

**UNIFORM ACT ORGANIZING SIMPLIFIED  
RECOVERY PROCEDURES AND  
ENFORCEMENT MEASURES**



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

- Considering the Treaty on the Harmonization of Business Law in Africa and in particular Article s 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;
- Considering the report by the OHADA Permanent Secretariat and the observations of the Member States;
- Considering the opinion of the Common Court of Justice and Arbitration dated 23 March 1998;

Having deliberated thereon, the States Parties present and voting adopt the Uniform Act the terms of which are set out below.

**BOOK I  
SIMPLIFIED RECOVERY PROCEDURES**

**PART I  
MANDATORY INJUNCTION TO PAY**

**CHAPTER I  
CONDITIONS**

VII

**ARTICLE 1**

The recovery of a debt certain and due for immediate payment may be obtained following the procedure applied for mandatory injunctions to pay.

**ARTICLE 2**

The procedure for a mandatory injunction to pay shall be applicable where:

- 1) the debt arises from a contract;
- 2) the obligation arises from of the issuance or acceptance of any negotiable instrument, or of a cheque without cover or insufficient cover.

## **CHAPTER II PROCEDURE**

### **Section I The Petition**

#### **ARTICLE 3**

The action shall be commenced by a petition to the competent court of the place of residence or place of abode of the debtor or in the event of several debtors, in the residence or place of abode of one of the debtors.

The parties may derogate from the above rule by providing a jurisdiction clause in the contract.

Lack of territorial jurisdiction may only be raised by the court handling the matter or by the debtor during the proceedings initiated by his opposition.

#### **ARTICLE 4**

The application shall be filed in or sent to the registry of the competent court by the applicant or his agent duly authorized by the laws of each of the State Parties to represent him in court.

It shall under pain of inadmissibility mention the following;

- 1) the names, profession and residence of the parties or, for corporate persons, their legal form, corporate name and registered office;
- 2) a clear indication of the amount claimed, with a breakdown of the different heads of the said claim, as well as the grounds upon which it is based.

The petition shall be accompanied by the originals or certified true copies of the documents in support thereof.

Where the petition is filed by a person not resident within the state of the competent court before which the matter is pending, it shall, subject to the same penalty, contain a choice of address for service within the jurisdiction of said court.

### **Section II The Mandatory Injunction to Pay**

#### **ARTICLE 5**

Where, upon examination of the documents submitted, the petition appears to be wholly or partially well-founded, the President of the competent court shall issue a mandatory injunction to pay the amount determined by him.



Where the President of the competent court dismisses the petition in whole or in part his decision shall not be subject to appeal by the creditor. The creditor's only remedy shall be an ordinary civil claim.

#### **ARTICLE 6**

The original documents annexed to the petition shall be returned to the petitioner and their certified true copies shall be preserved in the registry.

Where the petition is dismissed, it shall be returned to the petitioner alongside any documents submitted in support thereof.

#### **ARTICLE 7**

A certified true copy of the petition and of the mandatory injunction to pay, issued in conformity with the provisions of the preceding article shall be notified at the instance of the creditor on each debtor by an extrajudicial act.

The mandatory injunction to pay shall become null and void where it is not notified on the party concerned within three (3) months of the date of issue.

#### **ARTICLE 8**

Under pain of nullity, the notification of the mandatory injunction to pay shall enjoin the debtor:

either to pay to the creditor the amount indicated in the order, together with interest and registry fees, the amount of which shall be specified; or

where the debtor intends to put forward a defence, he shall file an opposition which shall have the effect of referring the initial petition filed by the creditor as well as the entire dispute to the court.

Under the same pain of nullity the notification of the mandatory injunction to pay shall:

- indicate the time limit within which the opposition shall be filed, the court before which the opposition shall be brought as well as the form of the said opposition;
- inform the debtor that he may take cognizance of the documents submitted by the creditor at the registry of the competent court whose President issued the mandatory injunction to pay, and that, failing to file an opposition within the prescribed time limit, he shall no longer have the right to any recourse and may be compelled through any legal means to pay the sums claimed.

### **Section III The Opposition**

#### **ARTICLE 9**

The ordinary remedy against the mandatory injunction to pay shall be the opposition. It shall be brought before the President of the competent court who rendered the decision granting the mandatory injunction to pay. The opposition shall be filed by extrajudicial act.

#### **ARTICLE 10**

The opposition shall be filed within fifteen (15) days from the date of service of the mandatory injunction. This time limit shall be extended taking into account the distance of the parties from the seat of the court.

However, where the injunction was not personally served on the debtor, the opposition shall be admissible up to the expiry of fifteen (15) days following first act of personal service or, failing this, following the first enforcement measure which shall have the effect of attaching all or part of the debtor's property.

#### **ARTICLE 11**

The opposing party shall, under pain of forfeiture and in the same act as the opposition:

serve the opposition on all the parties as well as the registry of the court which issued the order;

serve a summons to appear before the competent court on a scheduled date which shall not exceed a period of thirty (30) days from the date of the opposition.

#### **ARTICLE 12**

The court in which the opposition is filed, shall attempt conciliation. Where the conciliation succeeds, the President shall draw up a conciliation report which shall be signed by the parties. One copy thereof shall contain the executory formula.

Where the conciliation fails, the court shall immediately rule on the claim for recovery, even in the absence of the debtor who filed the opposition and the court's decision shall have the effect of a judgment delivered after adversary proceedings.

#### **ARTICLE 13**

The burden of proof of the debt shall lie on whosoever petitions for a mandatory injunction to pay.

#### **ARTICLE 14**

The decision of the court taken upon the opposition shall substitute the mandatory injunction to pay.

## ARTICLE 15

The decision delivered upon the opposition may be appealed against in accordance with the national procedural law of each State Party. However, the time limit for appeal shall be thirty (30) days from the date of the said decision.

### Section IV Effects of the Mandatory Injunction to Pay

## ARTICLE 16

The creditor may request the insertion of the executory formula on the ruling where no opposition is filed within fifteen days from notification of the mandatory injunction to pay or, where the debtor withdraws his opposition. The effect of such insertion shall be that of a decision taken after an adversary hearing and shall not be liable to appeal.

## ARTICLE 17

The application to insert the executory formula shall be made at the registry in a simple written or verbal declaration.

The decision shall be null and void where the creditor's application was not presented within two months following the expiry of the time limit for the opposition or its withdrawal by the debtor.

The certified true copies of the documents produced by the creditor and provisionally preserved at the registry shall be returned on his application from the time of the opposition or when the executory formula is inserted in the decision.

## ARTICLE 18

There shall be kept at the registry of each court a register, numbered and initialed by the President of the court, in which shall be entered the full names, profession and residence of creditors and debtors, the date of the mandatory injunction to pay or of refusal to grant the injunction, the amount and cause of the debt, the date of issuance of the copy, the date of the opposition, where it is filed, the date on which the parties were convened and the ruling made thereon.

## PART II SIMPLIFIED PROCEDURE FOR THE DELIVERY OR RESTITUTION OF SPECIFIC PERSONAL PROPERTY

## ARTICLE 19

Any person who claims the delivery or restitution of any specific, tangible, personal property may apply to the President of the competent court to order such delivery or restitution.

## CHAPTER I APPLICATION

### ARTICLE 20

The application for delivery or restitution shall be filed in the registry of the competent court of the place of residence or place of abode of the debtor of the obligation to deliver or restitute. The parties may derogate from the above rule of competence by providing a jurisdiction clause in the contract.

Lack of territorial jurisdiction shall only be raised by the court or by the debtor during the proceedings initiated by his opposition.

### ARTICLE 21

The application shall, under pain of inadmissibility, mention the following:

- the names, profession and residence of the parties and, in the case of corporate persons, the name, legal form and registered office;
- an exact description of the property which is the subject-matter of the claim for delivery or restitution;

It shall be accompanied by the original or the certified true copy of all documents in support thereof.

### ARTICLE 22

Where the court dismisses the application, its decision shall not be subject to appeal. The only remedy shall be an ordinary civil claim.

## CHAPTER II DECISION ORDERING DELIVERY OR RESTITUTION

### ARTICLE 23

Where the petition is founded, the president of the competent court shall rule at the foot of the application ordering delivery or restitution of the property in dispute.

The originals of the application and the mandatory injunction shall be preserved by the registrar, who shall issue certified true copies thereof to the applicant.

The original documents annexed in support of the application shall be returned to the applicant and certified true copies preserved in the registry.

#### **ARTICLE 24**

Where the application is dismissed, it shall be returned to the applicant together with the documents annexed thereto.

#### **ARTICLE 25**

The decision ordering delivery or restitution, accompanied by the certified true copies of the documents annexed in support of the application, shall be notified by extrajudicial act at the instance of the creditor, on the person required to effect delivery or restitution.

Under pain of nullity, the notification shall contain an order to proceed within fifteen days:

- either to deliver, at the respondent's expense, the designated property to a specific place under given conditions; or
- where the holder of the property has a defense, to file an opposition in the registry of the court that delivered the ruling in by a written or verbal declaration with proof thereof or by registered mail with acknowledgement receipt or by any other means with written proof failing which the decision shall become enforceable.

The decision ordering delivery or restitution shall be null and void where it has not been notified on the party concerned within three months from the date of issue.

### **CHAPTER III EFFECTS OF THE DECISION ORDERING DELIVERY OR RESTITUTION**

VII

#### **ARTICLE 26**

Opposition to the decision ordering delivery or restitution shall be in accordance with the provisions of Article s 9 to 15 of this Uniform Act.

#### **ARTICLE 27**

Where there is no opposition within the period prescribed under Article 16 above, the petitioner may apply to the president of the competent court to stamp the executory formula on the decision.

The conditions of such application shall be those provided for by Article s 17 and 18 of this Uniform Act.

**BOOK II**  
**ENFORCEMENT MEASURES**

**PART I**  
**GENERAL PROVISIONS**

**ARTICLE 28**

In default of voluntary execution, any creditor may, regardless of the nature of his claim and under the conditions provided for in this Uniform Act, compel the defaulting debtor to honour his obligations towards him or take protective measures to secure his rights.

Save in the case of a debt secured by a mortgage or other privilege, execution shall be carried out in the first place on movable property and, where this is insufficient, on immovable property.

**ARTICLE 29**

The State shall lend assistance in the execution of decisions and other writs of execution.

The executory formula shall entail the direct requisition of the forces of law and order.

An action can be brought against the State for failure or refusal to lend assistance.

**ARTICLE 30**

Compulsory execution and protective measures shall not apply to persons who enjoy immunity from execution.

However, any debt which is certain, due and owed by state corporations or firms, regardless of their legal form and mission, shall give rise to a set-off against debts which are also certain, due and owed them, subject to an agreement of reciprocity.

The debts of the state corporations and firms referred to in the preceding paragraph may only be considered certain, within the meaning of this article, where they arise from either an acknowledgement by the said corporations and firms of the debts or from a writ which is enforceable within the territory of the State where the corporations and firms are located.

**ARTICLE 31**

Compulsory execution shall be available only to a creditor who can show proof of a debt certain, due and owing, subject to the provisions relating to attachment and seizure pendente lite.

**ARTICLE 32**

With the exception of the auction sale of immovable property, compulsory execution may be pursued by virtue of a writ of provisional enforcement.

Execution shall then be carried out at the risk of the judgment creditor, who shall, where the writ is subsequently modified, be bound to fully make good any damage caused by the execution,

irrespective of whether he was at fault or not.

### ARTICLE 33

The following shall constitute writs of execution:

- (1) court decisions bearing the executory formula and decisions which are immediately enforceable;
- (2) foreign acts and court decisions as well as arbitral awards which have been granted exequatur in a ruling which is final in the State in which the writs are invoked;
- (3) conciliation reports signed by the judge and the parties;
- (4) notarial deeds bearing the executory formula;
- (5) decisions recognised as court decisions by the national law of each State Party.

### ARTICLE 34

Where a court decision is invoked against a third party, a certificate of non appeal and non opposition shall be produced containing the date of notification of the decision on the losing party. The certificate shall be issued by the registrar of the court that delivered the ruling concerned.

### ARTICLE 35

Unless otherwise provided for in this Uniform Act, any person who relies on a document in the course of measures taken to ensure the enforcement or protection of a debt shall notify such or give a copy thereof, except where it was notified before.

### ARTICLE 36

Where the attachment concerns tangible property, the debtor whose property has been attached or a third party holder of the attached property shall be deemed to be custodian of the objects attached, subject to the sanctions provided for under the criminal law.

Attachment shall render the property attached inalienable.

A debtor whose property has already been attached shall, under pain of a claim for damages, within five days from the date he became aware of the attachment, disclose to any new creditor attaching the same property, the existence of an existing attachment and the identity of the person who carried it out. He shall, in addition, produce the writ of attachment.

The same obligation shall apply to a third party holder of the property of the debtor.

The creditor so informed shall in turn communicate to all other creditors who are parties to the proceedings all documents and information which should be notified by virtue of Article s 74 to 76 of this Uniform Act.

**ARTICLE 37**

Notification of the writ of attachment on the debtor, even in the case of sequestration, shall interrupt the running of the statutory time limit.

**ARTICLE 38**

Third parties may not obstruct proceedings for the enforcement or the protection a claim. They shall lend support to such proceedings where so required by law. Failure by them to fulfill these obligations may make them liable to pay damages. A third party distrainee may also, under the same conditions, be ordered to pay for the judgment debt, subject to his filing an action for recovery against the debtor.

**ARTICLE 39**

A debtor may not compel a creditor to receive part payment of a debt, even where the debt is divisible.

However, taking into account the situation of the debtor and considering the needs of the creditor, the competent court may, save for claims for maintenance allowance and debts arising from an exchange transaction, postpone or order payment by installment of the debt over a period not exceeding one year. The court may also order that the payments shall first be applied to expunge the principal debt.

It may, in addition, order that these measures be subject to the fulfillment by the debtor of acts necessary to facilitate or guarantee payment of the debt.

**ARTICLE 40**

The deposit of sums, negotiable instruments or securities ordered by the court as a guarantee or as a protective measure shall confer a right of preference on the pledgee.

**ARTICLE 41**

Where the legal conditions are met, the bailiff or process-server may enter a place whether used as a residence or not and, where need be, open doors and take possession of movable property.

**ARTICLE 42**

In the absence of the occupant of the premises, or where the occupant denies access to the bailiff or process-server, the latter may place a guard at the doors to prevent any fraudulent disposition of property. He shall request the competent administrative authority or the police or gendarme officers to be present during the operations.

Under the same conditions, he may take possession of movable property.

**ARTICLE 43**

Where the attachment is carried out in the absence of the debtor or of any other person on the premises, the bailiff or process-server shall ensure that the door or opening through which he entered the premises is shut.



#### **ARTICLE 44**

The bailiff or process-server may ask to be assisted by one or two adult witnesses who shall not be related by blood or marriage in direct line to the parties and who are not in their employ. In such case, he shall state in the report their full names, occupation and residence. The witnesses shall sign the original and copies of the report.

#### **ARTICLE 45**

The bailiff or process-server may take pictures of the attached property. The photographs shall be kept by him for purposes of verification of the attached property. They may only be produced where there is a dispute before the competent court.

#### **ARTICLE 46**

No act of execution shall be carried out on a Sunday or a public holiday except in the case of necessity and by virtue of a special authorization of the President of the court in whose jurisdiction the enforcement measure is carried out.

Execution may not commence before 8 a.m. or after 6 p.m., save in case of necessity, with the authorization of the competent court and only in premises not used as a dwelling house.

The distrainor may not, take part in the attachment process except in case of necessity determined by the competent court.

#### **ARTICLE 47**

The costs of execution by distraint shall be borne by the debtor, save where it is obvious that they were not necessary at the time they were incurred.

Save where they concern an act whose performance is provided for by the national law of each State Party or by this Uniform Act, or is authorized by the competent court, costs incurred for recovery without an executory formula shall be borne by the creditor. However, the competent court may, on his application order the transfer of all or part of the costs incurred to the debtor who has acted in bad faith.

#### **ARTICLE 48**

In case of any difficulty in the enforcement of a writ of execution the bailiff or process-server may, of his own motion, refer the matter to the competent court.

The bailiff or process-server shall, at the expense of the debtor, serve a writ of summons on the parties, informing them of the date, time and place of the hearing during which the difficulty shall be examined. He shall inform the parties that a decision may be taken in their absence.

#### **ARTICLE 49**

The competent authority to rule on all disputes or petitions relating to execution by distraint or sequestration shall be the President of the court sitting in the course of urgent proceedings, or the judge delegated by him to that effect.

His decision may be appealed against within fifteen days from the date it was delivered.

The time limit for appeal and the exercise of the right to appeal shall not constitute a bar to enforcement except where by a reasoned ruling, the president of the competent court decides otherwise.

#### **ARTICLE 50**

All property belonging to the debtor may be the subject of attachment, even where the said property is held by a third party, save where it has been declared inalienable by the national law of each State Party.

Attachments may also be carried out on conditional claims, immature debt or debts paid in installments. The terms applicable to each of these obligations shall be binding on the distrainor.

#### **ARTICLE 51**

Assets and rights that may not be subject to distraint shall be determined by each State Party.

#### **ARTICLE 52**

Non-distrainable claims paid into an account shall not be attached.

#### **ARTICLE 53**

Where an account, even a joint account, funded by the earnings and salary of one of the spouses married under the joint property regime, is subject to a distraint or sequestration for the payment or guarantee of a debt incurred by the other spouse, the spouse whose earnings have been funding the account shall forthwith be awarded a sum of his choice equivalent to the earnings and salary paid into the account during the month preceding the attachment or an average of the earnings for the twelve months immediately preceding the attachment .

## **PART II SEQUESTRATION**

### **CHAPTER I GENERAL PROVISIONS**

#### **ARTICLE 54**

Any person whose claim appears to be founded may, apply to the competent court of the residence or place of abode of the debtor for leave to take protective measures on all the tangible or intangible personal property of his debtor, without prior summons to pay, where he can show proof of circumstances likely to jeopardize the recovery of the debt.

**ARTICLE 55**

Prior leave of the competent court shall not be necessary where the creditor holds a writ of execution.

The same shall apply in the case of default in payment, duly established by an accepted bill of exchange, promissory note, cheque or unpaid rents after a summons to pay as soon as they fall due by virtue of a written lease over immovable property.

**ARTICLE 56**

Sequestration may be carried out on all the tangible or intangible personal property of the debtor. It shall render such property inalienable.

**ARTICLE 57**

Where the sequestered property is a monetary claim, such sequestration shall render the sum claimed inalienable up to the sum authorized by the competent court or, where such authorization is unnecessary, up to the sum attached.

Sequestration shall, as of right, render the sums deposited inalienable and shall confer on the distrainor a possessory lien.

**ARTICLE 58**

Where the sequestration is carried out on money in a banking establishment or similar financial establishment, the provisions of Article 161 shall apply.

**ARTICLE 59**

The decision ordering sequestration shall, under pain of nullity, specify the amount guaranteed by the said protective measure and also specify the nature of the property involved.

**ARTICLE 60**

The sequestration order of the competent court shall lapse where it is not executed within a period of three months from the date on which it was made.

**ARTICLE 61**

Save where the sequestration was carried out with a writ of execution, the creditor shall, within one month following the said sequestration and under pain of being declared null and void, institute proceedings or complete the necessary formalities aimed at obtaining a writ of execution.

Where the sequestration is carried out on property in the hands of a third party, copies of the documents in support of the process shall be forwarded to the third party within a period of eight days from the date on which they were issued.

## CHAPTER II DISPUTES

### ARTICLE 62

Even where prior authorization is not required, the competent court may, at any time on the application of the debtor, after hearing the creditor or summoning him to appear, set aside the protective measure where the distrainer fails to show proof that the conditions prescribed by Articles 54, 55, 59, 60 and 61 above have been fulfilled.

### ARTICLE 63

The application to set aside the protective measure shall be brought before the court which ordered the measure. Where such measure was taken without prior leave of court, the application shall be brought before the competent court of the residence or place of abode of the debtor.

Other disputes, especially those relating to the execution of the measure, shall be brought before the competent court of the place where the attached property is situated.

## CHAPTER III SEQUESTRATION OF TANGIBLE MOVABLE PROPERTY

### Section I The Sequestration Process

### ARTICLE 64

After reminding the debtor that he is required to indicate any of his assets which have been subject to a previous attachment and to give the bailiff or process server the corresponding report thereof, the bailiff or process server shall draw up a report of the attachment which shall under pain of nullity, contain ;-

- 1) a reference of the decision of the competent court or the enforceable instrument on the basis of which the attachment was carried out; the originals or the certified true copies of these documents shall be appended to the original of the deed;
- 2) the full names and residence of the distrainer and distrainee or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 3) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not resident therein ; any service or offer may be made at the chosen address;
- 4) a detailed description of the property attached;

- 5) where the debtor is present, his declaration concerning any previous attachment of the same property;
- 6) a statement in bold characters that the attached property is inalienable; that it is in the hands of the debtor or any third party agreed upon by the parties or, failing such agreement, by a court order ruling in urgent application; that it may neither be alienated nor removed save under the circumstances provided for by Article 97 below, under pain of criminal sanctions; and that the distrainee is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 7) a statement in bold characters of the debtor's right, to apply to the competent court of his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled;
- 8) an indication of the competent court before which other disputes shall be brought, especially those relating to the attachment process;
- 9) an indication, where applicable, of the full names and status of the persons who were involved in the attachment process and who shall sign the original and the copies; where a person refuses to sign, it shall be mentioned in the report ;
- 10) a reproduction of the criminal provisions punishing the fraudulent disposition of the attached property, as well as the provisions of Article s 62 and 63 above. The provisions of Article 45 above may equally apply.

#### **ARTICLE 65**

Where the debtor is present during the attachment exercise, the bailiff or process server shall verbally remind him of the contents of Article s 64 (6) and (7) above.

A copy of the report bearing the same signatures as the original report shall immediately be handed to him; such handing over shall be equivalent to proper service.

Where the debtor was not present during the attachment process, a copy of the report shall be given to him allowing him a period of eight (8) days within which to inform the bailiff or process server of any details relating to all previous attachments and to send him the report thereof.

#### **ARTICLE 66**

The provisions of Article s 99 and 103 below shall apply to the sequestration where the attachment is carried out in the hands of the debtor.

#### **ARTICLE 67**

Where sequestration is carried out on property in the hands of a third party, the procedure provided for by Article s 107 to 110 and 112 to 114 inclusive below shall apply.

Where attachment is carried out without prior leave of court as required by Article 55 above, the provisions of Article 105 below shall apply.

The attachment report shall be served on the debtor within eight (8) days. It shall also, under pain of nullity, contain:

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment was carried out;
- 2) a statement in bold characters of the debtor's right, to apply to the competent court at his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled
- 3) a reproduction of Article s 62 and 63 above .

#### **ARTICLE 68**

All incidental issues arising in the course of the attachment process shall, where necessary, be treated in accordance with the provisions of Article s 139 to 146 below.

### **Section II Conversion into a Writ of Attachment and Sale**

#### **ARTICLE 69**

A creditor in possession of a writ of execution in proof of his claim shall serve on the debtor an instrument bearing the conversion of the writ. Such instrument shall under pain of nullity contain;-

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case mere reference to it shall be enough ;
- 4) a separate detailed account of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the interest rate.
- 5) a summons to pay the said sums within a period of eight (8) days, failing which the property attached shall be sold.

The conversion may be endorsed in the instrument bearing notification of the writ of execution.

Where the attachment is carried out on property in the hands of a third party, a copy of the instrument of conversion shall be served on the said third party.

## ARTICLE 70

Upon expiry of a period of eight (8) days from the date of the instrument of conversion the bailiff or process server shall proceed with a verification of the property attached. A report shall be drawn up with regard to any missing or damaged property.

In the report the distrainee shall be informed that he has a period of one (1) month to sell the property attached by private sale, under the conditions provided for in Article s 115 to 119 below.

## ARTICLE 71

Where the property is no longer found at the place of attachment, the bailiff or process server shall enjoin the distrainee to inform him within a period of eight (8) days of the place where it is located and, in the event where it has been subject to attachment and sale, to provide him with the name and address of either the bailiff or process server who undertook the said attachment and sale, or the creditor on whose account it was carried out.

In the absence of a response, the creditor shall petition to the competent court which may order that the said information be provided, failing which, a periodic default fine may ensue, without prejudice to his right to institute criminal proceedings for misappropriation of the attached property.

## ARTICLE 72

Where there is no private sale within the prescribed period, a forced sale shall be proceeded with in accordance with the procedure laid down for attachment and sale.

### Section III Foreign Attachment

## ARTICLE 73

Where the debtor has no fixed abode or where his residence or business establishment is in a foreign country, the competent court to order attachment of the debtor's property and settlement of disputes arising therefrom shall be the court of the creditor's residence.

The distrainor shall be the custodian of the property if, it is in his possession, otherwise a custodian legis shall be appointed.

The applicable procedure shall be the one laid down for sequestration.

## **Section IV Multiple Seizures**

### **ARTICLE 74**

The bailiff or process server who carries out a sequestration on property rendered inalienable by one or more previous sequestrations, shall serve a copy of the attachment report on each of the creditors whose action preceded his.

Where property covered by a writ of protective attachment subsequently become the subject of a writ of attachment and sale, the bailiff or process server shall serve the attachment report on the creditors who carried out the previous sequestrations.

Similarly, the instrument whereby the sequestration is converted into a writ of attachment and sale shall be served on the creditors who prior to the conversion had carried out protective attachment over the same property.

### **ARTICLE 75**

Where the debtor makes proposals for a private sale, the distrainor creditor who accepts the said proposals shall, by registered mail with acknowledgement of receipt or by any other means with written proof, notify the contents of the said proposals to the creditors who had previously carried out protective attachments on the property, before the act of attachment or before the instrument of conversion, as the case may be. Under pain of nullity, the mail or other means used shall reproduce in bold characters the three paragraphs below.

Each creditor shall, within a period of fifteen (15) days of receipt of the information by registered mail or by any other means, take a decision on the proposals of the private sale and inform the distrainor creditor of the nature and amount of his claim.

Where there is no reply within the prescribed delay, the creditor shall be deemed to have agreed to the proposals of sale.

Where, within the same time limit, the creditor does not give any information on the nature and amount of his claim, he shall lose the right to a share in the proceeds from the private sale, unless he asserts his claim on the balance of the proceeds after the distribution, if any.

### **ARTICLE 76**

The distrainor creditor who undertakes the removal of the property with a view to its forced sale shall, by registered mail with acknowledgement of receipt or by any other means with written proof, inform the creditors who carried out a sequestration of the same property before the attachment or conversion as the case may be. Under pain of nullity, registered mail or the other means used to communicate shall state the name and address of the officer of court in charge of the sale and reproduce in bold characters the following paragraphs.

Each creditor shall, within a period of fifteen (15) days of receipt of the registered letter or other means used in informing him of the removal of the property with a view to selling it, inform the



officer of court in charge of the sale of the nature and amount of his claim as at the date of the removal.

Where he fails to reply within the time limit, he shall lose the right to a share in the proceeds from the private sale, unless he asserts his claim on the balance of the proceeds after the distribution, if any.

## CHAPTER IV SEQUESTRATION OF DEBTS

### Section I The Attachment Process

#### ARTICLE 77

The creditor shall carry out the attachment by means of an instrument issued by a bailiff or process server, served on the third parties in accordance with the provisions of Article s 54 and 55 above.

The instrument, shall under pain of nullity, contain;

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 2) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not resident therein ; any service or offer may be made at the chosen address;
- 3) a reference to the decision of the competent court or the enforceable instrument on the basis of which the attachment was carried out;
- 4) a detailed account of the amount of the sums for which the attachment is carried out;
- 5) a prohibition to any third party from disposing the sums claimed up to the amount owed the debtor;
- 6) a reproduction of the provisions of the second paragraph of Article 36 above as well as those of Article 156 below.

#### ARTICLE 78

In the absence of an amicable settlement, any interested party may apply to the court that the sums attached be paid to an escrow agent who shall be appointed by the court of the place of residence or the place of abode of the debtor.

The handing over of the funds to the escrow agent shall stop interest owed by the garnishee from accruing.

## ARTICLE 79

Within a period of eight (8) days, under pain of forfeiture the sequestration shall be notified to the debtor through an Act of a bailiff or a process server.

Under pain of nullity, the Act shall contain;

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment is carried out;
- 2) a copy of the attachment report;
- 3) a statement in bold characters of the debtor's right, to apply to the competent court at his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled;
- 4) an indication of the court before which other disputes shall be brought, especially those relating to the attachment process;
- 5) a reproduction of the provisions of Article s 62 and 63 above.

## ARTICLE 80

A garnishee shall be required to furnish the bailiff or process server with the information provided for in Article 156 below and to hand over copies of documents in support thereof. The information shall be mentioned in the report.

## ARTICLE 81

A garnishee who, without legitimate cause, fails to provide the information required may be liable to pay the sums for which the attachment is made where the said attachment is converted into a writ of attachment and award subject to any action he may bring against the debtor.

He may also be ordered to pay damages in the event of willful negligence or an inaccurate or false declaration.

Where the garnishee's declarations are not contested before the act of conversion, they shall be deemed to be accurate for purposes of the attachment.

## Section II

### Conversion into a Writ of Attachment and Award

## ARTICLE 82

A garnishor in possession of a writ of execution in proof of his claim shall serve on the garnishee a deed bearing the conversion of the writ. Such instrument shall under pain of nullity contain;-

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices;
- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case it shall simply refer to it ;
- 4) a separate detailed account of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the interest rate.
- 5) a request for payment of the sums previously indicated, up to the amount acknowledged by the garnishee or the amount declared owed. The act shall mention the fact that within this time limit the request shall entail the immediate attribution of the sums attached to the garnishor.

#### **ARTICLE 83**

A copy of the deed of conversion shall be served on the debtor.

The debtor may, within fifteen (15) days from the date of the said service, file an opposition to the deed of conversion before the competent court of his place of residence or place of abode.

Where there is no opposition, the garnishee shall make payment to the garnishor or to his authorized agent upon presentation of a certificate of non-opposition from the registry. Payment may be made before the expiry of the said period where the debtor declares in writing that he does not intend to file any opposition.

#### **ARTICLE 84**

The provisions of Article s 158 and 159, 165 to 168, of the second and third paragraphs of Article 170, Article s 171 and 172 below shall apply.

## **CHAPTER V SEQUESTRATION OF SHAREHOLDINGS AND OTHER TRANSFERABLE SECURITIES**

### **Section I Attachment Process**

Article 85  
Sequestration of shares and transferable securities shall be carried out by the service of an instrument on the persons mentioned in Article 236 below. Under pain of nullity, the instrument shall reproduce the provisions of Article 237 below, subject to (3) which provides that reference to the writ of execution may be replaced by the reference to the decision of the competent court that ordered the sequestration.

## ARTICLE 86

Within a period of eight (8) days, under pain of forfeiture, the sequestration shall be notified to the debtor through an instrument which shall, under pain of nullity, contain;

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment is carried out;
- 2) a copy of the attachment report;
- 3) a statement in bold characters of the debtor's right to apply to the competent court of his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled;
- 4) an indication of the court before which other disputes shall be brought, especially those relating to the enforcement of the writ of attachment;
- 5) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not resident therein ; any service or offer may be made at the chosen address;
- 6) a reproduction of the provisions of Article s 62 and 63 above.

## ARTICLE 87

The provisions of Article 239 below shall apply.

# VII

## Section II Conversion into a Writ of Attachment and Sale

## ARTICLE 88

A creditor in possession of a writ of execution in proof of his claim, shall serve on the debtor a writ of attachment and sale which shall, under pain of nullity, contain;-

- 1) the full names and residence of the distrainee and the distrainer, or, in the case of corporate bodies their legal forms, corporate names and registered offices;
- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case it shall simply refer to it ;
- 4) a separate detailed account of all the sums payable in principal, costs and accrued interest, as well as an indication of the interest rate.
- 5) a summons to pay the said sums, failing which the attached property shall be sold.
- 6) an indication in bold characters, that he has a period of one (1) month within which to sell

the attached securities by private sale, under the conditions provided for in Article s 115 to 119 below.

7) a reproduction of Article s 115 to 119 below.

#### **ARTICLE 89**

A copy of the deed of conversion shall be served on the garnishee.

#### **ARTICLE 90**

The sale shall be conducted in accordance with the provisions of Article s 240 to 244 below.

## **PART III ATTACHMENT AND SALE**

#### **ARTICLE 91**

Any creditor in possession of a writ of execution in proof of a debt, certain and due for immediate payment, shall after the service of a summons to pay, proceed with the attachment and sale of any tangible and movable property belonging to his debtor in order to recover the debt from the proceeds of the sale whether or not the said property is in the hands of the debtor.

Any creditor who fulfills the above conditions may join the attachment process by way of an opposition.

### **CHAPTER I PRELIMINARY SUMMONS TO PAY**

#### **ARTICLE 92**

The attachment shall be preceded by a preliminary summons to pay served on the debtor at least eight (8) days before the attachment and shall under pain of nullity contain:-

- 1) a reference of the writ of execution by virtue of which the attachment exercise was carried out, with a separate detailed account of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the interest rate.
- 2) a summons to pay the debt within eight (8) days, failing which it shall be recovered by the forced sale of his movable property.

**ARTICLE 93**

Where the creditor is not resident within the territorial jurisdiction of the court where the proceedings are to be instituted, the summons shall contain his choice of address for service for the purpose of the proceedings. However, notice of any change of address, shall be given to the debtor. Any service or offer may be made at the chosen address.

**ARTICLE 94**

Service of the summons to pay shall be personal or at the residence. The summons may not be served at the chosen address for service. It may be endorsed in the instrument bearing notification of the writ of execution.

**CHAPTER II  
THE ATTACHMENT PROCESS**

**Section I  
General Provisions**

**ARTICLE 95**

Any attachable tangible movable property belonging to the debtor may be the subject of attachment and sale, including property which has been the subject of a prior sequestration, in which case, Articles 88 to 90 above shall apply.

**ARTICLE 96**

Where there is no attachable property or where it is obvious that such property has no market value, the bailiff or process server shall draw up a nulla bona report, except the creditor requires that the execution be continued.

**ARTICLE 97**

The property attached shall be inalienable. Where for legitimate reasons, the property has to be removed, the holder of the property shall be required to give prior notice to the creditor save in the case of extreme urgency.

In any case, he shall inform the creditor of the place where the property shall be located.

**ARTICLE 98**

Upon the expiry of the eight (8) days from the date of service of the unproductive summons to pay, the bailiff or process server may, on the basis of the writ of execution, enter a place whether serving as a dwelling house or not, under the conditions provide for in Article s 41 to 46 above.

## Section II Attachment of Property in the hands of the Debtor

### ARTICLE 99

Before any attachment carried out in the presence of the debtor, the bailiff or process server shall verbally reiterate the formal request for payment and inform the debtor that he is required to declare the property which has been the subjects of a prior attachment.

### ARTICLE 100

The bailiff or process server shall draw up an inventory of the property. The instrument of attachment shall under pain of nullity contain:-

- 1) the full names and residence of the distrainee and the distrainor, or, in the case of corporate persons their legal forms, corporate names and registered offices and any choice of address by the distrainor;
- 2) the reference to the writ of execution authorizing the attachment;
- 3) an indication of the person to whom the writ was handed;
- 4) a detailed description of the property attached;
- 5) where the debtor is present, his declaration concerning any prior attachment of the same property;
- 6) a statement in bold characters that the attached property shall be inalienable, that they are in the custody of the debtor, that under pain of criminal sanctions they may not be transferred or removed save under the circumstances provided for in Article 97 above, and that the distrainee is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 7) an indication in bold characters, that he has a period of one (1) month within which to sell the attached securities by private sale, under the conditions provided for in Article s 115 to 119 below.
- 8) an indication of the court before which any disputes relating to attachment and sale shall be brought ;
- 9) an indication, where applicable, of the full names and status of the persons present during attachment process and who shall sign the original and the copies; where a person refuses to sign, it shall be mentioned in the report ;
- 10) a reproduction of the criminal provisions governing fraudulent disposition of attached assets as well as those of Article s 115 to 119 below;
- 11) a reproduction of Article s 143 to 146 below.

### **ARTICLE 101**

Where the debtor is present during the attachment process, the bailiff or process server shall verbally remind him of the provisions of (6) and (7) of the preceding article . He shall also remind him of the option of a private sale of the attached property, under the conditions provided for by Article s 115 to 119 below.

Mention shall be made of these declarations in the attachment report. A copy of the report bearing same signatures as the original shall immediately be handed to the debtor; such handing over shall serve as notification.

### **ARTICLE 102**

Where the debtor was not present during the attachment process, a copy of the report shall be served on him giving him a period of eight (8) days within which to inform the bailiff or process server of any details relating to all previous attachments and to send to him the report thereof.

### **ARTICLE 103**

The debtor shall continue to use the property rendered inalienable by the attachment save where such property is consumable. In such a case, he shall be required to bear in mind its estimated full value at the time of attachment.

However, the competent court may upon an application at any time and even before the commencement of the attachment and after hearing the parties or having duly summoned the parties, order the return of part of the property to a sequester it may appoint.

Where part of the property attached is a motor-vehicle, the competent court may after having heard or duly summoned the parties, order its immobilization pending removal for sale by any means which shall not lead to the deterioration of the vehicle.

### **ARTICLE 104**

Sums in cash may be attached up to the amount of the claim of the distrainor. They shall be kept in the custody of the bailiff or process server or at a registry of the distrainor's choice.

Mention shall be made thereof in the report of attachment, which shall also indicate, under pain of nullity, that the debtor has a period of fifteen (15) days, from notification of the said report, to contest it before the court of the place of the attachment which shall be named in the report.

Where the attachment is contested and no order made for payment to the creditor or restitution to the debtor, the competent court may order that the amount claimed be deposited in the registry.

Where the attachment is not contested within the prescribed period, the sums shall immediately be paid to the creditor and deducted from the total amount claimed.



### Section III

#### Attachment of Property in the hands of a Third Party

##### ARTICLE 105

Where the attachment concerns property in the hands of a third party and in premises occupied as a dwelling house by the third party, it shall be authorized by the court of the place where the said property is located.

##### ARTICLE 106

Upon presentation of the summons to pay served on the debtor in accordance with the provisions of Articles 92 to 94 above, upon the expiry of the period of eight (8) days of its date, and upon the eventual presentation, where possible, of the order of the court provided for in the preceding Article, the bailiff or process server may attach property in the hands of a third party held on behalf of debtor.

Following the same procedure, the creditor may also attach any property in his hand which belongs to the debtor.

##### ARTICLE 107

The bailiff or process server shall invite the third party to declare the property which he is holding on behalf of the debtor and any part of it which may have been subject to some previous attachment.

In case of refusal to declare or in the event of any inaccurate or false declaration, the third party may be ordered to pay for the subject matter of the attachment subject to any action which he may file against his debtor. He may also be ordered to pay damages.

##### ARTICLE 108

Where the third party declares that he does not have any property belonging to the debtor in his possession or where he refuses to make any declaration, a report to that effect shall be drawn up. The said report shall be handed over to, or served on the third party, with an indication in bold characters of the sanction referred to in the preceding Article.

##### ARTICLE 109

Where the third party declares that property belonging to the debtor is in his custody, an inventory thereof shall be drawn up which shall, under pain of nullity, contain:-

- 1) the reference of the writ by virtue of which the attachment is carried out;
- 2) the date of the attachment, the full names, and residence of the distrainor or, in the case of a corporate body its legal form, corporate name and registered office; a possible choice of residence by the distrainor;

- 3) the full names and residence of the debtor or, in the case of a corporate person, its legal form, corporate name and registered office;
- 4) the full names and residence of the third party;
- 5) the third party's declaration, and in bold characters, an indication that any inaccurate or false declaration shall make him liable for the debt, without prejudice to being held liable for any damages.
- 6) a detailed description of the property attached;
- 7) a statement in bold characters that the attached assets shall be inalienable, that they are placed in the hands of the third party, that they may neither be transferred nor removed, save under the circumstances provided for in Article 97 above, under pain of criminal sanctions; and that the third party is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 8) a statement that the third party may avail himself of the provisions of Article 112 below, which shall be reproduced in the document;
- 9) a statement that the third party may assert his claim over the property attached, by a simple declaration or registered mail with acknowledgement of receipt or by any means with written proof addressed to the bailiff or process-server of the distrainor;
- 10) an indication of the court before which shall be brought any opposition relating to the attachment and sale;
- 11) an indication, where applicable, of the full names and status of the persons who were present during attachment process and who shall sign the original and the copies; in the case of refusal, it shall be mentioned in the report;
- 12) a reproduction of the criminal provisions governing fraudulent disposition of attached assets.

#### **ARTICLE 110**

Where the third party is present during the attachment, the bailiff or process server shall verbally remind him of the provisions of Article 109 (5), (7) and (8) above. Mention shall be made of these declarations in the attachment report and a copy bearing same signatures as the original shall immediately be handed to the debtor; such handing over shall serve as notification.

Where the third party was not present during the attachment, a copy of the report shall be served on him giving him a period of eight (8) days within which to inform the bailiff or process server of any details relating to all previous attachments and to send to him the report thereof.

#### **ARTICLE 111**

A copy of the report shall be served on the debtor not later than eight days after the attachment.

Under pain of nullity, it shall state that the debtor has a period of one month within which to organize a private sale of the attached property in conformity with the conditions provided for by Articles 115 to 119 of the present Act, which shall be reproduced.

#### **ARTICLE 112**

The third party may refuse custody of the attached assets. Where he accepts custody, he may at any time request to be discharged of them. The bailiff or process-server shall then proceed to appoint another person who shall take custody of the assets.

#### **ARTICLE 113**

Subject to the third party's right of usufruct of the property attached, the competent court may, at any time, even before the attachment and after hearing the parties or after they have been duly summoned, order the return of one or more objects to an escrow agent appointed by the court.

Where part of the property attached is a motor-vehicle, the competent court may after having heard the parties or after the parties have been duly summoned, order its immobilization pending removal for sale by any means which shall not lead to the deterioration of the vehicle.

#### **ARTICLE 114**

Where the third party claims a possessory lien over the attached property, he shall inform the bailiff or process-server thereof by registered mail with acknowledgement of receipt or through any means with written proof, except where he had made a declaration at the time of the attachment.

Within a period of one month, the distrainor may oppose such possessory lien before the competent court of the residence or of the place of abode of the third party. The property shall remain inalienable during the proceedings.

Where there is no opposition within the period of one month, the third party's claim shall be deemed to be founded for the purposes of the attachment.

VII

### **CHAPTER III SALE OF ATTACHED PROPERTY**

#### **Section I Private Sale**

#### **ARTICLE 115**

Any debtor whose property is the subject of distraint may voluntarily, under the conditions defined below, sell the attached property and use the proceeds to pay the creditors.

#### **ARTICLE 116**

The debtor shall have a period of one month from the date of service of the attachment report to dispose of the attached property by private sale.

The attached property shall remain inalienable under the responsibility of the custodian. The property shall under no circumstances be removed before the deposit of the proceeds provided for in Article 118 below, except in the case of extreme urgency.

#### **ARTICLE 117**

The debtor shall inform the bailiff or process-server in writing of the offers made to him and shall state the name and address of the contingent purchaser as well as the period within which the latter offered to deposit the proposed price.

The bailiff or process-server shall forward these details to the distrainor and the opposing creditors by registered mail with acknowledgement of receipt or by any means with written proof.

The above parties shall within fifteen days decide either to accept or refuse the private sale, or to propose themselves as purchasers.

Where there is no response, they shall be deemed to have accepted.

A forced sale may only be carried out after the expiry of the one month time limit provided in Article 116 above, extended, where necessary, by the fifteen-day period accorded the creditors to respond to the offer.

#### **ARTICLE 118**

The proceeds of sale shall be deposited with the bailiff or process-server or at the registry, named by the distrainor.

The transfer of the ownership and delivery of the property shall be subject to the deposit of the purchase price.

Failing such deposit within the period agreed upon, the forced sale shall be carried out.

#### **ARTICLE 119**

Except where refusal to authorize the sale is intended to harm the debtor, the liability of the creditor may not be invoked.

## **Section II**

### **Forced Sale**

#### **ARTICLE 120**

The sale shall be carried out by public auction by an auxiliary officer of justice empowered to do so by the national law of each State Party. It shall either be carried out in the place of the attached property, or in a hall or in a marketplace whose geographical location is most appropriate to attract competitive bidding at minimal cost.

Where there is a disagreement between the creditor and the debtor over the place where the sale shall take place, the competent court, ruling in urgent matters, shall adjudicate over the dispute within five days of the complaint being filed by the most diligent party.

#### **ARTICLE 121**

Publication of the sale shall be done by affixing posters which shall indicate the place, date and time of sale and the nature of the attached property.

The posters shall be affixed at the town hall of the place of residence or place of abode of the debtor, or at the neighbouring market and at any other appropriate place, as well as at the place of the sale, where such sale is to be conducted in a different place.

The sale may also be publicized either through print media or broadcast media.

Publication shall be carried out upon the expiry of the period prescribed in the last paragraph of Article 117 above and at least fifteen days before the date fixed for the sale.

#### **ARTICLE 122**

The bailiff or process-server shall certify that the publication formalities have been complied with.

#### **ARTICLE 123**

The debtor shall be informed by the bailiff or process-server of the place, date and time of the sale not less than ten days before the date by registered mail with acknowledgment of receipt or by any other means with written proof. Mention shall be made thereof in the certificate as provided for in Article 122 above.

#### **ARTICLE 124**

Before the sale, the state and nature of the property attached shall be verified by the officer in charge of the sale. A report thereof shall be drawn up. Only missing and damaged property shall be mentioned in the report.

**ARTICLE 125**

The auction shall be adjudicated to the highest bidder after three (3) calls. The purchase price shall be payable in cash, failing which the property shall be resold following the irresponsible bid.

**ARTICLE 126**

The sale shall be stopped once the price of the property sold is sufficient to cover amount of the claim for which the property was attached and that of the opposing creditors in terms of the principal, interest and costs.

**ARTICLE 127**

A report of the sale shall be drawn up. It shall contain a description of the property sold, the amount of the sale and the full names of the successful bidder.

**ARTICLE 128**

The auctioneer or any other auxiliary of justice charged with the sale may not receive any amount below the purchase price under pain of the applicable criminal sanctions.

**CHAPTER IV  
INCIDENTAL CLAIMS RELATING TO ATTACHMENT**

**ARTICLE 129**

Any disputes arising from an attachment and sale shall be brought before the court of the place of the attachment.

**Section I  
Opposition by Creditors**

**ARTICLE 130**

Any creditor who fulfills the conditions provided for by Article 91 of the this Uniform Act may join in an attachment which has already been executed against the property of the debtor by means of an opposition, by proceeding where necessary with a further attachment. No opposition may be admissible after the property has been verified.

**ARTICLE 131**

The act of opposition shall, under pain of nullity, contain an indication of the writ of execution by virtue of which the opposition was made, a separate detailed account of the sums claimed in principal, costs and interest accrued, as well as an indication of the interest rate.

The act of opposition shall be served on the first distrainor creditor, unless the opposition is initiated by him, in order to make a new claim or extend the basis of the previous attachment. It shall also be served on the debtor.

The first distrainor creditor shall proceed with the sale alone.

#### **ARTICLE 132**

Any opposing creditor may extent the initial attachment to other property. A report of an additional attachment shall be drawn up in accordance with the conditions set forth in Article s 100 to 102 above.

The report shall be served on the first distrainor creditor as well as on the debtor.

The right to proceed with a further sale may also be exercised by the first distrainor creditor.

#### **ARTICLE 133**

Where during the attachment, the debtor provides the creditor with a report of a previous attachment, the creditor may file an opposition in accordance with the provisions of Article 131 above. He may also carry out a further attachment forthwith in accordance with the provisions of Article s 100 to 102 above.

A report of the further attachment shall be served on the first distrainor creditor alongside the act of opposition; both shall also be served on the debtor.

#### **ARTICLE 134**

Where the initial attachment is extended, the forced sale of the property attached shall only be carried out upon the expiry of the deadlines provided for the private sale of the said property.

However, a forced sale may be carried out immediately on property for which the period prescribed for private sale has expired, either with the consent of the debtor or by order of the competent court, where the publication formalities were already complied with at the time of the opposition.

#### **ARTICLE 135**

Where the first distrainor creditor fails to proceed with the formalities of the forced sale upon expiry of the prescribed deadlines, any opposing creditor shall request the first distrainor creditor to do so within a period of eight (8) days failing which he shall automatically be subrogated in the place of the first distrainor creditor.

The first distrainor creditor shall be discharged of his obligations. He shall be obliged to make available all relevant documents to the subrogee creditor.

**ARTICLE 136**

The discharge of the attachment may be by a decision of the competent court or with the consent of the distrainor creditor and the opposing creditors.

**ARTICLE 137**

Where the nullity of the first attachment results from a mere irregularity in the attachment process, such nullity shall not lead to the forfeiture of the oppositions. It shall have no bearing on further attachments and neither shall additional attachments be affected by it. Nullity of the first attachment shall not entail nullity of the opposition save where such nullity results from an irregularity in the execution of the writ of attachment.

The nullity shall not affect any further attachment.

**ARTICLE 138**

Only distrainor or opposing creditors who had made known their claim before the verification of the attached property provided for in article s 124 above and those who had taken out protective measures over the same property prior to the attachment, shall be allowed to enforce their rights on the proceeds of sale.

**Section II**

**Disputes relating to Attached Property**

VII

**ARTICLE 139**

No application relating to ownership or inalienability shall obstruct the attachment process; it may suspend the process in relation to the property in dispute.

Sub-section 1

Disputes relating to Ownership

**ARTICLE 140**

The debtor may apply for the annulment of an attachment order over property which does not belong to him.

**ARTICLE 141**

Any third party claiming ownership over any attached property may apply to the competent court for an order of diversion thereof.

Under pain of inadmissibility the application shall specify the elements on which the proprietary right is founded. It shall be served on the distrainor creditor, the distrainee and where necessary, on the holder of the property. The distrainor creditor shall join the opposing creditors in the action by registered mail with acknowledgement of receipt or by any other means with written proof.



The distrainee debtor shall be heard or summoned to attend the hearing.

#### **ARTICLE 142**

The application for diversion shall no longer be admissible after the sale of the attached property. The only recourse shall be an action for the recovery of the property.

However, a third party recognised as owner of property already sold may, up to the time of distribution of the proceeds of sale, divert the price of the property from which costs has not been deducted.

#### Sub-section 2

#### Disputes relating to Distrainability

#### **ARTICLE 143**

Disputes relating to the distrainability of the property included in the attachment shall be referred to the competent court by the debtor, the bailiff or the process server in the same manner as cases of difficulties relating to enforcement measures.

Where the debtor is opposed to the distraint of any property, he shall file such opposition within one month of being served with the notice of attachment.

The creditor shall be heard or summoned to attend the hearing.

### **Section III**

#### **Disputes relating to the Validity of the Attachment**

#### **ARTICLE 144**

The annulment of an attachment arising from a defect in form or substance, other than the claim that the attached property cannot be distrained, may be applied for by the debtor up to the time of sale of the attached property.

The distrainor creditor shall join the opposing creditors in the action.

Where the attachment is declared a nullity prior to the sale, the debtor may apply for the restitution of the attached property where it is in the possession of a third party without prejudice to any action for damages in accordance with the provisions of the common law.

Where the attachment is declared a nullity after the sale, but prior to the distribution of the proceeds, the debtor may apply for the restitution of the proceeds of sale.

#### **ARTICLE 145**

The court which annuls the attachment may order the debtor to bear all or part of the costs incurred, where the debtor had failed to apply for the nullity of the attachment in good time.

**ARTICLE 146**

The application for annulment shall not suspend the attachment Process, except otherwise ordered by the court.

**CHAPTER V  
SPECIAL PROVISIONS RELATING TO ATTACHMENT OF UNHARVESTED  
CROP**

**ARTICLE 147**

Crops and fruits which are almost mature may be attached before harvest. Only the creditor of the person entitled to the fruits may exercise this right of attachment. Under pain of nullity, this right may not be exercised more than six weeks prior to the habitual period of maturity.

**ARTICLE 148**

Under pain of nullity, the attachment report shall be drawn in conformity with the provisions of Article 100 above, with the exception of (4) of this Article, which shall be replaced by the description of the land upon which the crops are found, the quantity, state and an indication of the nature of the fruits.

The report shall be signed by the mayor or head of the administrative unit where the property is situated and a copy thereof left with him.

**ARTICLE 149**

The debtor shall be made the custodian of the attached crops. However, the competent court may, at the instance of the distrainor creditor name a manager of the farm. The debtor shall be heard or summoned to attend the hearing.

**ARTICLE 150**

The sale shall be publicized by affixing posters at the town hall or at the place where public Acts are affixed and at the market situated nearest to the place where the crops are found.

The posters shall mention the date, time and place of the sale and shall indicate the place where the crops are found, as well as the quantity and the nature of the crops.

The affixing of posters shall be certified as in matters of attachment and sale.

**ARTICLE 151**

The sale shall be carried out, in accordance with the provisions of Articles 120 and following and at the place where the crops are located or in the nearest market.

**ARTICLE 152**

However, the formalities prescribed for the attachment and sale process shall be observed.

**PART IV  
GARNISHEE PROCEEDINGS**

**ARTICLE 153**

Any creditor in possession of a writ of execution in proof of a debt certain and due immediate payment may in order to secure payment, attach any sum of money owed the debtor by a third party subject to the special provisions relating to the attachment of earnings.

**ARTICLE 154**

The effect of such attachment shall be to immediately award to the distrainor creditor, depending on the amount owed by the third party, the amount of the claim in principal, interest and costs only.

The sums attached shall be made inalienable by the act of attachment.

The act of attachment shall render the third party personally liable for the claim up to the amount of his obligation to the debtor.

**ARTICLE 155**

Where several acts of attachment are served on the same third party and on the same day, they shall be deemed to have been served simultaneously. Where the sums available are not sufficient to satisfy all the distrainor creditors, the claims shall rank equally.

Subsequent notification of other attachments or any other measure of deduction at source, even those emanating from preferential creditors shall not affect the award, without prejudice to the provisions organizing collective proceedings.

Where an attachment of sums is annulled, subsequent attachments and deductions shall take effect from their due dates.

**ARTICLE 156**

The garnishee shall be required to declare the extent of his obligations to the debtor to the garnishor. He shall also disclose any terms likely to affect his obligations, and where necessary any previous transfer of claims, assignment of debts or any prior attachments.

He shall hand over any documents in proof thereof.

The above declaration and the handing over of the documents shall be done on the spot to the bailiff or process server or within five days of service of the act of attachment where same was not served personally on the party. The act of attachment shall make mention of any declaration made and any documents handed over on the spot. Any inexact, incomplete or late declaration

shall engage the liability of the third party debtor to pay the claim, without prejudice of an order to pay damages.

## **CHAPTER I THE WRIT OF ATTACHMENT**

### **ARTICLE 157**

The garnishor shall commence attachment through a writ served on the garnishee by the bailiff or process server.

The act shall, under pain of nullity, contain;

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment is carried out;
- 2) a copy of the attachment report.
- 3) a statement in bold characters of the debtor's right, to apply to the competent court at his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled
- 4) an indication that the garnishee is personally liable to the garnishor and that he is precluded from using the sums attached within the limit of the amount he owes the debtor.
- 5) a reproduction of the provisions of Article s 38, and 156 above and 169 to 172 below above.

The Writ shall mention the time of service.

### **ARTICLE 158**

The attachment of claims in the hands of a person resident abroad shall be served on his person or at his residence.

### **ARTICLE 159**

Where the property to be attached is in the hands of receivers, depositories or trustees of public funds, acting in that capacity, the writ shall be a nullity where it is not served on the person empowered to receive it or on any person named by him, and where the original is not endorsed by such person, or in the case of refusal, by the Legal Department which shall immediately notify the head of the service concerned.

### **ARTICLE 160**

Under pain of nullity, the attachment shall be disclosed to the debtor through an Act of bailiff or process server within a period of eight days.

The act of notification shall, under pain of nullity, contain:

- 1) a copy of the writ of attachment;
- 2) an indication in bold characters that under pain of inadmissibility any opposition shall be raised within a period of one (1) month from the date of notification. The act shall also state the date of expiry of the period aforementioned; it shall state the competent court before which disputes may be brought.

Where the act of notification is served on the debtor in person, the bailiff or process server shall verbally reiterate the above indications. Mention of these verbal declarations shall feature in the act of notification.

The act shall remind the debtor that he may authorize the creditor in writing, to cause the third party to pay forthwith the entire or part of the claim.

#### **ARTICLE 161**

Where the attachment is carried out is on money kept in bank or similar financial institution, the bank or institution shall declare the nature of the account(s) of the debtor and the balance(s) in the account(s) on the date of the attachment.

Within a period of fifteen (15) working days of the attachment and during which the sums in the account shall be frozen, the declared balance may, where it is established that the date of same transaction was before the date of attachment, be transferred either to the credit or debit of the distrainor creditor by the following operations:

**a) credit entry:**

- deposits previously made in order to cash cheques or negotiable instruments not yet in the account.

**b) debit entry:**

- charges on cheques deposited to be cashed or credited to the account before the attachment, which returned unpaid;

withdrawals from the cash dispenser made before the attachment and payments by card, where the beneficiaries were effectively paid off before the attachment.

Notwithstanding the provisions of the second paragraph, negotiable instruments returned to discount and not paid upon presentation or on their due date, where such date is subsequent to the attachment, may be endorsed within a period of one (1) month following the attachment.

The attached sums shall only be affected by these contingent debit and credit transactions where their aggregate result of these transactions is negative and higher than the sums not affected by the attachment on the day of their settlement.

Where the inalienable sums diminish, the bank or financial institution shall, by registered letter with acknowledgement of receipt or by any means with written proof, furnish the garnishor with a statement of all the transactions which affected the accounts from the date of the attachment inclusive, within eight (8) days of the expiry of the period of cross entry.

**ARTICLE 162**

Where the debtor has multiple accounts, payment shall primarily be made from the funds visibly available, except where the debtor prescribes payment in a different manner.

**ARTICLE 163**

Where the attachment is carried out on a joint account, it shall be disclose to each account holder

Where the names and addresses of the other account holders are unknown to the bailiff or process server, the latter shall request the bank or institution holding the account to inform them immediately of the attachment and of the sums claimed.

**CHAPTER II  
PAYMENT BY THE GARNISHEE**

**ARTICLE 164**

The garnishee shall make payment to the garnishor on presentation of a certificate from the registry to prove that no opposition was filed within one month following disclosure of the attachment, or on presentation of the enforceable decision of the court dismissing the opposition.

Payment may equally be made before the expiry of the time limit for opposition, where the debtor declares in writing that he is not opposed to the attachment.

**ARTICLE 165**

Payment shall be made against a receipt to the garnishor or his specially authorised agent, who shall immediately inform the creditor thereof.

Such payment shall extinguish the obligation of the debtor and of the garnishee up to the amount of the sums paid.

**ARTICLE 166**

Where an opposition is filed, any party may apply to the competent court to name an escrow account into which the garnishee shall pay the sums attached.

**ARTICLE 167**

Where the attachment concerns a claim that is to be paid by installments, the obligation of the third party debtor shall be extinguished as and when the installments are paid in accordance with the provisions of paragraph (1) of Article 165 above.

The third party debtor shall be informed by the creditor by registered letter with acknowledgement of receipt or by any other means with written proof, of the fact that the debt has been extinguished even where the sums were paid into an escrow account as provided for in Article 166 above.

The attachment shall no longer be effective upon cessation of the obligation of the garnishee towards the debtor. The garnishee shall inform the garnishor thereof by registered mail with acknowledgement of receipt or by any other means with written proof.

#### **ARTICLE 168**

In the case of refusal by the garnishee to pay the sums which he admits or has been adjudged owed the debtor the dispute shall be brought before the competent court which may issue a writ of execution against the garnishee.

### **CHAPTER III DISPUTES**

#### **ARTICLE 169**

Disputes shall be brought before the court of the place of residence or the place of abode of the debtor. Where the debtor's residence is unknown, the disputes shall be brought before the court of the place of residence or the place of abode of the garnishee.

#### **ARTICLE 170**

Under pain of inadmissibility, the dispute shall be brought before the competent court by a writ of summons within a period of one month from the date of disclosure of the attachment to the debtor.

The garnishee shall be duly summoned.

The garnishee who fails to file an opposition within the prescribed period may institute a substantive action for the recovery of any payment made in error, in conformity with the procedure applicable to the institution of civil claims.

#### **ARTICLE 171**

The competent court shall endorse the attachment in relation to the uncontested amount of the debt. Its decisions shall be enforceable forthwith before registration.

Where it appears that neither the amount of the garnishor's claim nor the debt owed by the garnishee has been seriously challenged, the competent court may provisionally order the payment of an amount which it shall determine, and where necessary, order that guarantees be furnished by the garnishor.

#### **ARTICLE 172**

The decision taken by the court which heard the matter shall be subject to appeal within fifteen (15) days of notification.

The time limit for appeal and the notice of appeal shall suspend enforcement except the competent court decides otherwise in a reasoned ruling.

## **PART V ATTACHMENT AND ASSIGNMENT OF EARNINGS**

### **ARTICLE 173**

Any creditor in possession of a writ of execution in proof of a debt which is certain, and due for immediate payment may attach the earnings due his debtor by an employer.

### **ARTICLE 174**

The attachment of sums, regardless of the amount due as remuneration to any salaried person or worker, in any capacity, in any place whatsoever, for one or more employers, may only be carried out after an attempt at conciliation before the competent court of the place of residence of the debtor.

### **ARTICLE 175**

Earnings shall not be subject to sequestration.

### **ARTICLE 176**

There shall be kept at the registry of each court a register which shall be numbered and initialed by the President of the court, in which shall be recorded all writs irrespective of the nature, decisions and formalities arising from assignments and attachment of earnings.

### **ARTICLE 177**

Earnings may only be assigned or attached in the proportion determined by each State Party.

The basis for the calculation of the attachable portion of wages or salaries shall be the gross salary or wages including extra earnings, after deducting of;

- taxes and compulsory legal deductions retained at source;
  
- allowances representing expenses;
  
- allowances, increases and supplements for family responsibilities;
  
- allowances which by the laws and regulations of each State Party shall not be subject of attachment.

The aggregate of sums attached or voluntarily assigned shall not, under any circumstances even for claims of maintenance allowance, exceed the threshold fixed by each State Party.



## **ARTICLE 178**

Where a debtor receives from several sources sums attachable or assignable under the conditions provided for by the present chapter, the attachable portion shall be calculated on the entire amount.

Any deductions shall be made in accordance with the terms and conditions determined by the competent court

## **CHAPTER I GARNISHMENT OF EARNINGS**

### **Section I The Conciliation Attempt**

## **ARTICLE 179**

Applications for prior conciliation shall be by petition addressed to the competent court by the creditor.

The application shall contain:

- 1) the full names and address of the debtor;
- 2) the full names and residence of his employer or, in the case of a corporate person, its legal form, corporate name and registered office;
- 3) a separate account of the sums claimed in principal, costs and accrued interest and an indication of the interest rate;
- 4) the existence of any preferential right;
- 5) indications relating to the method of payment of the sums attached.

A copy of the writ of execution shall be attached to the petition.

## **ARTICLE 180**

Notice of the place, date and time of the conciliation attempt shall be given to the creditor by registered mail with acknowledgement of receipt or by any other means with written proof.

## **ARTICLE 181**

The registrar shall, not later than fifteen (15) days before the hearing, summon the debtor by registered mail with acknowledgement of receipt or by any other means with written proof.

The summons shall contain:

- 1) the full names and residence of the creditor or, in the case of a corporate body, its legal form, corporate name and registered office;
- 2) the subject matter of the application and a statement of the sums claimed;
- 3) an indication to the debtor that he may, at the hearing, raise any objections and informing him that a late objection shall not stay the attachment proceedings.
- 4) also indicate the conditions for his representation at the hearing.

In the absence of an acknowledgement of receipt and in the absence of the debtor, the competent court shall, where it does not deem it necessary to issue a fresh summons, deliver a decision wherein it shall proceed with the verifications provided for in Article 182 below. The said decision shall not be subject to any opposition and may only be attacked by way of appeal.

#### **ARTICLE 182**

The president of the competent court, assisted by the registrar, shall draw up the report of the appearance of the parties, it shall state whether or not conciliation took place, or mention the fact that only one party appeared.

In case of conciliation, he shall state in the report the terms of settlement which shall bring an end to the proceedings.

Where there is no conciliation, attachment shall be carried out after verification by the president of the amount of the debt in principal, interest and costs and, where possible, rule on any objections raised by the debtor.

### **Section II Attachment Process**

#### **ARTICLE 183**

Within eight days from the failure of conciliation or in the case where a ruling was delivered, within eight days following the expiry of the time limit for opposition, the registrar shall give notice of the writ of attachment to the employer by registered mail with acknowledgement of receipt or by any other means with written proof.

#### **ARTICLE 184**

The writ of attachment shall contain:

- (1) the full names and residences of the debtor and the creditor or, in the case of corporate persons, their legal forms, names and registered offices;
- (2) a separate account of the sums attached in principal, costs and accrued interest, as well as an indication of the interest rate;

- (3) the method of calculation of the attachable fraction and the method of payment thereof;
- (4) an injunction to declare at the registry within fifteen days, the nature of the relationship existing between the employer and the distrainee debtor, any assignments or attachments currently being carried out as well as any information authorizing deductions where the attachment concerns salary paid from public funds;
- (5) a reproduction of Article s 185 to 189 below.

#### **ARTICLE 185**

Any employer who, without just cause, either fails to make the declaration provided for by Article 184 (4) above or makes a false declaration, may be declared by the competent court to be the debtor of the deductions to be made and ordered to pay the costs incurred because of him, without prejudice to an order to pay damages.

#### **ARTICLE 186**

The employer shall be required to inform the registry and the distrainor within eight days of any changes in his relationship with the distrainee which may likely influence the proceedings in progress.

### **Section III Effects of the Attachment**

#### **ARTICLE 187**

Upon notification of the writ of attachment the attached fraction of the salary shall become inalienable.

#### **ARTICLE 188**

The employer shall send every month to the registry or the institution named for that purpose by each State Party the sums withheld from the earnings of the distrainee, without exceeding the attachable portion.

His obligations shall be extinguished upon the issue of a receipt from the registrar or by the acknowledgement of receipt of the money order issued by the postal department.

The garnishee shall attach to each payment a note showing the names of the parties, the amount paid, the date and references of the writ of attachment served on him.

#### **ARTICLE 189**

Where the employer fails to make the payments, the competent court shall in its ruling adjudge him personally liable. The ruling shall be served on him by the registrar or the creditor by registered mail with acknowledgement of receipt or by any other means with written proof,

within three days from the date of the ruling. Notice thereof shall be given to the debtor and, where necessary, to the creditor.

The garnishee shall have a period not exceeding fifteen (15) days from notification of the decision to declare his opposition at the registry.

Any ruling which remains unopposed within a period of fifteen days shall become final. It shall be enforced at the request of the most diligent party on the basis of a copy with an executory formula issued by the registrar.

## **Section IV Multiple Attachments.**

### **ARTICLE 190**

Any creditor in possession of a writ of attachment may, without a prior attempt at conciliation, intervene in the proceedings relating to the attachment of earnings in order to partake in the sharing of the sums attached.

Such intervention shall be by an application submitted or addressed to the competent court against an acknowledgment of receipt.

The application shall contain the declarations provided for in Article 179 above.

### **ARTICLE 191**

The intervening creditor shall notify such intervention by registered mail with acknowledgement of receipt or by any other means with written proof to the debtor and to other creditors already in the proceedings.

### **ARTICLE 192**

Objection may be raised against the intervention by a declaration at the registry of the competent court at any stage of the attachment proceedings. In such a case, the objection shall be joint to the pending proceedings.

Where the attachment has already been carried out, the debtor may institute an action for the restitution of the sums paid in error to the intervening party.

### **ARTICLE 193**

A creditor who is a party to the proceedings may, by intervention, claim accrued interest, the costs and liquidated or verified expenses incurred since the attachment.

**Section V**  
**Payment and Distribution of Attached Funds.**

**ARTICLE 194**

Any movement of funds shall be mentioned in the register prescribed in Article 176 above.

**ARTICLE 195**

Where there is only one distrainor creditor, the registrar shall pay to such creditor or his duly authorized agent the amount deducted as soon as he receives it from the employer.

The creditor or his authorized agent shall sign in the register provided for in Article 176 above.

**ARTICLE 196**

In the case of multiple attachments, the creditors shall rank equally subject to any legitimate preferential consideration.

**ARTICLE 197**

Where there are several distrainor creditors, any payments made by a garnishee shall be deposited in an account opened by the registrar in a banking or postal institution or in the public treasury.

Withdrawals of funds for distribution from such account shall be made by the registrar upon the authorization of the president of the competent court.

**ARTICLE 198**

The president of the competent court shall proceed to distribute the sums cashed quarterly during the first week of the months of February, May, August and November. He shall draw up a report showing the amount of costs to be deducted, the amount of preferential debts, and the amount of the sums allocated to the other creditors, if any.

The registrar shall give notice of the statement showing the distribution to each creditor and shall pay each his due.

The sums so paid to the creditors shall be discharged in the register provided for in Article 176 above.

**ARTICLE 199**

Where there is an objection against an intervention, the sums payable to the intervening creditor shall be held in an escrow account. They shall be paid to him where the objection is dismissed. Failing this, the said sums shall be distributed to the creditors or restituted to the debtor, as the case may be.

**ARTICLE 200**

Any objection to the statement of distribution may be made within a period of fifteen days from its notification through an opposition filed at the registry.

**ARTICLE 201**

The end of the attachment may result either from an agreement of the creditor(s) or from a finding of the President of the competent court that the debt has been extinguished.

It shall be notified to the employer within eight days.

**Section VI  
Miscellaneous Provisions**

**ARTICLE 202**

Except where he has a representative, the distrainor creditor who transfers his residence or his place of abode shall inform the registry thereof.

**ARTICLE 203**

Where, without change of employer, the debtor moves his residence or place of abode outside the jurisdiction of the court before which the proceedings are pending, the proceedings shall continue before the same court. Where any further attachments are instituted against the debtor the file shall be transmitted to the same court. The registry shall inform the creditors.

**ARTICLE 204**

Where there is a change of employer, the attachment may be pursued on property in the hands of the new employer, without any prior conciliation, on condition that the application is made within one year of the notice given by the former employer in accordance with the provisions of Article 186 above. Failing this, the attachment shall come to an end.

Where, in addition, the debtor has moved his residence or place of abode to the jurisdiction of a court other than the one to which the matter was referred, the creditor shall also be dispensed from a prior conciliation, on condition that the application be made at the registry of that court within the time limit provided for in the preceding paragraph.

**CHAPTER II  
ASSIGNMENT OF EARNINGS**

**Article 205**

Consent may be given to the assignment of wages and salaries, regardless of the amount, by a declaration of the assignor in person at the registry of the court of his place of residence or of his place of abode.

The declaration shall indicate the amount and origin of the debt for which payment is allowed, as well as the amount to be deducted from each payment of the earnings.

#### **ARTICLE 206**

Following verification by the competent court that the assignment is within the limits of the attachable quota, and mindful of any deductions already made on the assignor's salary, the registrar shall make mention of the declaration in the register provided for in Article 176 above and notify same on the employer stating therein:

- the monthly amount of the assignor's salary:
- the amount of the attachable quota as well as the amount to be deducted on the monthly salary in respect of the assignment allowed.

The declaration shall be handed over or notified to the assignee.

#### **ARTICLE 207**

The employer shall pay directly to the assignee the amount deducted on presentation of a copy of the declaration of assignment. Where the employer refuses to do so, he may be compelled to pay the duly assigned sums under the conditions provided for in Article 189 above.

#### **ARTICLE 208**

In the event of an attachment being carried out, the assignee shall, as of right, be deemed to be the distrainor for the remaining sums owed him and shall rank equally with the other distrainor creditors.

#### **ARTICLE 209**

In any case of an attachment being carried out, the registrar shall give notice of the writ of execution to the assignee, inform him that he shall rank equally with the distrainor in the sharing of sums attached and request him to produce a statement of the remaining sums owed to him.

The registrar shall equally inform the employer that subsequent payments shall be made at the registry.

#### **ARTICLE 210**

Where the attachment comes to an end before the assignment, the assignee shall regain his rights under the assignment deed.

The registrar shall notify the employer and inform him that the sums assigned shall de novo be paid directly to the assignee. He shall equally inform the assignee.

#### **ARTICLE 211**

Where there are strong presumptions that the assignment was made to defraud the distrainor, he may, in an urgent motion for annulment of such assignment, obtain an order from the court, that

the deductions be deposited with the registrar until a final decision on the merits of the case is pronounced by the court.

#### **ARTICLE 212**

The registrar shall, automatically or on the application of the most diligent party, proceed to cancel the entry in the register provided for by Article 176 above and immediately notify the debtor concerned and the employer by registered mail with acknowledgement of receipt or by any other means with written proof where;

- annulment of the assignment is by court order;
- by a declaration from the assignee written in a form provided for in Article 205 above, the cancellation of the assignment is agreed to by the parties;
- payment of the last installment intended to complete the execution of the assignment has been made.

### **CHAPTER III SIMPLIFIED PROCEDURE FOR CLAIMS OVER MAINTENANCE ALLOWANCE**

#### **ARTICLE 213**

For the last accrued arrears and sums still to mature, persons claiming maintenance allowance who are in possession of a writ of execution may, carry out a simple attachment of the attachable fraction of wages, remuneration, salaries and pensions paid to the debtor from public or special funds.

Their claim shall be preferred to all others, regardless of any preferential rights attached to the other claims.

#### **ARTICLE 214**

Notice of the application shall be given to the third party by registered mail with acknowledgement of receipt or by any other means with written proof addressed by the bailiff or process server who shall notify the debtor by simple letter.

The third party shall, within eight days, acknowledge receipt of such application and state whether or not he is in a position to act on it. He shall equally inform the debtor of the cessation or the suspension of remuneration.

#### **ARTICLE 215**

The third shall pay directly to the distrainor against a receipt, the amount claimed for maintenance allowance.



## **ARTICLE 216**

Any objection relating to these proceedings shall not stay execution.

They shall be made by written or verbal declaration at the registry of the court of the residence of the debtor paying the pension.

## **ARTICLE 217**

Where a new decision changes the amount awarded as maintenance allowance, or cancels or modifies the method of execution of the obligation, the application for direct payment shall, as of right, be modified in consequence with effect from the notification of the modifying decision to third parties in accordance with the provisions of Article 214 above.

# **PART VI SEIZURE-APPREHENSION AND ATTACHMENT UNDER A PRIOR CLAIM OF TANGIBLE MOVABLE PROPERTY**

## **Article 218**

Tangible movable property liable to be delivered or returned may only be attached by virtue of a writ of execution and, where necessary, by a final order of the competent court.

The same property may also be rendered inalienable pending any apprehension by means of an attachment under a prior claim

**VII**

## **CHAPTER I SEIZURE – APPREHENSION**

### **Section I**

#### **Apprehension of Property in the hands of the Person required**

to Deliver by virtue of a Writ of Execution.

## **ARTICLE 219**

A summons to deliver or restitute shall be served on the person required to deliver.

The summons shall under pain of nullity contain;

- (1)** a mention of the writ of execution authorizing the delivery as well as the full names and addresses of the beneficiary and debtor of the object to be delivered and, in the case of a corporate person, its legal form, name and registered office;

- (2) an indication that the person required to deliver may, within a period of eight days, transport at his expense, the named object to a place and under the stated conditions;
- (3) a warning that failure to deliver within the said period, the property may be apprehended at his expense;
- (4) an indication that disputes may be brought before the court of the place of residence or the place of abode of the recipient.
- (5) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; any service or offer may be made at the chosen address;-

#### **ARTICLE 220**

The property may also be apprehended immediately without a prior summons and on mere presentation of the writ of execution, where the person delivering same is present and where, in answer to the question to be asked by the bailiff or process server, he does not offer to bear the transport expenses

In such case, the deed provided for in Article 219 above shall contain a statement that disputes may be brought before the court of the place of residence or place of abode of the person from whom the property is withdrawn.

#### **ARTICLE 221**

An deed of voluntary delivery or apprehension of the asset shall be drawn up.

The deed shall contain a detailed description of the property. The property may, where necessary be photographed and the photograph shall be annexed to the deed.

#### **ARTICLE 222**

Where the property has been apprehended for delivery to its owner, a copy of the deed provided for in Article 221 above shall be given or notified, by registered mail with an acknowledgment of receipt or by any other means with written proof, to the person required by virtue of the writ of execution to deliver or restitute the property.

#### **ARTICLE 223**

In the peculiar case where the property has been apprehended for delivery to a pledgee, the deed of delivery or apprehension shall be equivalent to attachment of the property in the creditor's custody and the sale shall be carried out in accordance with the procedure applicable to attachment and sale.

A deed shall be delivered or notified to the debtor and shall, under pain of nullity, contain;

- (1) a copy of the deed of delivery or apprehension, as the case may be;
- (2) an indication of the place where the property is kept;

- (3) a separate account of the sums claimed in principal, costs and accrued interest, as well as an indication of the interest rate;
- (4) a statement in bold characters that the debtor has a period of one month to carry out a private sale of the attached property, in accordance with the provisions of Article s 115 to 119 above, and stating the date on which a forced sale may be carried out by public auction, where the private sale is not carried out within the said period,
- (5) a reproduction of Article s 115 to 119 above.

## **Section II**

### **Apprehension of Property in the hands of a Third Party by virtue of a Writ of Execution**

#### **ARTICLE 224**

Where the property is held by a third party, a summons to deliver the property shall be served on him directly. It shall immediately be disclosed, by registered mail with an acknowledgment of receipt or by any other means with written proof, to the person required to deliver or restitute it.

The summons shall, under pain of nullity, contain;

- (1) a copy of the writ of execution authorizing the restitution and, where it is authorized by court decision, the order of the court as well as the full names and addresses of the beneficiary of the restitution and of the third party holder of the object and, in the case of a corporate person, its legal form, name and registered office;
- (2) an injunction to, within a period of eight days, either deliver the named property or inform the bailiff or process-server, under pain of damages, as the case may be, of the reasons for his refusal to deliver;
- (3) an indication that any problems shall be brought before the court of place of residence or place of abode of the beneficiary of the deed;
- (4) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; any service or offer may be made at the chosen address;

#### **ARTICLE 225**

Where voluntary delivery is not made within the stipulated period, the petitioner may apply to the court of the place of residence or place of abode of the third party holder of the property to order delivery of the property. Any third party may also petition to the court.

The summons referred to in Article 224 above and any preventive measures taken shall lapse where the matter is not referred to the court within one month from the date of service of the summons.

## **ARTICLE 226**

The property may be apprehended upon the mere presentation of the court ruling ordering delivery of same to the petitioner. A deed of apprehension shall be drawn up in conformity with the provisions of Article 221 above. A copy of the deed shall be handed or notified to the third party by registered mail with an acknowledgment of receipt or by any other means with written proof.

After removal, the person required to deliver shall be informed thereof as specified in the provisions of Article s 222 and 223 above, as the case may be.

## **CHAPTER II ATTACHMENT UNDER A PRIOR CLAIM**

### **ARTICLE 227**

Any person who has an apparent reason for demanding the delivery or restitution of tangible movable property may, pending delivery, render the property inalienable by attaching same under a prior claim.

With the exception of the case where the creditor has a writ of execution or a court decision which is not yet enforceable, a prior authorization by the competent court following an application made to that effect, shall be necessary.

The petition shall be brought before the court of the place of residence or place of abode of the person required to deliver or restitute the property.

The decision granting the authorization shall bear a description of the property which may be attached and the identity of the person required to deliver or restitute same. The authorization shall be enforceable against any holder of the named property.

### **ARTICLE 228**

The validity of the attachment under a prior claim shall be subject to the conditions prescribed for preventive measures by the provisions of Article s 60 and 61 above.

Where the said conditions are not met, an end of the attachment may be ordered at any time, even where the petitioner has a writ of execution or a court judgment which is not yet enforceable.

The application to end the attachment shall be brought before the court of the place of residence or place of abode of the debtor enjoined to deliver or restitute the property.

The decision putting an end to the attachment shall take effect from the date of its notification.

## ARTICLE 229

Any other disputes, particularly those relating to the attachment process, shall be brought before the court of the place of location of the attached property.

## ARTICLE 230

Upon presentation of the authorization from the competent court or of one of the writs authorizing the attachment, the attachment under a prior claim shall be carried out in any place and on property in the hands of any holder.

Special authorization from the competent court shall be required where the attachment is carried out in premises used as a dwelling house by a third party holder of the property.

## ARTICLE 231

After reminding the holder of the property that he is required to state whether the property has been subject to a prior attachment and, where necessary, to produce the report thereof, the bailiff or process-server shall draw up a deed of attachment which shall, under pain of nullity contain;

- (1) the full names and residence of the creditors and debtors or, in the case of corporate persons, their legal forms, names and registered offices;
- (2) reference of the authorization of the competent court which shall be annexed to the deed, or a mention of the writ upon which the attachment was carried out;
- (3) a detailed description of the property attached;
- (4) where the holder is present, his declaration as to a prior attachment of the same property;
- (5) a statement in bold characters that the attached property shall under pain of criminal sanctions be inalienable, it is placed in the custody of the third party, that it may neither be transferred nor removed, save under the circumstances provided for in Article 103 above,; and that the third party is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- (6) a statement in bold characters of the right to challenge the validity of the attachment and to apply to the court of the residence or place of abode of the debtor for an end to it;
- (7) an indication of the court before which shall be brought any opposition relating to the execution of writ of attachment;
- (8) an indication, under pain of criminal sanctions, where applicable, of the full names and status of the persons who were present during attachment exercise and who shall sign the original and the copies; any by any person refusal shall be mentioned in the deed ;
- (9) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; service or offer may be made at the chosen address;
- (10) a reproduction of the criminal provisions governing fraudulent disposition of attached property as well as the provisions of Article s 60, 61, 227 and 228 above.

The bailiff or process-server may photograph the attached property under the conditions prescribed in Article 45 above.

#### **ARTICLE 232**

The writ of attachment shall be handed to the holder of the property and he shall be verbally reminded of the provisions of Article s 231 (5) and (6) above. Mention shall be made thereof in the writ.

Where the attachment is carried out on property in the hands of a third party, the writ shall also be served on the person required to deliver or restitute not later than eight days of issue.

Where the holder was not present during the attachment, a copy of the writ shall be served on him and he shall be given a period of eight days to bring to the knowledge of the bailiff or process-server any information relating to the existence of a previous attachment, and to furnish him with a copy of the report thereof.

#### **ARTICLE 233**

At any time, the president of the competent court may, after hearing the parties or duly summoning them, authorize upon an application, the delivery of the property to an escrow agent designated by him.

#### **ARTICLE 234**

Any party with a personal right on attached property in his hands shall inform the bailiff or process-server thereof by registered mail with acknowledgement of receipt or by any other means with written proof, except where he has made a declaration thereof at the time of the attachment. The distrainor shall, within a period of one month, bring any dispute before the court of the place of residence or place of abode of the holder.

The property shall be inalienable during the hearing.

Where no objection is raised within a period of one month, the inalienability shall lapse.

#### **ARTICLE 235**

Where the person who carried out an attachment under a prior claim is in possession of a writ of execution ordering the delivery or restitution of the attached property, the procedure shall be that applicable to seizure-apprehension and as provided for in Article s 219 to 226 above.

# PART VII

## SPECIAL PROVISIONS RELATING TO PARTNERSHIP RIGHTS AND ASSIGNABLE SECURITIES

### CHAPTER I ATTACHMENT PROCESS

#### ARTICLE 236

The attachment shall be carried out either on the issuing company or corporate person or on the authorized agent charged with the preservation or management of the securities.

#### ARTICLE 237

Eight days after an unproductive summons to pay, the creditor shall proceed to attachment by an deed which shall, under pain of nullity, contain;

- (1) the full names and residence of the debtor and the distrainor or, in the case of corporate persons, their legal form, name and registered office;
- (2) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein ; any service or offer may be made at the chosen address;
- (3) an indication of the writ of execution authorizing the attachment;
- (4) a detailed account of the sums claimed in principal, costs and accrued interests, as well as an indication of the interest rate;
- (5) an indication that the attachment shall render inalienable the pecuniary rights attached to the totality of shares and the transferable securities to which the debtor is entitled;
- (6) a demand to disclose within a period of eight days the existence of any subsequent pledges or attachment and to communicate to the distrainor a copy of the Article s of Association of the company.

#### ARTICLE 238

The attachment shall, within a period of eight days and under pain of forfeiture, be disclosed to the debtor by service of the writ, which shall under pain of nullity contain;

- (1) a copy of the attachment report;
- (2) a statement in bold characters that objections shall, under pain of inadmissibility, be raised within a period of one month following the service of the writ; The statement shall also mention the expiry date of the period in question.

- (3) an indication of the competent court, which shall be that of the place of the residence of the debtor;
- (4) a statement in bold characters that the debtor has a period of one month to carry out a private sale of the attached securities under the conditions provided for in Article s 115 to 119 above;
- (5) a reproduction of Article s 115 to 119 above.

#### **ARTICLE 239**

The deed of attachment shall render inalienable the pecuniary rights of the debtor, who may obtain an end to the attachment by depositing a sufficient sum of money to pay off the creditor. The said sum shall be specially assigned to the benefit of the distrainor creditor.

## **CHAPTER II THE SALE**

#### **ARTICLE 240**

Where a private sale is not realized as provided for by Article s 115 to 119 above, forced sale shall take the form of an auction sale, on the application of the creditor, upon presentation of a certificate issued by the registrar showing that no objection had been raised within one month following disclosure of the attachment or, where applicable, a court decision dismissing the opposition filed by the debtor.

#### **ARTICLE 241**

The terms of reference, drawn up in view of the sale shall besides a reminder of the above procedure contain:

- (1) the Article s of Association of the company;
- (2) any document needed to assess the composition and value of the rights put up for sale.

Contracts instituting an approval or creating a preferential right for the benefit of the partners shall only be binding on the purchaser if they feature in the terms of reference.

#### **ARTICLE 242**

A copy of the terms of reference shall be served on the company which shall inform the partners thereof.

On the same day, a summons shall be served, where necessary, on the other opposing creditors requesting them to consult the terms of reference at the auctioneer's office or in the office of any auxiliary of justice in charge of the sale.

Any interested party may make observations on the terms of reference at the offices of the above persons. Such observations shall no longer be admissible after the expiration of two months following the notification provided for in the first paragraph.



#### **ARTICLE 243**

The notice showing the date, time and place of the sale shall be published in the media and, where necessary, by posters affixed not more than one month and not less than fifteen days prior to the date fixed for the sale.

The debtor, the company and, where necessary, the other opposing creditors shall be informed of the date of the sale by way of notification.

#### **ARTICLE 244**

Any contingent legal or contractual proceedings for approbation, pre-emption or substitution shall be implemented in accordance with the provisions peculiar to each one of them.

### **CHAPTER III MULTIPLICITY OF ATTACHMENTS**

#### **ARTICLE 245**

Where there is a multiplicity of attachments, the proceeds of the sale shall be shared among the creditors who carried out the attachment before the sale.

However, where a sequestration was carried out before the attachment which led to the sale, the creditor shall take part in the distribution of the proceeds of sale, but the sums transferred to him shall be held up until he obtains a writ of execution.

## **PART VIII ATTACHMENT OF REAL PROPERTY**

VII

#### **ARTICLE 246**

A creditor may only obtain the sale of real property belonging to his debtor by complying with the formalities prescribed below.

Any agreements to the contrary shall be null and void.

### **CHAPTER I CONDITIONS FOR THE ATTACHMENT OF REAL PROPERTY**

#### **ARTICLE 247**

The forced sale of real property may only be pursued by virtue of a writ of execution in proof of a debt which is certain and due for immediate payment.

The procedure for sale may equally be instituted for an amount provisionally awarded before final judgment or for a debt certain, due and owing; however sale may only be carried out when the writ has become enforceable and the debt liquidated.

#### **ARTICLE 248**

The court before which the sale is pursued shall be the court with full jurisdiction in the place where the real property is located.

However, the forced sale of real property which fall under the same management but which is situated within the jurisdictions of many courts shall be pursued before any of the courts concerned.

### **Section I**

#### **Conditions relating to the Nature of the Property**

#### **ARTICLE 249**

The indivisible part of real property may not be put up for sale before its sharing or liquidation which may be requested by the creditors of a co-owner.

#### **ARTICLE 250**

The forced sale of joint real property shall be pursued against both spouses.

#### **ARTICLE 251**

The creditor may only pursue the sale of real property which has not been mortgaged in his favour where the real property mortgaged to him is insufficient, except where all the property constitutes one and the same commercial activity and where the debtor so requests.

#### **ARTICLE 252**

The forced sale of real property situated within the territorial jurisdiction of different courts may only be carried out successively.

However, without prejudice to the provisions of Article 251 above, the sale may be carried out simultaneously:

where the properties form part of one and the same commercial activity ;

With the authorization of the President of the competent court, where the value of the property situated within the jurisdiction of one court is below the total sum owed the distrainor creditor and the registered creditors. The authorization may include all or part of the property.

## **Section II**

### **Prior Registration**

#### **ARTICLE 253**

Where the property which is the subject of attachment is not registered and where the national laws provide for such registration, the creditor shall be bound to have the property registered at the land registry after he has been duly authorized to do so in a decision which is not subject to appeal, by the President of the competent court of the place where the property is situated.

Under pain of nullity, the summons provided for in Article 254 below may only be served after the application for registration has been filed; and the sale may not take place until the land certificate has been issued.

## **CHAPTER II**

### **PLACEMENT OF THE PROPERTY IN THE HANDS OF LEGAL AUTHORITIES**

#### **Section I**

##### **Summons to pay**

#### **ARTICLE 254**

For the purposes of attachment, a forced sale of real property shall be preceded by a summons to pay, under pain of nullity.

Under pain of nullity, such summons shall be served on the debtor and, where necessary, on the third party holder of the property and shall contain:

- (1) a reproduction or copy of the writ of execution and the amount of the debt, as well as the full names and address of the creditor and the debtor and, in the case of a corporate person, its legal form, name and registered office;
- (2) a copy of the special power to attach given to the bailiff or process-server by the pursuing creditor, save where the copy and the original of the summons to pay is endorsed with a special proxy given to the notary public or process server signed by the pursuing creditor.
- (3) a warning that, failure to pay within twenty days, the summons may be registered at the land registry and shall entail attachment from the date of publication;
- (4) an indication of the court before which expropriation shall be pursued;
- (5) the number of the land certificate and an indication of the precise location of the property which is the subject of attachment; in the case of unregistered real property, the reference

number of the application for registration; and, where expenses have been incurred by the debtor on land not belonging to him, but which had been assigned to him by decision of an administrative authority, its exact description as well as the reference of the assignment decision;

- (6) the designation of the counsel whose address the pursuing creditor has chosen as his address for service and where all oppositions to the summons, real tenders and notifications relating to the attachment shall be served.

#### **ARTICLE 255**

Under pain of nullity, the summons shall be served, where necessary, on the third party holder who shall be enjoined to either pay the debt in full including the principal and interest, or to surrender the mortgaged property or, lastly, or be subjected to the expropriation procedure.

Surrender of the property shall be done at the registry of the competent court of the location of the property; it shall be endorsed by the said court.

#### **ARTICLE 256**

In order to obtain the information needed for drawing up the summons to pay, the bailiff or process-server may enter the property on which the attachment shall be carried out where necessary, with the assistance of the forces law and order.

Where the property is held by a third party against whom the judgment creditor has no writ of execution, the bailiff or process-server shall apply for an authorization from the competent court.

#### **ARTICLE 257**

Where the attachment has to be carried out simultaneously on several properties, a single summons to pay may be issued for all of them.

#### **ARTICLE 258**

Where the property constitutes expenses incurred by the debtor in relation to land which does not belong to him, but which has been assigned to him by decision of an administrative authority, the summons provided for in Article 254 above shall equally be served on the said authority and endorsed by the same authority.

### **Section II**

#### **Publication of the Summons to Pay**

#### **ARTICLE 259**

The bailiff or process-server shall cause the original of the summons to be endorsed by the registrar of the lands department who shall be given a copy for publication.

Where the debtor seeks the recovery of expenses he incurred in relation to land that does not belong to him, but which has been assigned to him by decision of an administrative authority, the said authority shall comply with the formalities prescribed in the preceding paragraph.

Where a summons had not been deposited in the office of the land registry or with the administrative authority concerned within three months of its notification and effectively published thereafter, the creditor may only recommence process by repeating the entire proceedings.

#### **ARTICLE 260**

Where the land registrar or administrative authority concerned cannot proceed to register the summons at the time it is served, he shall mention the date and time of deposit on the original copy served on him.

Where there is a previously registered summons, the land registrar or administrative authority shall enter in the margin of the registration, any subsequent summons presented to him by order of presentation, he shall state the full names, residence or declared abode of the new pursuing creditor and the name of his counsel.

He shall also record his refusal to proceed with the registration in the margin, upon the presentation of the summons, and shall mention each of the summonses entirely registered or mentioned with the indications made on them as well as an indication of the court where the attachment took place.

The attachment may not end without the consent of the distrainor creditors who were subsequently disclosed.

#### **ARTICLE 261**

Where payment is made within the period prescribed in Article 254 (3) above, registration of the summons shall be cancelled by the land registrar or administrative authority upon presentation of the discharge signed by the pursuing creditor.

Failing this, the debtor or any interested party may request the discharge by showing proof of payment; to this effect, he shall refer the matter to the competent court for urgent hearing.

The court shall rule within eight days upon the matter being referred to it. Its decision shall be subject to appeal in accordance with the prescribed procedure.

### **Section III**

#### **Effects of the Summons to Pay**

#### **ARTICLE 262**

In the case of non-payment, the summons to pay shall entail attachment with effect from the date of registration.

The landed property and the revenue therefrom shall be immobilized under the conditions provided for in the articles below.

The debtor may neither alienate the landed property nor encumber it with a real right or charge.

The registrar or administrative authority shall refuse to carry out any other registration.

However, the transfer or constitution of real rights shall be valid where, before the date fixed for the auction sale, the purchaser or creditor deposits a sufficient sum to settle the principal, interest and costs owed the registered creditors as well as the distrainor, and serves them notice of the deposit deed.

The sums thus deposited shall be specially assigned to the registered creditors and the distrainor.

Under no circumstances shall extra time be granted to pay the said deposit where a deposit is not made before the auction sale.

### **ARTICLE 263**

Natural crops and industrial crops, rents and farm rents collected after the service of the summons or the proceeds there from, except in the case of a previous attachment, shall be immobilized for eventual distribution with the proceeds of the sale of the immovable property.

They shall be deposited either in the general deposit office or in the hands of an escrow agent appointed by the President of the competent court.

Where the immovable property is not leased out for farming or rented, the distrainee shall hold the property until the sale, as a court appointed receiver, unless otherwise ordered by President of the competent court upon the application of one or more creditors.

The distrainee may, under pain of being adjudged liable in damages, not carry out any wood harvesting or cause any degradation of the property.

Any problems encountered shall be referred to the President of the competent court of the place where the property is located. His decision shall not be subject to appeal.

### **ARTICLE 264**

Where the value of the attached property is significantly higher than the amount of the debt, the distrainee debtor may obtain an order from the competent court to stay the proceedings in relation to one or more parts of the immovable property named in the summons; the application for such order shall not stay the publication of the summons.

Before the deposit of the terms of reference, the application shall be made before the competent court by a simple exchange of submissions between counsels; after the deposit of the terms of reference, the application shall be made by way of a statement received as prescribed in Article 272 below.

To support his application, the debtor shall show proof that the value of the property which is the subject of the proceedings shall suffice to pay off the distrainor creditor and all the registered creditors.

The application shall be determined at the contingent hearing. The decision of the court granting the stay of proceedings shall indicate the property in relation to which proceedings shall be discontinued.

Where the proceeds of the property sold are not enough to pay off the creditor, the creditor may resume the proceedings in relation to the property which was provisionally exempted.

#### **ARTICLE 265**

Where the debtor proves that the unencumbered net income from his property over a period of two years is sufficient to settle the debt in its principal, costs and interest and, where he offers the income to the creditor, the proceedings may be suspended following the procedure prescribed in the preceding article .

The proceedings may resume in the event of any opposition or obstacles to payment.

### **CHAPTER III PREPARATION OF THE SALE**

#### **Section I Drawing up and Filing of the Terms of Reference**

#### **ARTICLE 266**

The terms of reference is the document which is drafted and signed by the counsel of the pursuing creditor specifying the conditions and procedure for the sale of the property attached.

Under pain of forfeiture, it shall be filed at the registry of the competent court of the place of the location of the property within a maximum period of fifty days of the publication of the summons.

#### **ARTICLE 267**

The terms of reference shall, under pain of nullity, contain:

- (1) the title of the document;
- (2) an indication of the writ of execution by virtue of which the proceedings against the debtor were instituted and the summons to pay with a mention of the fact of its publication, as well as the other acts and decisions of the court pronounced after the service of the summons to pay and which have been served on the pursuing creditor;
- (3) an indication of the court or notary agreed upon by the pursuing creditor and the judgment debtor to carry out the auction sale;

- (4) an indication of the place where the contingent hearing provided for by Article 270 below shall take place;
- (5) the full names, profession, nationality, date of birth and residence of the pursuing creditor;
- (6) the full names, capacity and address of the pursuing counsel;
- (7) designation of the attached property as contained in the summons to pay or report describing it drawn up by the bailiff or process-server;
- (8) the conditions of sale and, especially, the rights and obligations of the vendors and successful bidders, a mention of the costs of the proceedings and any special condition;
- (9) where necessary, the parcel of land;
- (10) the reserve price fixed by the judgment creditor which may not be lower than a quarter of the market value of the property. The value of the property shall be appreciated in accordance with the valuation made by the parties during the conclusion of the mortgage contract or, failing this, by comparison with the transactions concerning property of a similar nature or location.

A statement of the real rights registered in relation to the property concerned, issued by the land registrar on the date of service of the summons to pay shall be annexed to the terms of reference.

#### **ARTICLE 268**

The date of the sale shall be fixed in the deposit deed at the earliest forty-five days and latest ninety days from the date of filing the said document.

### **Section II**

#### **Summons to Consult the Terms of Reference**

#### **ARTICLE 269**

Within eight days of filing the terms of reference, the distrainor creditor shall summon the distrainee and other registered creditors to consult the terms of reference filed at the registry, and to cause their submissions to be entered therein.

Under pain of nullity, the said summons shall be served on the judgment debtor in person or at his residence, and to the registered creditors, at their respective addresses of service.

#### **ARTICLE 270**

Under pain of nullity the summons shall state:

- (1) the date and time of the contingent hearing during which the court shall rule on the statements and submissions made. Such hearing may not take place less than thirty days after the last summons;



- (2) the date and time envisaged for the auction sale which shall take place between the thirtieth and sixtieth day after the contingent hearing;
- (3) under pain of forfeiture, that the statements and submissions shall be received up to the fifth day preceding the contingent hearing and that where they fail to file an application for a resolutive action against a previous sale or file proceedings against an irresponsible bid of a previous forced sale and mention same pursuant to the terms of reference within the same period, they shall forfeit their right to exercise these actions against the successful bidder.

#### **ARTICLE 271**

Where the application for resolution or the proceedings for an irresponsible bid are duly filed, the proceedings in relation to the property concerned shall be stayed.

The application for resolution shall be brought before the court of the place where the action for the sale of the attached property is pending

It shall be subject to the procedure, time limits and remedies at law which apply in applications for the diversion of the attached property

### **Section III The Contingent Hearing**

#### **ARTICLE 272**

The declarations and observations shall be heard after the exchange of written submissions between the parties; the hearing shall be adversary.

Where there is an objection to the amount of the reserve price, the onus shall lie on the party objecting to support his objection.

He may apply to the president of the competent court to appoint an expert at his expense. The fees shall be payable in advance.

#### **ARTICLE 273**

The contingent hearing may only be adjourned for serious and duly justified reasons or where the competent court decides on its own motion to exercise its right of control over the terms of reference as provided for in article 275 below.

#### **ARTICLE 274**

The ruling of the court after the contingent hearing shall be transcribed in the register kept for terms of reference by the registrar;

The ruling shall be reproduced and served on the parties on the application of the most diligent party.

Where the date scheduled for the contingent hearing cannot be maintained, the competent court shall fix a new date.

#### **ARTICLE 275**

During the contingent hearing the competent court may on its own motion, where necessary, after a written expert report:

order forthwith the diversion of some of the attached property wherever its overall value appears to be disproportionate to the amount of debt to be recovered;

alter forthwith the amount of the reserve price where it was not fixed in conformity with the provisions of article 267 (10) above.

In such case, the competent court shall inform the parties of its intention to modify the terms of reference and invite them to file further submissions before the next hearing date within a period not exceeding five (5) days.

Where the matter could not be heard on the date initially scheduled, the parties shall be informed of the date and time of next hearing.

### **Section IV Publication of the Sale**

#### **ARTICLE 276**

Not earlier than thirty (30) days and not later than fifteen (15) days before the auction sale, an extract of the terms of reference shall be published with the signature of the pursuing counsel, in a newspaper empowered to publish legal notices and by affixing posters at the door of the residence of the judgment debtor, the competent court or of the approved notary public, as well as in the places reserved for the affixing of posters or posters of the local council where the property is located.

#### **ARTICLE 277**

Under pain of being declared null the extract shall contain:

- (1) the full names, profession, residence or place of abode of the parties and of their various counsel;
- (2) a description of the attached property, as stated in the terms of reference;
- (3) the reserve price;
- (4) an indication of the date, place and time of the auction sale, and mention of the competent court or the approved notary to carry out the sale.

**ARTICLE 278**

Proof of publication shall be by the tender of a copy of the newspaper, duly signed by the printer, and proof of the having affixed the poster shall be by a report of the bailiff or process-server written on a copy of the poster.

**ARTICLE 279**

Following an application the president of the competent court may in a ruling which shall not be subject to an appeal limit or extend the legal publication, depending on the nature and value of the property attached.

**Chapter IV  
SALE**

**Section I  
Date and Place of the Auction Sale**

**ARTICLE 280**

On the date scheduled for the adjudication of the auction sale, the court shall be moved by the written or verbal submissions of the counsel for the pursuing creditor or any other registered creditors.

The latter shall in open court, state the costs of the proceedings previously fixed by the president of the competent court.

**ARTICLE 281**

However, the auction sale may be adjourned for serious and legitimate causes by a reasoned decision of the court following an application which shall be filed not later than five (5) days before the date fixed for the sale.

In case of an adjournment, the decision of the court shall fix a new date for the auction sale which may not be more than sixty (60) days from the date of the court session.

The pursuing creditor shall proceed with the formalities of publication de novo.

The decision of the court shall not be subject to appeal, except where the competent court has disregarded the time limit provided for in the preceding paragraph. In such case, an appeal shall lie in accordance with the conditions provided for by article 301 below.

**ARTICLE 282**

The sale of the property shall be by public auction either at the bar of the competent court or in the office of the approved notary public.

The auction shall be in successive bids which shall progressively increase by the persons wishing to acquire the property. The property shall be adjudicated in favour of the highest bidder.

The bids shall be made either through a counsel or by the bidders themselves; the same counsel may represent several bidders, where the bidders present themselves jointly.

### **ARTICLE 283**

Before bidding begins, candles shall be prepared in such a way that each shall last approximately one minute.

As soon as bidding is ordered, a candle shall be lit and the amount of the reserve price shall be announced.

Where a bid is made, during the duration of one candle, such bid shall only become final and entail adjudication where no new bid is made before the extinction of two candles.

The bidder shall cease to be bound where his bid is superseded by another, even where the later bid is declared a nullity.

Where no bid is made after three candles have been successively lit, the pursuing creditor who initiated the sale shall be declared the successful bidder at the reserve price unless he applies that the auction sale be adjourned to another court session with a new reserve price in conformity with the provisions of article 267 (10) above.

The adjournment of the auction sale shall be as of right; the formalities prescribed for publication shall be commenced de novo.

Where on the day of the adjourned auction no bid is made, the pursuing creditor shall be declared the successful bidder at the initial reserve price.

### **ARTICLE 284**

Counsel may not bid for members of the competent courts or for the members of the office of the notary public carrying out the sale, under pain of the auction sale or the higher bid being declared a nullity without prejudice to the award of damages.

Under the same pain of nullity, they may not bid for the judgment creditor or for persons who are known to be insolvent. The pursuing counsel may not declare himself the winner of the bid or the higher bid, under pain of nullity of the adjudication or the higher bid and an order against him awarding damages to all the parties.

### **ARTICLE 285**

The auction sale which shall either be in favour of the counsel making the last bid or in the absence of a bid, in favour of the pursuing creditor in the amount of the reserve price, shall be pronounced in a ruling of the court or in a report drawn up by the notary public.

## ARTICLE 286

The counsel who is the last bidder shall, within three days of the auction sale, disclose the successful bidder and furnish his written acceptance or proxy which shall remain annexed to the original of the ruling of the court or the report drawn up by the notary public, otherwise, he shall be deemed to be the successful bidder.

The successful bidder shall have the option within twenty-four (24) hours, to disclose in an act known as 'declaration of real purchaser', that he did not bid on his own account, but on the account of person whose name he shall disclose.

## Section 2 The Higher Bid

### ARTICLE 287

Any person may, within ten days following the date of adjudication, may make a higher bid, provided that it shall be higher than the purchase price by 10%.

The time limit for the higher bid shall entail forfeiture

The said higher bid may not withdrawn.

### ARTICLE 288

The higher bid shall be filed at the registry of the court which ordered the sale or before the named notary public either by the higher bidder himself or through counsel who shall act on his behalf. It shall be entered without delay in the register kept for terms of reference.

The higher bidder or his counsel shall be required to disclose the higher bid within five days of the declaration, to the person to whom the property was adjudicated, the pursuing creditor and to the distrainee.

The disclosure shall be entered in the register kept for terms of reference within a period of five days.

Where the higher bidder fails to make the disclose or to enter same in the register kept for terms of reference within the time limit, the pursuing creditor and the distrainee or any creditor who has been registered or summoned may make the disclosure and enter same in the said register within five days of expiry of the afore mentioned time limit; the costs shall be borne by the negligent higher bidder.

The disclosure shall be made by extra judicial act without the obligation to collect a copy of the declaration of the higher bid.

The act shall give the date of the contingent hearing during which objections relating to the validity of the higher bid shall be heard.

The hearing may not be scheduled before the expiry of a period not exceeding twenty (20) days from the date of disclosure.

It shall also give the date of the new auction sale, which may not take place earlier than thirty (30) days from the date of the contingent hearing.

#### **ARTICLE 289**

Any objection relating to the higher bid shall be contained in the submissions filed and communicated to the adverse party not later than five (5) days before the contingent hearing.

The filing of the submissions shall be mentioned next to the entry on the disclosure of the higher bidder in the register kept for terms of reference.

Where there is no objection relating to the higher bid, or where it is validated, the new auction sale shall be preceded by the affixing of posters at least eight days before the sale, in conformity with the provisions of articles 276 to 279 above.

On the scheduled date, new bidding shall be open; where a bid is not superseded, the property shall be adjudicated in favour of the bidder.

No higher bid may be allowed after the second auction sale.

### **Section III Public Auction Sale**

VII

#### **ARTICLE 290**

A copy of the decision of the court or the report of the auction sale drawn up by the notary public shall be registered alongside the terms of reference.

A copy thereof shall be issued by the registrar or the notary public, as the case may be, to the successful bidder after payment of the costs of the proceedings and of the purchase price and after having fulfilled the conditions of the terms of reference within twenty (20) days from the date of the auction sale.

However, where the successful bidder is the only registered or preferred creditor of the distrainee, he shall be required to pay only the amount of the purchase price in excess of his claim including costs.

The receipt and documents in proof thereof shall be annexed to the decision of court or to the report of the auction sale drawn up by the notary public and reproduced alongside the copy.

An action for irresponsible bidding may be instituted against the successful bidder who fails to produce these justifications within twenty (20) days of the auction sale.

#### **ARTICLE 291**

Where the sale comprises of several parcels of landed property, a copy of the decision of the court or the report of the auction sale drawn up by the notary public shall be issued to each successful bidder.

The executory formula shall be affixed on the court ruling or the report.

#### **ARTICLE 292**

The ordinary costs of the proceedings shall always be paid as a matter of priority in addition to the purchase price. Any provision to the contrary shall be null and void. The same shall apply to extraordinary costs, unless it has been ordered that they should be deducted from the purchase price subject to action against the party ordered to pay costs.

#### **ARTICLE 293**

The decision of the court or the report of the auction sale drawn up by the notary public shall not be subject to an appeal, without prejudice to the provisions of article 313 below.

#### **ARTICLE 294**

Where the auction sale has become final, a copy of the decision of the court or the report of the auction sale drawn up by the notary public shall be deposited in the land registry for registration.

The successful bidder shall be required to carry out this formality within two months, under pain of a resale on the basis of irresponsible bidding.

The registrar of lands shall mention the fact of publication in the margin of the copy of the published summons. He shall also proceed to strike off the registered preferential claims and mortgages which have been paid off by the proceeds of the sale, even those registered after the issuance of the statement of entry.

In this case, the creditor's only claim shall be for a share in the proceeds of the sale.

#### **ARTICLE 295**

Where attachment of real property concerns expenses incurred by the debtor on land which does not belong to him but which has been transferred to him by decision of an administrative authority, and where the sale has become final, a copy of the decision of the court or the report drawn by the notary public who adjudicated upon the sale shall be lodged with such administrative authority for entry in the margin of the allotment decision.

The administrative authority shall proceed to cancel all the entries in the margin of the initial allotment decision and transfer the allotment in favour of the person to whom the property was adjudicated. Creditors' only claim shall be for a share in the proceeds of the sale.

#### **ARTICLE 296**

Even where the sale has been published in the office of the registrar of lands, it shall not confer upon the successful bidder real property rights that were not vested in the distrainee.

**ARTICLE 297**

The time limits provided for in articles 259, 266, 268, 269, 270, 276, 281, 287, 288(7) and (8) and 289 above are subject to limitation by lapse of time.

The formalities provided for by this Act and by articles 254, 267 and 277 above shall only be sanctioned by nullity where the irregularity caused loss to the party seeking to rely on it.

The nullity grounded upon the lack of the adequate description of one or more of the attached property shall not necessarily entail the nullity of the proceedings in relation to the other properties.

**CHAPTER V  
INCIDENTS RELATING TO THE ATTACHMENT OF REAL PROPERTY**

**ARTICLE 298**

Any dispute or incidental claim relating to the proceedings in the attachment of real property raised after service of the summons to pay shall be filed through a simple document drafted by counsel. It shall contain the arguments upon which the claim is based. Where the party has not briefed counsel, his action shall be commenced by writ of summons

The matters shall be heard and adjudicated upon expeditiously.

**ARTICLE 299**

Any dispute or incidental claim shall be raised prior to the contingent hearing under pain of forfeiture.

However under pain of forfeiture, claims founded on a fact or an act which happened or was disclosed after such hearing and those likely to cause the diversion of all or part of the attached property, the nullity of all or part of the procedure of the contingent hearing or the annulment of the attachment, may still be raised after the contingent hearing within eight days before the date of the auction sale.

**ARTICLE 300**

The decisions of the court which are delivered in matters of attachment of real property shall not be subject to opposition.

They may only be subject to an appeal where the decision is in relation to the principle itself of the claim or grounds relating to the incapacity of one of the parties, or to the ownership, the non distrainability or the inalienability of the attached property.

**ARTICLE 301**

The appeal shall be notified on all the concerned parties at their residence or their chosen address of service.



It shall also be notified, within the prescribed time-limit for appeals, to the registrar of the competent court who shall endorse the notice of appeal and mention same in the register kept for the terms of reference.

The notice of appeal shall contain the appellant's submissions under pain of nullity.

The court shall rule within fifteen (15) days of the filing of the appeal.

## **Section I**

### **Incidents arising from the Multiple Attachments.**

#### **ARTICLE 302**

Where two or more distrainers have published the summonses to pay relating to different properties belonging to the same debtor, and where the attachment is carried out before the same court, the other proceedings shall be joined to the petition of the earliest party and shall be continued by the first distrainer.

Where the summonses to pay were published on the same day, it shall be up to the creditor whose summons bears the earlier date to prosecute the action and, where the summonses bear the same date, the creditor with the oldest claim shall proceed with the action.

#### **ARTICLE 303**

Where a second summons to pay presented at the land registry comprises more property than the first, such summons shall be published in respect of the property not included in the first.

The second pursuing creditor shall disclose the published summons to the first distrainer, who shall be required to pursue the action for the two distrainers, where they are at the same level.

Where the proceedings are not at the same level, the first distrainer shall suspend the action on the first proceedings and pursue the second until both are at the same level. They shall, at this point, be brought before the court determining the first attachment.

#### **ARTICLE 304**

Where the first distrainer fails to pursue the second attachment disclosed to him, the second distrainer may, in a written application addressed to the registrar of landed property, apply for subrogation.

#### **ARTICLE 305**

An application for subrogation may also be made where there is collusion, fraud, negligence or other cause for delay attributable to the distrainer, without prejudice to damages payable to the injured party.

Negligence shall be established where the pursuing creditor has failed to fulfill a formality or has failed to engage any procedure within the prescribed time limit.

A creditor may only apply for subrogation eight days after an unproductive summons to continue proceedings by a correspondence between counsel to creditors whose summonses to pay were previously filed in the office of the land registry.

The distrainee shall not be joined to the action.

#### **ARTICLE 306**

The party who loses the action for subrogation shall bear the costs. The pursuing creditor against whom subrogation is pronounced shall be required to hand over against a receipt, the documents of the proceedings to the subrogee who shall continue the proceedings at his own risks. The handing over of the documents shall discharge the subrogor pursuing creditor of all his obligations; his share of the costs shall only be payable after the auction sale, either from the proceeds of the sale or by the successful bidder.

#### **ARTICLE 307**

The applicant for subrogation shall have the option of modifying the reserve price fixed by the pursuing creditor. However, the reserve price may only be modified after publication has been made or commenced on condition that new posters and notices of the auction are affixed within the time limits provided for in 276 above with an indication of the new reserve price.

### **Section II Application for Diversion**

#### **ARTICLE 308**

A third party who claims ownership of a attached property and who is not personally liable for the debt and whose real property has no connection with the said debt may, in order to remove it from the attachment, apply for it to be diverted before the auction sale within the period provided for by article 299 (2) above.

However, the application for diversion shall only be admissible where the land law of the State Party where the property is located makes provision for an action for recovery of property or any other action for a similar purpose.

#### **ARTICLE 309**

The application for diversion of all or part of the attached property shall be against both the distrainor and the distrainee

## ARTICLE 310

Where the application for diversion concerns the whole property, the proceedings shall be discontinued. Where the diversion applied for concerns only part of the attached property, the proceedings for the adjudication of the rest of the property may be continued. The competent court may also, order the suspension of the proceedings in relation to all the property upon the application of the interested parties.

In the case of partial diversion, the pursuing creditor may be allowed to change the reserve price that was mentioned in the terms of reference.

### Section III Application for Annulment

## ARTICLE 311

With the exception of those grounds for nullity referred to in article 299 (2) above, the grounds relating to the form or merits, against the procedure preceding the contingent hearing shall be raised, under pain of forfeiture, by way of a statement annexed to the terms of reference not later than five days before the date fixed for hearing. Where they are allowed, the action may be recommenced from the last valid act and the time limits for accomplishing the subsequent acts shall be computed from the date of the notification of the decision which pronounced the nullity.

Where the grounds are dismissed, the action shall continue from the stage where the proceedings had been stopped.

## ARTICLE 312

Proceedings may not be annulled because they had been initiated by the creditor for an amount higher than the debt.

## ARTICLE 313

The nullity of the decision of the court or the report drawn up by the notary public of the auction sale may only be applied for in a main action before the competent court of the place where the auction sale took place within a period of fifteen (15) days after the auction sale.

Application for nullity may only be made for concomitant causes or causes subsequent to the contingent hearing by any interested person, except the successful bidder.

Annulment shall have the effect of invalidating the proceedings from the date of the contingent hearing or subsequent to such hearing, depending on the causes of annulment.

## **Section IV Irresponsible Bidding**

### **ARTICLE 314**

The effect of irresponsible bidding shall be to nullify the adjudication proceedings on the ground that the successful bidder failed to meet his obligations thereby causing a new auction sale of the property.

Bidding shall be deemed irresponsible where the successful bidder:

- (1) fails to show proof within twenty (20) days following the auction sale that he has paid the purchase price and the costs and fulfilled the conditions of the terms of reference;
  
- (2) fails to carry out publication of the decision of the court or the report drawn up by the notary public of the auction sale at the land registry within the period provided for in Article 294 above.

### **ARTICLE 315**

Proceedings in irresponsible bidding may be commenced by the distrainee, the pursuing creditor, registered creditors and the unsecured creditors. They shall be instituted against the successful bidder and, possibly, his rightful claimants. They shall not be subject to any time limit.

However, subject to the provisions of Article 320 below, an action may no longer be instituted nor continued where the cause of action no longer exists.

### **ARTICLE 316**

Where the report of auction sale has not been issued, the person instituting the action for irresponsible bidding shall cause the registrar or notary to issue him a certificate to prove that the successful bidder has not complied with the clauses and conditions of the terms of reference.

Where the successful bidder files an opposition to the issuance of a such a certificate, the president of the competent court shall rule at the instance of the most diligent party.

The ruling shall not be subject to an appeal.

### **ARTICLE 317**

The certificate provided for in the preceding article shall be served on the successful bidder within five days of service; publication of such service shall be made with a view to the new auction sale.

The posters and entries shall show the full names and residence of the irresponsible bidder, the amount of the auction, a reserve price fixed by the pursuing creditor and the date when the new auction sale shall take place shall be mentioned in the terms of reference that were previously filed.

The time limit between the new publication and the sale shall be within a period not exceeding fifteen (15) days and not more than thirty (30) days.

#### **ARTICLE 318**

Not later than fifteen days before the auction sale, notice shall be served on the successful bidder, distrainee, distrainor and the creditors indicating the date, time and place of the auction sale.

The said notice shall be communicated through a simple correspondence between the counsel and, in the absence of counsel, through notification by a bailiff or process-server.

#### **ARTICLE 319**

Where the report of the auction sale has been issued, the party prosecuting the action for irresponsible bidding shall serve a summons to pay, and a copy of the decision of the court or the report drawn up by the notary public of the auction sale on the successful bidder.

Five days after the service of the summons to pay, he may proceed to publish the new sale as provided for in article 317 above.

#### **ARTICLE 320**

No new sale shall take place where within the period provided for the new sale, the irresponsible bidder shows proof of having complied with the conditions of the auction sale and deposited a sufficient sum determined by the president of the competent court to be used for settling the costs of the action for the irresponsible bid.

#### **ARTICLE 321**

Under pain of the nullity of the auction sale the formalities and time limits provided for in articles 316 to 319 above shall be observed.

The grounds for nullity shall be filed five days before the auction sale as provided for in article 317 above.

#### **ARTICLE 322**

Where no bid is made, the reserve price may be reduced within the limit provided for in article 267 (10) above by a decision of the president of the competent court.

Where no bid is made despite the reduction of the reserve price, the property shall be adjudicated in favour of the pursuing creditor for the amount of the first reserve price.

The irresponsible bidder shall not bid during the new auction sale.

#### **ARTICLE 323**

The irresponsible bidder shall be liable for the accrued interest on the amount of his bid up to the date of the second sale, and for the difference between his price and the price of that of the second auction sale, where the latter is lower.

Where the second price is higher than the first, he shall not benefit from the difference.

The costs of the proceedings, registry fees and the cost of stamp duty paid by the irresponsible bidder shall not be reimbursed.

## **PART IX DISTRIBUTION OF THE PROCEEDS OF THE SALE**

### **ARTICLE 324**

Where there is only one creditor, the proceeds of the sale shall be paid to him up to the amount of his claim in principal, interest and costs within a period not exceeding fifteen (15) days from the date of payment of the purchase price.

The balance shall be paid to the debtor within the same period.

Interest shall accrue at the legal rate upon the expiry of the said period, for any sums owed.

### **ARTICLE 325**

Where there are many creditors concerned in the attachment of the movable property or many registered and preferred creditors concerned in the attachment of immovable property they may agree on a consensual sharing of the proceeds of the sale.

In such case, they shall forward a copy of their private agreement or authenticated deed to the registry or to the auxiliary of justice holding the funds.

The creditors shall be paid within a period of fifteen days as soon as the agreement is received.

The balance shall be paid to the debtor within the same period.

Interest shall accrue at the legal rate upon the expiry of the said period, for any sums owed.

### **ARTICLE 326**

Where within a period of one month of the payment of the purchase price by the successful bidder the creditors have not arrived at a unanimous agreement, the most diligent creditor shall refer the matter to the president of the court of the place of the auction sale or to the judge delegated by him. The latter shall rule on the distribution of the proceeds of the sale.

### **ARTICLE 327**

The writ of shall state the date of the hearing and enjoin the creditors to prove their claims, that is, to state their dues, the rank on which they are expected to be placed and to forward all documents in proof thereof.

The summons shall reproduce the provisions of article 330 below.

**ARTICLE 328**

The writ of summons shall equally be served on the distrainee.

**ARTICLE 329**

Hearing may not take place earlier than forty (40) days after service of the last summons.

**ARTICLE 330**

Within twenty (20) days of the date of the service of the summons, the creditors shall under pain of forfeiture deposit their claims at the registry of the competent court.

**ARTICLE 331**

Statements may be deposited not later than five (5) days before the hearing; copies thereof shall be served on the other parties.

**ARTICLE 332**

After examining the statements in support of the claim, and the submissions of the parties, the competent court shall proceed to the distribution of the proceeds of the sale. The court may for serious and duly justified reasons postpone the distribution to a new date.

The decision of the court granting or dismissing the application to postpone the distribution shall not be subject to appeal.

**ARTICLE 333**

The decision given on the merits by the court may be appealed against within fifteen days of its notification.

The appeal shall only be admissible where the contested amount is above the amount stated in the final ruling of the court.

**ARTICLE 334**

Where the sale or irresponsible bidding takes place during the proceedings or even after final settlement, the competent court shall modify the state of collocation in conformity with the outcome of the sale.

## **PART X FINAL PROVISIONS**

**ARTICLE 335**

The time limits provided for in this uniform act shall be clear time limits.

**ARTICLE 336**

All provisions relating to matters treated in the Uniform Act are hereby repealed within the States Parties.

**ARTICLE 337**

This Uniform Act shall apply to protective measures, recovery by distraint and recovery proceedings instituted after its entry into force.

**ARTICLE 338**

This Uniform Act shall be published in the official gazette of OHADA and the official gazettes of States Parties.

It shall enter into force in accordance with the provisions of Article 9 of the Treaty on the Harmonization of Business Law in Africa.

Done at Libreville on 10 April 1998

For the Republic of Benin

Moïse Mensa

Minister of Finance

For Burkina Faso

Larba Yarga

For the Republic of Cameroon

Joseph Belibi

Minister of Justice Secretary-General of the

Ministry of Justice

For the Central African Republic

Marcel Metefara

Minister of Justice

For the Republic of Côte d'Ivoire

Kouakou Brou Jean

Minister of Justice

For the Gabonese Republic



Marcel Eloi Rahandi Chambrier

Minister of Justice

For the Republic of Equatorial Guinea

Mrs. Evangelina - Filomena Oyo

Minister of Justice

For the Republic of Mali

Amidou Diabate

Minister of Justice

For the Republic of Niger

Issifou Abba Moussa

Minister of Justice

For the Republic of Senegal

Jacques Baudin

Minister of Justice

For the Togolese Republic

Assiba Amoussou-Guenou

Secretary of State in charge  
of Finance