

**Commercial Code**  
**Book VI: The Financial Difficulties of Enterprises**  
**(as amended by Law no. 2005-845 of 26 July 2005)**

**Table of Translated Terms**

Administrateur (judiciaire)	(Judicial) administrator
Astreinte	Fine
Banqueroute	Criminal bankruptcy
Bureau de jugement	Judgment division
Caisse des dépôts et consignations	Official deposit-taker
Cessation de paiements	Cessation of payments
Chef d'entreprise	Entrepreneur
Collectivité territoriale	Local authority
Collocation	Set aside
Commissaire de comptes	Auditor
Comité d'entreprise	Works Council
Conciliateur	Conciliateur
Conciliation	Conciliation
Conseil de prud'hommes	Employment Tribunal
Conseil d'Etat	Council of State
Contrôleur	Monitor
Délégués du personnel	Employees' representative
Département	Administrative division
Dirigéant	Manager
Droit de suite	Right to sue the asset-holder
Entreprise	Business
Faillite personnelle	Personal bankruptcy
Fonds de commerce	List of clientele
Greffe	Court Registry
Homologué	Endorsed
Juge-commissaire	Supervising judge
Juge consulaire	Commercial Court judge
Liquidateur	Liquidator
Liquidation (judiciaire)	(Judicial) liquidation
Locataire-gérant	Lease-manager
Location-gérance	Lease-management
Mandat ad hoc	Ad hoc mandate
Mandataire ad hoc	Ad hoc nominee
Mandataire de justice	Nominees of justice
Mandataire judiciaire	Judicial nominee
Obligataire	Bondholder
Organisme de prévoyance	Contingency body
Personne morale de droit privé	Private-law corporate body
Redressement (judiciaire)	(Judicial) rescue
Règlement amiable	Amicable settlement
Représentant des salariés	Employees' representative
Sauvegarde	Preservation
Siège social	Corporate seat
Tierce opposition	Third-party appeal
Titre exécutoire	Order for enforcement
Tribunal de commerce	Commercial Court
Tribunal de grande instance	High Court
Vente gré à gré	Sale at will

**Unofficial translation; only the French text is authoritative.**  
**Translation (c) PJ Omar 2005.**

(Title divisions removed and provisions repealed or renumbered by Article 1, Law of 2005)

Article L. 610-1

A decree of the Council of State shall determine in each administrative division the court or courts who shall hear the procedures set out in the present Book as well as the territorial jurisdiction in which these courts will exercise the powers that are devolved to them.

(Inserted by Article 2, Law of 2005)

**Title I: The Prevention of the Financial Difficulties of Businesses**

**Chapter I: The Prevention of the Financial Difficulties of Businesses, the Ad Hoc Mandate and the Conciliation Procedure**

Article L. 611-1

Any person registered on the commercial and companies register or on the register of professions as well as all private-law corporate bodies may join a prevention group recognised by order of the representative of the State in the region.

This group has as its purpose the supply to its members, in a confidential manner, of an analysis of economic, accounting and financial information that these promise to transmit regularly to it.

When the group notices any indicia of difficulties, it informs the entrepreneur of these and may suggest to him the intervention of an expert.

In the judgment of the representative of the State, the competent administrative units may lend their assistance to recognised prevention groups. The services of the Banque de France may equally, following the terms set out in an agreement, be called upon to formulate advice on the financial situation of member businesses. Recognised prevention groups may also benefit from subsidies by local authorities. Recognised prevention groups are authorised to conclude, notably with credit establishments and insurance businesses, agreements for the benefit of their members.

(Amended by Article 3, Law of 2005)

Article L. 611-2

I. - Where it appears from any act, document or proceeding that a commercial company, an economic interest grouping or an individual, commercial or craftsman's businesses is experiencing difficulties of a nature which may compromise the continuation of business, its managers may be summoned by the President of the Commercial Court so that proper measures may be taken to redress the situation.

At the end of this meeting or if the directors have not responded to the summons, the President of the Court may, notwithstanding any legislative or regulatory rule to the contrary, obtain communication, by the auditors, the members or representatives of personnel, public authorities, state security and contingency bodies as well as the services tasked with the centralisation of banking risks and incidences of payment, of all details of a nature to give him exact information about the debtor's economic and financial situation.

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Translation (c) PJ Omar 2005.**

II - Where the directors of a commercial company do not proceed to file the annual accounts within the time limits stipulated in the applicable texts, the President of the Court may address them an order to do this within a short period in default of which a fine is payable.

If this order is not followed by a response within the time limit set by decree of the Council of State, the President of the Court may put into application with respect to them the provisions of the second paragraph of I above.

(Amended by Article 4, Law of 2005)

#### Article L. 611-3

The President of the Commercial Court or of the High Court may, at the request of the representative of the business, appoint an ad hoc nominee whose mission he will determine.

(Inserted by Article 5, Law of 2005)

#### Article L. 611-4

There is instituted, before the Commercial Court, a conciliation procedure which may benefit any persons exercising a commercial or craft activity who are experiencing a legal, economic or financial difficulty, actual or forecast, and who are not in cessation of payments for more than forty-five days.

(Inserted by Article 5, Law of 2005)

#### Article L. 611-5

The conciliation procedure is applicable, in the same conditions, to private-law corporate bodies and to individuals exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected. For the application of the present article, the High Court is competent and its President exercises the same powers as those attributed to the President of the Commercial Court.

The conciliation procedure is not applicable to farmers who benefit from the procedure provided for in Articles L. 351-1 to L. 351-7 of the Rural Code.

(Inserted by Article 5, Law of 2005)

#### Article L. 611-6

The President of the Court is petitioned by a request from the debtor outlining his economic, social and financial situation, his financing needs as well as, it being the case, the means to face up to these.

Apart from the powers attributed to him by the second paragraph of I of Article L. 611-2, the President of the Court may task an expert of his choice to establish a report on the debtor's economic, social and financial situation and, notwithstanding any legislative or regulatory rule to the contrary, obtain from banking and financial establishments all details of a nature to give him exact information about the debtor's economic and financial situation.

The conciliation procedure is opened by the President of the Court, who appoints a conciliator for a period not exceeding four months but which he may, by a reasoned order, extend by a month at the most at the latter's request. The debtor may suggest

a conciliator for designation by the President of the Court. At the end of this period, the conciliator's mission and the proceedings come to an end as of right.

The decision opening conciliation proceedings is not subject to appeal. It is notified to the Public Prosecutor. Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the decision is also notified to the professional body or competent authority, of which, it being the case, he depends.

The debtor may dismiss the conciliator under the conditions and in the time limits to be fixed by decree by the Council of State.

(Inserted by Article 5, Law of 2005)

#### Article L. 611-7

The conciliator's mission is to favour the conclusion of a friendly accord between the debtor and his principal creditors as well as, it being the case, his usual contracting partners, which is destined to bring the business' difficulties to an end. He may also suggest any proposal which is relevant to the preservation of the business, the pursuit of economic activity and the maintenance of employment.

To this end, the conciliator may obtain all useful information from the debtor. The President of the Court may communicate to the conciliator all details he has in his possession and, it being the case, the results of any expert's report mentioned in the second paragraph of Article L. 611-6.

Financial authorities, social security bodies, institutions managing the unemployment insurance scheme provided for by Articles L 351-3 and following of the Employment Code as well as institutions governed by Book IX of the Social Security Code may consent to waivers of debt under the conditions fixed by Article L. 626-6 of the present Code.

The conciliator informs the President of the Court of the state of progress of his mission and provides all useful observations about the debtor's diligence.

If, during proceedings, the debtor is pursued by a creditor, the judge who has opened proceedings may, at the request of the debtor and having been informed by the conciliator, apply Articles 1244-1 to 1244-3 of the Civil Code.<sup>1</sup>

In case it becomes impossible to reach an agreement, the conciliator will present without delay a report to the President of the Court. The latter will bring his mission and conciliation proceedings to an end. His decision is notified to the debtor.

(Inserted by Article 6, Law of 2005)

#### Article L. 611-8

I - The President of the Court, by joint request of the parties, notes their agreement and gives it enforceable status. He makes an order in light of the debtor's certified declaration attesting that he is not in cessation of payments at the time the agreement is concluded or that this will bring [the state] to an end. The decision noting the agreement is not subject to publicity and is not subject to appeal. It brings conciliation proceedings to an end.

II - Nevertheless, at the debtor's request, the Court may endorse the agreement obtained if the following conditions are present:

1. The debtor is not in cessation of payments or the agreement brings this to an end;
2. The terms of the agreement are of a nature to ensure the continuity of the business' activity;

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<sup>1</sup>The right to postpone or stagger payments at no interest or at a reduced rate of interest.

3. The agreement does not harm the interests of non-signatory creditors, without prejudice to the application which may be made of Articles 1244-1 to 1244-3 of the Civil Code.

(Inserted by Article 7, Law of 2005)

Article L. 611-9

The Court makes an order having heard or duly summoned in chambers the debtor, the creditors who are party to the agreement, the representatives of the Works Council or, in default, the employees' representative, the conciliator and the Public Prosecutor. The professional body or competent authority from which, it being the case, the debtor who exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected depends, is heard or summoned under the same conditions.

The Court may hear any other person whose evidence appears to it to be useful.

(Inserted by Article 7, Law of 2005)

Article L. 611-10

The endorsement of the agreement brings an end to conciliation proceedings.

Where the debtor is subject to legal supervision of its accounts, the endorsed agreement is transmitted to its auditor. The endorsing order is filed in the registry where any interested party may have knowledge of it and is the object of measures of publicity. It is subject to appeal by a third party within a limit of ten days from publication. The judgment rejecting endorsement is not subject to publicity. It is subject to appeal.

The endorsed agreement suspends, during its period of validity, all suits and all individual pursuits to recover the moveable and immoveable assets of the debtor with view to obtaining the payment of debts the object of the action. It suspends, for the same period, the limits given to creditors participating in the agreement in default of which they lose or have terminated the rights attached to the debts mentioned in the agreement. Jointly bound persons and those who have consented to a joint or independent guarantee may rely on the stipulations of any endorsed agreement.

The endorsed agreement brings with it the lifting as of right of any interdiction preventing [the debtor] from issuing cheques in compliance with Article L. 131-73 of the Monetary and Financial Code, put into place on the occasion of a cheque issued prior to the opening of conciliation proceedings being rejected.

Petitioned by one of the parties to the endorsed agreement, the Court, if it notes the failure to perform the terms resulting from the agreement, will order its termination as well as the end of any restriction covering any [payment] delays granted.

(Inserted by Article 7, Law of 2005)

Article L. 611-11

In cases of subsequent preservation, judicial rescue or judicial liquidation proceedings, those persons who had consented, within the endorsed agreement mentioned in II of Article L. 611-8, a new supply of funds to the debtor with view to assuring the pursuit of the business' activity and its continuity will be paid, for the amount of this supply, as a priority before all debts arising prior to the opening of conciliation, according to the ranking provided in II of Article L. 622-17 and II of Article L. 641-13. Under the same conditions, those persons who supply, within the

endorsed agreement, a new good or service with view to assuring the pursuit of the business' activity and its continuity will be paid, for the cost of this good or service, as a priority before all debts arising prior to the opening of conciliation.

This provision does not apply to funds consented to by the shareholders or members of the partnership within the framework of an increase in capital.

Those creditors signatories to the agreement may not benefit directly or indirectly from this provision insofar funds supplied prior to the opening of conciliation are concerned.

(Inserted by Article 8, Law of 2005)

#### Article L. 611-12

The opening of preservation, judicial rescue or judicial liquidation proceedings brings to an end as of right the agreement noted or endorsed by application of Article L. 611-8. In this case, creditors recover the whole of their debts and security, subject to deduction of sums received, without prejudice to the provisions of Article L. 611-1.

(Inserted by Article 9, Law of 2005)

#### Article L. 611-13

The missions of an ad hoc nominee or conciliator may not be carried out by any person having, during the course of the twenty-four preceding months, received, for whatever reason, directly or indirectly, from any of the debtor's creditors or from a person who holds control of or is controlled by [that creditor] within the meaning of Article L. 233-16, except if it is by reason of an ad hoc mandate or mission of amicable settlement<sup>2</sup> or conciliation exercised for the same debtor or the same creditor. The person thus appointed must attest on his honour, at the time of accepting his mandate, that he complies with this prohibition.

The missions of ad hoc nominee or conciliator may not be entrusted to any [Commercial Court] judge in office or who has left office less than five years prior.

(Inserted by Article 10, Law of 2005)

#### Article L. 611-14

Having received the debtor's approval, the President of the Court fixes the remuneration terms for the ad hoc nominee, the conciliator and, it being the case, the expert, at the time of the designation of the party concerned, in function of the tasks necessary for the fulfilment of the mission. the remuneration is set out by order of the President of the Court at the end of the mission.

Appeals against these decisions are brought before the First President of the Court of Appeal within a time limit to be fixed by decree of the Council of State.

(Inserted by Article 10, Law of 2005)

#### Article L. 611-15

Any person called to [conduct] conciliation proceedings or an ad hoc mandate or who, by his function, has knowledge of these is bound to confidentiality.

(Inserted by Article 10, Law of 2005)

<sup>2</sup>The former name for conciliation.

## Chapter II: Provisions Applicable to Non-Commercial Private-Law Corporate Bodies with Economic Activity

### Article L. 612-1

Non-commercial private-law corporate bodies with economic activity whose number of employees, whose gross turnover or whose assets and balance sheet total exceed, for any two of these criteria, the thresholds fixed by decree of the Council of State, must establish each year a balance sheet, profit and loss accounts as well as an annexe. The methods for establishing these documents shall be fixed by decree. This corporate bodies are required to appoint at least one auditor and one replacement.

For agricultural co-operatives and common interest agricultural companies that do not have commercial form, where they do not call on certified auditors, this requirement may be satisfied by recourse to the services of a recognised organisation according to the provisions of Article L. 527-1 of the Rural Code. The conditions for the application of this provision shall be detailed in a decree by the Council of State.

The penalties provided for in Article 242-8 are applicable to the managers of the corporate bodies mentioned in the first paragraph of this article who do not, every year, establish a balance sheet, profit and loss accounts as well as an annexe.

Even if the thresholds noted in the first paragraph have not been reached, non-commercial private-law corporate bodies with economic activity may appoint at least one auditor and one replacement under the same conditions as in the second paragraph. In this case, the auditor and his replacement are subject to the same obligations, are exposed to the same risk of civil and criminal liability and exercise the same powers as if they were appointed by application of the first paragraph.

(Amended by Article 11, Law of 2005)

### Article L. 612-2

Non-commercial private-law corporate bodies with economic activity whose number of employees, whose gross turnover or whose assets and balance sheet total exceed the thresholds fixed by decree of the Council of State, must establish a statement of realisable and available assets, excluding business income, and one of due debt, a provisional profit and loss account, a financing schedule and a financing plan.

The frequency, time limits and methods of establishing these documents shall be detailed in a decree.

These documents are analysed in reports written about the evolution of the corporate body as established by the management body. These documents and reports are communicated simultaneously to the auditors, to the Works Council or, in default, the employees' representative, to the supervisory body, where one exists.

In cases where the provisions of the preceding paragraphs are not observed or if the information given in the reports mentioned in the preceding paragraph call for observations on his part, the auditor shall note this in a written report which shall be communicated to the management body. This report is communicated to the Works Council or, in default, the employees' representative. This report shall also be made available for information at the next meeting of the deliberative assembly.

(Amended by Article 11, Law of 2005)

### Article L. 612-3

Where the auditor of a corporate body mentioned in Articles L. 612-1 and L. 612-4 finds, on the occasion of the exercise of his mission, facts whose nature may compromise the corporate body [being able to] continue business, he informs the managers of the corporate body under the conditions to be fixed by decree of the Council of State.

In default of a response within fifteen days, or if this does not permit the continuation of business, the auditor shall invite, in writing, a copy of which is transmitted to the President of the Court, the managers to summon the collegiate body of the corporate body to consider the facts as found. The auditor is summoned to this meeting. The deliberations of the collegiate body are notified to the Works Council or, in default, the employees' representative and to the President of the Court.

In cases where these provisions are not followed, or if the auditor notes that despite the decisions taken the continuation of business remains compromised, a general meeting is summoned under those conditions and within time limits fixed by decree of Council of State. The auditor establishes a special report presented to this meeting. This report is notified to the Works Council or, in default, the employees' representative.

If, at the end of this general meeting, the auditor notes that the decisions taken do not permit the continuation of business to be assured, he shall take steps to inform the President of the Court and communicate to him the results [of the meeting].

The provisions of this article do not apply where conciliation or preservation proceedings have been initiated by the managers in application of Articles L. 611-6 and L. 620-1.

(Amended by Article 11, Law of 2005)

### Article L. 612-4

Any association receiving one or more subsidies on an annual basis from the State or public establishments or local authorities whose amount exceeds an overall amount fixed by decree must establish every year a balance sheet, profit and loss accounts as well as an annex, for which a decree shall establish the methods for establishing these.

These associations are required to appoint at least one auditor and one replacement.

(Amended by Article 11, Law of 2005)

## **Title II: Preservation**

### Article L. 620-1

There is instituted a preservation procedure opened by request of a debtor mentioned in Article L. 620-2 who justifies being in difficulties that he is not able to surmount, whose nature is to bring him to cessation of payments. This procedure is aimed at facilitating the reorganisation of the business with view to permitting the pursuit of economic activity, the maintenance of employment and the discharge of debts.

The preservation procedure gives rise to a plan adopted by a judgment at the end of an observation period and, it being the case, to the formation of two creditors' committees, in compliance with the provisions of Articles L. 626-29 and L. 626-30.



(Inserted by Article 12, Law of 2005)

Article L. 620-2

The preservation procedure is applicable to all commercial persons, to any person registered on the register of professions, to any farmer, to any other person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected, as well as to any private-law corporate body.

A new preservation procedure may not be opened with respect to any person already subject to such a procedure or to judicial rescue or judicial liquidation proceedings, as long as the operation of the plan resulting from this has not been brought to an end or the liquidation procedure has not been closed.

(Inserted by Article 13, Law of 2005)

Chapter I: Opening of Proceedings

Article L. 621-1

The Court makes an order opening proceedings, having heard or duly summoned in chambers the debtor, the representatives of the Works Council or, in default, the employees' representative. The Court may hear any other person whose evidence appears to it to be useful.

Furthermore, where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the Court makes an order having heard or summoned, under the same conditions, the professional body or competent authority from which, it being the case, the debtor depends.

The Court may, before making an order, depute a judge to collect any information on the business' financial, economic and social situation. This judge may make use of the provisions set out in Article L. 623-2. he may assisted by any expert of his choice.

The opening of preservation proceedings with respect to a debtor who benefits or has benefited from an ad hoc mandate or conciliation proceedings within the preceding eighteen months must be heard in the presence of the Public Prosecutor.

In this case, the Court may, ex officio or at the request of the Public Prosecutor, obtain the communication of all documents and deeds relating to the ad hoc mandate or the conciliation, notwithstanding the provisions of Article L. 611-15.

(Inserted by Article 14, Law of 2005)

Article L.621-2 (formerly L. 621-5)

The competent court is the Commercial Court if the debtor is a commercial person or is registered on the register of professions. The High Court is competent in other cases.

The proceedings that are opened may be extended to one or more other persons in cases of assets being mixed with those of the debtor or where the corporate body is a sham. To this end, the court that has opened initial proceedings shall remain competent.

(Amended by Article 15, Law of 2005)

Article L. 621-3 (formerly L. 621-6)

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

The judgment opens an observation period of a maximum duration of six months, which may be renewed once by a reasoned decision at the request of the administrator, the debtor or the Public Prosecutor. It may also be extended exceptionally at the request of the Public Prosecutor by a reasoned decision of the Court for a period to be fixed by decree of the Council of State.

Where an agricultural business is concerned, the Court may extend the observation period by reference to the agricultural year in vigour as well as customs specific to the produce of the business.

(Amended by Article 16, Law of 2005)

#### Article L. 621-4

In the opening judgment, the Court will appoint a supervising judge whose functions are defined in Article L. 621-9. It may, in cases of need, appoint a number [of supervising judges].

It invites the Works Council or, in default, the employees' representative to appoint a representative from among the business' employees. In the absence of a Works Council or employees' representative, the employees will elect a representative, who exercises the functions devolved to these institutions by the provisions of the present title. The methods of appointment or election of an employees' representative will be detailed in a decree by the Council of State. Where no employees' representative can be appointed or elected, a minute of the failure is established by the entrepreneur.

In the same judgment, without prejudice to the possibility of nominating one or more experts with view to carrying out a mission it may determine, the Court will appoint two nominees of justice who are the judicial nominee and the judicial administrator, whose functions are respectively defined in Article L. 622-20 and Article L. 622-1. It may, at the request of the Public Prosecutor, appoint a number of judicial nominees or judicial administrators. In the situation provided for in the fourth paragraph of Article L. 621-1, the Public Prosecutor may object to the appointment of the person who previously was appointed as an ad hoc nominee or conciliator in the context of a mandate or procedure concerning the same debtor.

Nevertheless, the Court is not bound to appoint a judicial administrator where proceedings benefit a [debtor] whose number of employees and gross turnover are below thresholds to be fixed by decree of the Council of State. In this case, the provisions of Chapter VII of the present title are applicable. until the judgment adopting the plan, the Court may, at the request of the debtor, the judicial nominee or the Public Prosecutor, decide to appoint a judicial administrator.

For the purposes of taking inventory and the estimate required by Article L. 622-6, the Court shall appoint a registered estimator, a bailiff, a notary or a trader in merchandise.

(Inserted by Article 17, Law of 2005)

#### Article L. 621-5

No parent or relative, including up to the fourth degree, of the entrepreneur or its managers, if [the debtor] is a corporate body, may be appointed to any one of the positions set out in Article L. 621-4 except where this provision prevents the appointment of an employees' representative.

(Inserted by Article 17, Law of 2005)

**Unofficial translation; only the French text is authoritative.  
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Article L. 621-6 (formerly L. 621-9)

The employees' representative as well as employees participating in his appointment must not have incurred the penalties set out in Article L. 6 of the Electoral Code. The employees' representative must be at least eighteen years old.

(Amended by Article 18, Law of 2005)

Article L. 621-7

The Court may, ex officio or on the initiative of the supervising judge or at the request of the Public Prosecutor, proceed to replace the administrator, the expert or the judicial nominee.

The Court may add, under the same conditions, one or more administrators or judicial nominees to those already appointed. The administrator, the judicial nominee or a creditor appointed as monitor may ask the supervising judge to petition the Court for the same purpose.

Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the professional body or competent authority from which, it being the case, the debtor depends may petition the Public Prosecutor for the same purpose.

The debtor may ask the supervising judge to petition the Court with view to replacing the administrator or expert. Under the same conditions, the creditors may request the replacement of the judicial nominee.

Only the Works Council or, in default, the employees' representative or, in default, the employees may proceed to replace the employees' representative.

(Inserted by Article 19, Law of 2005)

Article L. 621-8 (formerly L. 621-11)

The administrator and judicial nominee shall keep the supervising judge and Public Prosecutor informed of the progress of proceedings. The latter may at any time request the communication of all deeds and documents relating to proceedings.

The Public Prosecutor shall communicate to the supervising judge at his request or ex officio, notwithstanding any legal provision to the contrary, any information he holds and which may be useful for proceedings.

(Amended by Article 20, Law of 2005)

Article L. 621-9 (formerly L. 621-12)

The supervising judge is in charge of supervising the speedy progress of proceedings and of protecting the interests of participants.

Where the appointment of a technical expert is necessary, only the supervising judge may proceed to make the appointment for the purposes of a mission he shall determine, without prejudice to the powers of the Court provided in Article L. 621-4 to appoint one or more experts. The remuneration terms for the technical expert are fixed by a decree of the Council of State.

(Amended by Article 21, Law of 2005)

Article L. 621-10

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

The supervising judge appoint between one and five monitors from among those creditors who make a request. Where he appoints several monitors, he must ensure that at least one of these is chosen from among the privileged creditors and one from among the unsecured creditors.

No parent or relative, including up to the fourth degree, of the entrepreneur or the managers of a corporate body, nor any person holding directly or indirectly all or part of the capital of the debtor corporate body or whose capital is held, in part or all, by the same person, may be appointed a monitor or representative of a corporate body appointed as monitor.

Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the professional body or competent authority from which, it being the case, the debtor depends shall be a monitor ex officio. In this case, the supervising judge may not appoint more than four monitors.

The liability of a monitor is only established in instances of gross negligence. He may be represented by one of its duly-authorized nominees or by a lawyer. Any creditor appointed as a monitor may be removed by the Court at the request of the Public Prosecutor.

(Inserted by Article 22, Law of 2005)

#### Article L. 621-11

The monitors will assist the judicial nominee in his functions and the supervising judge in his mission to supervise the management of the business. They may have access to all documents transmitted to the administrator and to the judicial nominee. They are bound by confidentiality. The functions of a nominee are without fee.

(Inserted by Article 22, Law of 2005)

#### Article L. 621-12

If it appears, after the opening of proceedings, that the debtor is already in cessation of payments at the time judgment was pronounced, the Court shall note this and fix the date [thereof] under the conditions stated in the second paragraph of Article L. 631-8. It converts the preservation procedure into one of judicial rescue. If necessary, it may modify the length of the observation period left to run.

The Court is petitioned by the administrator, the judicial nominee or the Public Prosecutor. It may equally act ex officio. It makes an order having heard or duly summoned the debtor.

(Inserted by Article 22, Law of 2005)

### Chapter II: The Business during the Observation Period

#### Article L. 622-1 (formerly L. 621-22)

I -The management of the business is carried out by its manager.

II - Where the Court, in application of the provisions of Article L. 621-4, appoints one or more administrators, it may require them jointly or separately to supervise the debtor in management operations, or to assist him in all management acts or some of these.

III - In his mission, the administrator is bound to observe legal and contractual obligations incumbent on the entrepreneur.

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Translation (c) PJ Omar 2005.**

IV - At any time, the Court may alter the administrator's mission at his request or at the request of the judicial nominee or Public Prosecutor.

(Amended by Article 23, Law of 2005)

Article L. 622-2 (formerly L. 621-22-1)

The debtor's auditor may not raise professional secrecy as a defence to requests by the administrator's auditor seeking to obtain communication of any information or documents relative to the running, from the moment the administrator is appointed, of bank or Post Office accounts opened in the name of the debtor.

(Unchanged)

Article L. 622-3 (formerly L. 621-23)

The debtor continues to exercise over his assets rights of disposal and management as well as any rights and suits not included within the administrator's mission.

(Unchanged)

Article L. 622-4 (formerly L. 621-16)

Following his entry into office, the administrator is bound to request the entrepreneur to or, it being the case, to himself perform all acts necessary for the preservation of the business' rights against its debtors and for the preservation of production capacity.

The administrator has the authority to take out on behalf of the business any mortgages, charges, pledges or security that the entrepreneur may have neglected to secure or renew.

(Unchanged)

Article L. 622-5 (formerly L. 621-17)

From the opening judgment, all third party holders are bound to return to the administrator or, in default, the judicial nominee, at the latter's request, all documents and accounts books with view to their being examined.

(Unchanged)

Article L. 622-6

From the opening of proceedings, an inventory is taken and an estimate made of the debtor's assets as well as any guarantees burdening these. the inventory, given to the administrator and to the judicial nominee, is completed by the debtor with a note of any assets he holds potentially subject to a third party claim.

The debtor gives to the administrator and to the judicial nominee a list of his creditors, the amount of his debts and principal contracts in progress. He informs them of any legal proceedings to which is a party.

The administrator or, if one has not been appointed, the judicial nominee may, notwithstanding any legal or regulatory rule to the contrary, obtain communication, by the administrative and public authorities, state security and contingency bodies, credit establishments as well as the services tasked with the centralisation of

banking risks and incidences of payment, of all details of a nature to give him exact information about the debtor's asset situation.

Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, inventory is taken in the presence of a representative of the professional body or competent authority from which, it being the case, the debtor depends. In no case can the inventory harm the professional secrecy to which the debtor is subject.

The absence of an inventory does not prevent the exercise of any claims for recovery or restitution.

A decree by the Council of State will determine the conditions in which the present article applies.

(Inserted by Article 24, Law of 2005)

Article L. 622-7 (formerly L. 621-24)

The judgment opening proceedings acts, as of right, to forbid the payment of any debt which arose before the judgment, except payments by way of set-off between connected debts. It also acts, as of right, to forbid the payment of any debt arising after the opening judgment, not [otherwise] mentioned in Article L. 622-17, excepting those debts linked to the needs of the ordinary life of the individual debtor and any support payments.

The supervising judge may authorise the entrepreneur or the administrator to perform an act of disposal outside the normal management of the business, to grant a mortgage or legal charge or to settle or compromise [a claim].

The supervising judge may also authorise them to pay debts arising before the judgment, to surrender security or possession of a thing held lawfully, where the surrender is justified by the pursuit of activity.

All acts or payments carried out in contravention of the provisions of this article may be voided at the request of any interested party or of the Public Prosecutor, submitted within a time limit of three years beginning with the accomplishment of the act or the payment of the debt. Where the act is subject to publicity, the time limit runs from the date of [the publicity].

(Amended by Article 25, Law of 2005)

Article L. 622-8 (formerly L. 621-25)

In the case of the sale of a good subject to a special privilege, to a legal charge or to a mortgage, the portion of the price corresponding to the debts guaranteed by the security is placed on deposit with the official deposit-taker. Following the adoption of the plan, the creditors benefiting from the security or holding a general privilege are paid out of this price following the order of priority as between them and in compliance with Article L. 626-22 where they are subject to the time limits in a plan.

The supervising judge may order the provisional payment of all or part of their debt to creditors holding security over goods. Except in the case of a specially reasoned decision by the supervising judge or where [the decision] benefits the Treasury or social bodies or assimilated organisations, the provisional payment is subject to the presentation by its beneficiary of a guarantee provided by a credit establishment.

The debtor or administrator may suggest to creditors the substitution of equivalent guarantees for those they hold. In the absence of agreement, the supervising judge may order this substitution. An appeal against this order may be brought before the Court of Appeal.

(Amended by Article 26, Law of 2005)

Article L. 622-9 (formerly L. 621-26)

The activity of the business is pursued during the observation period subject to the provisions of Articles L. 622-10 to L. 622-16.

(Amended by Article 27, Law of 2005)

Article L. 622-10

At any time during the observation period, the Court, at the request of the debtor, the administrator, the judicial nominee, one of the monitors, the Public Prosecutor or ex officio may order the partial cessation of business.

Under the same conditions, it converts the proceedings into judicial rescue, if the conditions in Article L. 631-1 are met, or orders judicial liquidation, if the conditions of Article L. 640-1 are met.

It makes an order having heard or duly summoned the debtor, the administrator, the judicial nominee, the monitors, the Works Council or, in default, the employees' representative and having solicited the views of the Public Prosecutor.

When it converts preservation proceedings into judicial rescue proceedings, the Court may, if necessary, alter the length of the observation period remaining to run.

(Inserted by Article 28, Law of 2005)

Article L. 622-11

When the Court orders liquidation, it brings an end to the observation period and, subject to the provisions of Article L. 641-10, to the administrator's mission.

(Inserted by Article 28, Law of 2005)

Article L. 622-12

Where the difficulties justifying the opening of proceedings are no longer present, the Court may close the debtor's request. It makes an order under the conditions provided in Article L. 622-10.

(Inserted by Article 28, Law of 2005)

Article L. 622-13 (formerly L. 621-28)

The administrator alone has the capacity to require the execution of current contracts by providing the promised consideration to the other party. The contracted is terminated as of right after notice addressed to the administrator remains without reply for more than one month. Before this time limit expires, the supervising judge may give the administrator a shorter time or give him an extension, which may not exceed two months, to take a position.

Where the consideration is formed by the payment of a sum of money, it must be paid when due, except if the administrator obtains the acceptance by the other party of any [payment] delays. In light of the provisional documentation in his possession, the administrator assures himself, at the time he asks for performance, that he has the necessary funds at his disposal for that purpose. If the contract concerned is to be performed or payment made in stages over time, the administrator brings it to an

end if it appears to him that he does not have the necessary funds at his disposal to complete the obligations for the next stage.

If payment is not made under the conditions defined in the preceding paragraph or in the absence of agreement by the other party to continue the contractual relationship, the contract is terminated as of right and the Public Prosecutor, the administrator, the judicial nominee or a monitor may petition the Court to bring the observation period to an end.

The other party must perform its obligations despite any default in performance by the debtor as to promises prior to the opening judgment. The default in performing these obligations does not create any right for creditors except for the purposes of proof as a debt.

If the administrator does not make use of the facility to continue the contract or brings it to an end under the conditions in the second paragraph, the failure to execute the contract may give rise to damages and interest which may be declared as a debt for the benefit of the other party. [The other party] may nevertheless postpone the restitution of sums paid over in excess by the debtor in performance of the contract until an order has been made about the damages and interest.

Notwithstanding any legal rule or contractual term to the contrary, no aggregation, termination or voiding of the contract may result solely by virtue of the opening of preservation proceedings.

(Amended by Article 29, Law of 2005)

#### Article L. 622-14

The termination of leases over immoveable property given in lease to the debtor and used for business purposes is noted or ordered:

1. Where the administrator decides not to continue with the lease and asks for its termination. In this case, the termination takes effect at the date of the request;
2. Where the lessor requests the termination or notes the termination of the lease because of a default in the payment of the rent or charges relating to occupation after the opening judgment, the lessor not being able to act except at the expiry of a period of three months from the date of that judgment.

If the payment of sums due occurs before the expiry of this period, there is no cause for termination.

Notwithstanding any contractual term to the contrary, the failure to carry on business during the observation period in one or more premises leased by the business does not cause the termination of the lease.

(Inserted by Article 30, Law of 2005)

#### Article L. 622-15 (formerly L. 621-30)

In case the lease is sold, any clause imposing on the transferor joint liability with the transferee is deemed void.

(Amended by Article 31, Law of 2005)

#### Article L. 622-16 (formerly L. 621-31)

In case of preservation proceedings, the lessor has a priority for rent for the two years preceding the judgment opening proceedings.



If the lease is terminated, the lessor has, in addition, a priority for the current year for all that concerns the performance of the lease and for damages and interest that may be awarded by the Courts.

If the lease is not terminated, the lessor may not demand the payment of rent yet to fall due where the security given him at the time of the contract are maintained or where those that have been supplied after the opening judgment are sufficient.

The supervising judge may authorise the debtor or the administrator, it being the case, to sell moveable assets furnishing the rented property subject to quick perishing or imminent depreciation or wasteful to preserve, or whose sale does not put at risk the existence of funds or the maintenance of guarantees sufficient for the lessor.

(Amended by Article 32, Law of 2005)

Article L. 622-17 (formerly L. 621-32)

I - Debts arising in a regular manner after the opening judgment for the needs of the progress of proceedings or of the observation period or as consideration for a supply to the debtor for his professional activity during this period are paid as they fall due.

II - In cases where the debts are not paid as they fall due, [the debts] are paid in priority before all other debts, whether these are guaranteed by way of security or charges, excepting those debts guaranteed by the priority set out in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code.

III - Their payment is made in the following order:

1. Debts owed to employees whose amount has not been advanced by application of Articles L. 143-11-1 to L. 143-11-3 of the Employment Code;

2. Court fees;

3. Loans as well as debts arising from the performance of contracts pursued in compliance with the provisions of Article L. 622-13 and where the other party accepts the receipt of postponed payments; these loans and payment postponements shall be authorised by the supervising judge only as far as is necessary for the pursuit of activity during the observation period and are subject to publicity. In cases where a contract which is properly pursued has been terminated, any indemnities and penalties are excluded from benefiting under this article;

4. Sums whose amount has been advanced by application of 3 of Article L. 143-11-1 of the Employment Code.

IV - Unpaid debts lose the priority given by this article if they have not been brought to the knowledge of the judicial nominee and the administrator where one has been appointed or, where these persons have ceased functions, of the plan performance supervisor or the liquidator within a year from the end of the observation period.

(Amended by Article 33, Law of 2005)

Article L. 622-18 (formerly L. 621-33)

Any sum received by the administrator or judicial nominee which is not paid into the debtor's bank or postal accounts for the purposes of pursuing activity must be paid immediately into an account with the official deposit-taker.

In case of [payment] delays, the administrator or judicial nominee must pay, for sums remaining unpaid, a rate of interest equal to the legal rate of interest plus five percent.

(Unchanged)

Article L. 622-19 (formerly L. 621-38)

Any sum received by the association mentioned in Article L. 143-11-4 of the Employment Code in application of Articles L. 143-11-1 to L. 143-11-3 of the same Code must be declared to the tax authorities.

(Unchanged)

Article L. 622-20 (formerly L. 621-39)

The judicial nominee appointed by the Court has sole authority to act in the name of and in the interests of creditors. Nevertheless, in case of default by the judicial nominee, any creditor appointed as monitor may act in this interest under the conditions set out in a decree by the Council of State.

The judicial nominee communicates to the supervising judge and to the Public Prosecutor any observations passed to him at any time during proceedings by the monitors.

Sums recovered following action pursued by the judicial nominee or, in default, by one or more creditors appointed as monitors form part of the debtor's assets and shall be used in case the business' activity continues according to the terms set out for the payment of debts.

(Amended by Article 34, Law of 2005)

Article L. 622-21 (formerly L. 621-40)

I - The opening judgment suspends or prohibits any legal action by a creditor whose debt is not mentioned in I of Article L. 622-17 and which has as its purpose:

1. The finding of liability for the payment of a sum of money;
2. The termination of a contract for a failure to pay a sum of money.

II - Equally, it stops or prohibits all measures of execution by the creditors over moveable and immovable assets.

III - Any imposed [payment] delays subject to penalties for default or to termination of rights are as a consequence suspended.

(Amended by Article 35, Law of 2005)

Article L. 622-22 (formerly L. 621-41)

Subject to the provisions of Article L. 625-3, any suits in progress are suspended until the pursuing creditor has proved his debt. They are then resumed as of right and, it being the case, the administrator or plan performance supervisor appointed by application of Article L. 626-25 having been summoned, are solely aimed at noting the debt and fixing its amount.

(Amended by Article 36, Law of 2005)

Article L. 622-23 (formerly L. 621-42)

Legal actions and measures of execution other than those noted in Article L. 622-21 are pursued during the observation period against the debtor, after the administrator and the judicial nominee have been summoned or after the action is resumed at their initiative.

(Unchanged)

Article L. 622-24 (formerly L. 621-43)

From the moment the judgment is published, all creditors whose debts arise before the opening judgment, except in the case of employees, must send a declaration of the debt to the judicial nominee. Creditors who are holders of security or are linked to the debtor by a contract which have been the subject of publication are notified personally and, it being the case, at their nominated domicile. The time limit runs as far as they are concerned from the moment they receive notice of this caution.

The proof of debt may be made by the creditor or by any representative or nominee of his choice.

The proof of debt must be made even if it is not established in a document. Those whose amount is not yet definitively fixed are proved on the basis of an estimate. Debts owed the Public Treasury and social security and contingency bodies as well as debts claimed by bodies mentioned in Article L. 351-21 of the Employment Code which are not the subject of an order for enforcement are admitted on a provisional basis for the declared amount. In any case, proofs [submitted] by the Treasury and social security are always made subject to taxes and other debts not established at the date of the proof. Subject to judicial and administrative proceedings in progress, the definitive establishment of [these debts] must be carried out within the time limit set out in Article L. 624-1 in default of which they are barred.

Those institutions mentioned in Article L. 143-11-4 of the Employment Code are subject to the provisions of this article for the sums they have advanced and which are to be reimbursed to them under the conditions set out for those debts arising before the opening of proceedings.

Debts lawfully arising after the opening of proceedings, other than those mentioned in I of Article L. 622-17 and support payments, are subject to the terms of this article. Time limits will run as of the date the debt becomes due. nevertheless, creditors whose debts arise from a rolling contract may prove all of the sums due to them under the conditions set out by a decree of the Council of State.

The time limits for a civil party<sup>3</sup> for debts arising from a criminal offence run from the definitive judgment that fixes the amount.

(Amended by Article 37, Law of 2005)

Article L. 622-25 (formerly L. 621-44)

The proof must state the amount of the debt due at the date of the opening judgment with an indication of the sums yet to fall due and the dates these will fall due. [The proof] must state the nature of any privilege or charge related to the debt.

Where the debt is expressed in a foreign currency, the conversion to euros must be made at the rate prevailing on the date of the opening judgment.

Unless it results from an order for enforcement, the debt proved is certified as truthful by the creditor. The auditor's stamp or, in default, that of an expert accountant on the proof of debt may be requested by the supervising judge. The refusal to stamp must be reasoned.

(Unchanged)

Article L.622-26

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<sup>3</sup>Party in criminal proceedings seeking damages or compensation.

In default of a declaration within the time limits determined in a decree by the Council of State, creditors are not admitted to any distributions or dividends unless the supervising judge relieves them of their disability if they establish that their default is due to their act or it is due to the debtor's voluntary omission at the time the list mentioned in the second paragraph of Article L. 622-6 is established. They may not then be admitted except to distributions following their request.

The claim of relief may not be brought except within a time limit of six months. This time limit runs from the moment of publication of the opening judgment or, for those institutions mentioned in Article L. 143-11-4 of the Employment Code, at the end of the period during which debts resulting from the employment contract are guaranteed by these institutions. For creditors holding security subject to publicity or linked to the debtor by a contract subject to publicity, [the time limit] runs from the moment they receive the notice sent to them. As an exception, the time limit is extended to one year in the case of creditors who are deemed to find it impossible to know they are owed a debt before the end of the six months mentioned.

(Inserted by Article 38, Law of 2005)

Article L. 622-27 (formerly L. 621-47)

If there is a dispute over all or part of a debt other than those mentioned in Article L. 625-1, the judicial nominee will advise the creditor concerned inviting him to make his explanations known. A failure to reply within thirty days bars any later dispute over the judicial nominee's proposals.

(Unchanged)

Article L. 622-28 (formerly L. 621-48)

The opening judgment stops legal and contractual interest running, as well as any interest due to late payment and penalties, unless interest arising from loan contracts for a period equal to or more than a year or contracts subject to payment postponements for a year or more are concerned. Individuals with joint liability or who have given a dependent or independent guarantee may benefit from the provisions of this paragraph.

The opening judgment suspends until the order adopting the plan or pronouncing liquidation any action against individuals with joint liability or who have given a dependent or independent guarantee. The Court may subsequently give them a further period [to pay] or postpone payment for a maximum of two years.

Creditors who benefit from any guarantees may take measures to preserve [assets].

(Amended by Article 39, Law of 2005)

Article L. 622-29 (formerly L. 621-49)

The opening judgment does not render due debts not fallen due at the date it is pronounced. Any [contractual] clause to the contrary is void.

(Amended by Article 40, Law of 2005)

Article L. 622-30 (formerly L. 621-50)

No mortgage, legal charge or privilege may be registered after the date of the opening judgment. The same applies to deeds and judgments embodying or

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constituting real rights, unless these deeds have come into force or the judgments become enforceable prior to the opening judgment.

Nevertheless, the Public Treasury retains its priority for debts it was not required to note at the date of the opening judgment and for debts the subject of recovery after this date if these debts have been proved under the conditions set out in Article L. 622-24.

The seller of a business, by way of exception to the provisions of the first paragraph, may register a priority.

(Amended by Article 41, Law of 2005)

Article L. 622-31 (formerly L. 621-51)

The creditor who benefits from promises subscribed to, endorsed or guaranteed jointly by two or more parties subject to proceedings may prove his debt for the nominal amount of his title in each [set of] proceedings.

(Amended by Article 42, Law of 2005)

Article L. 622-32 (formerly L. 621-52)

No recourse for payments made is open to those jointly liable and subject to proceedings against each other unless the total of sums paid out by virtue of all proceedings exceeds the total amount of the debt including principal and [other sums payable]; in this case, the excess is payable, following the order of the promises, to those of jointly liable parties who have the others as guarantors.

(Amended by Article 42, Law of 2005)

Article L. 622-33 (formerly L. 621-53)

If the creditor who benefits from promises subscribed to, endorsed or guaranteed jointly by the debtor subject to proceedings and others has received an advance on the sums due before the opening judgment, he may not prove his debt except for the amount less the advance and retains, for what remains due to him, any rights against the jointly liable party or guarantor.

The jointly liable party or guarantor who has made partial payment may prove the whole of the amount he has paid for the discharge of the debtor.

(Amended by Article 42, Law of 2005)

Chapter III: The Development of an Economic, Social and Environmental Plan

Article L. 623-1 (formerly L. 621-54)

The administrator, with the debtor's help and the possible assistance of one or more experts, is tasked with establishing in a report the economic and social balance sheet of the business.

The economic and social balance sheet details the origin, importance and nature of the business' difficulties.

Where the business operates one or more defined installations in the sense of Title I of Book V of the Environmental Code, the economic and social balance sheet is completed by an environmental balance sheet that the administrator will draw up under the conditions set out in a decree by the Council of State.

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In light of the balance sheet, the administrator will suggest a preservation plan, without prejudice to the application of the provisions of Article L. 622-10.

(Amended by Article 43, Law of 2005)

Article L. 623-2 (formerly L. 621-55)

The supervising judge may, notwithstanding any legislative or regulatory rule to the contrary, obtain communication, by the auditors, expert-accountants, the members or representatives of personnel, public administration and authorities, state security and contingency bodies as well as the services tasked with the centralisation of banking risks and incidences of payment, of all details of a nature to give him exact information about the business' economic, financial, social and asset situation.

(Amended by Article 44, Law of 2005)

Article L. 623-3 (formerly L. 621-56)

The administrator receives from the supervising judge all information and documents useful for the completion of his mission and those of any experts.

Where proceedings are opened with respect to a business that benefits from an amicable agreement endorsed under Article L. 611-8 of the present code or in Article L. 351-6 of the Rural Code, the administrator receives the expert's report mentioned in Article L. 611-6 or, it being the case, the expert's report and the minute mentioned in Articles L. 351-3 and L. 351-6 of the Rural Code.

The administrator consults the judicial nominee and any person capable of informing him on the status of and perspectives for rescue of the business, the means by which the debts may be settled and the social conditions for the pursuit of activity. He will inform the debtor of this and receive any observations or suggestions.

He keeps the judicial nominee, the Works Council or, in default, the employees' representative informed of the progress of his tasks. He consults them and the debtor about the measures he envisages taking in light of the information and offers received.

Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the administrator consults the professional body or competent authority, from which, it being the case, the debtor depends.

(Amended by Article 45, Law of 2005)

Chapter IV: The Determination of the Debtor's Assets

Section 1: The Ascertainment and Proving of Debts

Article L. 624-1 (formerly L. 621-103)

Within the time limit fixed by the Court, the judicial nominee establishes, having solicited the debtor's views, the list of declared debts with his proposals for their acceptance, rejection or renvoi before the competent jurisdiction. This list is transmitted to the supervising judge.

The judicial nominee may not be remunerated by reference to proven debts not appearing on this list within the time limit referred to above, except for those debts proved after this time limit by application of the two final paragraphs of Article L. 622-4.

(Amended by Article 46, Law of 2005)

Article L. 624-2 (formerly L. 621-104)

In view of the proposals [submitted] by the judicial nominee, the supervising judge decides on the acceptance or rejection of debts or notes either that there exists an action in process or that the dispute is not within his [field of] competence.

(Unchanged)

Article L. 624-3 (formerly L. 621-105)

An appeal against the decisions of the supervising judge taken in application of the present section is open to the creditor, the debtor or to the judicial nominee. Nevertheless, the creditor's whose debt is disputed in whole or in part and who has not replied to the judicial nominee within the time limit mentioned in Article L. 622-27 may not exercise an appeal against the supervising judge's decision where this confirms the judicial nominee's proposal. The conditions and method for bringing the appeal set out in the first paragraph will be fixed by a decree of the Council of State.

(Amended by Article 47, Law of 2005)

Article L. 624-4 (formerly L. 621-106)

The supervising judge may make a final order in those cases set out in the present section where the value of the principal amount of the debt does not exceed the amount of the jurisdictional threshold in the case of a final order made by the court which opened proceedings.

(Amended by Article 47, Law of 2005)

Section 2: The Rights of Spouses

Article L. 624-5 (formerly L. 621-111)

The spouse of a debtor subject to preservation proceedings establishes the contents of [his/her] personal property in compliance with the rules of the matrimonial regime and under the conditions set out in Article L. 624-9.

(Amended by Article 48, Law of 2005)

Article L. 624-6 (formerly L. 621-112)

The judicial nominee or the administrator may, by proving by any means that the goods acquired by the debtor's spouse were acquired by money supplied by [the debtor], request that the acquisitions thus made be restored to the [debtor's] assets.

(Unchanged)

Article L. 624-7 (formerly L. 621-113)

Claims made by virtue of Article L. 624-5 may not be exercised except subject to debts and mortgages lawfully attaching to the property

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(Unchanged)

Article L. 624-8

The spouse of a debtor who, at the time of the marriage or within the year of the marriage or within the following year, was a commercial person or registered on the Register of Professions or a farmer or who exercised any other independent professional activity, may not exercise within preservation proceedings any action by reason of advantages conceded by one spouse to the other within the marriage contract or during marriage. The creditors may not, for their part, rely on any advantages conceded by one of the spouses to the other.

(Inserted by Article 49, Law of 2005)

Section 3: The Rights of the Seller of Moveable Property, Claims and Restitution

Article L. 624-9 (formerly L. 621-115)

The claiming of property may not be made after the period of three months which follows the date of the opening judgment.  
For goods which are the subject of a contract still in currency at the date proceedings are opened, this delay runs from the termination or end of the contract.

(Amended by Article 50, Law of 2005)

Article L. 624-10 (formerly L. 621-116)

The owner of property may not need to prove his ownership where the contract which covers the property has been the subject of publicity.  
He may claim the restitution of his property under the conditions set out in a decree of the Council of State.

(Amended by Article 51, Law of 2005)

Article L. 624-11 (formerly L. 621-117)

The privilege and right to reclaim established by 4 of Article 2102 of the Civil Code benefiting the seller of goods as well as an action to terminate [the contract] may not be exercised except within the terms of the provisions of Articles L. 624-12 to L. 624-18 of the present Code.

(Amended by Article 52, Law of 2005)

Article L. 624-12 (formerly L. 621-118)

A claim may be made for recovery of the goods, if they still exist wholly or partly in specie, where resolution of the sale was made before the judgment opening proceedings, whether this was by a decision of a court or the application of a term of the contract.

The claim must be admitted even if the termination of the sale has been ordered or noted by a judicial decision following the judgment opening proceedings where the claim for recovery or termination was initiated prior to the opening judgment by the seller for a reason other than the failure to pay the price.

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(Amended by Article 53, Law of 2005)

Article L. 624-13 (formerly L. 621-119)

Merchandise sent to the debtor may be reclaimed as long as the sale has not taken place in the [debtor's] shops or in those belonging to the agent tasked with selling these on his behalf.

Nevertheless, the claim is not admissible if, before their arrival, the merchandise has been resold without fraud on the basis of regular invoices or transport documents.

(Unchanged)

Article L. 624-14 (formerly L. 621-120)

The seller may retain any merchandise that has not been delivered or sent to the debtor or to a third party acting on his behalf.

(Unchanged)

Article L. 624-15 (formerly L. 621-121)

If they remain in the debtor's portfolio, commercial bills and any uncashed documentary titles given by their owner to cover or for the purposes of predetermined payments may be reclaimed.

(Unchanged)

Article L. 624-16 (formerly L. 621-122)

A claim may be made for goods, if they exist in specie, consigned to the debtor whether in bond or for a sale on behalf of the owner.

A claim may also be made for goods, if these still exist in specie at the time of the judgment instituting insolvency proceedings, sold with a retention of title clause which requires full payment of the sales price as a condition for the transfer of title. This clause, which may appear in a document governing a number of commercial operations as agreed between the parties, must have appeared in an agreed document set out at the latest at the time of delivery. Notwithstanding any clause to the contrary, the retention of title clause may be relied on as against the purchaser or other creditors, unless the parties have agreed to avoid or modify it in writing.

A claim in specie may also be made in the same conditions over property incorporated in other goods where the property may be recovered without causing damage to that property or to the goods within which they are incorporated. A claim may also be made in specie over goods in bulk where the seller has in his possession goods of a similar type and the same quality.

In all cases, no claim may be brought if, by decision of the supervising judge, the price is paid immediately. The supervising judge may also, with the consent of the creditor making the request, provide a delay for settlement. The payment of the price is thus assimilated to the status of debts mentioned in I of Article L. 622-17.

(Amended by Article 54, Law of 2005)

Article L. 624-17 (formerly L. 621-123)

The administrator or, in default, the debtor with the agreement of the judicial nominee may agree to the claim for recovery or restitution of goods the subject of the present section, with the agreement of the debtor. In default of agreement or in cases of dispute, the request is brought before the supervising judge who makes an order on the fate of the contract in light of the views of the creditor, the debtor and the judicial nominee.

(Amended by Article 55, Law of 2005)

Article L. 624-18 (formerly L. 621-124)

The price or a part of the price for goods mentioned in Article L. 624-16 may be claimed where this has not been paid nor consideration provided nor set off on account between the debtor and the purchaser at the date of the judgment opening proceedings.

(Amended by Article 55, Law of 2005)

Chapter V: The Settlement of Debts Resulting from the Employment Contract

Section 1: Of the Ascertainment of Debts

Article L. 625-1 (formerly L. 621-125)

Following ascertainment, the judicial nominee establishes, within the time limits provided in Article L. 143-11-7 of the Employment Code, lists of debts arising from employment contracts, the debtor having been heard or duly summoned. These lists of debts are submitted to the employees' representative under the conditions set out in Article L. 625-2. They are noted by the supervising judge, filed in the Court Registry and are subject to measures of publicity under the conditions set out in a decree by the Council of State.

The employee whose debt is not mentioned in whole or in part on the lists must petition the Employment Tribunal in default of which the debt is barred within a time limit of two months beginning with the publication mentioned in the previous paragraph. He may ask the employees' representative to assist or represent him before the Employment Tribunal.

The debtor or administrator where the latter's mission is to carry on the management [of the business] is cited to appear.

(Amended by Article 56, Law of 2005)

Article L. 625-2 (formerly L. 621-36)

The lists of debts resulting from employment contracts are submitted for ascertainment by the judicial nominee to the employees' representative mentioned in Article L. 621-4. The judicial nominee must communicate all useful documents and information to him. In case of difficulties, the employees' representative may address himself to the administrator and, it being the case, petition the supervising judge. He is bound by the obligation of discretion mentioned in Article L. 432-7 of the Employment Code. The time spent in the exercise of his mission as determined by the supervising judge is considered as of right to be salaried time and paid for by the employer, the administrator or the liquidator, it being the case, at the normal [payment] intervals.

(Amended by Article 57, Law of 2005)

Article L. 625-3 (formerly L.621-126)

Proceedings in progress before the Employment Tribunal at the date of the judgment opening preservation [proceedings] are pursued in the presence of the judicial nominee or where he has been duly summoned.

The judicial nominee informs the court petitioned and the employees [who are] parties to proceedings within ten days of the opening of proceedings.

(Amended by Article 58, Law of 2005)

Article L. 625-4 (formerly L.621-127)

Where the institutions mentioned in Article L. 143-11-4 of the Employment Code refuse for whatever reason to settle a debt mentioned on a list of debts resulting from an employment contract, they communicate their refusal to the judicial nominee who informs the employees' representative and the employee concerned immediately.

The latter may petition for the dispute [to be heard] by the Employment Tribunal. The judicial nominee, the entrepreneur or the administrator where his mission is to carry out the management are cited to appear.

The employee may ask the employees' representative to assist or represent him before the Employment Tribunal.

(Unchanged)

Article L. 625-5 (formerly L.621-128)

Disputes submitted to the Employment Tribunal by application of Articles L. 625-1 and L. 625-4 are brought directly to the judgment division.

(Unchanged)

Article L. 625-6 (formerly L.621-129)

The lists of debts resulting from an employment contract, noted by the supervising judge, as well the decisions made by the Employment Tribunal are mentioned on the minute of debts filed in the [Court] Registry. Any interested party, except those mentioned in Articles L. 625-1 to L. 625-4, may bring a petition or third-party appeal under the conditions determined by a decree of the Council of State.

(Unchanged)

Section 2: The Priority of Employees

Article L. 625-7 (formerly L.621-130)

Debts resulting from an employment contract are guaranteed in cases of preservation proceedings:

1. By the priority established in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code for the reasons and amounts defined in these articles;
2. By the priority in 4 of Article 2101 and 2 of Article 2104 of the Civil Code.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

(Amended by Article 58, Law of 2005)

Article L. 625-8 (formerly L.621-131)

Notwithstanding the existence of any other debt, debts guaranteed by the priority established in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code must be paid by the administrator, by order of the supervising judge, within ten days of the judgment opening proceedings being pronounced, if the administrator has the necessary funds.

Nevertheless, before the establishment of the amount of these debts, the administrator, with the permission of the supervising judge and insofar as the funds available permit, pays the employees immediately, on a provisional basis, a sum equal to a month's unpaid salary, on the basis of the latest wage-slip but without being able to exceed the threshold mentioned in Article L. 143-10 of the Employment Code.

In default of [available funds], sums due by virtue of the two previous paragraphs must be settled at the first receipt of funds.

(Amended by Article 58, Law of 2005)

Section 3: The Guarantee of Debt Payments Resulting from the Employment Contract

Article L. 625-9 (formerly L.621-132)

Without prejudice to the rules set out in Articles L. 625-7 and L. 625-8, debts resulting from an employment contract or an apprenticeship contract are guaranteed under the conditions set out in Articles L. 143-10 to L. 143-11-9 and L. 143-13-1 of the Employment Code.

(Unchanged)

Chapter VI: The Preservation Plan

Article L. 626-1

Where a serious possibility for the preservation of the business exists, the Court orders to this end a plan which brings the observation period to an end.

This preservation plan includes, as necessary, the end, the addition or the sale of one or more activities. Sales made by application of the present article are subject to the provisions of Section I of Chapter II of Title IV. The judicial nominee exercises the mission entrusted to the liquidator by these provisions.

(Inserted by Article 59, Law of 2005)

Section 1: The Development of the Draft Plan

Article L. 626-2

The draft plan determines the perspectives for rescue in function of the possibilities for and the manner of carrying out activities, the state of the market and the means of financing available.

It defines the manner in which the debts are settled and any possible guarantees the entrepreneur may subscribe to in order to ensure [its] implementation.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

The draft sets out and justifies the level of and perspectives for employment as well as the social conditions envisaged for the carrying out of activities. Where the draft provides for redundancies for an economic reason, it noted for the record any measures that have been applied and defines the actions to be taken with view to facilitating the re-employment and indemnifying the employees whose jobs are under threat. The draft takes account of any work documented in the environmental balance sheet.

(Inserted by Article 60, Law of 2005)

Article L. 626-3 (formerly L. 621-58)

Where the draft plan provides for a modification of capital, an extraordinary general meeting or a partners' meeting as well as, where their approval is necessary, the special meetings mentioned in Articles L. 225-99 and L. 228-35-6 or the general assemblies of the mass of creditors noted in Article L. 228-103 are summoned under the conditions set out in a decree of the Council of State.

If, due to the fact of losses being noted by the accounting documents, the capital funds are less than half of the authorised capital, the meeting is first called upon to reconstitute the capital to the amount suggested by the administrator and which may not be less than half of the authorised capital. It may also be called upon to decide on the reduction or increase of capital in favour of parties who have promised to implement the plan.

Promises subscribed to by shareholders or partners or by new subscribers are subject as to their implementation to the approval of the plan by the Court.

Clauses requiring approval [by existing shareholders or partners] are deemed void.

(Amended by Article 61, Law of 2005)

Article L. 626-4 (formerly L. 621-59)

Where the preservation of the business requires it, the Court, at the request of the Public Prosecutor, may subject the adoption of the plan to the replacement of one or more managers of the business, except where the debtor exercises a liberal profession subject to a legislative or regulatory framework.

To this end and under the same conditions, the Court may order that company stock, shares in the capital or property titles giving access to capital, held by one or more de jure or de facto directors, may not be transferred and decide that any attached voting rights may be exercised, for a period that it will determine, by a nominee of justice nominated for this purpose. Similarly, it may order the sale of company stock, shares in the capital or property titles giving access to capital, held by the same persons, the price of sale being determined by an expert's statement.

For the application of the present article, the managers and representatives of the Works Council or, in default, the employees' representative are heard or duly summoned.

(Amended by Article 62, Law of 2005)

Article L. 626-5

Proposals for the settlement of debts are, as they are developed and under the supervision of the supervising judge, communicated by the administrator to the judicial nominee, the monitors as well as to the Works Council or, in default, the employees' representative.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

The judicial nominee receives individual or collective approval by each creditor who has proved his debt in compliance with Article L. 622-24, on the [payment] delays and waivers that are proposed to him. In case of consultation in writing, in default of a reply within thirty days beginning with the receipt of the letter from the judicial nominee, [failure to reply] amounts to approval. These provisions are applicable to the institutions mentioned in Article L. 143-11-4 of the Employment Code for the amounts mentioned in the fourth paragraph of Article L. 622-24, even if the debts have not yet been proved.

(Inserted by Article 63, Law of 2005)

#### Article L. 626-6

Financial authorities, social security bodies, institutions managing the unemployment insurance scheme provided for by Articles L 351-3 and following of the Employment Code as well as institutions governed by Book IX of the Social Security Code may consent, in parity with the efforts agreed to by other creditors, to waivers of all or part of the debts [owed them] by the debtor under conditions similar to those that would be given, in normal market conditions, by an private economic agent placed in the same situation.

In this context, the financial authorities may waive the whole of any directly paid taxes raised for the benefit of the State and of local authorities as well as any other amounts in the State budget payable by the debtor. As far as indirect taxes raised for the benefit of the State and of local authorities are concerned, only interest on late payments, accumulations, penalties or fines may be the subject of a waiver.

The conditions for the waiver of debts are determined by a decree of the Council of State.

Creditors mentioned in the first paragraph may also decide to transfer the priority of their charge or mortgage or abandon this security.

(Inserted by Article 63, Law of 2005)

#### Article L. 626-7

The judicial nominee makes a minute of the replies made by the creditors. This minute is addressed to the debtor and to the administrator with view to establishing his report as well as to the monitors.

(Inserted by Article 63, Law of 2005)

#### Article L. 626-8 (formerly L. 621-61)

The debtor, the Works Council or, in default, the employees' representative, the monitor or monitors and the judicial nominee are informed of and consulted on the report presenting the economic and social balance sheet and the draft plan furnished to them by the administrator.

This report is at the same time addressed to the competent administrative authority in employment law matters. The minute of the meeting whose agenda notes the consultation of the employees' representatives is transmitted to the Court as well as the administrative authority noted above.

The Public Prosecutor receives a copy of the report.

(Amended by Article 64, Law of 2005)

## Section 2: The Judgment Ordering the Plan and its Implementation

### Article L. 626-9

Having heard or duly summoned the debtor, the administrator, the judicial nominee, the monitors as well as the representatives of the Works Council or, in default, the employees' representative, the Court makes an order in light of the administrator's report, having solicited the Public Prosecutor's opinion. Where proceedings are opened for the benefit of a debtor whose number of employees or whose gross turnover exceeds the thresholds fixed by decree of the Council of State, the hearing must be held in the presence of the Public Prosecutor.

(Inserted by Article 65, Law of 2005)

### Article L. 626-10 (formerly L. 621-63)

The plan nominates the parties obliged to implement it and mentions the totality of promises subscribed to by these parties and which are necessary for the preservation of the business. These promises cover the future of activity, the methods for maintaining and financing the business, the settlement of debts arising before the opening judgment as well as, if it is the case, the guarantees supplied to ensure implementation.

The plan outlines and justifies the level of and perspectives for employment as well as the social conditions envisaged for carrying out of activities.

The persons who will implement the plan, even if only as partners, may not have imposed any burdens other than the promises subscribed to by these parties during its preparation, subject to the provisions of Articles L. 626-3 and L. 626-16.

(Amended by Article 66, Law of 2005)

### Article L. 626-11 (formerly L. 621-65)

The judgment which adopts the plan makes its provisions binding on all parties. Except in the case of corporate bodies, jointly bound persons and those who have consented to a joint or independent guarantee may rely on the provisions.

(Amended by Article 67, Law of 2005)

### Article L. 626-12

Without prejudice to the application of the provisions of Article L. 626-18, the duration of the plan is fixed by the Court. It may not exceed ten years. Where the debtor is a farmer, this period may not exceed fifteen years.

(Inserted by Article 68, Law of 2005)

### Article L. 626-13 (formerly L. 621-71)

The Court's judgment adopting the plan brings with it the lifting as of right of any interdiction preventing [the debtor] from issuing cheques in compliance with Article L. 131-73 of the Monetary and Financial Code, put into place on the occasion of a cheque issued prior to the opening of conciliation proceedings being rejected.

(Amended by Article 69, Law of 2005)

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

Article L. 626-14 (formerly L. 621-72)

In the judgment ordering the plan or modifying it, the Court may decide that assets, which in its view are indispensable for the continuity of the business, may not be alienated, for a time fixed by it, without its authorisation. The duration of the prohibition on alienation may not exceed that of the plan.

Publicity for the temporary prohibition on alienation is carried out under the conditions set out in a decree by the Council of State.

Any contract agreed in breach of the provisions of the first paragraph may be declared void at the request of any interested party or of the Public Prosecutor brought within a time limit of three years from the contract being concluded. Where the contract is subject to publicity, the time limit runs from the date of publicity.

(Amended by Article 70, Law of 2005)

Article L. 626-15 (formerly L. 621-73)

The plan mentions the modification of the [memorandum and articles] necessary for the reorganisation of the business.

(Amended by Article 71, Law of 2005)

Article L. 626-16

In case of need, the judgment adopting the plan gives a mandate to the administrator to convene, under the conditions determined in a decree by the Council of State, the competent meeting to put into effect the modifications provided for in the plan.

(Inserted by Article 72, Law of 2005)

Article L. 626-17 (formerly L. 621-75)

The partners or shareholders are bound to pay up the capital they have subscribed to within the time limit determined by the Court. In cases of immediate payment, they may benefit from any set off to the maximum of the amount of their proved debts and within any limit [the debts] are subject to being reduced within the plan by reason of any [payment] delays or waivers.

(Unchanged)

Article L. 626-18 (formerly L. 621-76)

The Court gives effect to the [payment] delays and waivers accepted by the creditors under the conditions set out in the second paragraph of Article L. 626-5 and Article L. 626-6. These [payment] delays and waivers may, it being the case, be reduced by the Court. For other creditors, the Court imposes uniform [payment] delays, subject to, as far as fixed term creditors are concerned, [payment] delays greater than those agreed by the parties prior to proceedings being opened, which may exceed the duration of the plan.

The first payment may not be scheduled beyond a time limit of one year.



Beyond the second year, the amount of each of the dividends provided by the plan may not, except in the case of an agricultural business, be less than 5% of the proved debts.

For leasing contracts, these [payment] delays come to an end if, before their expiry, the credit taker exercises the option to purchase. This may not occur if, subject to the deduction of any accepted waivers, the whole of the sums due by virtue of the contract has not been settled.

(Amended by Article 73, Law of 2005)

Article L. 626-19 (formerly L. 621-77)

The plan may provide a choice for creditors including payment within shorter uniform [payment] delays but with a reduction proportionate to the amount of the debt.

The reduction of the debt does not bar [a claim] until the settlement at the date determined of the last payment set out in the plan.

(Amended by Article 74, Law of 2005)

Article L. 626-20 (formerly L. 621-78)

I - By way of exception to the rules set out in Articles L. 626-18 and L. 626-19, the following may not be subject to any [payment] delays or waivers:

1. Debts guaranteed by the priority established in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code;

2. Debts resulting from a contract of employment guaranteed by the priority in 4 of Article 2101 and 2 of Article 2104 of the Civil Code where the amount of the debts has not been advanced by the institutions mentioned in Article L. 143-11-4 of the Employment Code or has not been the subject of subrogation.

II - Within a maximum of 5% of the estimated debt, the smallest debts taken in ascending order of their amounts and provided that this amount does not exceed the limit set out by decree are paid without any [payment] delays or waivers. This provision does not apply where the amount of debts owed to one and the same person exceed a tenth of the percentage fixed above or where subrogation has been agreed to or a payment made on behalf of another has occurred.

(Unchanged)

Article L. 626-21 (formerly L. 621-79)

The noting of a debt in the plan and the concession of [payment] delays or waivers by the creditor does not prejudice the definitive admission of the debt.

Sums to be distributed corresponding to disputed debts are not settled except when these debts are definitively admitted. Nevertheless, the Court that has been petitioned may order that the creditor will participate on a provisional basis in part or in whole in any distributions made before the definitive admission [of that debt].

Unless the law provides otherwise, payments set out in the plan are not assignable.

The Court will determine the means for the payment of dividends set out in the plan.

The dividend amount is paid to the plan performance supervisor who will distribute the amount.

(Amended by Article 75, Law of 2005)

Article L. 626-22 (formerly L. 621-80)

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

In cases where property is subject to a special priority, a legal charge or mortgage, the portion of the price corresponding to the debts guaranteed by the security is placed on deposit with the official deposit-taker and creditors benefiting from the security or those holding a general privilege are paid out of the price after payment of those debts guaranteed by the priority established in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code.

[Creditors] receive dividends falling due according to the plan, reduced in function of any anticipatory payments, following the order of priority as between them.

If property is subject to a special priority, a legal charge or mortgage, another guarantee may be substituted for this in case of need if it presents equivalent advantages. In the absence of agreement, the Court may order the substitution [to take place].

(Amended by Article 76, Law of 2005)

Article L. 626-23 (formerly L. 621-81)

In case of a partial sale of assets, the price is paid to the debtor subject to the application of Article L. 626-22.

(Amended by Article 77, Law of 2005)

Article L. 626-24 (formerly L. 621-67)

The Court may task the administrator with concluding any contracts, necessary for the plan to be implemented, which he will determine.

The judicial nominee remains in office for the period necessary for the ascertainment and definitive admission of the debts.

(Amended by Article 78, Law of 2005)

Article L. 626-25 (formerly L. 621-68)

The Court appoints for the period set out in Article L. 626-12 the administrator or the judicial nominee as the supervisor tasked with overseeing the implementation of the plan. The Court may, in case of need, appoint a number of supervisors.

Litigations commenced before the judgment adopting the plan and to which the administrator or the judicial nominee is a party are carried on by the plan performance supervisor or, if he is no longer in office, a nominee of justice specially appointed for this purpose by the Court.

The plan performance supervisor is equally authorised to undertake litigation in the collective interest of creditors.

The plan performance supervisor may have communicated to him all documents and information useful for his mission.

He reports to the President of the Court and to the Public Prosecutor any default in the implementation of the plan. He also informs the Works Council or, in default, the employees' representative.

Any sum received by the plan performance supervisor must be paid immediately into an account with the official deposit-taker. In case of [payment] delays, the plan performance supervisor must pay, for sums remaining unpaid, a rate of interest equal to the legal rate of interest plus five percent.

The plan performance supervisor may be replaced by the Court ex officio or at the request of the Public Prosecutor.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

(Amended by Article 79, Law of 2005)

Article L. 626-26 (formerly L. 621-69)

A substantial modification in the objectives or the methodology of the plan may not be made except by order of the Court, at the request of the debtor and following a report by the plan performance supervisor.

The Court makes an order after having solicited the Public Prosecutor's opinion and having heard or duly summoned the debtor, the plan performance supervisor, the monitors, the representatives of the Works Council or, in default, the employees' representative and any interested party.

(Amended by Article 80, Law of 2005)

Article L. 626-27

I - The Court adopting the plan may, after the Public Prosecutor has provided his opinion, order the termination [of the plan] if the debtor does not adhere to his promises within the time limits set out in the plan. Where the performance failure results from a failure by the debtor to pay dividends and the Court has not ordered the termination of the plan, the plan performance supervisor may proceed, in compliance with the provisions ordered, to recovering [these amounts].

Where the debtor's cessation of payments is noted while the plan is being implemented, the Court which adopted [the plan] orders, after the Public Prosecutor has provided his opinion, its termination and orders judicial liquidation.

The judgment which orders the termination of the plan brings an end to its implementation and causes any [payment] delays granted to fall.

II - In the cases mentioned in I, the Court is petitioned by a creditor, the plan performance supervisor or the Public Prosecutor. It may also open proceedings ex officio.

III - After termination of the plan and opening or order opening new proceedings, creditors subject to the plan are dispensed from having to prove the debts [owed them] and their security. Debts mentioned in the plan are admitted as of right less any sums already received.

(Inserted by Article 81, Law of 2005)

Article L. 626-28

Where it is established that the promises enumerated in the plan or ordered by the Court have been kept, the Court, at the request of the plan performance supervisor, the debtor or any interested party, may note that the plan has been implemented.

(Inserted by Article 82, Law of 2005)

Section 3: The Creditors' Committees

Article L. 626-29

Where the debtor's accounts are certified by an auditor or established by an expert-accountant, and whose number of employees or whose gross turnover exceeds the thresholds fixed by decree of the Council of State are subject to the provisions of the present section.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

At the request of the debtor or of the administrator, the supervising judge may authorise the application of this section [for businesses] under the threshold.

(Inserted by Article 83, Law of 2005)

#### Article L. 626-30

Credit establishments and principal suppliers of goods or services are grouped into two creditors' committees by the judicial administrator within a time limit of thirty days beginning with the judgment opening proceedings. Each supplier of goods or services is a member as of right of the committee of principal suppliers where the debts [owed him] represent more than 5% of the total of debts owed to suppliers. Other suppliers, solicited by the administrator, may be members [of the committee]. The debtor presents to these committees, within a time limit of two months from the date they are formed, which may be extended once by the supervising judge at the request of the debtor or of the administrator, proposals with view to the drawing up of the draft plan mentioned in Article L. 626-2.

After discussion with the debtor and the judicial administrator, the committees will vote on the draft, it being modified if the case, at the latest within a time limit of thirty days after the proposals have been transmitted by the debtor. The decision is taken by each committee by a majority of its members, representing at least two-thirds of the total amount of the debts owed to all the members of the committee as indicated by the debtor and certified by his auditor(s) or, where one(s) has/have not been appointed, established by his expert-accountant.

The draft plan adopted by the committees is not subject to either the provisions of Article L. 626-12 or to those in the second and third paragraphs of Article L. 626-18. Local authorities and public bodies may not be members of the committee of principal suppliers.

(Inserted by Article 83, Law of 2005)

#### Article L. 626-31

Where the draft plan has been adopted by the committees in compliance with the provisions of Article L. 626-30, the Court assures itself that the interests of all of the creditors are sufficiently protected. In this case, the Court adopts the plan in conformity with the draft adopted and according to the methods set out in section 2 of the present chapter. Its decision applies to all of their members those proposals accepted by each of the committees.

By way of exception to the provisions of Article L. 626-26, a substantial modification in the objectives or the methodology of the plan ordered by a Court may not occur except by the methods set out in the present section.

(Inserted by Article 83, Law of 2005)

#### Article L. 626-32

Where there are bondholders, the judicial administrator summons representatives of the mass [of bondholders], if there is one, within a time limit of fifteen days from the date the draft plan is transmitted to the committees to outline it to them.

Representatives of the mass thereafter convene a general meeting of bondholders within a time limit of fifteen days to decide on the draft. Nevertheless, in cases of failure or absence of any representatives of the mass duly noted by the supervising judge, the administrator summons the general meeting of bondholders.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

The decision may cover the total or partial abandon of the debt owed the bondholders.

(Inserted by Article 83, Law of 2005)

Article L. 626-33

Creditors who are not members of the committees formed in application of Article L. 626-30 are consulted according to the provisions of Articles L. 626-5 to L. 626-7. To this end, the judicial administrator carries out the mission entrusted to the judicial nominee by these provisions.

The provisions of the plan relating to creditors who are not members of the committees formed in application of Article L. 626-30 are ordered according to the provisions of Articles L. 626-12 and L. 626-18 to L. 626-20.

(Inserted by Article 83, Law of 2005)

Article L. 626-34

Where one or other of the committees has not pronounced on the draft plan within the time limits set out, where one has rejected the proposals put to it by the debtor or where the Court has not adopted the plan in compliance with Article L. 626-31, proceedings are resumed to prepare a plan under the conditions set out in Articles L. 626-5 to L. 626-7 with view to its adoption under the terms of Articles L. 626-12 and L. 626-18 to L. 626-20. Proceedings are resumed according to the same methods where the debtor has not presented any proposals for a plan to the committees within the time limits set.

(Inserted by Article 83, Law of 2005)

Article L. 626-35

A decree by the Council of State will determine the conditions for the application of the present section.

(Inserted by Article 83, Law of 2005)

Chapter VII: Special Provisions in the Absence of a Judicial Administrator

Article L. 627-1

The provisions of this chapter are applicable where no judicial administrator has been appointed under the terms of the penultimate paragraph of Article L. 621-4. The other provisions of this title are applicable insofar as they do not conflict with those in the present chapter.

(Inserted by Article 84, Law of 2005)

Article L. 627-2

The debtor exercises, following the agreement of the judicial nominee, the facility open to the administrator to continue performance of contracts in progress under the terms of Article L. 622-13. In case of disagreement, the supervising judge is petitioned by an interested [party].

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

(Inserted by Article 85, Law of 2005)

Article L. 627-3 (formerly L. 621-139)

During the observation period, the debtor draws up a draft plan with the possible assistance of an expert appointed by the Court.

The debtor communicates to the judicial nominee and the supervising judge proposals for the settlement of debts set out in Article L. 626-5 and proceeds to the notifications and consultations provided for by Articles L. 623-3 and L. 626-8.

For the application of Article L. 626-3, an extraordinary general meeting or a partners' meeting as well as, where their approval is necessary, the special meetings mentioned in Articles L. 225-99 and L. 228-35-6 or the general assemblies of the mass of creditors noted in Article L. 228-103 are summoned under the conditions set out in a decree of the Council of State. The supervising judge determines the amount of the increase in capital to be proposed to the meeting to reconstitute the capital funds.

(Amended by Article 86, Law of 2005)

Article L. 627-4

After the filing of the draft plan by the debtor in the Court Registry, the Court makes an order in light of the supervising judge's report.

(Inserted by Article 87, Law of 2005)

**Title III: Judicial Rescue**

Chapter 1: The Opening and Progress of Judicial Rescue

Article L. 631-1

There are instituted proceedings of judicial rescue open to all debtor mentioned in Articles L. 631-2 or L. 631-3 who, it being impossible for them to face up to due debts with their available assets, are in cessation of payments.

Judicial rescue proceedings are aimed at permitting the pursuit of economic activity, the maintenance of employment and the discharge of debts. They give rise to a plan adopted by a judgment at the end of an observation period and, it being the case, to the formation of two creditors' committees, in compliance with the provisions of Articles L. 626-29 and L. 626-30.

(Inserted by Article 88, Law of 2005)

Article L. 631-2

Judicial rescue proceedings are applicable to all commercial persons, to any person registered on the register of professions, to any farmer, to any other person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected, as well as to any private-law corporate body.

New judicial rescue proceedings may not be opened with respect to any person already subject to such proceedings or to judicial liquidation proceedings, as long as

the operation of the plan resulting from this has not been brought to an end or the liquidation procedure has not been closed.

(Inserted by Article 88, Law of 2005)

Article L. 631-3

Judicial rescue proceedings are equally applicable to those persons mentioned in the first paragraph of Article L. 631-2 after the end of their professional activity if all or part of their debts arise from this [activity].

Where any commercial persons, any person registered on the register of professions, any farmer, any other person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected, has died in cessation of payments, the Court may be petitioned, within a year from the date of death, at the request of a creditor, whatever the nature of the debt, or of the Public Prosecutor. The Court may equally [open proceedings] ex officio and may be petitioned by any of the debtor's heirs without the condition of the time limit being applicable.

(Inserted by Article 88, Law of 2005)

Article L. 631-4

The opening of proceedings must be requested by the debtor at the latest within the forty-five days following the cessation of payments if he has not, within this time limit, requested the opening of conciliation proceedings.

In case of the failure of conciliation proceedings, where it appears from the conciliator's report that the debtor is in cessation of payments, the Court ex officio opens proceedings with view to making an order for the opening of judicial rescue proceedings.

(Inserted by Article 89, Law of 2005)

Article L. 631-5

Where there are no conciliation proceedings in progress, the Court may equally [open proceedings] ex officio or at the request of the Public Prosecutor with view to opening judicial rescue proceedings.

Subject to this reservation, proceedings may be opened at the request of a creditor, whatever the nature of the debt. Nevertheless, where the debtor has ceased professional activity, the request must be brought within a year beginning from:

1. The removal from the commercial and companies register. Where a corporate body is concerned, the time limit runs from the date of the removal subsequent to publicity noting the closure of liquidation operations;
2. The end of activity, where any person registered on the register of professions, any farmer, any person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected, is concerned;
3. The publication of the completion of liquidation, where a corporate body not subject to registration is concerned.

Furthermore, proceedings may not be opened with respect to a debtor exercising an agricultural activity who is not incorporated in the form of a commercial company unless the President of the High Court has been petitioned, prior to the request, with

view to nominating a conciliator under the provisions of Article L. 351-2 of the Rural Code.

(Inserted by Article 89, Law of 2005)

Article L. 631-6

The Works Council or, in default, the employees' representative may communicate to the President of the Court or to the Public Prosecutor any fact revealing the debtor [being in] cessation of payments.

(Inserted by Article 89, Law of 2005)

Article L. 631-7

Articles L. 621-1, L. 621-2 and L. 621-3 are applicable to judicial rescue proceedings.

(Inserted by Article 89, Law of 2005)

Article L. 631-8

The Court determines the date of cessation of payments. In default of a determination of this date, cessation of payments is deemed to occur at the date of the judgment that notes it.

It may be moved one or more times, without it being possible to antedate it more than eighteen months from the date of the judgment noting cessation of payments. Except in cases of fraud, it may not be moved to a date prior to the definitive decision endorsing an amicable agreement in application of II of Article L. 611-8.

The Court is petitioned by the administrator, the judicial nominee or the Public Prosecutor. It makes an order having heard or duly summoned the debtor.

A request for modification of the date may be submitted to the Court within a time limit of a year following the judgment opening proceedings.

(Inserted by Article 89, Law of 2005)

Article L. 631-9

Articles L. 621-4 to L. 621-11 are applicable to judicial rescue proceedings. The Court may open proceedings ex officio for those purposes mentioned in the third and fourth paragraphs of Article L. 621-4.

(Inserted by Article 89, Law of 2005)

Article L. 631-10 (formerly L. 621-19)

Beginning with [the date of] the opening judgment, the de jure or de facto directors, whether remunerated or not, may not transfer, in default of which such transfers are void, company stock, shares in the capital or property titles giving access to capital representing their social rights in the company which is the subject of the opening judgment except under those conditions determined by the Court.

Shares in the capital or property titles giving access to capital are placed in a special limited account, opened by the administrator in the name of the holder and held by the company or the financial intermediary, it being the case. No transactions may be effected on the account without the authorisation of the supervising judge.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**



The administrator shall make mention, it being the case, on the corporate body's registers of the prohibition on transfers of the managers' stock.

(Amended by Article 90, Law of 2005)

Article L. 631-11 (formerly L. 621-21)

The supervising judge determines the remuneration for the functions exercised by the debtor if an individual or by the managers of a corporate body.  
In the absence of remuneration, persons mentioned in the preceding paragraph may obtain out of the assets, for themselves or their families, subsidies determined by the supervising judge.

(Amended by Article 91, Law of 2005)

Article L. 631-12

Other than those powers which are conferred by the present title, the mission of the administrator or administrators is determined by the Court.

The Court may require them jointly or separately to assist the debtor in management operations or some of these, or to carry out solely and exclusively the management of the business. Where one or more administrators are tasked with carrying out solely and exclusively the management of the business and that each of the thresholds mentioned in the fourth paragraph of Article L. 621-4 has been reached, the Court may appoint one or more experts with view to assisting them in carrying out their management tasks. In other cases, [the Court] has the facility of appointing one or more [experts]. The President of the Court fixes the remuneration of these experts which are a cost on proceedings.

In his mission, the administrator is bound to observe legal and contractual obligations incumbent on the entrepreneur.

At any time, the Court may alter the administrator's mission at his request or at the request of the judicial nominee or Public Prosecutor or ex officio.

The administrator shall run, under his signature, any bank or Post Office accounts of which the debtor is the holder where the latter is subject to the prohibitions set out in Articles L. 131-72 or L. 163-6 of the Monetary and Financial Code.

(Inserted by Article 92, Law of 2005)

Article L. 631-13

From the opening of proceedings, third parties are permitted to submit to the administrator offers relating to the maintenance of business activity through the partial or complete sale of [the business] according to the provisions of Section I of Chapter II of Title IV.

(Inserted by Article 92, Law of 2005)

Article L. 631-14

I - Articles L. 622-2 to L. 622-9 and L. 622-13 to L. 622-33 are applicable to judicial rescue proceedings.

II - Nevertheless, jointly bound persons and those who have consented to a joint or independent guarantee may not rely on the provisions set out in the first paragraph of Article L. 622-28.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

(Inserted by Article 92, Law of 2005)

Article L. 631-15

I - At the latest within a time limit of two months beginning with the opening judgment, the Court will order the observation period to be pursued if it appears that the business has at its disposal sufficient financial capacity to this end. Nevertheless, where the debtor exercises an agricultural activity, this time limit may be modified by reference to the agricultural year in vigour as well as customs specific to the produce of the business.

The Court makes an order in light of a report made by the administrator or, where one has not been appointed, by the debtor.

II - At any time during the observation period, the Court, at the request of the debtor, the administrator, the judicial nominee, one of the monitors, the Public Prosecutor or ex officio may order the partial cessation of business or orders judicial liquidation, if the conditions of Article L. 640-1 are met.

It makes an order having heard or duly summoned the debtor, the administrator, the judicial nominee, the monitors, the Works Council or, in default, the employees' representative and having solicited the views of the Public Prosecutor.

When the Court orders liquidation, it brings an end to the observation period and, subject to the provisions of Article L. 641-10, to the administrator's mission.

(Inserted by Article 92, Law of 2005)

Article L. 631-16

if it appears, during the course of the observation period, that the debtor has at his disposal sufficient sums to pay off the creditors and to acquit the fees and related costs of proceedings, the Court may bring an end to [the observation period].

It makes an order at the request of the debtor under the conditions set out in the second paragraph of II of Article L. 631-15.

(Inserted by Article 92, Law of 2005)

Article L. 631-17

Where redundancies for an economic reason present an urgent need [and are] inevitable and indispensable during the observation period, the administrator may be authorised by the supervising judge to proceed to carry out the redundancies.

Prior to the supervising judge being petitioned, the administrator consults the Works Council or, in default, the employees' representative under the conditions set out in Article L. 321-9 of the Employment Code and informs the competent administrative authority mentioned in Article L. 321-8 of the same Code. He attaches, in support of the request addressed to the supervising judge, the advice received and actions taken with view to facilitating the re-employment and indemnification of the employees [concerned].

(Inserted by Article 92, Law of 2005)

Article L. 631-18

I - The provisions of Chapters III, IV and V of Title II of the present Book are applicable to judicial rescue proceedings.

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

II - Nevertheless, the appeal provided for in the first paragraph of Article L. 624-3 is equally open to the administrator where he has the task of carrying on the management of the business.

For the application of Article L. 625-1, the judicial nominee cited [as a party] before the Employment Tribunal or, in default, the claimant cites the institutions mentioned in Article L. 143-11-4 of the Employment Code to appear.

Furthermore, for the application of Article L. 625-3 of the present Code, the institutions mentioned in Article L. 143-11-4 of the Employment Code are cited by the judicial nominee or, in default, by the petitioning employees, within ten days of the judgment opening judicial rescue proceedings or of the judgment converting preservation proceedings into rescue proceedings. Similarly, proceedings in progress before the Employment Tribunal at the date of the opening judgment are pursued in the presence of the administrator, where his mission is to manage the business, or where he has been duly summoned.

(Inserted by Article 92, Law of 2005)

#### Article L. 631-19

I - The provisions of Chapter VI of Title II are applicable to the rescue plan.

II - Where the plan provides for redundancies for an economic reason, it may not be adopted by the Court until the Works Council or, in default, the employees' representative have been consulted under the conditions set out in Article L. 321-9 of the Employment Code and the competent administrative authority mentioned in Article L. 321-8 of the same Code has been informed.

The plan will detail notably those redundancies that will occur within the time limit of a month following the judgment. Within this time limit, redundancies may be carried out by the administrator sending a simple notice, subject to those rights of notification set out in the law or in the collective work agreements or contracts.

(Inserted by Article 92, Law of 2005)

#### Article L. 631-20

By way of exception to the provisions of Article L. 626-11, jointly bound persons and those who have consented to a joint or independent guarantee may not rely on the provisions of the plan.

(Inserted by Article 92, Law of 2005)

#### Article L. 631-21

The provisions of Chapter VII of Title II are applicable to the rescue plan.

During the observation period, activity is carried on by the debtor who exercises the prerogatives devolved on the administrator by Article L. 631-17 and who proceeds to the notifications set out in the second paragraph of II of Article L. 631-19.

The judicial nominee exercises the prerogatives devolved on the administrator by the second and third paragraphs of Article L. 631-10.

(Inserted by Article 92, Law of 2005)

#### Article L. 631-22

In light of the administrator's report, the Court may order the sale of all or part of the business if the debtor finds it impossible to ensure the rescue [of the business] himself. With the exception of I of Article L. 642-2, the provisions of Section I of Chapter II of Title IV are applicable to this sale. The judicial nominee exercises the tasks entrusted to the liquidator.

The administrator remains in office to conclude any contracts necessary for the sale to be carried out.

(Inserted by Article 92, Law of 2005)

## Chapter 2: The Nullity of Certain Acts

### Article L. 632-1 (formerly L. 621-107)

I - The following acts, if occurring following the date of cessation of payments, are deemed null:

1. All contracts without consideration selling moveable or immoveable property;
2. All commutative contracts where the debtor's obligations exceed those of the other contracting party;
3. All payments by any means for any debts not falling due at the date of payment [being made];
4. All payments for debts falling due made by any means other than in cash, commercial instruments, bank transfers, factored invoices set out in Law no. 81-1 of 2 January 1981 facilitating credit to business or any other method of payment commonly admitted within business relations;
5. Any deposit or payment on account of sums carried out in application of Article 2075-1 of the Civil Code without there being a judicial decision that is *res judicata*;
6. Any contractual security, court-agreed security or as well as legal security enjoyed by spouses and any right to a legal charge over the goods of the debtor for debts acquired prior to this;
7. Any preservation measures, unless the registration or act of seizure was made prior to the date of cessation of payments;
8. Any authorisation, exercise or resale of options as defined in Articles L. 225-177 and following of the present Code.

II. Furthermore, the Court may also annul all contracts without consideration mentioned in paragraph 1 of I made in the six months preceding the date of cessation of payments.

(Amended by Articles 93 and 94, Law of 2005)

### Article L. 632-2 (formerly L. 621-108)

Payment for debts falling due after the date of cessation of payments and contracts with an attached burden entered into after this date may be annulled if those who have dealt with the debtor had knowledge of the cessation of payments.

All notices to third-party holders, all seizures with view to attributing assets and all objections may also be annulled where they have been given or exercised by a creditor after the date of cessation of payments and in knowledge of this.

(Amended by Article 95, Law of 2005)

### Article L. 632-3 (formerly L. 621-109)

The provisions of Articles L. 632-1 and L. 632-2 may not affect the validity or payment of a bill of exchange, promissory note or cheque.

(Unchanged)

Article L. 632-4 (formerly L. 621-110)

A claim of nullity may be brought by the administrator, the judicial nominee, the plan performance supervisor, the liquidator or the Public Prosecutor. Its object is to reconstitute the debtor's assets.

(Amended by Article 96, Law of 2005)

**Title IV: Judicial Liquidation**

Preliminary Chapter: The Opening and Progress of Judicial Liquidation

Article L. 640-1

There is instituted a procedure of judicial liquidation open to any debtor mentioned in Article L. 640-2 who is in cessation of payments and whose rescue is manifestly impossible.

Judicial liquidation proceedings are intended to bring an end to the business' activity or to realise the debtor's assets by a complete or separate sale of [the debtor's] rights and his goods.

(Inserted by Article 97, Law of 2005)

Article L. 640-2

Judicial liquidation proceedings are applicable to all commercial persons, to any person registered on the register of professions, to any farmer, to any other person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected, as well as to any private-law corporate body.

New judicial liquidation proceedings may not be opened with respect to any person already subject to such proceedings, as long as these [proceedings] have not been closed.

(Inserted by Article 97, Law of 2005)

Article L. 640-3

Judicial liquidation proceedings are equally applicable to those persons mentioned in the first paragraph of Article L. 640-2 after the end of their professional activity if all or part of their debts arise from this [activity].

Where any commercial persons, any person registered on the register of professions, any farmer, any other person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected, has died in cessation of payments, the Court may be petitioned, within a year from the date of death, at the request of a creditor, whatever the nature of the debt, or of the Public Prosecutor. The Court may equally [open proceedings] ex officio within the same time limit. [The Court] may be petitioned by any of the debtor's heirs without the condition of the time limit [being applicable].

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

(Inserted by Article 97, Law of 2005)

Article L. 640-4

The opening of proceedings must be requested by the debtor at the latest within the forty-five days following the cessation of payments if he has not, within this time limit, requested the opening of conciliation proceedings.

In case of the failure of conciliation proceedings, if the Court, making an order in application of the second paragraph of Article L. 631-4. notes that the conditions mentioned in Article L. 640-1 are present, it opens judicial liquidation proceedings.

(Inserted by Article 97, Law of 2005)

Article L. 640-5

Where there are no conciliation proceedings in progress, the Court may equally [open proceedings] ex officio or at the request of the Public Prosecutor with view to opening judicial liquidation proceedings.

Subject to this reservation, proceedings may be opened at the request of a creditor, whatever the nature of the debt. Nevertheless, where the debtor has ceased professional activity, the request must be brought within a year beginning from:

1. The removal from the commercial and companies register. Where a corporate body is concerned, the time limit runs from the date of the removal subsequent to publicity noting the closure of liquidation operations;
2. The end of activity, where any person registered on the register of professions, any farmer, any person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework and whose title is protected, is concerned;
3. The publication of the completion of liquidation, where a corporate body not subject to registration is concerned.

Furthermore, proceedings may not be opened with respect to a debtor exercising an agricultural activity who is not incorporated in the form of a commercial company unless the President of the High Court has been petitioned, prior to the request, with view to nominating a conciliator under the provisions of Article L. 351-2 of the Rural Code.

(Inserted by Article 97, Law of 2005)

Article L. 640-6

The Works Council or, in default, the employees' representative may communicate to the President of the Court or to the Public Prosecutor any fact revealing the debtor [being in] cessation of payments.

(Inserted by Article 97, Law of 2005)

Chapter I: The Judicial Liquidation Judgment

Article L. 641-1

I - Articles L. 621-1 and L. 621-1 are applicable to judicial liquidation proceedings.

II - In the judgment opening judicial liquidation, the Court will appoint a supervising judge and, as the liquidator, an enrolled judicial nominee or a person chosen on the

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Translation (c) PJ Omar 2005.**

basis of the first paragraph of II of Article 812-2. The Court may, at the initiative of the supervising judge or at the request of the Public Prosecutor, or ex officio, proceed to replace the liquidator or to add one or more liquidators. To this end, the debtor or the creditor may ask the supervising judge to petition the Court.

Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the professional body or competent authority from which, it being the case, the debtor depends may petition the Public Prosecutor for the purpose mentioned in the first paragraph.

An employees' representative is appointed under the conditions set out in the second paragraph of Article L. 621-4. He is replaced under the conditions set out in the fifth paragraph of Article L. 621-7. He undertakes the tasks set out in Article L. 625-2.

The monitors are appointed and exercise their functions under the same conditions as those set out in Title II.

III - Where judicial liquidation is ordered during the currency of the observation period in preservation or judicial rescue proceedings, the Court appoints the judicial nominee to the function of liquidator. Nevertheless, the Court may, in a reasoned judgment, at the request of the administrator, a creditor, the debtor or the Public Prosecutor, appoint to the functions of liquidator another person under the conditions set out in Article L. 812-2.

The Court may proceed to replace the liquidator or to add one or more liquidators following the rules set out in II of the present article.

Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the professional body or competent authority from which, it being the case, the debtor depends may petition the Public Prosecutor for the purpose mentioned in the first two paragraphs of the present III.

IV - The date of cessation of payments is determined under the conditions set out in Article L. 631-8.

(Inserted by Article 98, Law of 2005)

#### Article L. 641-2

The liquidator established within a month of his appointment a report on the debtor's situation, except if the Court orders judicial liquidation during the currency of an observation period. The provisions of the second paragraph of Article L. 621-9 are applicable.

The simplified judicial liquidation proceedings set out in Chapter IV of the present title is applicable if it appears that the assets of the debtor do not include any immoveable asset, or that the number of his employees during the six months prior to the opening of proceedings and his gross turnover are equal to or less than the thresholds fixed by decree of the Council of State.

(Inserted by Article 99, Law of 2005)

#### Article L. 641-3

The judgment that opens judicial liquidation has the same effect as set out in the case of preservation [proceedings] in the first and fourth paragraphs of Article L. 622-7 and by Articles L. 622-21, L. 622-22, L. 622-28 and L. 622-30.

Creditors will prove their debts to the liquidator by the methods set out in Articles L. 622-24 to L. 622-27 and L. 622-31 to L. 622-33.

(Inserted by Article 100, Law of 2005)

Article L. 641-4

The liquidator proceeds to [carry out] liquidation operations at the same time as the ascertainment of debts. He may initiate or pursue litigation within the judicial nominee's competence.

The ascertainment of unsecured debts need not take place if it appears that the proceeds of asset sales will be wholly absorbed by Court fees and secured debts, unless, in the case of a corporate body, there is a case for holding the de jure or de facto managers liable for all or part of the debts in compliance with Articles L. 651-2 and L. 652-1.

The liquidator carries out the tasks devolved on the administrator and judicial nominee under Articles L. 622-6, L. 622-20, L. 622-22, L. 622-23, L. 624-17, L. 625-3, L. 625-4 and L. 625-8.

With view to drawing up the inventory mentioned in Article L. 622-6, the Court shall appoint a registered estimator, a bailiff, a notary or a trader in merchandise.

An estimate of the debtor's assets is performed by the persons mentioned in the fourth paragraph.

Redundancies to be carried out by the liquidator in application of the decision ordering liquidation are subject to the provisions of Articles L. 321-8 and L. 321-9 of the Employment Code.

(Inserted by Article 101, Law of 2005)

Article L. 641-5 (formerly L. 622-5)

Where judicial liquidation during the currency of the observation period in preservation or judicial rescue proceedings, the liquidator proceeds to [carry out] liquidation operations at the same time as he eventually completes the ascertainment of debts and the establishment of the ranking of creditors. He carries on litigation initiated before the liquidation judgment, whether by the administrator or judicial nominee, and may initiate litigation within the judicial nominee's competence.

(Amended by Article 102, Law of 2005)

Article L. 641-6 (formerly L. 622-6)

No parent or relative, including up to the fourth degree, of the entrepreneur or its managers, if [the debtor] is a corporate body, may be appointed as the liquidator.

(Unchanged)

Article L. 641-7

The liquidator shall keep, at least every three months, the supervising judge, the debtor and the Public Prosecutor informed of the progress of proceedings.

(Amended by Article 103, Law of 2005)

Article L. 641-8 (formerly L. 622-8)

Any sum received by the liquidator in the exercise of his functions must be paid immediately into an account with the official deposit-taker. In case of [payment] delays, the liquidator must pay, for sums remaining unpaid, a rate of interest equal to the legal rate of interest plus five percent.

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(Unchanged)

Article L. 641-9 (formerly L. 622-9)

I - The judgment opening or ordering judicial liquidation also operates as of right, from its date, to relieve the debtor of the management of the business and the disposal of his property, even that acquired by any means while judicial liquidation proceedings are ongoing. Any rights and litigation over assets are exercised for the whole of judicial liquidation proceedings by the liquidator.

Nevertheless, the debtor may join [litigation] as a civil party with the aim of holding the author of a felony or crime liable of which [the debtor] has been a victim.

The debtor may also perform any acts and exercise rights and litigation that are not included within the duties of the liquidator or of the administrator, where one is appointed.

II - Where the debtor is a corporate body, the corporate managers in place when the judgment ordering judicial liquidation is pronounced remain [in place], except where the memorandum and articles or a decision of the general meeting provide otherwise. In case of need, a nominee may be appointed in their place by order of the President of the Court at the request of any interested [party], of the liquidator or of the Public Prosecutor.

The corporate seat is deemed to be fixed at the domicile of the business' legal representative or of the nominee appointed.

III - Where the debtor is an individual, he may not exercise, during the currency of judicial liquidation [proceedings] any of the activities mentioned in the first paragraph of Article L. 640-2.

(Amended by Article 104, Law of 2005)

Article L. 641-10 (formerly L. 622-10)

If the sale, in whole or in part, of the business is contemplated or if the public interest requires it, the maintenance of activity may be authorised by the Court for the maximum period determined by a decree of the Council of State. It may be extended at the request of the Public Prosecutor for a period determined in the same way. Where an agricultural business is concerned, the period is determined by the Court by reference to the agricultural year in vigour as well as customs specific to the produce of the business. The provisions of Article L. 641-13 are applicable to debts arising during this period.

The liquidator administers the business. he has the option of requiring the execution of contracts in progress and exercises the prerogatives conferred on the judicial administrator by Article L. 622-13.

Under the conditions set out in Article L. 631-17, he may proceed to carry out redundancies.

It being the case, he prepares a sales plan, enters into the contracts necessary for the accomplishment [of the sale], receives and distributed the price.

Nevertheless, where the number of employees and gross turnover are above thresholds to be fixed by decree of the Council of State or, in case of need, the Court may appoint a judicial administrator to administer the business. In this case, by way of exception to preceding paragraphs, the administrator is subject to the provisions of Article L. 622-13. He prepares the sales plan, enters into the contracts necessary for the accomplishment [of the sale] and, under the conditions set out in Article L. 631-17, he may proceed to carry out redundancies.

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Translation (c) PJ Omar 2005.**

Where the administrator does not have at his disposal the sums necessary for the pursuit of activity, he may have these remitted to him by the liquidator. The liquidator or administrator, where one has been appointed, exercises the functions conferred, according to the case, to the administrator or judicial nominee by Articles L. 622-4 and L. 624-6.

(Amended by Article 105, Law of 2005)

Article L. 641-11

The supervising judge carries out the functions devolved upon him by Articles L. 621-9, L. 623-2 and L. 631-11, by the first paragraph of Article L. 622-13 and the fourth paragraph of Article L. 622-16. Information held by the Public Prosecutor is communicated to him according to the rules set out in the second paragraph of Article L. 621-8. The liquidator or administrator, where one has been appointed, receive from the supervising judge all information useful for carrying out their mission.

(Inserted by Article 106, Law of 2005)

Article L. 641-12 (formerly L. 622-13)

Judicial liquidation does not entail as of right the termination of leases over immoveable property used for business purposes. The liquidator or administrator may continue the lease or sell it under the conditions set out in the contract agreed with the lessor with all the rights and obligations attached therein. In cases where the lease is sold, the provisions of Article L. 622-15 are applicable. Where the liquidator or administrator decides not to continue with the lease, the termination takes effect by a simple request. In this case, the termination takes effect at the date of the request. The lessor may request termination by a Court or note the termination of the lease as of right for a reason [arising] prior to the judgment [opening] judicial liquidation or, where [judicial liquidation] has been order following preservation or judicial rescue proceedings, [arising prior to] the judgment opening prior proceedings. He should, if he has not done so already, initiate a request within three months of the publication of the judgment [opening] judicial liquidation. The lessor may also request termination by a Court or note the termination of the lease because of a default in the payment of the rent or charges relating to occupation after the judgment [opening] judicial liquidation under the conditions set out in the third to the fifth paragraphs of Article L. 622-14.

(Amended by Article 107, Law of 2005)

Article L. 641-13

I - Debts arising in a regular manner after the judgment which opens or pronounces judicial liquidation or, in the latter case, after the opening judgment in prior preservation or judicial rescue proceedings, for the needs of the progress of proceedings or for the needs, it being the case, of the prior observation period or as consideration for a supply to the debtor for his professional activity following one of these judgments are paid as they fall due.

II - In cases where the debts are not paid as they fall due, [the debts] are paid in priority before all other debts, excepting those debts guaranteed by the priority set

out in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code, those that are guaranteed by the priority for Court fees, those that are guaranteed by the priority set out in Article L. 611-11 of the present Code as well as those that are guaranteed by security over immovable assets or those guaranteed by security over moveable assets to which a retention of title right is attached or those constituted by application of Chapter V of Title II of Book V.<sup>4</sup>

III - Their payment is made in the following order:

1. Debts owed to employees whose amount has not been advanced by application of Articles L. 143-11-1 to L. 143-11-3 of the Employment Code;
2. Court fees;
3. Loans as well as debts arising from the performance of contracts pursued in compliance with the provisions of Article L. 622-13 and where the other party accepts the receipt of postponed payments; these loans and payment postponements shall be authorised by the supervising judge only as far as is necessary for the pursuit of activity during the observation period and are subject to publicity. In cases where a contract which is properly pursued has been terminated, any indemnities and penalties are excluded from benefiting under this article;
4. Sums whose amount has been advanced by application of 3 of Article L. 143-11-1 of the Employment Code;
5. Other debts according to their ranking.

IV - Unpaid debts lose the priority given by this article if they have not been brought to the knowledge of the judicial nominee or the administrator where one has been appointed or the liquidator, within six months the judgment which opens or pronounces judicial liquidation or, in default, within a year from the judgment adopting the sales plan.

(Inserted by Article 108, Law of 2005)

#### Article L. 641-14

The provisions of Chapters IV and V of Title II of the present book on the determination of the debtor's assets and the settlement of debts resulting from an employment contract as well as the provisions of Chapter II of Title III of the present book on the nullity of certain acts apply to judicial liquidation proceedings.

Nevertheless, for the application of Article L. 625-1, the liquidator summoned before the Employment Tribunal or, in default, the petitioner shall summon before the Court the institutions mentioned in Article L. 143-11-4 of the Employment Code.

For the application of Article L. 625-3 of the present Code, the institutions mentioned in Article L. 143-11-4 of the Employment Code are cited by the liquidator or, in default, by the petitioning employees, within ten days of the judgment opening judicial liquidation proceedings or the judgment pronouncing it. Similarly, proceedings in progress before the Employment Tribunal at the date of the opening judgment are pursued in the presence of the administrator, where one has been appointed, or where he has been duly summoned.

(Inserted by Article 109, Law of 2005)

#### Article L. 641-15

During judicial liquidation proceedings, the supervising judge may order that the liquidator or administrator, where one has been appointed, be the recipient of mail addressed to the debtor.

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<sup>4</sup>Legal charge over tools and equipment.

The debtor, having been informed, may assist in the opening of mail. nevertheless, any summons before a Court, any notice of orders or any mail with a personal character must be immediately given or restored to the debtor.

The supervising judge may authorise the liquidator to have access to electronic mail received by the debtor under the conditions determined in a decree by the Council of State.

Where the debtor exercises an activity in which he is bound by professional secrecy, the provisions of this article are not applicable.

(Inserted by Article 110, Law of 2005)

## Chapter II: The Sale of Assets

### Section 1: The Sale of the Business

#### Article L. 642-1

The sale of the business is aimed at ensuring the maintenance of activities capable of autonomous exploitation, [the maintenance of] all or part of the employment attached to this and the settlement of debts.

[The sale] may be complete or partial. In the latter case, [the sale] must encompass an ensemble of elements capable of being exploited and that form one or more complete and autonomous branches of activity.

Where an ensemble is essentially constituted by the right to a rural lease, the Court may, subject to rights of indemnity for the departing lessee and notwithstanding any other provisions of the farming contract, authorise either the lessor, his spouse or one of his descendants to repossess the [property] to use it, or assign the rural lease to another lessee suggested by the lessor or, in default, any [potential] lessee whose offer has been received under the conditions set out in Articles L. 642-2, L. 642-4 and L. 642-5. Provisions relating to structural control of agricultural exploitations are not applicable. Nevertheless, where a number of offers have been received, the Court takes into account the provisions in 1 to 4 and 6 to 8 of Article L. 331-3 of the Rural Code.

Where a debtor, who is an individual, exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the sale may only cover physical elements. Nevertheless, where a public or ministerial office<sup>5</sup> is concerned, the liquidator may exercise the debtor's right to nominate a successor to the Keeper of the Seals, the Minister of Justice.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-2

I - Where the Court is of the view that the complete or partial sale of the business may be contemplated, it authorise the pursuit of activity and determines the time limit during which takeover offers must reach the liquidator and the administrator, where one has been appointed.

Nevertheless, if offers received by application of Article L. 631-13 fulfil the conditions set out in II of the present article and are satisfactory, the Court may decide not to apply the preceding paragraph.

II - Any offer must be in writing and include an indication of:

1. The precise identification of goods, rights and contracts included in the offer;
2. Forecasts for activity and financing;

<sup>5</sup>Such as a notary, court registrar etc.

3. The price offered, the methods for settlement [of the price], the status of those bring in capital and, it being the case, their guarantors. If the offer suggests recourse to borrowing, it must detail the conditions, in particular the duration [of the loan];
4. The date the sale is to be performed;
5. The level of and perspectives for employment justified by the activity considered;
6. Guarantees to be subscribed to with view to ensuring the offer is implemented;
7. Forecasts for the sale of assets during the two years following sale;
8. The duration of each of the promises made by the author of the offer.

III - Where the debtor exercises a liberal profession subject to a legislative or regulatory framework and whose title is protected, the offer must further include an indication of the transferee's professional qualification.

IV - The liquidator and the administrator, where one is appointed, inform the debtor, the employees' representative and the monitor of the content of offers [that have been] received. He files them in the Court Registry and any interested [party] may have knowledge [of them].

They are notified, it being the case, to the professional body or competent authority from which the debtor depends.

V - The offer may not be modified, except in a more favourable sense in light of the objectives mentioned in the first paragraph of Article L. 642-1, nor withdrawn. It binds its author until the decision of the Court adopting the plan.

In cases where an appeal against the decision adopting the plan [is brought], only the transferee remains bound by his offer.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-3

No debtor, no de jure or de facto manager of a corporate body [subject to] judicial liquidation, no parent or relative, including up to the second degree, of the managers or the individual debtor, no person having or having had the status of monitor during proceedings is permitted, directly or through an agent, to present an offer. Similarly, these person are prohibited from acquiring, within five years following the sale, all or part of the goods subject to liquidation, whether directly or indirectly, as well as from acquiring stock or shares in the capital or any company having as part of its assets, directly or indirectly, all of part of the goods, as well as property titles giving access to capital in this company within the same period.

Nevertheless, where an agricultural business is concerned, the Court may make an exception to these prohibitions and authorise a sale to one of the persons mentioned in the first paragraph, excepting a monitor. In other cases, the Court, at the request of the Public Prosecutor, may authorise the sale to one of the persons mentioned in the first paragraph, except a monitor, by a specially reasoned judgment, after having solicited the monitors' views.

All acts or payments carried out in contravention of the provisions of this article may be voided at the request of any interested party or of the Public Prosecutor, submitted within a time limit of three years beginning with the accomplishment of the act. Where the act is subject to publicity, the time limit runs from the date of [the publicity].

(Inserted by Article 111, Law of 2005)

#### Article L. 642-4

The liquidator or the administrator, where one is appointed, provides the Court with all the elements permitting it to ascertain the serious nature of the offer as well as

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Translation (c) PJ Omar 2005.**

the third-party status of the author within the meaning of the provisions of Article L. 642-3.

He also gives the Court all elements permitting it to appreciate the conditions for the settlement of debts, notably in light of the price offered, any residual assets left to recover or realise, the debts arising from the period when activity is pursued and, it being the case, other debts remaining for which the debtor is liable.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-5

Having solicited the view of the Public Prosecutor and having heard or duly summoned the debtor, the liquidator, the administrator, where one is appointed, the representatives of the Works Council or, in default, the employees' representative and the monitors, the Court accepts the offer which under the best conditions ensures that the employment attached to the ensemble is durable, the payment of creditors and which presents the best guarantees for [its] implementation. [The Court] adopts one or more sales plans.

The hearing must be held in the presence of the Public Prosecutor where proceedings are opened for the benefit of individual or corporate debtors whose number of employees or whose gross turnover exceeds the thresholds fixed by decree of the Council of State.

The judgment which adopts the plan makes its provisions binding on all parties.

Where the plan provides for redundancies for an economic reason, it may not be adopted by the Court until the Works Council or, in default, the employees' representative have been consulted under the conditions set out in Article L. 321-9 of the Employment Code and the competent administrative authority mentioned in Article L. 321-8 of the same Code has been informed. The plan will detail notably those redundancies that will occur within the time limit of a month following the judgment. Within this time limit, redundancies may be carried out by the liquidator, or by the administrator, where one has been appointed, sending a simple notice, subject to those rights of notification set out in the law or in the collective work agreements or contracts.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-6

A substantial modification in the objectives or the methodology of the plan may not be made except by order of the Court, at the request of the transferee.

The Court makes an order having heard or duly summoned the liquidator, the judicial administrator, where one is appointed, the monitors, the representatives of the Works Council or, in default, the employees' representative and any interested person and after having solicited the Public Prosecutor's opinion.

Nevertheless, the amount of the sales price as it has been determined in the judgment adopting the plan may not be modified.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-7

The Court will determine those contracts covering credit-leasing, rental or supplies of goods or services necessary for the maintenance of activity in light of the

observations made by the debtor's contracting partners [that have been] transmitted to the liquidator or the administrator, where one is appointed.

The judgment adopting the plan entails the transfer of these contracts, even if the sale is preceded by the leasing period mentioned in Article L. 642-13.

These contracts must be performed under the conditions in application on the day of the opening of proceedings, notwithstanding any clause to the contrary.

In cases where a credit-leasing contract is transferred, the credit taker may not exercise the option to purchase except after payment of sums remaining due up to the limit of the value determined by the common agreement of the parties or, in default, the Court at the date of the transfer.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-8

For the implementation of the plan adopted by the Court, the liquidator or the administrator, where one is appointed, enters into any contract necessary for the sale to be realised. During the wait for the fulfilment of these acts and on proof that the sales price has been deposited [in Court] or an equivalent guarantee [supplied], the Court may entrust to the transferee, at his request and on his undertaking responsibility, the management of the business to be sold.

Where the sale includes a list of clientele, no improved offer is permitted.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-9

As long as the sales price has not been completely paid, the transferee may not, with the exception of stock, alienate or give in lease-management the corporeal or incorporeal goods he has acquired.

Nevertheless, partial or complete alienation, use as security, lease or lease-management [over the goods] may be authorised by the Court following a report by the liquidator who should consult the Works Council or, in default, the employees' representative beforehand. The Court must take account of the guarantees offered by the transferee.

Any substitution of the transferee must be authorised by the Court in the judgment adopting the plan, without prejudice to the implementation of the provisions of Article L. 642-6. The author of the offer accepted by the Court remains a guarantor, on the basis of joint and several liability, for the performance of the promises to which he subscribed.

Any contract agreed in breach of the provisions of the first paragraph may be declared void at the request of any interested party or of the Public Prosecutor brought within a time limit of three years from the contract being concluded. Where the contract is subject to publicity, the time limit runs from the date of publicity.

(Inserted by Article 111, Law of 2005)

#### Article L. 642-10

The Court may attach to the sales plan a clause providing that all or part of the goods sold may not be alienated, for a time fixed by it.

Publicity for the clause is carried out under the conditions set out in a decree by the Council of State.

Any contract agreed in breach of the provisions of the first paragraph may be declared void at the request of any interested party or of the Public Prosecutor brought within a time limit of three years from the contract being concluded. Where the contract is subject to publicity, the time limit runs from the date of publicity.

(Inserted by Article 111, Law of 2005)

Article L. 642-11

The transferee gives an account to the liquidator of the application of the provisions set out in the sales plan.

If the transferee does not perform his promises, the Court may, on the one hand, at the request of the Public Prosecutor, or on the other hand, at the request of the liquidator, a creditor, any interested party or ex officio, having solicited the view of the Public Prosecutor, order the termination of the plan, without prejudice to any damages and interest [that may be claimed].

The court may order the termination or cancellation of any contracts entered into in performance of the terminated plan. The price paid by the transferee may not be reclaimed.

(Inserted by Article 111, Law of 2005)

Article L. 642-12

Where the sale includes goods subject to a special privilege, to a legal charge or to a mortgage, a portion of the price will be set aside by the Court for each of the goods for the [purposes of the] distributions and the exercise of preferential rights.

The payment of the sales price bars the exercise as against the transferee of those creditors' rights attached to the goods.

Until payment of the complete price entailing the expunging of rights registered over the goods included within the sale, creditors holding a right to sue the asset-holder may not exercise it except where the good sold is alienated by the transferee.

Nevertheless, liability for security over immoveables and special security over moveables guaranteeing the repayment of a loan given to the business for the financing of an asset to which the security is related is conveyed to the transferee. [The transferee] is required to settle [by paying] into the creditor's hands the instalments agreed with [the creditor] and which remain due from the moment the property is transferred or, in the case of lease-management, from the enjoyment of the asset over which the guarantee is taken. an exception from the provisions of the present paragraph may be made by agreement between the transferee and the creditors [who are] holders of security.

(Inserted by Article 111, Law of 2005)

Article L. 642-13

In the judgment adopting the sales plan, the Court may authorise the conclusion of a lease-management contract, even in the presence of any clause to the contrary, notably within the lease over immoveable property, in favour of the person who has presented the acquisition offer which under the best conditions ensures that the employment attached to the ensemble is durable as well as the payment of creditors. The court makes an order having heard or duly summoned the debtor, the liquidator, the administrator, where one is appointed, the monitors, the representatives of the



Works Council or, in default, the employees' representative and any interested person and after having solicited the view of the Public Prosecutor.

(Inserted by Article 111, Law of 2005)

Article L. 642-14

The provisions of Articles L. 144-3, L. 144-4 and L. 144-7 on lease-management are not applicable.

(Inserted by Article 111, Law of 2005)

Article L. 642-15

In cases of lease-management, the business must be effectively transferred within two years of the judgment adopting the plan.

(Inserted by Article 111, Law of 2005)

Article L. 642-16

The liquidator may require the lease-manager to communicate to him all documents and information useful for his tasks. He gives an account to the Court of any impediment affecting the elements subject to lease-management as well as of any failure to perform promises incumbent on the lease-manager [to perform].

The Court, ex officio or at the request of the liquidator or of the Public Prosecutor, may order the termination of the lease-management contract and the termination of the plan.

(Inserted by Article 111, Law of 2005)

Article L. 642-17

If the lease-manager does not perform his obligation to acquire [the business] under the conditions and within the time limits determined in the plan, the Court, ex officio or at the request of the liquidator or of the Public Prosecutor, may order the termination of the lease-management contract and the termination of the plan, without prejudice to any damages and interest [that may be claimed].

Nevertheless, where the lease-manager proves that he can not acquire [the business] under the conditions initially provided due to a cause for which he is not liable, he may ask the Court to modify the conditions, except those that concern the amount of the price and the time limit set out in Article L. 642-15. The court makes an order before the expiry of the leasing contract and having solicited the view of the Public Prosecutor and having heard or duly summoned the debtor, the liquidator, the administrator, where one is appointed, the monitors, the representatives of the Works Council or, in default, the employees' representative and any interested person.

(Inserted by Article 111, Law of 2005)

Section 2: The Sale of the Debtor's Assets

Article L. 642-18 (formerly L. 622-16)

The sale of immoveable property is carried out in the manner provided for in the case of seizure of immoveable property. Nevertheless, the supervising judge determines, having solicited the views of the monitors, having heard or duly summoned the debtor and the liquidator, the reserve price and the essential conditions of sale and determines the methods of publicity.

Where proceedings to seize immoveable property initiated prior to the opening of preservation, judicial rescue and judicial liquidation proceedings has been suspended due to the effect of [proceedings], the liquidator may be subrogated to the rights of the creditor seizing [property] as far as any acts he has accomplished are concerned, which are deemed to have been performed on behalf of the liquidator who proceeds to the sale of the immoveable property. The seizure of immoveable property may resume at the stage it had reached when the judgment opening proceedings suspended it.

Under the same conditions, the supervising judge may, if the nature of the goods, their position or if offers received are of a nature to permit an amicable sale in the best of conditions, order a sale by amicable adjudication at the reserve price he determines or authorise a sale at will. In cases of amicable adjudication, there may still be improved offers.

Adjudications carried out by application of preceding paragraphs entail the discharge of mortgages.

The liquidator distributes the proceeds of sale and settles the ranking between creditors, subject to any disputes which may be brought before the High Court.

In cases where judicial liquidation involves a farmer, the Court may, taking into account the debtor's personal and family situation, give him a grace period to leave his principal home.

The means for applying the present article are determined in a decree by the Council of State.

(Amended by Article 112, Law of 2005)

#### Article L. 642-19 (formerly L. 622-18)

Having solicited the view of the monitors, the supervising judge orders the sale at public auction or authorise the sale at will of the debtor's other property, the latter having been heard or duly summoned. Where the sale takes place at public auction, it is carried out under the conditions set out, depending on the case, in the second paragraph of Article L. 322-2 or in Articles L. 322-4 or L. 322-7.

The supervising judge may require that the draft for an amicable sale be submitted to him to ascertain whether the conditions he has determined have been respected.

(Amended by Article 113, Law of 2005)

#### Article L. 642-20

The provisions of Article L. 642-3 are applicable to the sale of assets realised by application of Articles L. 642-18 and L. 642-19. In this case, the powers of the Court are exercised by the supervising judge.

(Inserted by Article 114, Law of 2005)

#### Article L. 642-21

Where the provisions of Article L. 631-22 have been applied and the debtor cannot obtain in Court the adoption of a rescue plan, the provisions of the present title are

applicable. Goods not included in a sales plan are sold under the conditions [set out] in the present section.

(Inserted by Article 114, Law of 2005)

### Section 3: Common Provisions

#### Article L. 642-22

Any sale of the business and any realisation of assets must be preceded by publicity whose methods shall be determined in a decree by the Council of State in function of the size of the business and the nature of the assets to be sold.

(Inserted by Article 115, Law of 2005)

#### Article L. 642-23 (formerly L. 622-19)

Before any sale or destruction of the debtor's archives, the liquidator informs the competent administrative authority with view to having the archives preserved. The authority enjoys a right of pre-emption. The destination of archives of a debtor subject to professional secrecy shall be determined by the liquidator by agreement with the professional body of competent authority from which [the debtor] depends.

(Amended by Article 116, Law of 2005)

#### Article L. 642-24 (formerly L. 622-20)

The liquidator may, with the authorisation of the supervising judge with the debtor having been heard or duly summoned, compromise or settle any disputes that interest the creditors collectively even those relating to rights and litigation over immoveable property.

If the object of the compromise or settlement is of an indeterminate value or exceeds the amount of the jurisdictional threshold in the case of a final order made by the Court, the compromise or settlement is subject to endorsement by the Court.

(Unchanged)

#### Article L. 642-25 (formerly L. 622-21)

The liquidator authorised by the supervising judge may, by paying a debt, withdraw goods subject to a charge [given] by the debtor or a retained object.

In default, the liquidator should, within six months of the judgment [opening] judicial liquidation, request the supervising judge for authority to proceed to the realisation [of the good]. The liquidator gives notice to the creditor of the authority fifteen days before the realisation.

The creditor holding the charge, even if he has not been admitted, may request the supervising judge before the realisation to attribute the good to him. If the debt is rejected, in whole or in part, [the creditor] restores to the liquidator the good or its value, subject to the admitted amount of the debt [owed him].

In case of sale by the liquidator, the right of retention is transferred to the proceeds. The registration that may have been made for the preservation of the charge is expunged at the liquidator's diligence.

(Amended by Article 117, Law of 2005)

Chapter III: The Payment of Debts

Section 1: Settlement with Creditors

Article L. 643-1 (formerly L. 622-22)

The judgment which opens or pronounces judicial liquidation has the effect of making due all debts not yet fallen due. Nevertheless, where the Court authorises activity to continue by reason that a total or partial sale of the business is contemplated, debts not yet fallen due are due at the date of the judgment ordering sale.

Where debts are expressed in a currency other than that of the place where judicial liquidation has been pronounced, they are converted into the currency of this place at the exchange rate on the date of the judgment.

(Amended by Article 118, Law of 2005)

Article L. 643-2 (formerly L. 622-23)

Creditors [who are] holder of a special priority, of a legal charge or mortgage and the Public Treasury in the case of its privileged debts may, once they have proved their debts even if these have not yet been admitted, exercise their right of individual action if the liquidator has not undertaken the liquidation of goods subject to the security within a time limit of three months beginning with the judgment opening or pronouncing judicial liquidation. Where the Court has fixed a time limit in application of Article L. 642-2, these creditors may exercise their right of individual action at the end of this time limit, if no offer including this asset has been presented.

In cases of the sale of immoveable property, the provisions of the first, third and fifth paragraphs of Article L. 642-18 will apply. Where proceedings to recover immoveable property have been initiated prior to the opening judgment, the creditor holding a mortgage is relieved, where individual action may be resumed, from [having to perform] any acts and formalities carried out before the judgment.

(Amended by Article 119, Law of 2005)

Article L. 643-3 (formerly L. 622-24)

The supervising judge may, ex officio or at the request of the liquidator or of a creditor, order the payment on a provisional basis of a proportion of a debt that has been admitted on a definitive basis.

The provisional payment may be subject to the presentation by its beneficiary of a guarantee provided by a credit establishment.

In cases where the request for a proportion relates to a privileged debt [owed to] financial authorities, social security bodies, institutions managing the unemployment insurance scheme provided for by Articles L 351-3 and following of the Employment Code as well as institutions governed by Book IX of the Social Security Code, the guarantee set out in the second paragraph is not required.

(Amended by Article 120, Law of 2005)

Article L. 643-4 (formerly L. 622-25)

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

If one or more distributions of sums occur prior to the distribution of the proceeds of immoveable property, creditors with priority and mortgagees [that have been] admitted may apply for a dividend pro rata to the total debt [owed them].

After the sale of immoveable property and the definitive settlement of the ranking of creditors with priority and mortgagees, those whose debts are likely to fall within the amount of dividends payable out of the proceeds from [the sale of] immoveable property for the whole of the debt [owed them] do not receive their [share of the] amount set aside for mortgage claims except after deducting the sums they have received.

The sums that are deducted benefit unsecured creditors.

(Unchanged)

Article L. 643-5 (formerly L. 622-26)

The rights of mortgage creditors that are partially set aside out of the distribution of the proceeds from [the sale of] immoveable property are settled on the basis of the amount that remains due to them after the set aside for property [claims]. The excess amount that they have received in prior distributions measured against the dividend calculated after ordering is kept back from the amount set aside for mortgage claims and is included in those sums that may be distributed to unsecured creditors.

(Unchanged)

Article L. 643-6 (formerly L. 622-27)

Creditors with priority and mortgagees who are not satisfied out of the proceeds of [the sale of] immoveable property rank with unsecured creditors for the remaining amounts due them.

(Unchanged)

Article L. 643-7 (formerly L. 622-28)

Subject to the third paragraph of Article L. 642-25, the provisions of Articles L. 643-4 to L. 643-6 apply to creditors benefiting from special security over moveable property.

(Unchanged)

Article L. 643-8 (formerly L. 622-29)

The amount of the assets, after subtraction of Court fees and expenses in the judicial liquidation, of subsidies granted to the entrepreneur or to the managers and their families and of sums paid to priority creditors, is divided among all creditor pro rata to the debts [owed them that have been] admitted.

The portion corresponding to debts that have not been the subject of an order pronouncing on their definitive admission and, notably, the remuneration of managers as long as there has been no order in their case, is kept in reserve.

(Unchanged)

Section 2: The Closure of Judicial Liquidation Operations

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**

Article L. 643-9

In the judgment which opens or pronounces judicial liquidation, the Court determines a time limit at the end of which the closure of proceedings will be examined. If the closure cannot be ordered at the end of this time limit, the Court may extend the term in a specially reasoned judgment.

Where there are no longer any due debts or where the liquidator has sufficient sums at his disposal to satisfy the creditors or where the pursuit of judicial liquidation operations has become impossible by reason of an insufficiency of assets, the closure of judicial liquidation is ordered by the Court, having heard or duly summoned the debtor.

The Court may be petitioned at any time by the liquidator, the debtor or the Public Prosecutor. It may act *ex officio*. At the expiry of a time limit of two years from the judgment [opening] judicial liquidation, any creditor may petition the Court with view to closing proceedings.

In cases where there is a sales plan, the Court does not order the closure of proceedings unless it has noted whether the transferee has respected his obligations.

(Inserted by Article 121, Law of 2005)

Article L. 643-10 (formerly L. 622-31)

The liquidator proceeds to render accounts. He is responsible for documents which have been transmitted to him during proceedings for five years from rendering [accounts].

(Unchanged)

Article L. 643-11

I - The judgment closing judicial liquidation for an insufficiency of assets does not permit creditors to recover their individual rights of action against the debtor except where the debt results from:

1. A finding of guilt [involving] the debtor;
2. Rights attached to the person of the creditor.

II - Nevertheless, a jointly bound party or co-guarantor who has paid in place of the debtor may pursue him.

III - Creditors will recover their individual rights of action in the following cases:

1. Personal bankruptcy [involving] the debtor has been ordered;
2. The debtor has been found guilty of criminal bankruptcy;
3. The debtor or a corporate body of which he was a manager has been subject to prior judicial liquidation proceedings closed due to an insufficiency of assets less than five years before the proceedings to which he is subject;
4. Proceedings have been opened as territorial proceedings within the meaning of paragraph 2 of Article 3 of Council Regulation (EC) No. 1346/2000 relative to insolvency proceedings.

IV - Furthermore, in cases of fraud affecting one or more creditors, the Court may authorise the resumption of individual action by any creditor as against the debtor. The Court makes an order at the time of the closing of proceedings having heard or duly summoned the debtor, the liquidator and the monitors. It may make an order following [the closure of proceedings] at the request of any interested [party] under the same conditions.

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V - Creditors who have recovered their individual rights of action under the present article may, if the debts [owed them] have been admitted, obtain an order for enforcement by a ruling of the President of the Court or, if the debts [owed them] have not been ascertained, put it into effect within the conditions [authorised by] ordinary law.

(Inserted by Article 122, Law of 2005)

Article L. 643-12 (formerly L. 622-33)

The closure of judicial liquidation lifts the effect of any prohibition preventing [the debtor] from issuing cheques in compliance with Article L. 131-73 of the Monetary and Financial Code, put into place on the occasion of a cheque issued prior to the opening of conciliation proceedings being rejected.

If the creditors recover their individual rights of action, the prohibition resumes effect from the moment the order for enforcement noted in Article L. 643-11 has been delivered.

(Amended by Article 123, Law of 2005)

Article L. 643-13

If the closure of judicial liquidation has been ordered due to an insufficiency of assets and it appears that assets have not been realised or that litigation in the interest of creditors has not been initiated during proceedings, [proceedings] may be resumed.

The Court is petitioned by the liquidator previously appointed, by the Public Prosecutor or by an interested creditor. It may also act ex officio. If it is petitioned by a creditor, [the creditor] must prove the deposit with the Court Registry of the necessary funds for the costs of operations. The amount of costs deposited will be reimbursed as a priority out of sums recovered as a result of proceedings being resumed.

If the assets of the debtor consist of a sum of money, the procedure set out in Chapter IV of the present title is applicable as of right.

(Inserted by Article 124, Law of 2005)

Chapter IV: Simplified Judicial Liquidation

Article L. 644-1

Simplified judicial liquidation proceedings are subject to the rules of judicial liquidation except where the provisions of this chapter apply.

(Inserted by Article 125, Law of 2005)

Article L. 644-2

By way of exception to the provisions of Article L. 642-19, where the Court decides on the application of this chapter, it determines those assets of the debtor that may be the subject of a sale at will. The liquidator proceeds to do this within three months following the date of this judgment.

At the end of this period, goods remaining will be sold at public auction.

(Inserted by Article 125, Law of 2005)

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Translation (c) PJ Omar 2005.**

Article L. 644-3

By way of exception to the provisions of Article L. 641-4, only those debts that are likely to fall within the amount of dividends payable as well as those resulting from a contract of employment will be ascertained.

(Inserted by Article 125, Law of 2005)

Article L. 644-4

At the end of proceedings ascertaining and proving of these debts and the realisation of goods, the liquidator establishes a draft dividend plan which he files in the Court Registry where any interested [party] may have knowledge [of it] and which is subject to publicity.

Any interested [party] may dispute the draft dividend plan before the supervising judge within a time limit determined in a decree by the Council of State.

The supervising judge rules on disputes by way of an order which is the subject of publicity and notification to interested creditors. An appeal may be brought within a time limit determined in a decree by the Council of State.

The liquidator proceeds to pay dividends according to the draft or the judgment given.

(Inserted by Article 125, Law of 2005)

Article L. 644-5

One year at the latest after the opening of proceedings, the Court orders the end of judicial liquidation, having heard or duly summoned the debtor.

It may, in a specially reasoned judgment, extend proceedings for a period which may not exceed three months.

(Inserted by Article 125, Law of 2005)

Article L. 644-6

At any time, a Court may decide, in a specially reasoned judgment, to no longer apply the exceptions set out in this chapter.

(Inserted by Article 125, Law of 2005)

**Title V: Liabilities and Sanctions**Article L. 650-1

Creditors may not be held liable for harm resulting from the fact of credit granted, except in cases of fraud, being implicated in the management of the debtor or if the guarantees entered into in consideration of credit are disproportionate to this.

In cases where the liability of a creditor is established, guarantees entered into in consideration of credit are deemed void.

(Inserted by Article 126, Law of 2005)

Chapter I: Liability for a Deficiency in Assets

**Unofficial translation; only the French text is authoritative.  
Translation (c) PJ Omar 2005.**



Article L. 651-1 (formerly L. 624-2)

The provisions of the present chapter and of Chapter II of the present title are applicable to the managers of a private-law corporate body subject to a collective procedure as well as to individuals, [who are] permanent representatives of those corporate bodies [that are] managers.

(Amended by Article 127, Law of 2005)

Article L. 651-2 (formerly L. 624-3)

Where the termination of a preservation or judicial rescue plan or the judicial liquidation of a corporate body reveals a deficiency of assets, the Court may, in instances where this deficiency is due to management fault, decide that the debts of the corporate body shall be borne, whether in whole or in part, by all the de jure or de facto managers or by only some of them, contributing to the management fault. In cases where there is a number of managers, the Court may, by a reasoned decision, declare them to be jointly and severally liable.

The claim is barred after three years from the [date of the] judgment that orders judicial liquidation or the termination of the plan.

Sums paid by the managers in application of the first paragraph form part of the debtor's assets. These sums are distributed between all creditors pro rata to their claim.

(Amended by Article 128, Law of 2005)

Article L. 651-3

In the case set out in Article L. 651-2, the Court is petitioned by the judicial nominee, the liquidator or the Public Prosecutor.

In the collective interest of creditors, the Court may equally be petitioned by a majority of creditors appointed as monitors where the judicial nominee with responsibility for acting has not undertaken the claims provided for in the same article after notice that has been given remains without response within a time limit and under the conditions to be determined by a decree of the Council of State.

In the case set out in the first paragraph, the supervising judge may not sit as part of the bench making the order nor participate in the hearing.

Court fees for which managers have been found liable shall be paid in priority out of the sums that are paid over to settle debts.

(Inserted by Article 129, Law of 2005)

Article L. 651-4 (formerly L. 624-7)

For the application of the provisions of Article L. 651-2, either ex officio or at the request of one of the persons mentioned in Article L. 651-3, the President of the Court may task the supervising judge or, in default, one of the members of the Court to, notwithstanding any legal or regulatory rule to the contrary, the communication of any document or information on the asset situation of the managers and those individuals, [who are] permanent representatives of those corporate bodies [that are] managers mentioned in Article L. 651-1, from administrative and public authorities, state security and contingency bodies as well as credit establishments.

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The President of the Court may, under the same conditions, order any useful preservation measure in relation to the assets of the managers or their representatives mentioned in the preceding paragraph.

The provisions of the present article are equally applicable to members or partners in a corporate body that is subject to preservation, judicial rescue or judicial liquidation proceedings, where they are jointly and severally liable for its debts.

(Amended by Article 130, Law of 2005)

## Chapter II: Liability for Corporate Debts

### Article L. 652-1

During the progress of liquidation proceedings, a Court may decide that a de jure or de facto manager of the corporate body shall bear the whole or part of its debts shall be borne, where it has been established, as against this director, one of the faults defined below that has contributed towards the cessation of payments:

1. To have disposed of property belonging to the corporate body as his own;
2. Using the corporate body as a cover for his actions, to have conducted business transactions to further his personal interests;
3. To have used goods or credit facilities belonging to the corporate body against its interests for his own ends or in order to benefit another corporate body or business in which he had a direct or indirect interest;
4. To have pursued trading at a deficit in an abusive manner for his own ends which could only lead directly to the corporate body being in cessation of payments;
5. To have diverted or dissimulated all or part of the assets of the corporate body or fraudulently increased its debts.

In the cases set out in the present article, the provisions of Article L. 651-2 shall not apply.

(Inserted by Article 131, Law of 2005)

### Article L. 652-2

In cases where more than one manager is liable, the Court takes account of the fault of each [manager] in order to determine the portion of corporate debts he will bear. In a reasoned decision, it may declare them jointly and severally liable.

(Inserted by Article 131, Law of 2005)

### Article L. 652-3

Sums recovered are dedicated to paying the creditors according to the order of their security.

(Inserted by Article 131, Law of 2005)

### Article L. 652-4

The claim is barred after three years from the [date of the] judgment that orders judicial liquidation.

(Inserted by Article 131, Law of 2005)

Article L. 652-5

The provisions of Articles L. 651-3 and L. 651-4 are applicable to the claim provided in the present chapter.

(Inserted by Article 131, Law of 2005)

Chapter III: Personal Bankruptcy and other ProhibitionsArticle L. 653-1 (formerly L. 625-1)

Where judicial rescue or judicial liquidation proceedings are opened, the provisions of the present chapter are applicable:

1. To all commercial persons, to any person registered on the register of professions, to any farmer, to any other person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework or whose title is protected;
2. To individuals who are de facto or de jure managers of corporate bodies;
3. To individuals, [who are] permanent representatives of those corporate bodies [that are] managers of those corporate bodies defined in 2.

These same provisions are not applicable to individuals or managers of a corporate body exercising an independent professional activity and, in this context, subject to disciplinary rules.

II - The claims provided in the present chapter are barred after three years from the [date of the] judgment that orders the opening of proceedings mentioned in I.

(Amended by Article 132, Law of 2005)

Article L. 653-2 (formerly L. 625-2)

Personal bankruptcy carries with it a prohibition from directing, managing, administering or controlling, directly or indirectly, any commercial or craft business, any agricultural operation or any business having any other independent activity and any corporate body.

(Amended by Article 133, Law of 2005)

Article L. 653-3 (formerly L. 625-3)

The court may order the personal bankruptcy of any person mentioned in 1 of I of Article L. 653-1, subject to the exceptions provided in the final paragraph of the same article, against whom any of the following facts have been established:

1. To have pursued trading at a deficit in an abusive manner which could only lead directly to the cessation of payments;
2. To have diverted or dissimulated all or part of his assets or fraudulently increased his debts.

(Amended by Article 134, Law of 2005)

Article L. 653-4 (formerly L. 625-4)

The Court may order the personal bankruptcy of any appointed or shadow director of a corporate body, who has committed one of the faults mentioned in Article L. 652-1.

(Amended by Article 135, Law of 2005)

Article L. 653-5

A court may order the personal bankruptcy of any person mentioned in Article L. 653-1 against whom any of the following facts have been established:

1. To have carried out a commercial, craft or agricultural activity or a management or administrative function in a corporate body contrary to a prohibition provided by law;
2. With the intention of avoiding or delaying the opening of judicial administration or judicial liquidation proceedings, to have made purchases with view to sales at below market prices or used ruinous means to procure funds;
3. To have subscribed, for the benefit of another, without compensation, to obligations adjudged to be too important at the time [these obligations] were entered into, with regard to the situation the business or corporate body was in;
4. To have paid or authorised payment to a creditor, after cessation of payments and in knowledge of the cause of this, to the prejudice of other creditors;
5. To have, by voluntarily abstaining from co-operating with [those responsible] for proceedings, formed an obstacle to its good progress;
6. To have made accounting documents disappear, to have failed to keep accounts where applicable texts made this a requirement, or to have kept fictitious accounts, manifestly incomplete or irregular in light of the applicable provisions.

(Inserted by Article 136, Law of 2005)

Article L. 653-6 (formerly L. 625-6)

The court may order the personal bankruptcy of any manager of a corporate body who has not paid business debts for which he has been found liable.

(Unchanged)

Article L. 653-7

In the cases set out in Articles L. 653-3 to L. 653-6 and L. 653-8, the Court is petitioned by the judicial nominee, the liquidator or the Public Prosecutor.

In the collective interest of creditors, the Court may equally be petitioned at any time during proceedings by a majority of creditors appointed as monitors where the judicial nominee with responsibility for acting has not undertaken the claims provided for in the same articles after notice that has been given remains without response within a time limit and under the conditions to be determined by a decree of the Council of State.

In the same cases set out in the first paragraph, the supervising judge may not sit as part of the bench making the order nor participate in the hearing.

(Inserted by Article 137, Law of 2005)

Article L. 653-8 (formerly L. 625-8)

In cases falling within Articles L. 653-3 to L. 653-6, a court may order, instead of personal bankruptcy, a prohibition from being involved in the direction, management, administration or control, directly or indirectly, of any commercial or craft business, any agricultural operation or any corporate body or of one or more of these.

The prohibition mentioned in the first paragraph may equally be pronounced against any person mentioned in Article L. 653-1 who, in bad faith, has not submitted to the

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judicial nominee, to the administrator or to the liquidator, information he is bound to communicate to him by application of Article L. 622-6 within the month following the opening judgment.

It may equally be pronounced against any person mentioned in Article L. 653-1 who has omitted to make, within the time limit of forty-five days, a declaration of cessation of payments, without having otherwise requested the opening of conciliation proceedings.

(Amended by Article 138, Law of 2005)

#### Article L. 653-9

The voting rights of managers subject to personal bankruptcy or to a prohibition set out in Article L. 653-8 will be exercised in the meetings of corporate bodies subject to judicial rescue or judicial liquidation proceedings by a nominee of justice appointed by the Court for this purpose at the request of the administrator, the liquidator or the plan performance supervisor.

A Court may order these managers or some of them to sell stock or shares in the capital of corporate bodies or order a forced sale through the use of a nominee of justice, if necessary after an expert's report. The proceeds of any sale are used for the payment of that part of the corporate debt for which the managers are liable.

(Unchanged)

#### Article L. 653-10

The court that orders personal bankruptcy may order that [the individual] be incapable of exercising a publicly elected office. The prohibition is ordered for a period equal to that of the personal bankruptcy subject to a limit of five years. Where the order has become definitive, the Public Prosecutor notifies the interested party of the prohibition, which has effect from the moment of its notification.

(Inserted by Article 139, Law of 2005)

#### Article L. 653-11

Where a Court orders personal bankruptcy or the prohibition set out in Article L. 653-8, it determines the duration of the measure, which may not be greater than fifteen years. It may order the provisional enforcement of this decision. The destitution [of rights], prohibitions and incapacity to exercise a publicly elected office end as of right at the [end of the] fixed term, without any need for an order to be pronounced.

The judgment closing [proceedings] for a lack of outstanding debts, including following the enforcement of any order imposing liability for corporate debts on these persons, restores the entrepreneur or the managers of the corporate body to all their rights. It dispenses or relieves them from any destitution [of rights], prohibition or incapacity to exercise a publicly elected office.

An interested [party] may request the Court to relieve him from, in whole or in part, any destitution [of rights], prohibition or incapacity to exercise a publicly elected office if he has made a sufficient contribution towards the payment of debts.

Where he is the subject of the prohibition set out in Article L. 653-8, he may be relieved if he presents guarantees demonstrating his capacity to manage or control one or more businesses or [corporate] bodies mentioned in the same article.

Where the relief from any destitution [of rights] or prohibition is complete, the Court's decision amounts to rehabilitation.

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(Inserted by Article 140, Law of 2005)

Chapter IV: Criminal Bankruptcy and Other Infractions

Section I: Criminal Bankruptcy

Article L. 654-1 (formerly L. 626-1)

The provisions of the present section are applicable:

1. To any commercial person, to any farmer, to any person registered on the register of professions and to any person exercising an independent professional activity, including a liberal profession subject to a legislative or regulatory framework or whose title is protected;
2. To any person who, directly or indirectly, de jure or de facto, has directed or liquidated a private-law corporate body;
3. To individuals, [who are] permanent representatives of those corporate bodies [that are] managers of those corporate bodies defined in 2 above.

(Amended by Article 141, Law of 2005)

Article L. 654-2 (formerly L. 626-2)

Where a procedure of judicial administration or judicial liquidation is opened, any person mentioned in Article L. 654-1 may be found guilty of criminal bankruptcy where any of the following facts have been established against him:

1. To have made, with the intention of avoiding or delaying the opening of judicial administration proceedings, purchases with view to a resale at below market prices or used ruinous means to procure funds;
2. To have diverted or dissimulated all or part of the debtor's assets;
3. To have fraudulently increased the debtor's debts;
4. To have kept fictitious accounts or made accounting documents belonging to the business or corporate body disappear or failed to keep any accounts where the applicable texts impose an obligation;
5. To have kept manifestly incomplete or irregular accounts in light of legal provisions.

(Amended by Article 142, Law of 2005)

Article L. 654-3 (formerly L. 626-3)

Criminal bankruptcy is punishable by five years imprisonment and a fine of €75,000. The same penalties are incurred by the accomplices of the criminal bankrupt, even if they do not occupy the position of a commercial person, farmer or craftsman and do not manage, directly or indirectly, de jure or de facto, a private-law corporate body.

(Amended by Article 142, Law of 2005)

Article L. 654-4 (formerly L. 626-4)

Where the author of or accomplice to criminal bankruptcy is a manager of a business that offers investment services, the penalties are increased to seven years imprisonment and a fine of €100,000.

(Unchanged)

Article L. 654-5 (formerly L. 626-5)

Individuals that are guilty of those infractions set out in Articles L. 654-3 and L. 654-4 may also be subject to the following supplementary penalties:

1. A prohibition from exercising civic, civil and family rights, following the provisions of Article 131-26 of the Penal Code.
2. A prohibition, for a maximum of a five year period, from exercising a publicly elected office, from exercising the professional or corporate activity in which exercise or by means of which the infraction was committed unless a Civil or Commercial Court has already imposed such a measure by a decision that has become definitive;
3. Exclusion from public markets for a maximum period of five years;
4. A prohibition, for a maximum of a five year period, from issuing cheques other than those allowing for the withdrawal of funds by the drawer from the [issuing bank] or certified [cheques];
5. Publicity or distribution of the judgment that has been pronounced under the conditions set out in Article 131-35 of the Penal Code.

(Amended by Article 142, Law of 2005)

Article L. 654-6

The Criminal Court which finds one of the persons mentioned in Article L. 654-1 guilty of criminal bankruptcy may, in addition, make an order pronouncing either that he is subject to personal bankruptcy or one of the prohibitions set out in Article L. 653-8 unless a Civil or Commercial Court has already imposed such a measure by a decision that has become definitive.

(Inserted by Article 143, Law of 2005)

Article L. 654-7 (formerly L. 626-7)

I - Corporate bodies may be declared criminally liable, under the conditions set out in Article 121-2 of the Penal Code, for those infractions set out in Articles L. 654-3 and L. 654-4.

II - The penalties suffered by corporate bodies are:

1. A fine, following the provisions set out in Article 131-38 of the Penal Code;
2. The penalties set out in Article 131-39 of the Penal Code.

III - The prohibition mentioned in 2 of Article 131-39 of the Penal Code refers to the exercise of the professional or corporate activity in which exercise or by means of which the infraction was committed.

(Unchanged)

Section II: Other Infractions

Article L. 654-8 (formerly L. 626-8)

Two years imprisonment and a fine of €75,000 will apply to the following facts:

1. Where any person mentioned in Article L. 654-1 agrees during the observation period to a mortgage or a legal charge or makes an act disposing [of assets] without the authorisation set out in the second paragraph of Article L. 622-7 or who pays, in

whole or in part, a debt in breach of the prohibition mentioned in the first paragraph of that article;

2. Where any person mentioned in Article L. 654-1 makes a payment in breach of the method by which the settlement of debts is to be carried out according to the preservation plan or rescue plan, who makes an act disposing [of assets] without the authorisation set out in the second paragraph of Article L. 626-14 or who proceeds to sell an asset subject to a prohibition on disposal within the context of a sales plan to which Article L. 642-10 applies;

3. Where any person, during the observation period or while the preservation plan or rescue plan is being implemented, with knowledge of the debtor's situation, concludes with the [debtor] one of the acts mentioned in 1 and 2 or receives an irregular payment.

(Amended by Article 144, Law of 2005)

Article L. 654-9 (formerly L. 626-9)

The penalties provided in Articles L. 654-3 to L. 654-5 apply to the following facts:

1. In the interest of persons mentioned in Article L. 654-1, the withdrawal, concealment or dissimulation of all or part of the assets, moveable and immoveable property belonging to these persons, all without prejudice to the application of Article 121-7 of the Penal Code;

2. For any person, the fraudulent proving within preservation, judicial rescue or judicial liquidation proceedings, whether in his name or by use of an agent, of pretended debts;

3. For any person exercising a commercial, crafts or agricultural activity or any other independent activity, under the name of another or using a pretended name, to become guilty of one of the facts set out in Article L. 654-14.

(Amended by Article 145, Law of 2005)

Article L. 654-10 (formerly L. 626-10)

The fact, for the spouse, descendants, ancestors or collateral relations or associates of the persons mentioned in Article L. 654-1 of abstracting, diverting or concealing effects sourced from the assets of a debtor subject to preservation or judicial rescue proceedings, is punishable by the penalties set out in Article 314-1 of the Penal Code.

(Amended by Article 146, Law of 2005)

Article L. 654-11 (formerly L. 626-11)

In those cases set out in the preceding articles, the court hearing matters makes an order, even if there has been an acquittal:

1. Ex officio, on the reintegration with the debtor's assets of all the property, rights and claims that have been fraudulently abstracted;

2. On any damages and interest that may be requested.

(Amended by Article 146, Law of 2005)

Article L. 654-12 (formerly L. 626-12)



I - The penalties set out in Article 314-2 of the Penal Code apply to the fact, for any administrator, judicial nominee, liquidator or plan performance supervisor, of:

1. Voluntarily harming the interests of the creditors or of the debtor by either using to his profit sums received while accomplishing his mission or attributing to himself any advantage which he knows he is not due;

2. Making use, in his own interest, of powers he has at his disposal for a purpose he knows to be contrary to the interests of the creditors or of the debtor.

II - The same penalties will apply to any administrator, judicial nominee, liquidator, plan performance supervisor or any other person, except the employees' representative, who acquires for his own account, directly or indirectly, the debtor's assets or uses them for his own profit, whatever his participation in proceedings. The Court hearing matters will declare the acquisition null and make an order for any damages and interest that may be requested.

(Amended by Article 146, Law of 2005)

Article L. 654-13 (formerly L. 626-13)

The fact, for a creditor, following the judgment opening judicial rescue or judicial liquidation proceedings, of agreeing a contract carrying a special advantage whose burden is borne by the debtor, is punishable by the penalties set out in Article 314-1 of the Penal Code.

The Court hearing matters will declare the agreement null.

(Unchanged)

Article L. 654-14 (formerly L. 626-14)

The penalties set out in Articles L. 654-3 to L. 654-6 will apply, for those persons mentioned in 2 and 3 of Article L. 654-1, to the fact, with bad faith and with view to abstracting all or part of their assets from being subject to an action by a corporate body that has been the subject of a judgment opening judicial rescue or judicial liquidation proceedings or from [actions] by the partners or creditors of the corporate body, of abstracting or concealing or of attempting to abstract or conceal, all or part of their goods, or of having themselves recognised as creditors for sums of money they are not owed.

(Unchanged)

Article L. 654-15 (formerly L. 627-4)

The fact, for any person, of exercising a professional activity or function in violation of any prohibition, destitution [of rights] or incapacity set out in Articles L. 653-2 and L. 653-8, is punishable by two years imprisonment and a fine of €375,000.

(Unchanged)

Section III: Procedural Rules

Article L. 654-16 (formerly L. 626-15)

For the application of the provisions of Sections I and II of the present chapter, the limitation period applicable to public actions runs from the day of the judgment

opening preservation, judicial rescue or judicial liquidation proceedings, where the incriminating facts have arisen before this date.

(Amended by Article 146, Law of 2005)

Article L. 654-17 (formerly L. 626-16)

The Criminal Court is petitioned either by the action of the Public Prosecutor or by the constitution as a civil party of the administrator, the judicial nominee, the employees' representative, the plan performance supervisor, the liquidator or a majority of creditors appointed as monitors acting in the collective interest of the creditors where the judicial nominee with responsibility for acting has not acted after notice that has been given remains without response within a time limit and under the conditions to be determined by a decree of the Council of State.

(Amended by Article 146, Law of 2005)

Article L. 654-18 (formerly L. 626-17)

The Public Prosecutor may require the administrator or liquidator to submit all contracts and documents held by them.

(Unchanged)

Article L. 654-19 (formerly L. 626-18)

The fees of actions brought by the administrator, the judicial nominee, the employees' representative, the plan performance supervisor or the liquidator are borne by the Public Treasury in cases of acquittal. In cases of conviction, the Public Treasury may not have recourse against the debtor until after the closure of judicial liquidation proceedings.

(Unchanged)

Article L. 654-20 (formerly L. 626-19)

Judgments and orders finding guilt made under the present chapter are published at the expense of the guilty.

(Unchanged)

**Title VI: General Procedural Provisions**

Articles L. 661-1 to L. 661-11, L. 662-1 to L. 622-6 and L. 663-1 to L. 663-4.

(not translated)

**Title VII: Exceptional Special Provisions Applicable to the Administrative Divisions of the Moselle, the Lower Rhine and the Upper Rhine**

Articles L. 670-1 to L. 670-8.

(not translated)

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**END OF COMMERCIAL CODE TEXT**Article 190, Law of 2005

The present law enters into force on 1 January 2006, with the exception of the following provisions that are applicable to current proceedings and the situation [of debtors] from its publication:

(a) In all provisions providing for an incapacity, prohibition or destitution [of rights] resulting from personal bankruptcy or a prohibition from management, these measures must be understood as having a maximum duration of fifteen years from the day the decision ordering them became definitive;

(b) Personal insolvency measures and the prohibition from management as well as any destitution [of rights] and prohibitions resulting from this come to an end at the date the present law is published where, at this date, they have been pronounced more than fifteen years previously by a decision that is definitive.

Nevertheless, actions already initiated at the date the present law is published, on the basis of Article L. 622-32 of the Commercial Code, are not, even if the time limit of fifteen years has expired, affected by the previous provisions and any amounts received by the creditors are not reclaimable;

(c) Article L. 624-10 of the Commercial Code in the reading resulting from the present law;

(d) Article L. 643-9 of the Commercial Code;

(e) The final paragraph of Article L. 811-11 of the Commercial Code.