

Relinquishment shall be done at the registry of the competent court in charge of the status of the assets; that act shall be acknowledged by the court.

Article 256: To collect information useful to the drafting of the order, the bailiff or the enforcement officer may enter the real properties subject to seizure, assisted, where necessary, by law enforcement officers.

When the real property is in the hands of a third party against whom the claimant has no enforceable instrument, the bailiff or the enforcement officer must request an authorization from the competent court.

Article 257: When the seizure concerns several real properties simultaneously, a single order may be established for all the properties.

Article 258: Where the debtor has incurred maintenance expenses for the real properties on a land that he does not owe, but which was assigned to him by a decision of an administrative authority, provided for in Article 254 above, the order shall also be notified to this authority and approved by her.

SECTION II: PUBLICATION OF THE ORDER

Article 259: The bailiff or the enforcement officer shall have the original of the order approved by the Registrar of land ownership to whom a copy is given for publication.

When the proceedings are initiated for maintenance expenses incurred by the debtor on a land that he does not owe, but which was assigned to him by a decision of an administrative authority, formalities prescribed in the preceding paragraph shall be carried out by that authority.

If an order has not been delivered at the land conservation office or the concerned administrative authority within three months of its notification, and then was not properly published, the creditor may only resume the proceedings by reiterating them.

Article 260: If the land title registrar or the concerned administrative authority does not register the order at the moment it is presented, he shall mark the date and time of the filing on the original that it is delivered to him.

If there is an order previously registered, the land title registrar or the administrative authority shall make notes on the margins of the registration, in the order of submission, of any subsequent order filed with the full names, residence or declared domicile of the new claimant and the name of the counsel.

He shall also note, in the margins and following a submission of an order, his refusal to register and he shall mention each of the orders fully registered or mentioned with the annotations thereon and those of the court where the seizure is made.

The seizure cannot be cancelled without the consent of the subsequent garnishing creditors thus revealed.

Article 261: In case of payment within the time limit set out in Article 254, paragraph 3 above, the registration of the order shall be removed by the land title registrar or the administrative authority upon release given by the pursuing creditor.

Otherwise, the debtor or any interested party may cause the removal by showing proof of payment; to this end, he shall seize the court ruling in urgent cases.

The decision authorizing or refusing the removal must be rendered within eight days following the referral to the competent court. It shall be subject to appeal through regular channels.

SECTION III: EFFECTS OF THE ORDER

Article 262: In the event of non-payment, the order is deemed to be a seizure from the time of its registration.

The property and its revenues shall be capitalized under the conditions set forth in the articles below. The debtor shall neither dispose of the property, nor encumber it with a real right or charge.

The land title registrar or the administrative authority shall refuse to deal with any new registration.

Nevertheless, the disposition or the constitutions of rights in rem shall be valid if, before the day set for the auction, the purchaser or the creditor shall deposit a sum sufficient to pay the principal, interest and fees, which is due, to the registered creditors as well as the garnishing creditor and he provides them with the statement of deposit. The sum thus deposited shall be specially paid to registered and garnishing creditors.

Failing to deposit prior to the award, no time limit may be granted for that purpose under any pretext.

Article 263: Natural or industrial fruits, rents and farms collected after the filing of the order or the proceeds from their sale shall be capitalized to be distributed with the price of the property, unless there is an effect of a previous seizure. They shall be deposited either at the deposits and consignments institutions, or in the hands of a receiver appointed by the president of the competent court.

Where the real properties are not leased or rented, the garnishee shall remain in possession thereof until the sale as a court-ordered receivership unless, at the request of one or several creditors, it has not been ordered by the president of the competent court.

The garnishee shall neither cut nor damage wood under penalty of award of damages.

In case of problems, the matter should be referred to the president of the competent court in charge of the real property, who shall render a judgment that cannot be appealed.

Article 264: Where the value of the seized real properties significantly exceeds the amount of the debt, the debtor may obtain from the competent court that the proceedings on one or more of the real properties identified in the order be suspended without such petition preventing the publication of the order.

Prior to the filing of the specifications, the petition shall be brought before the competent court by a simple act of an attorney to an attorney; After the filing of the specification, it shall be formulated by a statement written as it is stipulated in Article 272 below.

In support of his petition, the debtor must prove that the value of the real property, subject to ongoing proceedings, is sufficient to pay off the creditor and all registered creditors.

The petition shall be ruled on at the possible hearing. The court decision granting the stay shall indicate the real properties on which the proceedings will be discontinued.

After the final award, the creditor may resume proceedings on provisionally exempted assets, if the prices of sold assets is not enough to pay him off.

Article 265: Where the debtor demonstrates that net and free revenue of his real properties for two years is sufficient for the payment of the debt in capital, fees and interests, and if it offers delegation to the creditor, the proceedings may be suspended following the procedure set forth in the preceding article.

The proceedings may resume if there is any objection or obstacle to the payment.

CHAPTER III: PREPARATION OF SALE

SECTION I: DRAFTING AND PUBLICATION OF SPECIFICATIONS

Article 266: The specifications is a document, drawn up and signed by the pursuing creditor's attorney, who specifies the terms and conditions of the sale of the seized real property.

They shall be deposited at the registry of the court within the jurisdiction in which the property is located within a maximum period of fifty days from the publication of the order, under penalty of forfeiture.

Article 267: The specifications shall contain, on pain of nullity:

- 1) the title of the instrument;
- 2) the terms of the enforceable instrument under which proceedings are carried out against the debtor and of the order with a mention of its publication as well as other acts and court decisions included subsequently in the order and which have been notified to the pursuing creditor;
- 3) the court or the notary agreed by the pursuing party and the garnishee before whom the auction is proceeded;
- 4) the venue of the possible hearing provided for by Article 270 below;
- 5) the full names, profession, nationality, date of birth and domicile of the pursuing creditor;
- 6) the full names, title and address of the trial lawyer;
- 7) the name of the seized real property stated in the order or the minutes of the description prepared by the bailiff or the enforcement officer;
- 8) the terms of the sale and, in particular, the rights and obligations of the sellers and purchasers, the reminder of the costs of proceedings and any special conditions;
- 9) the allotment, where applicable;

- 10) the reserve price fixed by the suing party, which may not be lower than one-quarter of the market value of the property. The value of the property shall be appraised, either by virtue of the appraisal made by the parties at the conclusion of the conventional mortgage, or, failing that, by comparison with transactions carried out for similar properties of the same nature and condition.

The status of real rights registered on the property in interest issued by the land conservation on the date of the order shall be appended to the specifications.

Article 268: The date of the sale shall be set in the filing package forty five days thereafter. It cannot be more than ninety days after the filing.

SECTION II: SUMMONS TO REVIEW SPECIFICATIONS

Article 269: Within eight days, at the latest, after the filing of the specifications, the garnishing creditor shall deliver a summons to the garnishee and the registered creditors to acquaint themselves with the specifications at the registry and to file their observations.

Under penalty of nullity, such summons shall be served to the garnishee in person or at home, and to the registered creditors at their elected domicile.

Article 270: This summons shall state, on pain of nullity:

- 1) the day and time of a so-called subsequent hearing during which a ruling will be made on the statements and observations which have been formulated; this hearing cannot take place less than thirty days after the last summons;
- 2) the day and time scheduled for the tender which must take place between the thirtieth and the sixtieth day after the subsequent hearing;
- 3) That the statements and observations will be received, under penalty of forfeiture, until the fifth day before the subsequent hearing and that failure to form and mention the request for cancellation of a previous sale or the proceedings of a re-auction of a previous forced sale in the specifications, will deprive them of their right to exercise these actions towards the highest bidder.

Article 271: If such a request in resolution or such proceedings of a re-auction was made, proceedings in relation to properties encumbered with a resolutive action or the re-auction shall be suspended.

The request for cancellation shall be brought, in any case, before the court where is proceeded the seizure for sale.

It shall be subject to guidance, time limits, and remedies applicable to the request for diversion.

SECTION III: SUBSEQUENT HEARING

Article 272: Statements and observations shall be ruled after an exchange of reasoned conclusions by the parties, which must be performed in compliance with the adversarial principle.

When the amount of the reserve price is challenged, the dissenting party must prove the merits thereof. He may petition the president of the competent court for the appointment of an expert at his own prepaid expenses.

Article 273: The postponement of the subsequent hearing can only happen for serious and duly justified grounds, or when the competent court automatically exercises control over the specifications as it is stipulated in Article 275 below.

Article 274: The court decision rendered during the subsequent hearing shall be recorded on the specifications by the Registrar; it shall be raised and served at the request of the earliest petitioner.

The competent court shall set a new award date if the previously set date cannot be kept.

Article 275: The competent court may, automatically and if necessary, collect the following particulars, without delay, after consulting an expert in writing:

- 1) order the diversion of some assets seized whenever their overall value appears disproportionate to the amount of the claims to be recovered;
- 2) Change the amount of the reserve price if it was not fixed in accordance with the provisions of Article 267 (10) above.

In this case, the competent court shall inform the parties of its intention to amend the specifications and invite them to submit their observations within a maximum period of five days; it shall give them, if need be, the day and time of the hearing if the matter could not be ruled on the originally scheduled date.

SECTION IV: PUBLICITY FOR SALE PURPOSES

Article 276: No earlier than thirty days and no later than fifteen days before the invitation to tender, an extract from the specifications signed by the trial lawyer shall be published in a journal of legal notices and on posters displayed at the door of the home of the garnishee, the competent court or the agreed notary, as well as in official areas of public display in the neighborhood where the property is located.

Article 277: The extract shall contain, on pain of nullity:

- 1) the full names, professions, domiciles or residences of the parties and their counsel;
- 2) the name of the seized properties as stated in the specifications;
- 3) the reserve price;
- 4) The date, place and time of the auction, the competent court or the agreed notary before whom the auction will be conducted.

Article 278: Evidence of the announcement in the newspaper is found in a copy of the paper signed by the printer, on the display in the minutes of the bailiff or the enforcement officer written on a copy of the display.

Article 279: The president of the competent court may, by a non-appealable decision rendered on motion, restrict or increase the legal publicity, depending on the nature and the value of the seized assets.

CHAPTER IV: THE SALE

SECTION I: AUCTION DATE AND PLACE

Article 280: On the day set for the auction, the sale shall be conducted at the request, even verbal, of the attorney of the suing party or any registered creditor. The latter publicly indicates the amount of the costs of proceedings previously asked by the president of the competent court.

Article 281: Nevertheless, the auction may be postponed for serious and legitimate grounds by a reasoned court decision rendered on a motion filed five days at least before the day set for the sale.

In the event of postponement, the court decision shall set again the day of the auction which cannot exceed sixty days. The pursuing creditor must carry out a new publicity.

There shall be no other remedy to the court decision unless the competent court misunderstood the time limit under the preceding paragraph. In which case, the appeal shall be admissible under the conditions set forth in Article 301 below.

Article 282: The sale of the real property shall be held in public auctions inside the court or at the agreed notary's office.

Auctions are successive and increasingly higher offers submitted by individuals who wish to acquire the real property. The individual who made the largest offer is declared the winner.

Offers are made by the attorney or by the bidders themselves; the same attorney may represent several bidders when they wish to be highest co-bidders.

Article 283: Before the opening of the auction, candles are prepared in a way that each one of them shall last about one minute.

As soon as the auction opens, a candle is lit and the amount of the reserve price is announced.

If, during the duration of a candle, there is an auction, such auction shall be final and seal an auction only if there is no new one before the expiration of two candles.

The bidder ceases to be obligated if his bid is covered by another, even though the new auction would be declared void.

If there is no auction after lighting three candles consecutively, the suing party shall be declared the winner of the reserve price unless he requests the postponement of the auction to another hearing with a new reserve price in accordance with the provisions of Article 267 (10) above. The postponement of the auction shall be automatic; the publicity formalities must be repeated.

In case of postponement, if no bid is made during the new auction, the suing party is declared winner for the first reserve price.

Article 284: The attorneys may not bid for the members of the competent court or the notary before which the sale is proceeded, on pain of nullity of the auction or the higher bid and award of damages.

Under the same penalties, they cannot bid for the garnishee or the notoriously insolvent persons. The trial lawyer cannot make himself a highest bidder or bidder on pain of nullity of the auction, the overbid, and award of damages to all parties.

Article 285: The auction shall be pronounced by a court decision or the minutes of the notary for the benefit of either the attorney who has bid the last auction or for the benefit of the suing party for the amount of the reserve price if there was no bid.

Article 286: The attorney, who is the last bidder, is required, within three days of the auction, to declare the highest bidder and accept him or represent his power, which remains attached to the minute of the court or notarized declaration, otherwise he is deemed successful highest bidder in his name.

Any highest bidder shall have the option, within twenty-four hours, to publicize in a so-called 'command' statement that he is not purchaser for his own account, but he is acting for someone else whose name he shall reveal.

SECTION II: OVERBID

Article 287: Any individual may, within ten days following the auction, make a higher bid provided that it is the tenth at least of the main sale price. The time limit for overbids shall take precedence over foreclosure.

This bid cannot be retracted.

Article 288: The overbid shall be made at the registry of the court which ordered the sale before the agreed notary, by the higher bidder himself or through his attorney, who makes himself the bidder. This shall immediately be mentioned in the specifications.

The higher bidder or his attorney is required to inform thereof the awardee, the suing party and the garnishee party within five days.

Such communication shall be inserted in the specifications within a period of five days.

Failure to communicate or mention this information within the prescribed time limits by the bidder, the suing party, the garnishee or any registered or ordered creditor can make the communication and its mention within the five days that followed; the costs will be borne by the negligent over-bidder.

The communication shall be made by an extrajudicial act without the need to obtain the statement of the highest bid.

It shall indicate the date of the subsequent hearing during which challenges of the validity of the overbid will be judged

This hearing cannot be scheduled before the expiration of a period of twenty days from the communication.

It shall also set the date of the new invitation to tender, which cannot take place more than thirty days after the subsequent hearing.

Article 289: The validity of the overbid shall be challenged by filing and communicating the findings five days at least before the day of the subsequent hearing. Such conclusions shall be notified after the notice of the communication.

If the overbid is not challenged or if it is validated, the new invitation to tender shall be preceded by the display of posters eight days at least before the sale, in accordance with the provisions of Articles 276 to 279 above.

On the set day, new auctions shall be open; if the overbid is not covered, the over-bidder is declared winner.

No overbid may be received on the second invitation to tender.

SECTION III: AUCTION

Article 290: The court decision or the minutes on the auction of the notary shall be executed as a deed in minute next to the specifications.

A copy shall be issued, as the case may be, by the Registrar or the notary, to the successful highest bidder after payment of the costs of the proceedings and the auction price and after meeting the conditions of the specifications that must be executed within twenty days of the auction.

However, if the highest bidder is the only one registered or preferred creditor of the garnishee, he is only required to pay the amount of the auction exceeding his debt, in addition to costs.

The receipt and supporting documents shall be appended to the minutes of the court decision or the minutes of the auction drawn up by the notary and reproduced following the issuance.

The highest bidder who does not provide justifications within twenty days of the auction may be prosecuted through re-auction without prejudice to the due process.

Article 291: If the award includes several instances, copy of the court decision or the minutes of the auction drawn up by the notary in a binding form shall be issued to each successful highest bidder.

Article 292: Regular proceedings costs shall be paid by preference over the price. Any provision to the contrary shall be void. The same shall apply to extraordinary costs, unless it has been ordered that they would be taken from the price, except appeal against the party condemned to pay for the costs.

Article 293: The court decision or the minutes of the auction drawn up by the notary cannot be subject to any remedies, without prejudice to the provisions of Article 313 below.

Article 294: When the auction has become final, a copy of the court decision or the minutes of the auction drawn up by the notary shall be filed at the land conservation for registration.

The highest bidder is required to carry out this formality within two months under penalty of resale on a re-auction.

The land title registrar shall make annotations of that publicity on the margins of a copy of the published order. He shall also remove all charges and registered mortgages that are purged by the sale, even those registered after the issuance of the status of registration. Therefore, creditors shall exert action only on the price.

Article 295: When the foreclosure concerns maintenance expenses incurred by the debtor on a lot that he does not own, but that was assigned to him by a decision of an administrative authority, and the award has become final, the court decision or the notarized minutes of the award is delivered to that administrative authority for the purpose of making annotations in the margins of the allocation decision.

The administrative authority shall delete all entries made in conjunction with the decision of initial assignment and transfer the assignment to the winner. Creditors shall exert action only on the price.

Article 296: The auction, even published in the land conservation office, shall not transmit to the successful bidder other real rights than those belonging to the garnishee.

Article 297: The time limits provided for in Articles 259, 266, 268, 269, 270, 276, 281, 287, 288 paragraphs 7 and 8, 289 above are prescribed under penalty of forfeiture.

Formalities set forth by these texts and Articles 254, 267 and 277 above shall become null and void only if the irregularity resulted in harming the interests of the one who invokes them.

The invalidity pronounced due to failure to give a good description of one or more of the properties included in the seizure shall not necessarily invalidate the proceedings relating to other properties.

CHAPTER V: INCIDENTS OF FORECLOSURES

Article 298: Any dispute or incidental claim for the proceedings of a foreclosure formulated subsequent to the notification of the order shall be formed by a simple act done by an attorney containing means and conclusions. It shall be initiated against any party without a lawyer by petition with a writ.

Cases are heard and ruled expeditiously.

Article 299: Disputes or incidental claims must, under penalty of forfeiture, be raised in a subsequent hearing.

However, requests based on a fact or an act occurred or revealed after such hearing and those intended to declare the diversion of all or part of seized assets, the invalidity of all or part of the procedure followed in the possible hearing or the cancellation of the seizure, may still be submitted after the possible hearing, but only, under penalty of forfeiture, until the eighth day before the auction.

Article 300: Court decisions rendered in foreclosures are not likely to be opposed.

They may be appealed only when they rule on the very principle of the debt or on substantive pleas of the incapacity of one of the parties, of the property, of the distraint and the lack of distraint of the seized property.

The decisions of the appellate court shall not be subject to opposition.

Remedies shall be exercised under the conditions of common law.

Article 301: The appeal shall be notified to all the parties involved at their actual or elected domicile.

The notice shall be also notified, within the appeal time limit, to the Registrar of the competent court, who approves and annotates it in the specifications.

The notice of appeal shall contain the statement of the person initiating the appeal on pain of nullity.

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

SECTION I: INCIDENTS CAUSED BY PLURALITY OF SEIZURES

Article 302: If two or several garnishing parties had their orders relating to separate properties belonging to the same debtor and whose seizure is being proceeded in the same court published, the proceedings shall be put together at the request of the earliest petitioner and pursued by the first garnishing party.

If the orders were published the same day, the creditor, whose order is dated first, shall initiate the proceedings and, if the orders are issued on the same day, it will be the oldest creditor.

Article 303: If a second order submitted at the land conservation includes more properties than the first order, it shall be published for the assets not included in the first. The second pursuing party shall communicate the order published for the first garnishing party who is required to conduct the proceedings of the two garnishing parties if they are at the same level.

If they are not at the same level, the first garnishing party shall stay the first proceedings and pursue the second until it is at the same level. They are, then, brought before the court that made the first seizure.

Article 304: Since the first garnishing party failed to pursue the second seizure that was communicated to him, the second garnishing party may request a subrogation through a written act addressed to the land title registrar, request a subrogation.

Article 305: The subrogation may also be requested if there is collusion, fraud, negligence or another cause of delay attributable to the garnishing party, without prejudice to damages to whom it belongs.

There's negligence when the pursuing party has not completed a formality or failed to do a procedural act within the prescribed time limits.

A creditor can request the subrogation eight days only after a summons to continue the proceedings remained unanswered, issued by an act of an attorney to another attorney, to creditors including orders that were previously mentioned in the land conservation office.

The garnishee shall not be impugned.

Article 306: The losing party on the dispute relating to subrogation shall be personally ordered to pay the costs.

Translation subject to further correction (December 2016)

The pursuing party against whom the subrogation has been pronounced shall be obligated to hand over, against a receipt, the documents of the proceedings to the subrogated who continues the proceedings at his peril. By handing over the documents, the subrogated pursuing party shall be discharged of all his obligations; his litigation fees shall be reimbursed only after the auction from either the proceeds or by the highest bidder.

Article 307: The petitioner of the subrogation shall have the option to modify the reserve price set out by the pursuing party. However, the reserve price can only be changed after the advertisement done or started on the condition that new posters and announcements be made within the time limits set forth in Article 276 above with the indication of the new price.

SECTION II: REQUESTS FOR DIVERSION

Article 308: The third party that claims to be owner of a seized property and who is personally liable neither for the debt nor for the property, may initiate a request for diversion before the auction within the time limit set out in Article 299 above in order to extract him from the seizure.

However, the request for diversion shall be admissible only if the land legislation of the State party in which the real property is located admits the replevin or any other action for the same purpose.

Article 309: The request for diversion of all or part of the seized assets shall be initiated against both the garnishing party and the garnishee.

Article 310: When the request for diversion concerns the entire property, the continuation of the proceedings shall be suspended. Where the diversion is sought only for a portion of the seized assets, the surplus may be awarded. The competent courts may also order the suspension of everything at the request of interested parties.

In case of partial diversion, the pursuing party is allowed to change the reserve price stipulated in the specifications.

SECTION III: REQUESTS FOR CANCELLATION

Article 311: Annulment resources, both in form and substance, with the exception of those referred to in Article 299 paragraph 2 above, against the procedure that precedes the possible hearing must be raised, under penalty of forfeiture, by a statement appended to the specifications five days, at the latest, before the date set for the hearing; if they are admitted, the proceeding may resume from the last valid deed and the time limits for performing the following acts run at the time of the notification of the court decision which pronounced the annulment.

If they are rejected, the proceeding shall continue on its last mistakes.

Article 312: The proceeding may not be cancelled on the grounds that the creditor initiated it for an amount greater than what he owed.

Article 313: The nullity of the court decision or the notarized minutes of the auction may only be requested by virtue of a main cancellation action brought before the competent court in the jurisdiction in which the auction was carried out within a period of fifteen days following the auction.

It can be requested only for concurrent or subsequent reasons to the possible hearing, by any interested party, with the exception of the successful highest bidder.

The effect of the cancellation is to invalidate the procedure from the possible hearing or subsequent to the latter depending on the causes of annulment.

SECTION IV: RE-AUCTION

Article 314: The re-auction purpose is to nullify the auction due to the breach of the highest bidder of his obligations and to carry out a new auction of the real property.

The re-auction shall be open when the highest bidder:

- 1) does not prove that he paid the price, the fees and met the conditions of the specifications, within twenty days following the auction;
- 2) Does not publish the court decision or the notarized minutes of the auction at the land conservation within the time limit provided for in Article 294 above.

Article 315: The re-auction may be initiated by the garnishee, the garnishing creditor and registered and unsecured creditors. It shall be formed against the highest bidder and eventually his dependents. It shall not be subject to any time limit. However, it can no longer be brought or continued when the opening causes of such action disappeared subject to the provisions of Article 320 below.

Article 316: Where the auction deed has not been issued, the individual who pursues the re-auction shall receive a certificate from the Registrar or the notary attesting that the highest bidder has not justified the execution of the clauses and conditions of the specifications.

If the successful highest bidder opposes the issuance of the certificate, a ruling shall be made, at the request of the most diligent party, by the president of the competent court and without remedy.

Article 317: The certificate provided for in the preceding article shall be served to the highest bidder. Within five days of such notification, publicity shall be carried out for the new auction.

Posters and inserts shall state the full names, domicile or residence of the re-auctioneer, the amount of the auction, the reserve price set by the claimant, and the day, indicated on the old specifications, on which the new adjudication will take place. The time limit between the new publicity and the sale shall be at least fifteen and thirty days at the most.

Article 318: Fifteen days at least before the auction, the highest bidder, the garnishee, the garnishing party and creditors shall be notified of the day, time and place of the auction. This service is effected by an act of an attorney to an attorney, and absent a counsel, at the behest of a bailiff or an enforcement officer.

Article 319: Where the auction deed has been issued, the claimant of the re-auction shall serve the highest bidder with a copy of the court decision or notarized minutes of the auction.

Five days after this service, he may carry out the publicity of the new sale as provided for in Article 317 above.

Article 320: Until the day of the resale, if the re-auctioneer proves that he has met the conditions of the auction and reported a sufficient amount, set by the president of the competent court, in order to offset the costs of the re-auction procedure, no new invitation to auction shall be issued.

Article 321: Formalities and time limits provided for in Articles 316 to 319 above shall be observed, on pain of nullity.

The reasons for nullity must be formulated five days prior to the auction provided for in Article 317 above.

Article 322: If he is not inclined to bid, the reserve price may be reduced within the time limit set in Article 267, paragraph 10 above, by the decision of the president of the competent court.

If, despite this reserve price reduction, there is no auction, the claimant shall be declared the highest bidder for the first reserve price.

The re-auctioneer cannot bid on the new auction.

Article 323: The re-auctioneer shall be liable for the interests of his price until the day of the second sale and for the difference of his price and that of the second auction when such price is lower.

If the second price is higher than the first, the positive difference shall not profit him. He shall be reimbursed neither for the procedure and registry costs nor for the registration fees that he paid.

TITLE IX: DISTRIBUTION OF PROCEEDS

Article 324: Where there is a single creditor only, the proceeds of the sale shall be awarded to the latter up to the amount of his debt in principal, interest and fees, within a period of fifteen days, at the latest, from the time the price of sale is paid.

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

At the expiration of this period, the money owed shall produce interests at the legal rate.

Article 325: Where there are several creditors in personal and real property matters, several registered or preferred creditors may agree on a consensual distribution of the proceeds of the sale.

In this case, they shall send their agreement in a form of a signed private act or in authentic form to the registry or the court officer, keeper of the funds.

Creditors shall be paid within fifteen days from the receipt of the agreement.

Within the same time limit, the balance shall be awarded to the debtor.

At the expiration of this time limit, the money owed shall produce interests at the legal rate.

Article 326: If, within the period of one month following the payment of the proceeds of the sale by the highest bidder, creditors were unable to reach a unanimous agreement, the earliest

petitioner among them shall inform the president of the court of the place of the sale or the judge delegated by him to hear the case and to rule on the distribution of the proceeds.

Article 327: This writ of attachment shall indicate the date of the hearing and summon creditors to submit, and to state what is due to them, the rank to which they intend to be collocated and to communicate all supporting documents.

The summons shall reproduce the provisions of Article 330 below.

Article 328: The garnishee shall also receive notification of the writ of attachment.

Article 329: The hearing may not take place less than forty days after the last notification.

Article 330: Within twenty days of the summons, creditors may make their submissions at the registry of the competent court.

The expiration of this period shall automatically mean forfeiture against non-producing creditors.

Article 331: Statements may be filed no later than five days before the hearing. They must be communicated to the other parties.

Article 332: In light of the submissions, statements and explanations of the parties, the competent court shall distribute the proceeds of the sale. It may, for serious and duly justified causes, postpone the distribution, and set the day of the new hearing. The court decision granting or refusing a postponement shall not be appealed.

Article 333: The court decision on merits shall be subject to appeal within fifteen days of its notification. The appeal shall be admissible only if the amount of the disputed sum is greater than the rate of the final court decisions.

Article 334: Where the auction or re-auction intervenes in the course of proceedings or even after the final settlement, the competent court shall amend the status of collocation based on the results of the auction.

TITLE X: FINAL PROVISIONS

Article 335: The time limits set out in this Uniform Act are clear deadlines.

Article 336: This Uniform Act repeals all provisions relating to instances that it governs in the States parties.

Article 337: This Uniform Act shall govern protective measures, enforcement and recovery proceedings undertaken after its entry into force.

Article 338: This Uniform Act shall be published in the Official Journal of OHADA in the States parties. It shall enter into force in accordance with the provisions of Article 9 of the Treaty on the Harmonization in Africa of Business Law.

Done in Libreville on 10 April 1998

For the Republic of Benin

Mr. Moïse MENSA
Minister of Finance

For Burkina Faso

Mr. Larba Yarga
Minister of Justice

For the Republic of CAMEROON

Mr. Joseph BELIBI
Secretary General of the Ministry of Justice

For Central African Republic

Mr. Marcel METEFARA
Minister of Justice

For the Republic of IVORY COAST

Mr. Kouakou BROU JEAN
Minister of Justice

Mr. Marcel Eloi RAHANDI CHAMBRIER

Minister of Justice

For the Republic of EQUATORIAL GUINEA

Mrs Evangelina-Filomena OYO
Minister of Justice

For Republic of MALI

Mr. Amidou DIABATE
Minister of Justice

For the Republic of NIGER

Mr. Issifou ABBA MOUSSA
Minister of Justice