

Commercial code, as of 1st July 2013

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# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE I: COMMERCIAL ACTS**

#### **Article L. 110-1**

The law provides that commercial acts are:

- 1° All purchases of movable property for the purposes of resale, either as is or after processing and development;
- 2° All purchases of real property for the purposes of resale, unless the purchaser has acted in order to construct one or more buildings and to sell these en bloc or by individual unit;
- 3° All operations as intermediary for the purchase, subscription or sale of buildings, businesses or shares of property companies;
- 4° All companies involved in the rental of movables;
- 5° All manufacturing, commission and land or water transport companies;
- 6° All supply, agency, business office, auction house and public entertainment companies;
- 7° All exchange, banking, brokering, issuing activity and electronic money management operations and all payment services;
- 8° All public banking operations;
- 9° All obligations between dealers, merchants and bankers;
- 10° Bills of exchange between all persons.

#### **Article L. 110-2**

The law also deems commercial acts to be:

- 1° All construction companies and all purchases, sales and resales of ships for inland navigation and ships travelling abroad;
- 2° All sea shipments;
- 3° All purchases and sales of ship's tackle, apparatus and foodstuffs;
- 4° All chartering, freighting or bottomry loans;
- 5° All insurance policies and other contracts relating to maritime trade;
- 6° All contracts and agreements on crew wages and rents;
- 7° All engagements of seamen for the service of commercial ships.

#### **Article L. 110-3**

With regard to traders, commercial acts may be proven by any means unless the law specifies otherwise.

#### **Article L. 110-4**

I. - Obligations deriving from trade between traders or between traders and non-traders shall be time-barred after five years unless they are subject to special shorter statutes of limitations.

II. - All claims for payment shall be limited:

1° For food supplied to seamen on the captain's orders, to one year after delivery;

2° For the supply of materials and other items needed for the construction, equipment or supply of the ship, to one year after these foodstuffs are provided;

3° For built structures, to one year after the acceptance of the structures.

III. - Claims for payment of the wages of officers, seamen and other crew members shall lapse after five years.

## **LEGISLATIVE PART**

### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE II: TRADERS**

##### **CHAPTER I: DEFINITION AND STATUS**

##### ***Section 1: Status of trader***

#### **Article L. 121-1**

Traders are those who carry out commercial acts and who make this their usual profession.

#### **Article L. 121-2**

Minors declared to be of full age and capacity may be traders where authorised by the guardianship judge at the time when they are declared to be of full age and capacity or by authorisation of the Presiding Judge of the Tribunal de Grande Instance where the application is made after such declaration.

#### **Article L. 121-3**

Spouses of traders shall be deemed to be traders only if they carry out a separate commercial activity from that of their spouse.

##### ***Section 2: Spouses or civil pact of solidarity partners of heads of businesses working in a family-owned company***

#### **Article L. 121-4**

- The spouse of the head of a small craft, commercial or professional business regularly exercising a professional activity in that business shall opt for one of the following statuses:

- 1° Co-working spouse;
- 2° Employed spouse;
- 3° Spouse partner.

II. - In the case of companies, the status of co-working spouse is only authorised for the spouse of a manager and sole shareholder or manager and major shareholder of a limited liability company or an independent professional firm with limited liability meeting the thresholds set by a decree of the Conseil d'Etat.

The decision of the spouse of the manager and major shareholder to take the status of co-working spouse shall be notified to the other shareholders at the first general meeting after this status has been notified to the bodies listed under IV.

III. - The professional and corporate rights and obligations of the spouse arise from the status chosen.

IV. - Heads of business shall declare the status chosen by their spouse to the bodies authorised to register the company. Only co-working spouses shall be listed in the registers for occupational legal publications.

- The definition of co-working spouses, the terms and conditions under which their choice of status is registered with bodies listed under IV and other conditions under which this Article applies shall be defined by a decree of the Conseil d'Etat.

#### **Article L. 121-5**

Neither persons registered on the trades register nor traders may dispose of or encumber the rights in rem of jointly owned elements of the business which through their size or nature are necessary for the operation of the business without the explicit consent of the spouse working in the business, nor may they lease this business. They may not collect any monies arising from such transactions without such explicit consent.

A spouse who has not explicitly consented to this transaction may apply for it to be set aside. He or she may do so within two years from the day when he or she became aware of the transaction, but never more than two years after the dissolution of the community of the union.

#### **Article L. 121-6**

Where registered with the Commercial and Companies Register, the trades register or business register held by the chambers of commerce of Alsace and Moselle, a co-working spouse shall be deemed to have been authorised by the head of the business to carry out acts of administration

relating to the business.

On pain of invalidity, spouses shall be entitled to terminate the presumption of authority by swearing an affidavit before a notary, with their spouse present or having been duly summoned. The affidavit shall take effect with respect to third parties three months after being recorded in the Commercial and Companies Register, in the trades register or in the business register held by the trade chambers of Alsace and Moselle. Where no such record has been entered, it shall be effective as against third parties only if it has been established that they were aware of it.

The presumption of authority shall also cease by operation of law in the event of the presumed absence of one of the spouses, of judicial separation or judicial division of property, and where the conditions set out in the first paragraph above are not met.

#### **Article L. 121-7**

In dealings with third parties, acts of management and administration carried out by the co-working spouse for business requirements shall be deemed to have been carried out on behalf of the head of the business and shall not give rise to any personal obligation on the part of the co-working spouse.

#### **Article L. 121-8**

This section also applies to those who are party to a civil pact of solidarity with the head of the business.

## **LEGISLATIVE PART**

### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE II: TRADERS**

##### **CHAPTER II: FOREIGN TRADERS**

#### **Article L. 122-1**

Foreign nationals not resident in France and engaged in a commercial, industrial or craft occupation in France in conditions requiring their registration or inclusion in the commercial and companies register or the trades register must notify the prefect of the department in which they intend to conduct their business for the first time in the conditions set out by decree.

Nationals of member states of the European Union, of other European Economic Area member states or of the Swiss Confederation are exempt

from the notification requirement set out in the first paragraph.

#### **Article L. 122-2**

Any breach of the requirements of Article L. 122-1 and of those in the implementing decree specified therein shall be punishable by a prison sentence of six months and a fine of 3,750 Euros. The court may also order the closure of the establishment.

## **LEGISLATIVE PART**

### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE II: TRADERS**

##### **CHAPTER III: GENERAL OBLIGATIONS OF TRADERS**

##### ***Section 1: Commercial and Companies Register***

##### **Subsection 1: Persons required to register**

#### **Article L. 123-1**

I- A Commercial and Companies Register shall be kept in which the following shall be registered as a result of their declaration:

1° Natural persons with the status of trader, even if they are required to register in the trades register;

2° Companies and economic interest groups which have their registered office in a French department and which enjoy legal personality in accordance with Article 1842 of the Civil Code or with Article L. 251-4;

3° Commercial companies the registered office of which is situated outside a French department and which have an establishment in one of these departments;

4° French public establishments of an industrial or commercial nature;

5° Other legal persons the registration of which is specified by the legislation and regulations;

6° Commercial representatives or commercial agencies of foreign States, public authorities or public establishments established in a French department.

II. - The registrations and instruments or documents filed as specified by a decree of the Conseil d'Etat shall appear in the register and shall be made available to the public.

#### **Article L. 123-1-1**

As an exception to the provisions of Article L. 123-1, natural persons engaging in a commercial activity as their main or an ancillary activity are exempt from the requirement to register with the Commercial and Companies Register where they come under the system set out in Article L. 133-6-8 of the Social Security Code.

A decree of the Conseil d'Etat shall set out the conditions under which this Article shall apply, including in particular the terms and conditions under which a person exempt from registering should declare an activity with the relevant business start-up centre, the conditions for providing information to third parties on the absence of registration, and the terms and conditions for declaring an activity where the threshold is exceeded.

The persons mentioned in the first paragraph whose main activity is in paid employment may not engage in the professional activity stipulated in their contract of employment in respect of their employer's customers on an ancillary basis without the latter's agreement.

#### **Article L. 123-2**

No-one may be registered in the register if they do not meet the conditions required in order to carry out their activity. Legal persons must also have complied with the formalities specified by the legislation and regulations in force relating thereto.

#### **Article L. 123-3**

If a trader who is a natural person fails to apply for registration by the specified deadline, the judge hearing the case shall, either automatically or at the request of the State Prosecutor or any person proving that they have an interest in this, make an order requiring the trader to apply for registration, on pain of a coercive fine if necessary.

Under the same conditions, the judge may order, on pain of a coercive fine if necessary, any person registered in the commercial and companies register who has not applied within the specified deadlines to make such additional entries or corrections to the register as are necessary, to make the entries or corrections needed in the event of incorrect or incomplete declarations or to be struck off.

The registrar of a court delivering a decision requiring a person to register must notify this decision to the registrar of the commercial court whose jurisdiction covers the registered office or main establishment of the interested party. The registrar of the commercial court receiving the decision shall refer this to the judge responsible for overseeing the register.

#### **Article L. 123-5**

The act of giving, in bad faith, incorrect or incomplete information with a view to registration, striking off, or additional entries or corrections in the commercial and companies register shall be punishable by a fine of 4,500 Euros and a prison sentence of six months.

The competent court may, moreover, deprive the interested party of the right to vote and stand in elections to commercial courts, chambers of commerce and industry, and industrial tribunals for a period of up to five years.

#### **Article L. 123-5-1**

At the request of any interested party or the office of the public prosecutor, the presiding judge of the court, ruling by way of summary proceedings, may enjoin, subject to a coercive fine, the managing director of any legal person to file the documents and instruments with the commercial and companies register which this legal person is required to do by the acts or regulations.

The presiding judge may, in accordance with the same conditions and to this same end, appoint a representative responsible for fulfilling these formalities.

Subsection 2: Keeping of the Register and effects attached to registration

#### **Article L. 123-6**

The commercial and companies register shall be kept by the registrar of each commercial court. It shall be overseen by the presiding judge of the court or a judge entrusted with this responsibility who shall be competent for all disputes between the person under obligation and the registrar.

Where the normal operation of the Commercial and Companies Registers is compromised in the overseas departments and in the overseas collectivities of Saint-Martin and Saint-Barthélemy, the Minister for Justice may delegate their material management to the chamber of commerce and industry of these departments or to the local interprofessional chamber in Saint-Martin or to the multi-professional economic chamber in Saint-Barthélemy. The registry shall remain competent for overseeing registry deeds and extracts and in the matter of any dispute between the person under obligation and the chamber with competence. The maximum term of the agreement shall be twenty-four months, renewable under the same conditions.

#### **Article L. 123-7**

The registration of a natural person shall entail the presumption of the



status of trader. However, this presumption shall not be binding on third parties and administrations which provide proof to the contrary. Third parties and administrations shall not be permitted to rely on this presumption if they knew that the registered person was not a trader.

#### **Article L. 123-8**

The person obliged to register who has not applied to do so within a period of fifteen days from the start of their activity may not rely on the status of trader with regard to both third parties and public administrations until such time as they are effectively registered. However, this person may not invoke their failure to register in order to avoid the responsibilities and obligations inherent in this capacity.

Without prejudice to the application of Article L. 144-7, registered traders who assign their business or hand over the operation of it, particularly in the form of a leasing-management arrangement (location-gérance), may not plead the cessation of their commercial activity in order to avoid claims for damages to which they are subject due to the obligations contracted by their successors in the operation of the business until the day when the corresponding entry has been added or the registration has been deleted.

#### **Article L. 123-9**

In carrying out their activity, persons obliged to register may not raise the acts and instruments subject to entry in respect of third parties or public administrations unless these have been published in the register. However, such parties and administrations may rely on such acts and instruments.

In addition, persons obliged to file instruments or documents in the annex to the register may not raise these against third parties or administrations unless the corresponding formality has been carried out. However, third parties or administrations may rely on these instruments or documents.

The provisions of the above paragraphs shall apply to the acts or instruments subject to entry or filing even if they are covered by another legal publication. Third parties and administrations with personal knowledge of these acts or instruments may not, however, rely on these.

#### **Article L. 123-9-1**

The court registrar or the body referred to in the last paragraph of article 2 of law no. 94-126 of 11 February 1994 on individual enterprise shall issue a receipt, free of charge, against the submission of an application to create a business to any person subject to registration, as soon as that person has submitted a duly completed application for registration. This receipt allows the necessary formalities to be completed with the public and private bodies entrusted with rendering a public service, under the personal responsibility of the natural person having the status of trader or who is

acting on behalf of the company being formed. It shall bear the indication: "Registration pending".

The implementing provisions for the present Article are defined by a decree of the Conseil d'Etat.

### Subsection 3: Place of domicile of registered persons

#### Paragraph 1: Provisions applicable to natural persons

#### **Article L. 123-10**

Natural persons applying for registration in the commercial and companies register or the trades register must declare their business address and substantiate occupation thereof. They may in particular have their business registered in premises occupied by several businesses under the conditions determined by a decree of the Conseil d'Etat. This decree shall also stipulate the equipment or services that are required to justify the reality of the registered office of the company domiciled there.

Natural persons may declare the address of their place of residence and conduct their business there, barring any legislative provision or contractual stipulation to the contrary.

Natural persons who do not have business premises may declare their place of residence, solely for the purpose of providing a business address. Such a declaration shall not give rise to any change of use or to application of the commercial lease regulations.

#### Paragraph 2: Provisions applicable to legal persons

#### **Article L. 123-11**

Any legal person requesting registration in the commercial and companies register must substantiate occupation of the premises which will house its registered office, alone or with others, or, if the registered office is situated abroad, the agency, branch or representation established on French territory.

A legal person may have its registered address in premises occupied by several businesses under the conditions determined by a decree of the Conseil d'Etat. This decree shall also stipulate the equipment or services that are required to evidence the reality of the registered office of the legal person domiciled there.

#### **Article L. 123-11-1**

Any legal person is authorised to establish its registered office at the domicile of its legal representative and conduct its business there, barring any legislative provisions or contractual stipulation to the contrary.

Where the legal person is subject to legislative provisions or contractual stipulations mentioned in the preceding paragraph, its legal representative

may establish its headquarters at his domicile for a period that may neither exceed five years from the creation of the legal person nor exceed the term for occupying the premises.

In this case, prior to filing its application for registration or for modification to its registration, it must notify, in writing, the lessor, the association of co-owners, or the representative of the complex of buildings of its intention to use this possibility.

Prior to the expiry of the period mentioned in the second paragraph, the person must, on pain of automatic deletion, provide the Court Registry with all elements justifying its change of situation, according to the terms fixed by a decree of the Conseil d'Etat.

The provisions of this article may not give rise to a change in use of the building or to the application of the commercial lease regulations.

#### Paragraph 3: Common provisions

### **Article L. 123-11-2**

Domiciliation activities may not be carried out in premises designated for use as a main dwelling or for mixed use.

### **Article L. 123-11-3**

I. - No-one may carry out a domiciliation activity unless previously approved by the administrative authority prior to registration in the Commercial and Companies Register.

II. – The authorisation may only be granted to persons who:

1° Provide proof that the premises made available to domiciled persons have a specially dedicated room to ensure the necessary confidentiality and to enable regular meetings of bodies responsible for managing, administering or overseeing the company and for keeping, maintaining and consulting the books, registers and documents specified by the legislation and regulations;

2° Provide proof that they own the premises made available to domiciled persons or that they hold a commercial lease for these premises;

3° Have not been the subject of a definitive conviction:

For a crime;

Sentencing them to at least three months' imprisonment without suspension for:

# an offence covered by Title I of Book III of the Penal Code or an offence covered by special statutes punishable by the penalties imposed for fraud and breach of trust;

# handling stolen goods or a related or similar offence, referred to in Section 2 of Chapter I of Title II of Book III of the Penal Code;

# money laundering;

# bribery or accepting or soliciting bribes, influence peddling,

misappropriation and fraudulent conversion of property;  
# forgery, falsification of securities or other fiduciary instruments issued by the public authorities, falsification of marks of authority;  
# participation in an association of criminals;  
# drug trafficking;  
# procuring or an offence covered by Sections 2 and 2bis of Chapter V of Title II of Book II of the Penal Code;  
# an offence covered by Section 3 of Chapter V of Title II of Book II of the Penal Code;  
# a violation of the commercial companies' legislation covered by Title IV of Book II of the present Code;  
# fraudulent bankruptcy;  
# making loans at usurious rates of interest;  
# an offence envisaged by the law of 21 May 1836 prohibiting lotteries, by the Law of 15 June 1907 regulating casinos, or by Law no. 83-628 of 12 July 1983 relating to games of chance;  
# an offence against the legislation and regulations relating to foreign financial dealings;  
# tax fraud;  
# an offence referred to in Articles L. 115-16 and L. 115-18, L. 115-24, L. 115-30, L. 121-6, L. 121-28, L. 122-8 to L. 122-10, L. 213-1 to L. 213-5, L. 217-1 to L. 217-3, and L. 217-6 to L. 217-10 of the Consumer Code;  
# an offence referred to in Articles L. 8221-1 and L. 8221-3 of the Labour Code;  
4. Not have been the perpetrator of acts within the last five years giving rise to a disciplinary or administrative sanction or to withdrawal of approval of domiciliation activities;  
5. Not have been declared personally bankrupt or made subject to one of the prohibitory or forfeiture measures provided for in Book VI of the present code.

#### **Article L. 123-11-4**

Approval is issued only to legal persons whose shareholders or partners holding at least 25% of votes, capital shares or voting rights and whose managing directors meet the conditions set out in 3°, 4° and 5° of Article L. 123-11-3.

Persons operating one or more secondary establishments must provide proof that the conditions set out in 1° and 2° of Article L. 123-11-3 are met for each of the establishments operated.

Any significant change in the activity, installation, organisation or management of the person subject to approval must be notified to the administrative authority.

#### **Article L. 123-11-5**

Persons engaged in domiciliation activities shall fulfil the duties relating to money laundering and terrorism financing as defined in Chapter I of Title VI of Book V of the Monetary and Financial Code.

#### **Article L. 123-11-6**

The following persons are authorised, within the scope of their respective powers, to investigate and record infringements of the provisions of articles of the present subsection and the regulations implementing these:

- 1° The agents mentioned in Article L. 243-7 of the Social Security Code;
- 2° Inspectors of labour and assimilated officials as defined in Article L. 8113-7 of the Labour Code;
- 3° Agents of agricultural social insurance mutual benefit funds mentioned in Article L. 724-7 of the Rural and Maritime Fisheries Code.

These agents and officials shall each act with regard to the tasks relevant to them in accordance with the rules for investigating and recording offences as set out in the provisions of the rural and maritime fisheries code, the social security code and the labour code which apply to them.

Offences shall be recorded in reports which shall be taken as proof until evidence to the contrary is provided and transmitted directly to the office of public prosecutors.

#### **Article L. 123-11-7**

The implementing provisions of the present paragraph shall be determined by a decree of the Conseil d'Etat.

#### **Article L. 123-11-8**

A penalty of six months' imprisonment and a fine of €7,500 shall be imposed on any person engaging in domiciliation activities as mentioned in Article L. 123-11-2 without first having been approved as set out in Article L. 123-11-3 or after such approval is withdrawn or suspended.

### *Section 2: Accounts of traders*

#### Subsection 1: Financial obligations applicable to all traders

#### **Article L. 123-12**

All natural or legal persons with the status of trader shall enter in their accounts the movements affecting the value of their company. These movements shall be recorded chronologically.

These persons must check the existence and value of the assets and liabilities of the company by means of an inventory at least once every

twelve months.

They must prepare annual accounts at the end of the financial year in view of the entries made in the accounts and the inventory. These annual accounts shall consist of the balance sheet, the profit and loss account and an annex, all of which shall form an inseparable whole.

#### **Article L. 123-13**

The balance sheet shall describe individually the assets and liabilities of the company and shall clearly show shareholders' equity.

The profit and loss account shall summarise the income and expenditure for the financial year without taking into account their date of receipt or payment. It shall show the profit or loss for the financial year after deducting the depreciation and provisions. The income and expenditure, classed by category, shall be presented in the form of either tables or lists.

The company's total commitments in terms of pensions, supplementary pension payments, compensation and allowances due to retirement or similar advantages of its staff members or partners and its corporate officers shall be indicated in the annex. In addition, companies may decide to enter in the balance sheet, in the form of a provision, the amount corresponding to all or part of these commitments.

The annex shall supplement and comment on the information given in the balance sheet and the profit and loss account.

#### **Article L. 123-14**

The annual accounts shall be honest and truthful and shall ensure a fair representation of the assets, financial situation and results of the company.

Where the application of an accounting requirement is not sufficient to ensure the fair representation indicated in this article, additional information must be provided in the annex.

If, in an exceptional case, the application of an accounting requirement proves to be unsuitable in order to ensure a fair representation of the assets, financial situation or results, an exception must be made to this. This exception shall be indicated in the annex and duly reasoned, with an indication of its effect on the assets, financial situation and results of the company.

#### **Article L. 123-15**

The balance sheet, profit and loss account and annex shall include as many headings and items as are needed to ensure a fair representation of the assets, financial situation and results of the company. Each item in the balance sheet and profit and loss account shall contain the figure relating to the corresponding item for the previous financial year.

The elements forming the shareholders' equity shall be fixed by decree.

The classification of the elements of the balance sheet and the information to be included in the annex shall be fixed by a regulation of the Accounting Standards Board.

#### **Article L. 123-16**

Traders, whether natural or legal persons, may, in accordance with the conditions fixed by a regulation of the Accounting Standards Board, adopt a simplified presentation of their annual accounts where these do not exceed, at the end of the financial year, the figures fixed by decree for two of the following criteria: the total of their balance sheet, the net amount of their turnover or the average number of permanent employees during the financial year. They shall lose this option when this condition is not met for two successive financial years.

#### **Article L. 123-16-1**

The legal persons mentioned in Article L. 123-16 placed voluntarily or by operation of law under the effective simplified taxation system may submit an annex drawn up using an abridged template fixed by regulation of the Accounting Standards Board.

#### **Article L. 123-17**

Unless an exceptional change occurs in the trader's situation, whether a natural or legal person, the presentation of the annual accounts and the valuation methods used may not be altered from one financial year to the next. If alterations occur, these shall be described and justified in the annex and noted in the auditor's report.

#### **Article L. 123-18**

On its date of entry into the capital assets, property acquired against payment shall be recorded at its cost of acquisition, property acquired free of charge shall be recorded at its market value and property produced shall be recorded at its cost of production.

For fixed assets, the values used in the inventory shall, if applicable, take account of the depreciation plans. If the value of a fixed asset falls below its net book value, the latter shall be reduced to the inventory value at the end of the financial year, whether or not the depreciation is final.

Fungible assets shall be valued either at their weighted average cost of acquisition or production or by considering that the first item out is the first item in.

The capital gain noted between the inventory value of an item and its entry value shall not be entered in the accounts. If this results from a revaluation of all the tangible and capital assets, the revaluation difference between the current value and the net book value may not be used to offset

losses. it shall be clearly entered on the liabilities side of the balance sheet.

#### **Article L. 123-19**

The assets and liabilities shall be valued separately.

No offsetting may be applied between the assets and liabilities items of the balance sheet or between the income and expenditure items of the profit and loss account.

The opening balance sheet for a financial year shall correspond to the closing balance sheet for the previous financial year.

#### **Article L. 123-20**

The annual accounts must respect the precautionary principle. In order for these accounts to be prepared, traders, whether natural or legal persons, shall be presumed to be continuing their activities.

Even where there is no profit or insufficient profit, the necessary depreciation and provisions must be established.

The risks and losses occurring during the financial year or during a previous financial year shall be taken into account, even if they are identified between the end date of the financial year and that of the preparation of the accounts.

#### **Article L. 123-21**

Only the profits made by the end date of a financial year may be entered in the annual accounts. The profit made on a partially executed transaction, accepted by the other contracting party, may be entered, after the inventory, when its completion is certain and when it is possible, using the pro forma accounting documents, to value the overall profit of the transaction with sufficient certainty.

#### **Article L. 123-22**

The accounting documents shall be expressed in Euros and drafted in the French language.

The accounting documents and supporting documentation shall be kept for ten years.

The accounting documents relating to the recording of transactions and the inventory shall be prepared and maintained without blanks or alterations of any kind in conditions determined by a decree of the Conseil d'Etat.

#### **Article L. 123-23**

Duly kept accounts may be accepted by the courts in order to act as proof between traders in respect of commercial instruments.



If the accounts have not been duly kept, they may not be invoked by their author for the latter's benefit.

The production of accounting documents may be ordered by the courts only in matters of succession, joint ownership and partition of a company and in the event of judicial reorganisation or liquidation.

#### **Article L. 123-24**

All traders are required to open an account with a credit institution or a post office.

Subsection 2: Accounting obligations applicable to certain traders

#### **Article L. 123-25**

As an exception to the provisions of the first and third paragraphs of Article L. 123-12, natural persons placed voluntarily or by operation of law under the effective simplified taxation system may record claims and debts only at the end of the financial year and shall not be required to prepare an annex.

As an exception to the provisions of the first paragraph of Article L. 123-12, legal persons with the status of trader, excluding those controlled by a company that prepares accounts pursuant to Article L. 233-16, that are placed voluntarily or automatically under the effective simplified taxation system, may record claims and debts only at the end of the financial year.

#### **Article L. 123-26**

As an exception to the provisions of the second paragraph of Article L. 123-13, natural persons placed voluntarily or by operation of law under the effective simplified taxation system may record in their profit and loss account, according to its payment date, expenditure whose frequency does not exceed one year, excluding purchases.

#### **Article L. 123-27**

As an exception to the provisions of the third paragraph of Article L. 123-18, natural persons placed voluntarily or by operation of law under the effective simplified taxation system may carry out a simplified valuation of the stocks and work in progress according to a method fixed by a regulation of the Accounting Standards Board.

#### **Article L. 123-28**

As an exception to the provisions of Articles L. 123-12 to L. 123-23, natural persons who come under the taxation system defined in Article 50-0 of the General Tax Code may be exempted from the requirement to

prepare annual accounts. They shall keep a book chronologically recording the amount and origin of the income they receive due to their professional activity. Where their main trade involves the sale of merchandise, items, supplies and commodities to take away or consume on the spot, or the provision of housing, they shall also keep a record summarising, by year, the details of their purchases. A decree shall fix the conditions under which this book and this record are to be kept.

### *Section 3: Itinerant commercial and craft activities*

#### **Article L. 123-29**

In order to exercise an itinerant commercial or craft activity outside the territory of the municipality where he has his residence or it has its main establishment, or to have such an activity exercised by a spouse or agents, any natural or legal person must make a prior declaration to the relevant administrative authority in order that it may issue the card mentioned in the fourth paragraph.

The same applies to any person with no fixed domicile or residence for over six months, as set out in Article 2 of Law 69-3 of 03 January 1969 on the exercising of itinerant activities and on the system applying to persons moving around France with no fixed domicile or residence, who intends to exercise an itinerant commercial or craft activity or to have such an activity exercised by his spouse or agents.

The declaration mentioned in the first paragraph shall be periodically renewable.

This declaration shall give rise to the issuing of a card permitting the exercising of an itinerant activity.

#### **Article L. 123-30**

Apart from law enforcement officers and agents, the following persons are competent to record minor offences as covered by the decree mentioned in Article L. 123-31:

1° The deputy law enforcement agents referred to in 2° of Article 21 of the Code of Criminal Procedure;

2° Duly authorised officials in charge of overseeing retail food and other markets located on the territory of the municipality where the trader or craftsman exercises his commercial or craft activity.

#### **Article L. 123-31**

The terms of application of this Section shall be fixed by decree of the Conseil d'Etat, particularly the conditions for authorising the agents referred to in 2° of Article L. 123-30 and the terms under which their power is exercised.

# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE II: TRADERS**

#### **CHAPTER IV: COOPERATIVE ASSOCIATIONS OF RETAILERS**

##### **Article L. 124-1**

Through the collective efforts of their members, cooperative associations of retailers seek to improve the conditions in which they conduct their business. To that end, they may, inter alia, directly or indirectly engage in the following activities on behalf of their members:

1° Supplying them with some or all of the goods, commodities, services, equipment and materials they need in order to conduct their business, inter alia, by establishing and maintaining stocks of all kinds of goods, by building, purchasing, or leasing and managing private shops and warehouses, and by carrying out on their own premises or those of their members any appropriate works, conversions or refurbishments;

2° Bringing together on one site the businesses belonging to their members, creating and managing all services collectively needed to operate those businesses, building, purchasing or renting the buildings required for their activities or those of their members, and managing them, all as provided for in Chapter V of the present Title;

3° Within the framework of the legislative provisions relating to financial activities, facilitating access by the members and their clients to the various financing and credit facilities available;

4° Carrying out activities which are complementary to those referred to above, and, inter alia, providing their members with assistance in relation to technical, financial and accounting management;

5° Purchasing businesses in respect of which, as an exception to Article L. 144-3, leasing-management rights are granted to a member within two months and which must be re-conveyed within a maximum period of seven years. Failure to re-convey within this period may give rise to an injunction as set out in the second paragraph of Article L. 124-15;

6° Drawing up and implementing a common commercial policy designed to ensure the development and activity of its members by any means, including:

- the establishment of an appropriate legal structure;
- the provision of trademarks or brand names which they own or have the use of;
- the carrying out of commercial operations of an advertising or other nature which may include common pricing;

- the development of common methods and models for purchasing, stocking and presenting products, and for the architecture and organisation of the outlets;

7. Acquiring shareholdings, including majority interests, in directly or indirectly associated companies running retail businesses.

#### **Article L. 124-2**

Cooperative associations of retailers may not allow non-member third parties to benefit from their services.

However, cooperative associations of retail pharmacists may not refuse their services, in the event of an emergency, to non-member retail pharmacists and to all the public or private establishments where patients are treated, when these establishments duly own a pharmacy.

#### **Article L. 124-3**

Cooperative associations of retailers shall be public limited companies with variable capital formed and operating in accordance with the provisions of Book II, Title III, Chapter I. They shall be governed by the provisions of the present chapter and by those which are not contrary hereto in Book II, Titles I to IV and in Law No 47-1775 of 10 September 1947 defining the rules governing cooperation. The provisions of Book II, Titles I to IV on the formation of statutory reserves shall apply thereto.

Only associations and unions formed in order to carry out the operations referred to in Article L. 124-1 and which comply, in respect of their formation and operation, with the requirements of this Chapter may be regarded as cooperative associations of retailers or unions of these associations. Only these shall be authorised to take this title and to add it to their name.

#### **Article L. 124-4**

Without prejudice to the application of the provisions of Article 3bis of Law No. 47-1775 of 10 September 1947 instituting cooperative status, any retail trading entity which is properly established in a Foreign State may become a member of cooperative associations of retailers. The same applies to cooperative companies governed by the present chapter, as well as companies registered in both the trades register and the commercial and companies register. Cooperatives governed by the present chapter may admit to membership natural persons or legal persons having relevant commercial activities and possessing the requisite competence.

Cooperative retail companies engaged in the activities referred to in 2° of Article L. 124-1 may, moreover, admit to membership any person referred to in Article L. 125-1.

Retailers whose cooperative is affiliated to another cooperative

association of retailers may benefit directly from that association's services.

#### **Article L. 124-5**

The associations governed by this Chapter may establish between them unions having the same aims as those defined in Article L. 124-1.

These unions must comply, in respect of their formation and operation, with the same rules as the said associations. The second paragraph of Article 9 of the Act of 10 September 1947 defining the rules governing cooperation shall apply thereto.

Unions of cooperative associations of retailers may contain only cooperative associations of retailers or their members. Retailers whose cooperative is affiliated to a union may benefit directly from the services of this union.

Cooperative associations of retailers and their unions may form mixed unions with other cooperative associations and their unions.

As an exception to Article L. 225-1, the number of members in a union governed by this Article may be less than seven.

#### **Article L. 124-6**

Directors and members of the executive and supervisory boards are natural persons who are members in a personal capacity, or who have the capacity of chairman of the board of directors, general manager, executive board member or manager of a company itself having the capacity of member.

The duties of members of the board of directors or supervisory board members are unpaid and shall only give rise to reimbursement of costs as well as, where applicable, the payment of compensation for the time and work devoted to administering the cooperative.

The chairman of the board of directors, the executive board members and the chairman of the supervisory board may receive remuneration. However, they may be remunerated in proportion to operations or surpluses realised only where this method of remuneration is specified in the constitution. This constitution shall specify the body empowered to set the maximum annual remunerations for a period not exceeding five years.

The decisions to implement the preceding paragraph shall be ratified by the annual general meeting following the date on which they were taken.

#### **Article L. 124-7**

The constitution may specify that cooperative associations of retailers shall be combined in accordance with the conditions specified in Article 3*bis* of the Act of 10 September 1947 defining the rules governing cooperation. In this case, these associations may not use the services of the cooperative association with which they are combined.

#### **Article L. 124-8**

The decisions of the general meeting shall only be valid when one-third of the members existing on the date of the meeting are present or represented.

However, the decisions of meetings convened in order to amend the constitution shall only be valid if at least half of the members existing on the date when the meeting is convened are present or represented.

Members who have voted by post, where the constitution authorises this, shall be taken into account for determining the quorum.

When the quorum is not reached, a new meeting shall be convened. Its decisions shall be valid whatever the number of members present or represented.

#### **Article L. 124-9**

The deliberations of the general meeting are taken on a majority of the votes held by the members present or represented. However, a majority of two thirds of the votes of the members present or represented is required for any change to the constitution.

If the cooperative is engaged in the activities referred to in 2° of Article L. 124-1, this provision does not apply in the conditions referred to in Article L. 125-10.

#### **Article L. 124-10**

The exclusion of a member may be ordered, as applicable, by the board of directors or the supervisory board, with the interested party being duly heard.

All members subject to an exclusion order shall be able to appeal against this decision before the general meeting which shall decide on the appeal at the first routine meeting following the notification of exclusion. This exclusion shall enter into force on the date of notification of its acceptance by the general meeting.

However, the board of directors or the supervisory board, as applicable, may, in the interests of the association, suspend the exercise of the rights which the excluded member enjoys due to being a member of the cooperative until notification is sent to the latter of the general meeting's decision. the duration of this suspension may not exceed one year.

If the decision to exclude a member is not justified by a serious and legitimate reason, the court, referred to within one month of the notification of refusal of the member's appeal by the general meeting, may either reinstate the unduly excluded member or allocate damages thereto or order both of these measures.

When the cooperative carries out the activities specified in 2° of Article L. 124-1, the provisions of this Article shall not apply. Articles L. 125-15 and L.

125-16 shall apply.

#### **Article L. 124-11**

If a cooperative is engaged in the activities referred to in 2° of Article L. 124-1, the cooperative's shares held by a withdrawing or excluded member shall be redeemed, contrary to Article 18 of the Law of 10 September 1947 instituting cooperative status, as provided for in Articles L. 125-17 and L. 125-18.

This member nevertheless remains liable, towards both the cooperative and third parties, for a period of five years commencing on the day on which it definitively ceases to be a member, in respect of obligations which existed at the close of the financial year during which it left the cooperative. Pursuant to the previous paragraph, the board of directors or the supervisory board, as applicable, may retain some or all of the sums owed to the former member, for a maximum period of five years, limited to the amount required to guarantee the obligations for which it is liable pursuant to the present paragraph, unless the party concerned provides sufficient sureties.

#### **Article L. 124-12**

The ordinary general meeting may, by deciding in accordance with the quorum and majority conditions of the extraordinary general meeting, convert into shares all or part of the refunds frozen in individual accounts and all or part of the refunds distributable to the cooperative members in the last financial year.

In the latter case, the rights of each cooperative member to the allocation of shares resulting from this increase in capital shall be identical to those which they would have to the distribution of the refunds.

#### **Article L. 124-13**

The central cooperative credit agency shall be authorised to carry out all financial transactions in favour of associations formed in accordance with the provisions of this chapter. In particular it shall make available thereto the funds which are specifically allotted to the agency or which it may obtain in the form of loans or by rediscounting subscribed bills, it shall give its backing or act as guarantor in order to guarantee their loans and it shall receive and manage their fund deposits.

#### **Article L. 124-14**

If a cooperative association or union governed by the provisions of this chapter is dissolved, and subject to the provisions of the following paragraphs of this article, the net surplus of assets over the capital shall be passed either to other cooperative associations or unions of cooperatives

or to works of general or professional interest.

However, a cooperative association or union may be authorised by an order of the Finance Minister, adopted following an advisory opinion from the Cooperation Authority, to divide the net surplus of assets among its members. This division may not include the part of the net surplus of assets resulting from aid granted directly or indirectly to the association or union by the State or by a public authority. This part must be repaid in accordance with the conditions specified by the authorisation order.

The net surplus of assets shall be divided between the members by operation of law when the cooperative association carries out the activities referred to in 2° of Article L. 124-1.

#### **Article L. 124-15**

All groups of retailers established in order to carry out one or more of the activities referred to in 1°, 3° and 4° of Article L. 124-1 must, if they have not adopted the form of a cooperative association of retailers governed by the provisions of this Chapter, be formed as a société anonyme, limited liability company, economic interest group or European economic interest group.

The office of the public prosecutor or any interested party may apply to the presiding judge of the competent court, ruling by way of summary proceedings, to direct all members of a group of retailers formed in violation of the first paragraph to incorporate in one of the forms provided, on pain of a coercive fine where necessary.

#### **Article L. 124-16**

Cooperative associations of retailers for joint purchasing and their unions formed in accordance with law no 49-1070 of 2 august 1949 shall be regarded as meeting the provisions of this chapter without needing to amend their constitution.

However, the associations benefiting from the provisions of the previous paragraph shall bring their constitution into line when they amend this subsequently.



# **LEGISLATIVE PART**

## **BOOK I: COMMERCE IN GENERAL**

### **TITLE II: TRADERS**

#### **CHAPTER V: COLLECTIVE SHOPS OF INDEPENDENT TRADERS**

##### *Section 1: Formation of the collective shop*

###### **Article L. 125-1**

The provisions of this chapter shall apply to natural or legal persons gathered in the same place and under the same name in order to operate, according to common rules, their business or their company registered in the trades register without giving up ownership of it, thus creating a collective shop of independent traders.

###### **Article L. 125-2**

The persons referred to in Article L. 125-1 shall form, in the form of an economic interest group, a société anonyme with variable capital or a cooperative association of retailers, a legal person which shall own and use or solely use the buildings and annexed areas of the collective shop, define and implement the common policy and organise and manage the common services.

The economic interest group, company or association which owns all or part of the land, buildings and annexed areas of the collective shop may not return all or part of this property to its members during the existence of the said shop.

Only economic interest groups, public limited companies with variable capital and cooperative associations of retailers which comply, in respect of their formation and operation, with the requirements of this chapter may be regarded as collective shops of independent traders. These alone shall be authorised to take this title and to add it to their name.

###### **Article L. 125-3**

The economic interest group, company or association which has recourse to leasing shall be regarded as a user within the meaning of Article 5b of Order no 67-837 of 28 September 1967.

###### **Article L. 125-4**

Each member of the economic interest group, company or association

shall hold inseparable shares in the use of a space determined by the formation agreement or constitution and shall benefit from common services.

The formation agreement or constitution may allocate any holder another space for seasonal activities.

The meeting of members or the general meeting, as applicable, shall alone be competent to amend, with the agreement of the interested parties, the spaces thus allocated.

The provisions of this chapter on partners' shares shall apply to the shares referred to in the first paragraph above.

#### **Article L. 125-5**

When a business or company registered in the trades register is transferred to or created in the collective shop, no contribution shall be made to the group, company or association for the shares allocated to its owner. The shares in the group, company or association shall not represent the value of the business or company. Any contributions other than in cash are also prohibited.

#### **Article L. 125-6**

In the event of leased management of the business or company registered in the trades register, only the lessor shall be a member of the group, company or association.

A pre-existing business or company may only be transferred with the agreement of the lessee-manager.

#### **Article L. 125-7**

The owner of a business subject to a preferential right or charge specified by Chapters I to III of Title IV of this book must, prior to joining a collective shop and to transferring this business to the said shop, comply with the publication formalities specified in Articles L. 141-21 and L. 141-22.

If the creditor holding the preferential right or charge has not filed any objection with the Registry within ten days of the last in date of the publications specified in Articles L. 141-12 and L. 141-13, this creditor shall be deemed to have agreed to the membership of the owner of the business.

In the event of an objection, the lifting of this shall be ordered by the courts if the owner of the business proves that the sureties which the creditor has are not reduced by membership of the collective shop or that guarantees which are at least equivalent are offered thereto. If the objection is not lifted, the trader may not become a member of the collective shop while remaining the owner of the business.

#### **Article L. 125-8**

The formation agreement or constitution shall, in order to be valid, and under the solidary liability of the signatories, contain the express specification that no business shall be subject to the preferential right or a charge specified in Chapters I to III of Title IV of this book or, in the opposite case, that no objection has been formed prior to the membership of one of the members or that the lifting of the objection has been ordered by the courts.

#### **Article L. 125-9**

Collective shops of independent traders already created in the form of a legal person may, by their adaptation or conversion, be placed under the system specified by this chapter.

All members may, through summary proceedings, request the appointment of a representative specially entrusted with convening the meeting in order to decide on these adaptations or conversions.

Notwithstanding any provision to the contrary, these decisions shall be taken by a majority in number of the members forming the legal person. Those who did not take part in this may, however, withdraw by requesting the redemption of their shares in accordance with the conditions specified in Articles L. 125-17 and L. 125-18.

#### *Section 2: Administration of the collective shop*

#### **Article L. 125-10**

Internal regulations shall be annexed to the formation agreement or constitution, as applicable.

The formation agreement or constitution, and the internal regulations, may be amended only by the meeting, or the general meeting, as applicable, deciding by an absolute majority in number of the members of the group, company or association or, if the formation agreement or constitution specifies this, by a larger majority. The same shall apply to decisions on approval or exclusion.

Other decisions shall be taken in accordance with the conditions specific to each of the forms specified in Article L. 125-2. However, notwithstanding the provisions of Book II, the constitution of a société anonyme with variable capital formed pursuant to this Chapter may stipulate that each of the shareholders has one vote at the general meeting, whatever the number of shares held thereby.

#### **Article L. 125-11**

The internal regulations shall determine the rules for ensuring a common business policy. It shall fix the general operating conditions and in

particular:

1° The days and times of opening and, if applicable, the seasonal periods of closure or the annual holidays;

2° The organisation and management of the common services and the distribution of the charges corresponding to these services;

3° Subject to the legislation in force in this respect, the management of competing activities and the determination of ancillary activities which may be carried out by each member in competition with those of other members of the shop;

4° The choice of advertising and décor specific to each space and possibly their harmonisation;

5° The collective or individual actions to promote the shop, particularly those of a seasonal nature.

### *Section 3: Approval and exclusion*

#### **Article L. 125-12**

The formation agreement or constitution, as applicable, may subordinate any assignment of shares to the approval of the assignee by the meeting of the group or by the general meeting of the company or association, as applicable. The meeting or general meeting shall decide within one month of the date of the approval request.

The formation agreement or constitution, as applicable, may also subject to this approval the legal successors of a deceased shareholder who did not participate in his activity in the collective shop.

Refusal of approval shall confer the right to compensation in accordance with the conditions specified in Articles L. 125-17 and L. 125-18.

#### **Article L. 125-13**

The approval clause shall not be binding in the event of a forced sale of shares, whether or not these have been subject to a charge.

#### **Article L. 125-14**

The formation agreement or constitution, as applicable, may subordinate the leasing-management of a business or craft manufacturing company in the collective shop to the approval of the lessee-manager by the meeting.

Where the owner is subject to judicial reorganisation or liquidation proceedings, this clause may not be invoked if the conclusion of a contract for delegation of management is authorised by the court in accordance with the provisions of Title II of Book VI.

#### **Article L. 125-15**

The administrative body of the collective shop may issue a warning to

any member who, personally or through the persons to whom he has entrusted the operation of his business or company, breaches the internal regulations.

In the event of leasing-management, this warning shall also be notified to the lessee-manager.

If, in the following three months, this warning does not produce any effect and if the legitimate interests of the collective shop or of certain of its members are compromised, the meeting of members, or the general meeting, as applicable, shall have the option of deciding, by the majority specified in Article L. 125-10, on whether to exclude the interested party.

Until the exclusion decision becomes final, the person excluded shall be able to put forward one or more assignees in accordance with the conditions determined by the formation agreement or constitution.

#### **Article L. 125-16**

Subject to the shares valuation procedure specified in the second paragraph of Article L. 125-17, any member of a collective shop may refer to the Tribunal de Grande Instance, within one month of its notification by registered letter with recorded delivery, any decision taken pursuant to Articles L. 125-12, L. 125-14 and the third paragraph of Article L. 125-15.

The court may declare void or alter the decision referred thereto or replace this with its own decision.

Notwithstanding any clause to the contrary, recourse to the courts shall suspend the implementation of the referred decision, except in the event of a reasoned exclusion decision for the non-use of spaces or for the non-payment of charges.

#### **Article L. 125-17**

In the event of exclusion, departure or death accompanied by the refusal to approve the assignee or successors, the shareholder or, in the event of death, the latter's legal successors, shall be able to transfer or dispose of the business or the company registered in the trades register. The new allottee of the space or, failing this, the group, company or association, as applicable, shall refund the value of their shares plus any asset appreciation resulting from improvements made by them to the space which they held.

This value shall be fixed by the meeting or general meeting, as applicable, at the same time as the exclusion decision or the decision to refuse to approve the assignee or successors is taken. In the event of disagreement, this value shall be determined on the date of these decisions by an expert appointed by order of the Presiding Judge of the Tribunal de Grande Instance ruling by way of summary proceedings. This order shall not be open to any appeal, notwithstanding any clause to the contrary. The

expert report shall be subject to the approval of the Presiding Judge of the Tribunal de Grande Instance ruling by way of summary proceedings.

#### **Article L. 125-18**

In the cases referred to in the first paragraph of Article L. 125-17, the group or the company may only set up a new beneficiary if it has paid the former shareholder or, if the latter is deceased, his legal successors, the sums referred to in this Article L. 125-17, or, failing that, a consideration determined by the Presiding Judge of the Tribunal de Grande Instance ruling by way of summary proceedings.

However, such prior payment is not required when a surety has been provided for the value of those sums or of that provision by a lending institution or a financial institution duly authorised for that purpose, or when that amount has been placed in the hands of a representative, appointed if necessary by a judge ruling by way of summary proceedings.

Moreover, if it is a cooperative, the board of directors or the executive board, as applicable, may invoke the provisions of the second paragraph of Article L. 124-11.

#### *Section 4: Dissolution*

#### **Article L. 125-19**

Unless a clause in the formation agreement or constitution specifies otherwise, the reorganisation or judicial liquidation of one of the members shall not lead automatically to the dissolution of the economic interest group.

## **LEGISLATIVE PART**

### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE II: TRADERS**

##### **CHAPTER VI: MUTUAL GUARANTEE SCHEMES**

#### **Article L. 126-1**

The rules for creating mutual guarantee schemes between traders, industrialists, manufacturers, craftspeople, commercial companies, members of the professions and owners of property or property rights and also between the operators mentioned in Article L. 524-1 shall be fixed by the Law of 13 March 1917.

# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE II: TRADERS**

#### **CHAPTER VII: THE BUSINESS-PLAN SUPPORT CONTRACT FOR THE CREATION OR TAKEOVER OF A BUSINESS ACTIVITY**

##### **Article L. 127-1**

The support provided for a business plan to create or take over a business activity shall be defined in a contract through which, using the means available to it, a legal person undertakes to provide specific and continuous help to a natural person who is not in full-time employment and who undertakes to follow a preparatory programme covering the creation, takeover and management of a business activity. Such a contract can also be entered into by a legal person and a manager who is the sole partner of another legal person.

##### **Article L. 127-2**

The business-plan support contract shall be entered into for a term which cannot exceed twelve months, renewable twice. The terms and conditions of the support and preparation programme and the respective undertakings of the contracting parties are stipulated in the contract. The contract shall thus determine the conditions under which the person benefiting therefrom can make undertakings to third parties in relation to the planned business activity.

The contract shall be entered into in writing, failing which it shall be null and void.

##### **Article L. 127-3**

The fact that the legal person providing support makes facilities available to the beneficiary to prepare him for the creation, or the takeover and management, of the planned business activity does not, of itself, constitute any presumption of a relationship of subordination.

The provision of such facilities and any costs thereby incurred by the legal person providing the support pursuant to the contract shall be posted to its balance sheet.

##### **Article L. 127-4**

If a business activity begins while the contract is still in force, the beneficiary must register the business if the nature thereof makes this

necessary.

Prior to registration, the commitments made to third parties by the beneficiary while the support and preparation programme was ongoing are, in respect of those third parties, assumed by the mentor. After registration, the supporting legal person and the beneficiary are jointly and severally bound by the commitments made by the latter pursuant to the stipulations of the support contract, until it expires.

#### **Article L. 127-5**

The business-plan support contract for the creation or takeover of a business activity cannot have as its object or its effect a breach of the provisions of Articles L. 125-1, L. 125-3, L. 324-9 or L. 324-10 of the Labour Code.

The act of creating or taking over a business must be clearly distinguished from the mentoring function.

#### **Article L. 127-6**

The professional and social situation of the beneficiary of the business-plan support contract shall be determined by Articles L. 783-1 and L. 783-2 of the Labour Code.

The supporting legal person shall be liable in respect of third parties for any damage caused by the beneficiary as a consequence of the support and preparation programme referred to in Articles L. 127-1 and L. 127-2 prior to the registration referred to in Article L. 127-4. After registration, the supporting legal person shall guarantee the liability assumed under the support contract, provided that the beneficiary has complied with the clauses of the contract through to its expiry.

#### **Article L. 127-7**

The publication formalities for business-plan support contracts for the creation or takeover of a business activity and the present chapter's other implementing measures shall be determined by a decree of the Conseil d'Etat.

## **LEGISLATIVE PART**

### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE II: TRADERS**

##### **CHAPTER VIII: NATIONAL REGISTER OF THOSE BANNED FROM HOLDING MANAGERIAL RESPONSIBILITIES**



#### **Article L. 128-1**

In order to combat fraud, to prevent the committing of offences specified in Article 434-40-1 of the Penal Code and Article L. 654-15 of the present code and to facilitate the execution of measures to prohibit management activities ordered by the courts, the National Council of commercial court registrars is authorised to implement a national register of those prohibited from holding managerial responsibilities.

This register is kept by the National Council of commercial court registrars as a public service mission at its own expense and under its own responsibility.

The register shall contain details of personal bankruptcies and other measures prohibiting persons from running, managing, administering or controlling, directly or indirectly, a commercial, industrial or craft business, an agricultural activity, a business operating any other independent activity or any legal person ordered by way of civil or commercial sanction or by way of penalty and as a result of court decisions which have become res judicata. Disciplinary penalties shall not be listed in the register.

The register shall refer to the first instance or appellate decision ruling for the measure.

This register shall be governed by the present chapter and by Law 78-17 of 06 January 1978 on data protection. It is implemented after the formalities provided in Chapter IV of the same law have been completed.

#### **Article L. 128-2**

Commercial court registrars and civil court registrars ruling on commercial matters shall have permanent access to the register referred to in Article L. 128-1.

Under the terms of Article 3 of Law 78-17 of 06 January 1978, the following persons may access, free of charge, the personal information and data listed in the register referred to in the same Article L. 128-1:

1° Senior judicial officials and personnel of judicial courts in order to exercise their duties;

2° Personnel of the Ministry of Justice in order to exercise their duties;

3° Representatives of the administration and of bodies defined by decree of the Conseil d'Etat, as part of their duty to combat fraud.

The persons referred to in 2° shall notify the general secretary of the inter-ministerial committee for industrial restructuring, at the latter's request, if a person being considered to exercise run, manage, administer or control an entity in a file referred to the committee is listed in this register.

#### **Article L. 128-3**

Consultations of the register referred to in Article L. 128-1 shall be logged, including the identity of the consulting party and the time and date

of the consultation.

#### **Article L. 128-4**

There shall be no interconnection, as defined under 3° of I of Article 30 of the above-mentioned Law 78-17 of 06 January 1978, between the national register of those banned from holding managerial responsibilities and any other file or processing of personal data held by any person or by a state service not attached to the Minister for Justice.

#### **Article L. 128-5**

The terms of application of this Chapter shall be determined by decree of the Conseil d'Etat after consultation of the National commission for information technology and civil liberties.

## **LEGISLATIVE PART**

### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE II: TRADERS**

##### **CHAPTER IX: PAID CORPORATE MENTORING**

#### **Article L. 129-1**

The assignor of a commercial, craft, professional or service business may, after the assignment, enter into an agreement with the assignee whereby he undertakes, against payment, to provide a temporary mentoring service. The purpose of this service is to ensure the transmission to the assignee of the professional experience acquired by the assignor as head of the assigned business. The mentor shall remain affiliated to the same social security schemes to which he was affiliated prior to the assignment.

The terms of application of the provisions of this Article shall be determined by a decree of the Conseil d'Etat.

# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE III: BROKERS, AGENTS ON COMMISSION, CARRIERS, COMMERCIAL AGENTS AND INDEPENDENT DOOR-TO-DOOR SALESPeOPLE**

#### **CHAPTER I: BROKERS**

##### ***Section 1: Brokers in general***

###### **Article L. 131-1**

There are commodities brokers, ship-brokers, and land and water transport brokers.

###### **Article L. 131-2**

Any trader may engage in commodity brokerage.

###### **Article L. 131-3**

Only land and water transport brokers constituted pursuant to the law are entitled, in the places in which they are established, to engage in land and water transport brokerage. They cannot combine their functions with those of the commodity brokers or shipping brokers designated in Article L. 131-1.

###### **Article L. 131-5**

Providers of investment services may, in conjunction with commodities brokers, negotiate and broker sales or purchases of metals. They alone shall be entitled to record the prices of these.

###### **Article L. 131-11**

If a broker is entrusted with a brokerage operation for a matter in which he has a personal interest and does not notify this to the parties for whom he acts as intermediary, this shall be punishable by a fine of 3,750 Euros, without prejudice to any claim for damages by the parties. If registered on the list of brokers referred to in Article L. 131-12, he shall be struck off from this list and may not be reinstated for a period not exceeding five years.

## *Section 2: Sworn commodities brokers*

### Subsection 1: Conditions for oath-taking

#### **Article L. 131-12**

The list of sworn commodities brokers shall be drawn up by each court of appeal at the request of the principal state prosecutor. This list shall detail the date of each broker's registration and his professional specialisations as confirmed in the examination of aptitude provided in 5° of Article L. 131-13.

The court of appeal may enter new registrations or make modifications to the list as and when required.

#### **Article L. 131-13**

All persons registered on the list of sworn commodities brokers of a court of appeal must:

1° Be French nationals or citizens of a European Community member state or a European Economic Area member state;

2° Not have been declared personally bankrupt or disqualified pursuant to Book VI, Title V or pursuant to previously applicable provisions and not have been the perpetrator of acts having resulted in a criminal conviction for dishonourable conduct or lack of integrity or of facts having given rise to a disciplinary penalty or administrative sanction, striking off, dismissal, removal from office, withdrawal of approval or authorisation in the profession previously exercised;

3° Have an entry in the Commercial and Companies Register in a personal capacity;

4° Be authorised to conduct voluntary sales of furniture by public auction and have exercised his activity for at least two years in the professional speciality for which registration is requested;

5° Have passed the examination of aptitude in the previous three years in one or more professional specialities for which registration is requested;

6° Be resident in the jurisdiction of the Court of Appeal.

#### **Article L. 131-14**

In order to register a legal person on the list of sworn commodities brokers of a court of appeal, evidence of the following must be provided:

1° That its directors have not been the subject of a definitive criminal conviction for dishonourable conduct, lack of integrity, an offence against public decency or other acts of a similar nature having resulted in a disciplinary penalty or administrative sanction, striking off, dismissal, removal from office, withdrawal of approval or authorisation in the

profession previously exercised;

2° That the legal person has been engaged in commodity brokerage for at least two years in the professional speciality for which registration is requested;

3° That the activities in which the legal person is engaged are not incompatible with the duties of a sworn commodities broker;

4° That it has, among its directors, shareholders or employees, a person meeting the conditions set out in 1°, 2°, 4° and 5° of Article L. 131-13;

5° That it has its registered office, a subsidiary or a branch office related to its speciality within the jurisdiction of the Court of Appeal.

#### **Article L. 131-15**

The sworn commodities broker must provide evidence of:

1° The existence, at a credit institution, of an account the sole purpose of which is to receive the funds held on behalf of others;

2° An insurance policy covering their professional liability;

3° An insurance policy or surety guaranteeing the representation of the funds mentioned in 1°.

#### **Article L. 131-16**

Any change in the situation of brokers who have applied for listing or who have been listed on a register as regards the conditions set out in Article L. 131-15 must be immediately notified to the Principal State Prosecutor.

#### **Article L. 131-17**

No person may be registered as a sworn commodities broker on more than one court of appeal register.

#### **Article L. 131-18**

Persons listed on sworn broker registers referred to in Article L. 131-12 may indicate, in activities reserved to such brokers, their capacity using the term "sworn commodities broker registered with the Court of Appeal of" followed by the professional specialities for which they are registered.

Sworn commodities brokers admitted as honorary members may continue to use their title provided that they use the term "honorary" after the title.

#### **Article L. 131-19**

Any person other than those referred to in Article L. 131-18 who has used one of the designations referred to in the same Article shall be liable to the penalties laid down in Article 433-17 of the Penal Code.

The same penalties shall apply to anyone who uses a designation likely

to create confusion in the public's mind with the designations referred to in Article L. 131-18 of that code.

#### **Article L. 131-20**

Outside their duties as sworn commodities brokers, such brokers may exercise their usual profession, either in a personal capacity or within a company, including in particular commissioning, brokerage, commercial agency and consignment of commodities. In exercising such activities, they must clearly indicate that they are not acting as sworn brokers.

#### **Article L. 131-21**

When being listed on the register drawn up by the court of appeal, commodities brokers shall swear an oath before this court to fulfil their duties with honour and integrity.

#### **Article L. 131-22**

Sworn brokers may be struck off the register drawn up by a court of appeal following their resignation or subsequent to disciplinary measures. Their registration shall become null and void if they cease to broker commodities for which they are registered in a personal capacity under their professional specialities or if they are specialised in a sector of activity for which the requirement to repeat the technological examination has been deemed necessary and they have not passed a repeat examination upon the expiry of the specified period.

They may apply to be temporarily removed from the register on substantial grounds as recognised by the court of appeal after consultation with the principal state prosecutor. This temporary removal shall be referred to in the register if it applies to a period equal to or exceeding six months.

### **Subsection 2: Duties of sworn commodities brokers**

#### **Article L. 131-23**

If within the jurisdiction of the court of appeal there is no sworn commodities broker specialised in a given category of commodities or if the broker withdraws, the court may appoint a sworn broker registered with another court of appeal or a sworn commodities broker exercising another professional speciality within its jurisdiction.

Excluding cases of court appointments, sworn commodities brokers shall be competent to operate anywhere in France in the sector of activity for which they have a professional speciality as listed in the registers set out in Article L. 131-12.

#### **Article L. 131-24**

The price of commodities listed on the stock market shall be noted by sworn commodities brokers specialised in that category and operating in this market.

Where these brokers do not sufficiently represent all professional specialities and commercial transactions practised on this market, the chamber of commerce and industry, after consulting the National council of sworn commodities brokers, may decide on a yearly basis that a certain number of non-sworn brokers and dealers on the market shall assist the sworn commodities brokers, under the latter's responsibility, in noting the price of commodities.

Sworn commodities brokers shall also be competent to note the price of commodities and agricultural and fishery products offered for sale wholesale in premises used for the dispatch or wholesale trade of such goods.

#### **Article L. 131-25**

Sworn commodities brokers shall issue price certificates for commodities where these are noted as set out in Article L. 131-24.

Otherwise, they shall draw up pricing information indicating, under their responsibility, the price set for a commodity at the specified date and location.

#### **Article L. 131-26**

Sworn commodities brokers shall resell and repurchase goods where a contract or sale is not executed.

#### **Article L. 131-27**

Where the parties fail to agree on the appointment of an expert, estimates and public auctions of goods deposited in general warehouses pursuant to Article L. 522-31 must be carried out by sworn commodities brokers.

Sworn commodities brokers may be called on to carry out court-ordered or voluntary assessments of wholesale goods.

#### **Article L. 131-28**

Except where the court appoints an auctioneer or other public official, sworn commodities brokers shall be competent to carry out the following auctions:

- 1° Wholesale sales of goods authorised or ordered by the Commercial Court under the terms set out in Article L. 322-14 et seq.;
- 2° Sales of debtor goods in the event of judicial liquidation under the

terms set out in Article L. 642-19 et seq.;

3° Sales to enforce a pledge under the terms set out in Article L. 521-3.

#### **Article L. 131-29**

Sworn commodities brokers may be appointed to conduct the following auctions:

1° Public auctions of wholesale goods that have been the subject of an administrative or court-ordered attachment;

2° Court-ordered public auctions of retail goods where no auctioneer is available;

3° Sales of goods pursuant to Article L. 342-11 of the Rural and Maritime Fisheries Code;

4° Auctions of commodities and agricultural and fishery products in premises used for the dispatch or wholesale trade of such products.

#### **Article L. 131-30**

On pain of being definitively struck off the register of the court of appeal, sworn commodities brokers entrusted with conducting a public auction or requested to estimate goods deposited in a general warehouse may not acquire on their own behalf the goods entrusted to them for sale or assessment of value.

#### **Article L. 131-31**

Brokerage fees for public auctions and estimates for goods deposited in general warehouses payable to sworn commodities brokers shall be set out in an order of the minister for trade.

However, in the case of court-ordered or forced public auctions, the compensation payable to sworn commodities brokers shall be set by applying the auctioneers' scales of charges.

#### **Subsection 3: Disciplining of sworn commodities brokers**

#### **Article L. 131-32**

Any breach of the legislation and regulations by sworn commodities brokers relating to their profession or duties as sworn commodities brokers, as well as any dishonourable conduct or lack of integrity on their part, even where not related to the duties entrusted to them, shall result in disciplinary proceedings being brought against them.

The expiry of registration or striking off of sworn commodities brokers shall not impede disciplinary proceedings if the facts alleged were committed while they were in office.

The disciplinary penalties are:

1° A warning;



- 2° Temporary striking off for a period not exceeding three years;
- 3° Striking off accompanied by a definitive prohibition on the right to be listed on one of the registers referred to in Article L. 131-12 or the withdrawal of honorary membership.

Proceedings shall be taken by the State Prosecutor before the Tribunal de Grande Instance in whose jurisdiction the sworn broker exercises his activity. Disciplinary action shall lapse after ten years. Disciplinary decisions shall be reasoned. They may be appealed to the court of appeal.

#### Subsection 4: The National Council of sworn commodities brokers

##### **Article L. 131-33**

Sworn commodities brokers shall be represented by a National Council of sworn commodities brokers.

##### **Article L. 131-34**

The national council, a public-utility institution with legal personality, is entrusted with:

- 1° Examining, at national level, issues relating to the duties of sworn commodities brokers and, where applicable, giving its opinion on these issues to the public authorities;
- 2° Giving its opinion to Courts of Appeal on applications for registration as a sworn commodities broker;
- 3° Updating, at national level, the register of brokers registered with the Courts of Appeal, grouping them by specialities;
- 4° Organising examinations of professional aptitude;
- 5° Averting and settling any disputes arising between sworn commodities brokers and handling complaints against brokers and, where applicable, referring these to the State Prosecutor with territorial jurisdiction.

#### Subsection 5: Application conditions

##### **Article L. 131-35**

A decree of the Conseil d'Etat shall set out the conditions for the application of this Section, in particular the procedures for registration on sworn commodities broker registers and those relating to the taking of oaths, honorary membership, disciplinary proceedings, and the organisation and operation of the National council of sworn commodities brokers.

# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE III: BROKERS, AGENTS ON COMMISSION, CARRIERS, COMMERCIAL AGENTS AND INDEPENDENT DOOR-TO-DOOR SALESPEOPLE**

#### **CHAPTER II: AGENTS ON COMMISSION**

##### ***Section 1: Agents on commission in general***

###### **Article L. 132-1**

Agents on commission are persons who act in their own name or under a company name on behalf of a principal.

The duties and rights of agents on commission acting on behalf of a principal shall be determined by Title XIII of Book III of the Civil Code.

###### **Article L. 132-2**

Agents on commission shall have a preferential right over the value of the merchandise covered by their obligation and over the documents relating thereto with regard to all commission claims against their principals, even those created during prior transactions.

The preferential claim of the agent of commission shall include, together with the principal amount, the interest, commission and additional expenses.

##### ***Section 2: Agents on commission for transport***

###### **Article L. 132-3**

Agents on commission responsible for land or water transport shall be required to enter in their diary the declaration of the nature and quantity of the commodities and, if this is required, their value.

###### **Article L. 132-4**

They shall act as guarantor for the arrival of the commodities and bills within the period specified by the bill of lading, except in cases of legally recorded force majeure.

###### **Article L. 132-5**

They shall act as guarantor for damage to or loss of commodities and

bills unless there is a stipulation to the contrary in the bill of lading or in the event of force majeure.

#### **Article L. 132-6**

They shall act as guarantor for the acts of the intermediate agent on commission to whom they send the commodities.

#### **Article L. 132-7**

The commodities taken from the vendor's or consignor's warehouse shall, unless otherwise agreed, travel at the risk of the person to whom they belong, except for the latter's recourse against the agent on commission and the carrier responsible for the transportation.

#### **Article L. 132-8**

The bill of lading shall form a contract between the consignor, the carrier and the recipient or between the consignor, the recipient, the agent on commission and the carrier. Carriers shall therefore have a direct claim for payment of their services against the consignor and the recipient, both of whom shall guarantee payment of the transport cost. Any clause to the contrary shall be deemed unwritten.

#### **Article L. 132-9**

- I. - The bill of lading must be dated.
- II. - It must specify:
  - 1° The nature and weight or capacity of the items to be transported;
  - 2° The period within which the transport must be carried out.
- III. - It shall indicate:
  - 1° The name and address of the agent on commission through whom the transport is carried out, if there is one;
  - 2° The name of the person to whom the commodities are being sent;
  - 3° The name and domicile of the carrier.
- IV. - It shall set out:
  - 1° The price of the carriage;
  - 2° The compensation payable for late delivery.
- V. - It shall be signed by the consignor or the agent on commission.
- VI. - It shall contain in the margin the makes and numbers of the items to be transported.
- VII. - The bill of lading shall immediately be copied by the agent on commission into a numbered and initialled register without any gaps.

# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE III: BROKERS, AGENTS ON COMMISSION, CARRIERS, COMMERCIAL AGENTS AND INDEPENDENT DOOR-TO-DOOR SALESPEOPLE**

#### **CHAPTER III: CARRIERS**

##### **Article L. 133-1**

The carrier shall act as guarantor for the loss of the items to be transported, except in cases of legally recorded force majeure.

The carrier shall act as guarantor for damage other than that resulting from the inherent defect of the item or from force majeure.

Any clause to the contrary inserted in any bill of lading, price list or other document shall be invalid.

##### **Article L. 133-2**

If, due to the effect of force majeure, the transport is not carried out within the agreed period, no compensation may be claimed from the carrier for late delivery.

##### **Article L. 133-3**

The receipt of the transported items shall extinguish any claim against the carrier for damage or partial loss if, within three days of this receipt, not including public holidays, the recipient has not notified the carrier, by extra-judicial means or registered letter, of its reasoned protest.

If, within the period specified above, a request for an expert report is made pursuant to Article L. 133-4, this request shall be valid as a protest without the notification specified in the first paragraph having to be carried out.

All stipulations to the contrary shall be null and void. This latter provision shall not apply to international transport.

##### **Article L. 133-4**

In the event of refusal of the items transported or presented in order to be transported, or of any dispute whatsoever regarding the establishment or implementation of the shipping agreement or due to an incident occurring during and on the occasion of the transport, the state of the items transported or presented in order to be transported and, where necessary,

their packaging, weight, nature, etc. shall be verified and recorded by one or more experts appointed by the presiding judge of the commercial court or, failing this, by the Presiding Judge of the Tribunal de Grande Instance, through an order made following a petition.

The petitioner shall be obliged, under their responsibility, to invite to this expert assessment, by ordinary registered letter or by telegram, all parties likely to be involved in the case, in particular the consignor, consignee, carrier and agent on commission. the experts must take an oath, without a hearing being required, before the judge who has appointed them or before the judge of the Tribunal de Grande Instance from which they originate. However, in urgent cases, the judge receiving the petition may dispense with fulfilling all or part of the formalities specified in this paragraph. This dispensation shall be specified in the order.

The deposit or attachment of the items in dispute, and their subsequent transportation to a public warehouse, may be ordered.

The sale of these items may be ordered up to the amount of the transport expenses or other expenses already incurred. The judge shall allocate the proceeds of the sale to those parties which advanced these expenses.

#### **Article L. 133-5**

Without prejudice to the provisions as outlined in the transport code, the provisions contained in the present chapter shall apply to road, river and air carriers.

#### **Article L. 133-6**

Claims for damage, loss or delay to which the shipping agreement may give rise against the carrier shall lapse after one year, without prejudice to cases of fraud or inaccuracy.

All other claims to which this agreement may give rise against both the carrier or agent on commission and the consignor or recipient, and those which result from the provisions of Article 1269 of the Code of Civil Procedure, shall lapse after one year.

The period of these limitations shall be calculated, in the event of total loss, from the day when the commodities should have been delivered and, in all other cases, from the day when the goods were delivered or offered to the recipient.

The period for bringing any action for a remedy shall be one month. This limitation period shall run only from the day when the claim against the guarantor is made.

In the event of transport carried out on behalf of the State, the prescription shall start to run only from the day of notification of the ministerial decision specifying payment or final authorisation of payment.

#### **Article L. 133-7**

Carriers shall have a preferential right over the value of the commodities covered by their obligation and over the documents relating thereto with regard to all transport claims, even those resulting from prior transactions for which their principals, consignors or consignees remain in debt to them, insofar as the owner of the commodities over which the preferential right is exercised is involved in these transactions.

The transport claims covered by the preferential right shall involve the transport expenses proper, the supplementary remuneration payable for additional services and for tying-up the vehicle during loading or unloading, the expenses incurred in the interest of the commodities, the customs duties, taxes, expenses and fines linked to a transport operation as well as the interest.

#### **Article L. 133-8**

Only inexcusable reckless conduct on the part of the carrier or agents on commission is equivalent to criminal intent. Inexcusable is defined as deliberate intent implying an awareness of the probability of damage and its reckless acceptance without valid reason. Any clause to the contrary shall be deemed unwritten.

#### **Article L. 133-9**

Without prejudice to Articles L. 121-95 and L. 121-96 of the Consumer Code, the provisions of Articles L. 133-1 to L. 133-8 on carriers shall apply to removal companies where the service under the removal contract includes a transport service.

### **LEGISLATIVE PART**

#### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE III: BROKERS, AGENTS ON COMMISSION, CARRIERS, COMMERCIAL AGENTS AND INDEPENDENT DOOR-TO-DOOR SALESPEOPLE**

##### **CHAPTER IV: COMMERCIAL AGENTS**

#### **Article L. 134-1**

Commercial agents are agents who, as independent professionals not linked by contracts for services, are permanently entrusted with negotiating and possibly concluding sale, purchase, rental or service provision contracts for and on behalf of producers, manufacturers, traders or other

commercial agents. Commercial agents may be natural or legal persons.

Agents whose representation tasks are carried out in the context of economic activities which are covered, with regard to these tasks, by specific legislative provisions shall not come under the provisions of this chapter.

#### **Article L. 134-2**

Each party shall be entitled, at its request, to obtain from the other party a signed document indicating the contents of the agency contract, including the contents of its riders.

#### **Article L. 134-3**

Commercial agents may agree, without needing authorisation, to represent new principals. However, they may not agree to represent a company competing with that of one of their principals without the latter's agreement.

#### **Article L. 134-4**

The contracts concluded between commercial agents and their principals shall be in the common interest of the parties.

The relationships between commercial agents and principals shall be governed by an obligation of fair dealing and a reciprocal duty of information.

Commercial agents shall perform their mandate in a professional manner and principals shall enable the commercial agents to perform their mandate.

#### **Article L. 134-5**

Any element of the remuneration which varies according to the number or value of the deals concluded shall constitute a commission within the meaning of this chapter.

Articles L. 134-6 to L. 134-9 shall apply when the agents are remunerated in full or in part by the commission thus defined.

If the contract is silent on this, commercial agents shall be entitled to a remuneration in accordance with usual practice in the sector of activity covered by their agency contract and in which they carry out their activity. In the absence of any usual practice, the commercial agent shall be entitled to a reasonable remuneration taking account of all the elements involved in the transaction.

#### **Article L. 134-6**

For any commercial transactions concluded during the term of the agency

contract, commercial agents shall be entitled to the commission defined in Article L. 134-5 when these transactions have been concluded thanks to their intervention or when the transactions have been concluded with a third party whose custom they obtained previously for transactions of the same kind.

When they are entrusted with a geographical sector or a specific group of persons, commercial agents shall also be entitled to the commission for any transaction concluded during the term of the agency contract with a person belonging to this sector or group.

#### **Article L. 134-7**

For any commercial transactions concluded after the agency contract ceases, commercial agents shall be entitled to the commission either where the transaction is mainly due to their activity during the agency contract and has been concluded within a reasonable period after the contract ceases or where, in accordance with the conditions specified in Article L. 134-6, the order from the third party was received by the principal or by the commercial agent before the agency contract ceased.

#### **Article L. 134-8**

Commercial agents shall not be entitled to the commission specified in Article L. 134-6 if this is payable, pursuant to Article L. 134-7, to the previous commercial agent, unless the circumstances make it fair to share the commission between the commercial agents.

#### **Article L. 134-9**

The commission shall be earned as soon as the principal has carried out the transaction or should have carried this out under the agreement concluded with the third party or as soon as the third party has carried out the transaction.

The commission shall be earned at the latest when the third party has carried out its part of the transaction or should have carried this out if the principal had carried out its own part. It shall be paid no later than the last day of the month following the quarter in which it was earned.

#### **Article L. 134-10**

The right to the commission may be extinguished only if it is established that the contract between the third party and the principal will not be performed and if this is not due to circumstances attributable to the principal.

The commission which the commercial agent has already received shall be refunded if the right relating thereto is extinguished.



#### **Article L. 134-11**

A fixed-term contract which continues to be performed by both parties after its term shall be deemed to have been converted into an open-ended contract.

When the agency contract is an open-ended contract, each party may end this by giving prior notice. The provisions of this article shall apply to fixed-term contracts converted into open-ended contracts. In this case, the calculation of the prior notice period shall take account of the previous fixed term.

The period of prior notice shall be one month for the first year of the contract, two months for the second year started and three months for the third year started and for subsequent years. Unless otherwise agreed, the end of the prior notice period shall coincide with the end of a calendar month.

The parties may not agree shorter periods of prior notice. If they agree longer periods, the prior notice period specified for the principal must not be shorter than that specified for the agent.

These provisions shall not apply when the contract ends due to serious negligence by one of the parties or the occurrence of a case of legally recorded force majeure.

#### **Article L. 134-12**

If their relationship with the principal ceases, commercial agents shall be entitled to a compensatory payment for the loss suffered.

Commercial agents shall lose their entitlement to this compensation if they have not notified the principal, within one year of the cessation of the contract, that they intend to assert their rights.

The legal successors of commercial agents shall also benefit from the right to compensation when the cessation of the contract is due to the death of the agent.

#### **Article L. 134-13**

The compensation specified in Article L. 134-12 shall not be due in the following cases:

1° The cessation of the contract is caused by the serious negligence of the commercial agent;

2° The cessation of the contract is initiated by the agent unless this cessation is justified by circumstances attributable to the principal or due to the age, infirmity or illness of the commercial agent, as a result of which the continuation of the latter's activity can no longer be reasonably required;

3° Under the terms of an agreement with the principal, the commercial agent assigns to a third party the rights and obligations held under the agency contract.

#### **Article L. 134-14**

The contract may contain a non-competition clause applying after its cessation.

This clause shall be drawn up in writing and shall cover the geographical sector and, if applicable, the group of persons entrusted to the commercial agent and the type of goods or services which the latter represents under the contract.

The non-competition clause shall be valid only for a maximum period of two years after a contract ceases.

#### **Article L. 134-15**

When the activity of commercial agent is carried out under a written contract, signed by the parties, which is principally for another purpose, the parties may decide in writing that the provisions of this chapter do not apply to the part corresponding to the commercial agency activity.

This waiver shall be invalid if the performance of the contract reveals that the commercial agency activity is actually being carried out as the main or decisive element.

#### **Article L. 134-16**

Any clause or agreement contrary to the provisions of Articles L. 134-2 and L. 134-4, the third and fourth paragraphs of Article L. 134-11 and Article L. 134-15 or establishing an exception, to the detriment of the commercial agent, to the provisions of the second paragraph of Article L. 134-9, the first paragraph of Article L. 134-10, Articles L. 134-12 and L. 134-13 and the third paragraph of Article L. 134-14 shall be deemed unwritten.

#### **Article L. 134-17**

A Conseil d'Etat decree shall fix the conditions for applying this Chapter.

# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE III: BROKERS, AGENTS ON COMMISSION, CARRIERS, COMMERCIAL AGENTS AND INDEPENDENT DOOR-TO-DOOR SALESPEOPLE**

#### **CHAPTER V: INDEPENDENT DOOR-TO-DOOR SALESPEOPLE**

##### **Article L. 135-1**

Independent door-to-door salespeople are people who sell products or services under the conditions set out in Section 3 of Chapter I of Title II of Book I of the Consumer Code, excluding direct marketing by telephone or any other similar technical means, as part of a written representation, commission, retailing or brokerage agreement binding them to the company which entrusts them with the sale of its products or services.

##### **Article L. 135-2**

The agreement may specify that the vendor provides services the aim of which is to develop and coordinate the network of independent door-to-door salespeople, if such services are likely to facilitate the sale of the company's products or services under the conditions set out in Article L. 135-1. The agreement shall specify the nature of such services and define the conditions of performance and the remuneration arrangements.

In providing these services, vendors may under no circumstances act as employer or be in a contractual relationship with the independent door-to-door salespeople they coordinate. No remuneration of any kind may be paid by an independent door-to-door salesperson to another independent door-to-door salesperson, and no purchase may be made by any independent door-to-door salesperson from another independent door-to-door salesperson.

##### **Article L. 135-3**

Independent door-to-door salespeople whose income from activity reaches a total sum set by order during a period defined in the same order are required to register with the commercial and companies register or with the special register of commercial agents from 1 January after this period.

# **LEGISLATIVE PART**

## **BOOK I: COMMERCE IN GENERAL**

### **TITLE IV: THE BUSINESS**

#### **CHAPTER I: SALE OF THE BUSINESS**

##### *Section 1: Bills of sale*

##### **Article L. 141-1**

I. - In any instrument recording an assignment by private treaty of a business, agreed even in accordance with the condition and in the form of another contract or a capital investment in a business, the vendor shall be obliged to indicate:

1° The name of the previous vendor, the date and nature of the instrument of acquisition from the latter and the price of this acquisition for the fixed assets, goods and equipment;

2° The state of the preferential rights and charges affecting the business;

3° Turnover made by the vendor during each of the last three years preceding the sale, reduced to the length of time the business has been owned if under three years;

4° The operating results made during the same time;

5° The lease, its date and term and the name and address of the lessor and assignor, if applicable.

II. - The omission of the information specified above may, at the request of the purchaser made within one year, lead to the bill of sale being declared void.

##### **Article L. 141-2**

On the assignment date, the vendor and the purchaser shall initial all books of account kept by the vendor over the three financial years preceding the sale, reduced to the length of time the business has been owned if under three years, and a document presenting monthly turnover achieved between the end of the previous financial year and the month before the sale.

These books shall be the subject of an inventory drawn up in duplicate, signed by both parties, with a copy issued to each party. The assignor must make these books available to the purchaser for three years from the time it takes possession of the business.

Any clause to the contrary shall be deemed unwritten.

### **Article L. 141-3**

The vendor shall, notwithstanding any stipulation to the contrary, be bound by the guarantee relating to the inaccuracy of the information provided thereby, in accordance with the conditions laid down by articles 1644 and 1645 of the civil code.

Intermediaries, drafters of the contracts and their agents shall be jointly liable with the vendor if they are aware of the inaccuracy of the information provided.

### **Article L. 141-4**

Claims resulting from Article L. 141-3 shall be brought by the purchaser within one year of the date when the latter took possession of the business.

### *Section 2: Preferential right of the vendor*

### **Article L. 141-5**

The preferential right of the vendor of a business shall apply only if the sale has been recorded in a notarised instrument or unattested instrument which has been duly registered, and only if this has been entered in a public register held by the registry of the commercial court in whose jurisdiction the business is operated.

This right shall cover only those elements of the business listed in the sale and in the entry in the register and, in the absence of precise specification, shall cover only the corporate name and trade name, the right to the lease, the customer base and the goodwill.

Separate prices shall be established for the fixed assets of the business, the equipment and the goods.

The preferential right of the vendor guaranteeing each of these prices, or those remaining due, shall be exercised separately with regard to the respective prices of the resale for the goods, equipment and fixed assets of the business.

Notwithstanding any agreement to the contrary, part payments other than down payments shall be allocated firstly to the price of the goods and then to the price of the equipment.

The resale price assigned shall be broken down if it applies to one or more elements not included in the initial sale.

### **Article L. 141-6**

The entry in the register must be made, in order to be valid, within a fortnight of the date of the bill of sale. It shall take preference over any entry in the register made in the same period by the purchaser. It shall be effective against the creditors of a purchaser subject to judicial reorganisation or liquidation proceedings and on the heir on death.

The action for rescission, established by article 1654 of the civil code, shall, in order to be effective, be mentioned and expressly reserved in the entry in the register. This action may not be brought to the prejudice of third parties after the preferential right has lapsed. It shall be limited, like the preferential right, solely to the elements forming part of the sale.

#### **Article L. 141-7**

In the event of the court-ordered or amicable rescission of the sale, the vendor shall be obliged to take back all the elements of the business which formed part of the sale, even those for which the latter's preferential right and the action for rescission have lapsed. The vendor shall be responsible for the price of the goods and equipment existing at the time when the latter takes back possession, according to an estimate made of these by an expert in the presence of both parties, whether this is amicable or ordered by the court, subject to the deduction of what may still be due thereto, under the preferential right, with regard to the respective prices of the goods and equipment. the remainder, if any, shall be kept as the pledge for the registered creditors and, failing this, the unsecured creditors.

#### **Article L. 141-8**

The vendor bringing the action for rescission shall notify this to the registered creditors of the business at the domicile elected by them in their registrations. The judgement may be made only when a month has passed since this notification.

#### **Article L. 141-9**

The vendor who has stipulated during the sale that, in the absence of payment within the agreed term, the sale shall be rescinded by operation of law, or who has obtained an amicable rescission from the purchaser, must notify to the registered creditors, at the elected domiciles, the rescission incurred or granted which shall not become final until one month after this notification is made.

#### **Article L. 141-10**

When the sale of a business at public auction is applied for, either at the request of a court-appointed receiver or a creditors' representative or by court order at the request of any other legal successor, the applicant shall notify this to the previous vendors, at the domicile elected in their registrations, with a declaration that if they fail to bring the action for rescission within one month of notification, they shall lose the right to bring this in favour of the successful bidder.

#### **Article L. 141-11**

Articles L. 624-11 to L. 624-18 do not apply to either the preferential right or the action for rescission of the vendor of a business.

#### **Article L. 141-12**

Without prejudice to the provisions relating to contributions of business assets provided for in Articles L. 141-21 and L. 141-22, details of any sale or transfer of business assets, even if subject to conditions or in the form of another contract, and likewise any transmission of business assets via partition or sale by auction, must be published within two weeks of being effected, at the acquirer's behest, in a newspaper authorised to carry legal notices available in the district or department in which the business operates and must appear in the Bulletin Officiel des Annonces Civiles et Commerciales. For foreign businesses, the place of operation is that where the vendor has an entry in the commercial and companies register.

#### **Article L. 141-13**

The publication of the extract or notice carried out pursuant to the previous article shall, in order to be valid, be preceded either by the registration of the contract containing the transfer or, in the absence of a contract, by the declaration specified by articles 638 and 653 of the general tax code. This extract shall, subject to the same penalty, indicate the date, volume and number of the registration or, in the event of a simple declaration, the date and number of the receipt for this declaration and, in both cases, the indication of the office where these operations took place. It shall also set out the date of the contract, the surnames, forenames and domiciles of the former and new owners, the nature and headquarters of the business, the stipulated price, including the charges or the valuation used as the basis for paying the registration fees, the indication of the period set out below for objections and an election of domicile in the jurisdiction of the court.

#### **Article L. 141-14**

Within ten days of the date of the second publication referred to in Article L. 141-12, any creditor of the previous owner, whether his claim is due or not, may lodge an appeal against the payment of the price at the elected domicile via a simple extra-judicial notice. The appeal, if it is not to be declared null and void, must state the amount and causes of the claim and contain an election of domicile in the jurisdiction where the business is located. The lessor may not lodge an objection in respect of current rent or rent not yet due, notwithstanding any stipulations to the contrary. No amicable or judicial transfer in respect of the price or a portion of the price

can be raised against creditors who have duly declared their debts within the allotted time frame.

#### **Article L. 141-15**

In the event of an objection to the payment of the price, the vendor may, at any stage after the expiration of the ten-day period, make an summary application to the Presiding Judge of the Tribunal de Grande Instance for authorisation to receive the proceeds despite the objection, provided that the vendor pays to the Caisse des dépôts et consignations, or to a third party appointed for this purpose, a sufficient sum, fixed by the judge, in order to address, where applicable, the causes of the objection where the vendor acknowledges or is judged to be in debt. The deposit thus ordered shall be specifically assigned by the third-party holder to guarantee the claims for security which the objection has been made and to guarantee the exclusive preferential right which anyone else may have over this deposit without, however, a court-ordered transfer being able to result from this to the benefit of the objector or objectors in question with regard to other objecting creditors of the vendor, if any. When the summary order is enforced, the purchaser shall be discharged and the effects of the objection shall be assigned to the third-party holder.

The judge shall grant the authorisation requested only if this is justified by a formal declaration from the purchaser involved in the case, under the latter's personal responsibility and formally noted thereby, that there are no objecting creditors other than those who have taken action against the purchaser. The purchaser, when the order is enforced, shall not be released from paying the price to other objecting creditors prior to the said order, if any.

#### **Article L. 141-16**

If the objection has been made without title and cause or is invalid in its form and if there are no pending proceedings at the outset, the vendor may make a summary application to the Presiding Judge of the Tribunal de Grande Instance in order to obtain authorisation to receive the proceeds, despite the objection.

#### **Article L. 141-17**

The purchaser who pays the vendor without having carried out the publications in the specified forms, or before the expiration of the ten-day period, shall not be released with regard to third parties.

#### **Article L. 141-18**

If the sale or assignment of a business includes branches or establishments situated on French territory, the registration and publication



specified in Articles L. 141-6 to L. 141-17 shall also be carried out in a newspaper authorised to receive legal notices in the place of the registered office of these branches or establishments.

#### **Article L. 141-19**

During the twenty days following publication in the Bulletin Officiel des Annonces Civiles et Commerciales referred to in Article L. 141-12, an authenticated copy or an original of the bill of sale shall be held at the elected domicile to facilitate easy consultation thereof by any objecting or registered creditor.

During that same period, any registered creditor or creditor who has lodged an objection within the ten-day period stipulated by Article L. 141-14 may inspect the bill of sale and the objections at the elected domicile and, if the price is not sufficient to pay off the registered creditors and those who have made themselves known through an objection, may, within ten days of the publication in the Bulletin Officiel des Annonces Civiles et Commerciales referred to in Article L. 141-12, and pursuant to Articles L. 141-14 to L. 141-16, make a bid one sixth higher than the principal asking price for the business, excluding equipment and goods.

The one-sixth increase is not admissible after the court-ordered sale of a business or a sale effected at the request of a court-appointed receiver or court-appointed administrator, or of joint co-owners of the fund, by way of public auction pursuant to Articles L. 143-6 and L. 143-7, or in accordance with Article L. 642-5.

The public official instructed to proceed with the sale shall allow only those persons whose solvency is known to him, or who have deposited either with him or with the Caisse des dépôts et consignations, for specific allocation to payment of the price, a sum not lower than either half the total price of the first sale or the portion of the price of that sale stipulated as being payable in cash, plus the amount of the higher bid.

The auction with the price increased by one sixth shall take place under the same conditions and within the same time limit as the sale in respect of which the higher bid was made.

If the purchaser against whom the higher bid is made is dispossessed as a result thereof, he shall, under his own responsibility, deliver all the objections lodged to the successful bidder, against a receipt, within eight days of the sale, if he did not make them known earlier via a note inserted in the terms and conditions. The effect of these objections shall be applied to the auction price.

#### **Article L. 141-20**

When the sale price is finally fixed, whether or not there has been a higher bid, the purchaser, in the absence of an agreement between the

creditors for the amicable distribution of this price, shall be obliged, following formal notice from any creditor, and within the next fortnight, to deposit the due portion of the price, and the remainder as and when due, to cover all the objections made thereto together with the registrations affecting the business and the assignments notified thereto.

#### **Article L. 141-21**

Except where this results from a merger or demerger operation subject to the provisions of the fourth paragraph of Article L. 236-2 and Articles L. 236-7 to L. 236-22, any contribution in the form of business assets made to a company being formed or already in existence must be brought to the attention of third parties in accordance with the conditions specified in Articles L. 141-12 to L. 141-18 through an advertisement in the journal of legal notices and in the Bulletin Officiel des Annonces Civiles et Commerciales.

However, if following the application of the legislation and regulations in force on the publication of company documents, the information specified by these articles is already contained in the copy of the journal of legal notices where the advertisements must be made, this may be carried out by simple reference to this publication.

In these advertisements, the election of domicile shall be replaced by the address of the registry of the commercial court where creditors of the contributor must submit their claims.

#### **Article L. 141-22**

Within ten days of the last in date of the publications specified in Articles L. 141-12 and L. 141-13, any unregistered creditor of the contributing partner shall inform the Registry of the Commercial Court with jurisdiction over the business location of their capacity of creditor and the sum due thereto. The registrar shall issue thereto a receipt for this submission.

If one or more partners fail to make, within the next fortnight, a request to cancel the company formation or contribution, or if the cancellation is not ordered, the company shall be obliged, jointly with the main debtor, to pay the liabilities submitted and justified within the above period.

In the event of a contribution of a business by one company to another, in particular following a merger or demerger, the provisions of the above paragraph shall not apply when Articles L. 236-14, L. 236-20 and L. 236-21 should apply or when the option specified in Article L. 236-22 is exercised.

# **LEGISLATIVE PART**

## ***BOOK I: COMMERCE IN GENERAL***

### **TITLE IV: THE BUSINESS**

#### **CHAPTER II: CHARGE ON THE BUSINESS**

##### **Article L. 142-1**

Pledges may be taken on a business without conditions and formalities other than those specified by this Chapter and Chapter III below.

Taking a charge on a business does not give a pledgee creditor the right to have the business allocated in payment up to the full amount due.

##### **Article L. 142-2**

The charge subject to the provisions of this chapter may cover the following items only as forming part of a business: corporate and trade name, leasing rights, goodwill, custom and passing trade, commercial furniture, equipment and tools used for the operation of the business, patents, licences, trademarks, industrial drawings and designs, and in general the intellectual property rights attached thereto.

A certificate of addition subsequent to the taking of a charge which includes the patent to which it applies shall follow the fate of this patent and shall likewise form part of the pledge constituted.

Unless otherwise stated explicitly and precisely in the instrument creating it, the charge shall cover only the corporate and trade name, leasing rights, goodwill, custom and passing trade.

If the charge relates to a business and its branches, these must be designated by the precise indication of their registered address.

##### **Article L. 142-3**

The contract to charge business assets shall be ascertained by a notarised document or by a duly registered unattested document.

The preferential charge resulting from the contract to charge business assets shall be constituted by the simple fact of entry in a public register held at the registry of the commercial court within whose jurisdiction the business is operated.

The same formality must be completed at the registry of the commercial court within whose jurisdiction each of the branches of the business included in the charge is situated.

#### **Article L. 142-4**

Registration must take place, under pain of the charge becoming null and void, within fifteen days of the date of the constitution.

In the event of court-ordered receivership or liquidation proceedings, Articles L. 632-1 to L. 632-4 shall apply to charges of business assets.

#### **Article L. 142-5**

The ranking of secured creditors among themselves shall be determined by the date of their registrations. Creditors registered on the same date shall rank equally.

### **LEGISLATIVE PART**

#### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE IV: THE BUSINESS**

##### **CHAPTER III: PROVISIONS COMMON TO THE SALE AND CHARGE OF BUSINESSES**

##### ***Section 1: Realisation of the pledge and redemption of registered claims***

#### **Article L. 143-1**

In the event of assignment of the business, all registered claims shall become due by operation of law if the owner has failed to inform the secured creditors at least two weeks in advance of their intention to assign the business and the new registered office which they intend to designate.

Within two weeks of the notice given to them or within two weeks of the day on which they have learned of the assignment, all vendors and secured creditors must have the new registered office of the business annotated in the margin of the existing entry in the register and, if the business has been transferred to another jurisdiction, have the original registration and its date carried over into the register of the court of this jurisdiction, indicating the new registered office.

If it causes a depreciation of the business, assignment of the business without the consent of the vendor or the secured creditors may render due the debts owed to them.

The registration of a charge may also cause earlier debts incurred for the purpose of operation of the business to become due.

Applications to the Commercial Court for lapse of the term made pursuant to the previous two paragraphs shall be subject to the rules of procedure stipulated in paragraph four of Article L. 143-4.

#### **Article L. 143-2**

An owner seeking to terminate the lease on the building in which a business with charges registered against it operates must notify previously registered creditors of its application at the domicile elected by them in their registry entries. The judgement may be made only when a month has passed since this notification.

An amicable termination of the lease only becomes definitive one month after being notified to secured creditors at their elected domiciles.

#### **Article L. 143-3**

Any creditor pursuing distraint proceedings and any debtor against whom or which they are brought may apply to the commercial court within whose jurisdiction the business operates for the sale of the distrained business with its associated equipment and goods.

At the request of a plaintiff creditor, the Commercial Court shall order that, failing payment within the deadline allowed to the debtor, the sale of the business shall take place at the request of the creditor after completion of the formalities specified in Article L. 143-6.

The same shall apply if, upon proceedings instigated by the debtor, the creditor applies to proceed with the sale of the business.

Should the creditor not request it, the Commercial Court shall fix the deadline within which the sale of the business must take place at the request of the creditor in accordance with the formalities specified in Article L. 143-6, and it shall order that, where the debtor has not carried out the sale within the deadline, the distraint proceedings shall be resumed and continued on to the last steps.

#### **Article L. 143-4**

If required, the court shall appoint an interim manager of the business, set the reserve prices, determine the primary terms and conditions of the sale and appoint a public official to draw up the terms and conditions.

Where useful, special advertising shall be regulated by the judgement or, by default, by order of the presiding judge of the commercial court made on application.

The latter may, by judgement given, authorise the plaintiff, if there is no other registered creditor or opposing party and with the exception of preferential expenses for the benefit of the party or parties concerned, to receive the price directly and against a simple receipt either from the purchaser or from the public official mandated to conduct the sale, as the case may be, in deduction from or up to the amount of their claim in principal, interest and expenses.

Within two weeks of the first hearing, the commercial court shall rule by judgement not liable to stay of execution, enforceable at a moment's notice.

An appeal against the judgement shall entail suspension. It shall be formed within two weeks of its service on the opposing party and judged by the court within one month. The order shall be enforceable at a moment's notice.

#### **Article L. 143-5**

Vendors and secured creditors of the business may also, even by virtue of shares under an unattested document, have an order given for the sale of the business constituting their pledge one week after an official demand for payment made to the creditor and to a third-party holder, if applicable, has remained unsuccessful.

The application shall be brought before the Commercial Court within whose jurisdiction the business is operated, and this court shall rule as stated in Article L. 143-4.

#### **Article L. 143-6**

The plaintiff shall serve notice on the owner and the creditors registered prior to the decision ordering the sale at the domicile elected by them in their registrations at least two weeks before the sale to accept disclosure of the terms and conditions, to supply their statements and observations and to attend the sale by auction if they see fit.

The sale shall take place at least ten days after the affixing of notices indicating the names, occupations and domiciles of the plaintiff and the owner of the business, the decision by virtue of which the proceedings have been instigated, an election of domicile within the jurisdiction of the commercial court where the business is operated, the various elements constituting this business, the nature of its activities, its location, the reserve prices, the place, date and time of the sale by auction, the name and domicile of the public official mandated to conduct the sale and custodian of the terms and conditions.

These notices must mandatorily be affixed, at the instigation of the public official, to the main door of the building and of the town hall of the municipality in which the business is located, the commercial court within whose jurisdiction the business is located and on the door of the office of the public official mandated to conduct the sale.

The notice shall be inserted ten days prior to the sale in a newspaper authorised to publish legal notices and in the administrative district or department in which the business is located.

Publication shall be ascertained by a statement included in the record of forced sale.

#### **Article L. 143-7**

If required, the Presiding Judge of the Tribunal de Grande Instance within

whose jurisdiction the business is operated shall rule on the grounds for nullity of the sale procedure prior to the sale by auction and on the costs. Objections to these grounds must be made at least one week prior to the sale in order to be valid. Paragraph four of Article L. 143-4 shall apply to the order made by the Presiding Judge.

#### **Article L. 143-8**

If the commercial court before which a petition is brought for payment of a debt attached to the operation of a business rules against the defendant and if the creditor so requests, it may order the sale of the business by the same judgement. It shall order within the terms of paragraphs one and two of Article L. 143-4 and shall fix the time limit for payment after which the sale may proceed if payment is not made.

The provisions of paragraph four of Article L. 143-4 and of Articles L. 143-6 and L. 143-7 shall apply to the sale as ordered by the Commercial Court.

#### **Article L. 143-9**

Should the successful bidder fail to execute the clauses of the sale, the business shall be sold by auction without reserve in accordance with the forms specified by Articles L. 143-6 and L. 143-7.

The irresponsible bidder shall be liable to the creditors of the vendor and to the vendor himself, for the difference between their price and that of the resale by auction without reserve, but may not lay claim to any surplus that may arise.

#### **Article L. 143-10**

The separate sale of one or more elements of a business with charges registered against it, whether by distraint or by virtue of the provisions of this chapter, may not be carried out before ten days at the earliest after notification of the proceedings to those creditors who or which have registered at least two weeks prior to the notification, at the domicile they elected in their registrations. During this period of ten days, any registered creditor, irrespective of whether their claim has fallen due, may bring proceedings against the interested parties before the Commercial Court within whose jurisdiction the business is operated, applying for all the elements of the business to be sold at the request of the plaintiff or at their own request, within the terms and conditions and in accordance with the provisions of Articles L. 143-3 to L. 143-7.

The equipment and goods shall be sold at the same time as the business at separate reserve prices or subject to separate prices if the terms and conditions oblige the successful bidder to take them according to experts' statements.

A price breakdown must be given for those elements of the business

against which no preferential charges are registered.

#### **Article L. 143-11**

No higher bid will be allowed when the sale has taken place as specified in Articles L. 141-19, L. 143-3 to L. 143-8, L. 143-10 and L. 143-13 to L. 143-15.

#### **Article L. 143-12**

The preferential rights of the vendor and a registered creditor shall follow the business into whichever hands it may pass. If the sale of the business has not been carried out by public auction in accordance with the articles specified in article L. 143-11, a purchaser wishing to protect himself against proceedings by secured creditors must notify all the secured creditors, before the proceedings or within two weeks of receiving the official demand for payment under the penalty of loss, in accordance with the terms and conditions specified by decree.

If the sale of the business has not been carried out by public auction in accordance with the articles specified in Article L. 143-11, a purchaser wishing to protect himself against proceedings by secured creditors must notify all the secured creditors, before the proceedings or within two weeks of receiving the official demand for payment under the penalty of loss, in accordance with the terms and conditions specified by decree.

#### **Article L. 143-13**

Where Article L. 143-11 does not apply, any creditor with a registered charge on the business may demand its sale by public auction by offering to increase the principal price, exclusive of the equipment and goods, by one tenth, and to give a guarantee for the payment of the prices and expenses or to give proof of sufficient creditworthiness.

In order to be valid, this demand signed by the creditor must be served upon the purchaser and the prior owner debtor within two weeks of the notifications, with service before the commercial court of the business location of a plea for an order, in the event of dispute, on the validity of the higher bid, on the admissibility of the guarantee or creditworthiness of the higher bidder, and for an order that the business, with its associated equipment and goods, should be sold by public auction, and that the outbid purchaser should be obliged to communicate their title and the lease document or lease assignment document to the public official mandated to conduct the sale. The aforementioned deadline of two weeks may not be extended because of the distance between the elected domicile and the real domicile of secured creditors.

#### **Article L. 143-14**



With effect from notification of the higher bid, a purchaser having taken possession of the business shall no longer be the official receiver and may henceforth undertake only acts of administration. However, at any time during the proceedings they may apply to the commercial court or to a judge in summary proceedings, as the case may be, for the appointment of another receiver. This application may also be made by any creditor.

The higher bidder may not prevent the sale by public auction by waiver, even by paying the amount of the bid, other than by consent of all the secured creditors.

The formalities of the procedure and of the sale shall be carried out at the instigation of the higher bidder and, in the absence thereof, any registered creditor or the purchaser, at the cost and risk of the higher bidder and their guarantee remaining committed, in accordance with the rules specified in Articles L. 143-4, L. 143-5 to L. 143-7 and in paragraph three of Article L. 143-10.

In the absence of a bid, the higher bidder creditor shall be declared the successful bidder.

#### **Article L. 143-15**

The successful bidder shall be obliged to take the equipment and goods existing at the time of taking possession at the prices fixed by an amicable or court-ordered counter-appraisal between the outbid purchaser, their vendor and the successful bidder.

In addition to their purchase price, they shall be obliged to reimburse the dispossessed purchaser for the actual costs and expenses of their contract, of notifications, of registration and of publication specified in Articles L. 141-6 to L. 141-18 and, to the party or parties concerned, of accomplishing the resale.

Article L. 143-9 shall apply to the sale and to the sale by higher bid.

An outbid purchaser who becomes the purchaser by means of the resale by higher bid shall have recourse as provided by law against the vendor for the reimbursement of the amount in excess of the price specified by their title and for interest on this excess amount with effect from the date of each payment.

#### *Section 2: Registration and striking off formalities*

#### **Article L. 143-16**

The registration and striking off of a vendor's or pledgee creditor's preferential rights are subject to formalities whose terms and conditions are fixed by decree of the Conseil d'Etat.

#### **Article L. 143-17**

In addition to the registration formalities specified in Article L. 143-16, sales and assignments of businesses including trademarks, industrial drawings or designs, charges on businesses which include patents or licences, brands or drawings or designs, must be registered with the Institut National de la Propriété Industrielle, on production of the certificate of registration issued by the Registrar of the Commercial Court, within two weeks following this registration in order to be valid with respect to third parties, sales, assignments and charges as they apply to patents and licences, trademarks and industrial drawings and designs.

The assignment of patents included in the assignment of a business shall remain subject to the rules decreed in Articles L. 613-8 et seq. of the Intellectual Property Code.

#### **Article L. 143-18**

If the title resulting from the registered preferential right is negotiable, negotiation by endorsement shall imply the assignment of the preferential right.

#### **Article L. 143-19**

Registration shall preserve the preferential right for ten years with effect from its date. It shall cease to have effect if it has not been renewed before expiration of this period.

It guarantees two years of interest at the same ranking as the principal amount.

#### **Article L. 143-20**

Registrations are struck off either with the consent of the duly entitled interested parties or by virtue of a res judicata judgement.

Without a judgement, total or partial striking off cannot be effected by the registrar unless a duly registered notarised document or private instrument is lodged with the court through which the debtor or his properly subrogated assignee consents to the striking off and substantiates his rights.

The registration made at the Institut National de la Propriété Industrielle shall be struck off upon production of the certificate of deletion issued by the Registrar of the Commercial Court.

#### *Section 3: Intermediaries and distribution of the price*

#### **Article L. 143-21**

Any third-party holder of the purchase price for the business with whom

domicile has been elected must transfer it within three months of the date of the bill of sale.

On expiration of this deadline, the first to act may make a summary application to the competent court of the chosen place of domicile, which shall order either deposit with the Caisse des dépôts et consignations or the appointment of a trustee charged with distributing the proceeds of the sale of the business.

#### **Article L. 143-22**

If the confiscation of a business is ordered by a criminal court in application of Articles 225-16, 225-19 and 225-22 of the Penal Code and 706-39 of the Code of Criminal Procedure, the State must offer the confiscated business for sale in accordance with the terms and conditions specified by this Title within one year unless extended on exceptional grounds by order of the Presiding Judge of the Tribunal de Grande Instance. Liability with respect to the creditors shall be limited to the sale price of this business.

This offer for sale must be carried out in the form of a legal advertisement made at least forty-five days prior to the sale, whether this is to take place by auction or in the form of a private sale.

Sureties registered after the date of the statement of instigation of proceedings for any of the offences referred to in paragraph one shall be null and void by operation of law unless the court rules otherwise.

The administrative authority may, at any time, require the rent to be set at a rate corresponding to the rental value of the premises.

If the owner of the confiscated business is also the owner of the premises in which the business is operated, a lease must be drawn up, the terms and conditions of which shall be determined, in the absence of amicable agreement, by the Presiding Judge of the Tribunal de Grande Instance, who will rule within the terms and conditions specified for leases of immovable properties or for premises used for commercial, industrial or craft purposes.

#### **Article L. 143-23**

A decree of the Conseil d'Etat shall determine the enforcement measures for Chapters I and II above and this Chapter, in particular the fees to be allocated to Commercial Court Registrars and the terms and conditions under which registrations, deletions and the issuing of statements and negative certificates concerning sales, assignments and charges relating to the business including patents and licences, trademarks, industrial drawings and designs are carried out at the Institut National de la Propriété Industrielle.

It shall also determine the duties to be collected by the Conservatoire des

Arts et Métiers on behalf of the Institut National de la Propriété Industrielle on registrations and statements of priority, subrogation and striking off, statements of registration and certificates that none exist.

## **LEGISLATIVE PART**

### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE IV: THE BUSINESS**

##### **CHAPTER IV: LEASING-MANAGEMENT**

###### **Article L. 144-1**

Notwithstanding any clause to the contrary, any contract or agreement under the terms of which the owner or operator of a business or a craft establishment grants the lease thereof totally or partially to a manager who operates it at their own risk shall be regulated by the provisions of this chapter.

###### **Article L. 144-2**

The lessee-manager shall be classified as a trader. They shall be subject to all the obligations which arise therefrom.

If the business is a craft establishment, the lessee-manager shall be registered in the trades register and shall be subject to all the obligations which arise therefrom.

###### **Article L. 144-3**

Natural persons or legal entities who/which grant leasing-management rights must have operated the business or craft establishment placed under leasing-management for at least two years.

###### **Article L. 144-4**

The period stated in Article L. 144-3 may be dispensed with or reduced by order of the Presiding Judge of the Tribunal de Grande Instance made on ordinary application by the interested party, after having consulted the Office of the Public Prosecutor, in particular when the interested party can prove that they are unable to operate their business personally or through the intermediary of agents.

###### **Article L. 144-5**

Article L. 144-3 shall not apply to:

- 1° The State;
- 2° The territorial authorities;
- 3° Credit institutions;
- 4° Persons of full age subject to a legal protection measure or persons being treated for mental illness as provided for in Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Code of Public Health, in relation to the business which they owned prior to the entry into force of the legal protection measure or the commencement of hospitalisation;
- 5° The heirs or legatees of a deceased trader or craftsperson, and likewise the beneficiaries of a division between relatives in direct ascending line, in connection with the business thus transmitted;
- 6° The public institution created by Article L. 325-1 of the Town Planning Code;
- 7° A spouse who is the recipient of a business or a craft establishment following the dissolution of a matrimonial regime, when the spouse has participated in its operation for at least two years prior to the dissolution or division of the matrimonial regime; ;
- 8° The lessor of a business, when the main object of the leasing-management is to achieve retail sales of the products made or distributed by the business under an exclusive contract;
- 9° The lessors of cinema, theatre and music hall businesses.

#### **Article L. 144-6**

At the date of the leasing-management, the debts owed by the lessor of the business relating to the operation of the business may be declared due immediately by the commercial court where the business is located, if it considers that the leasing-management endangers their recovery.

In order not to be out of time, the proceedings must be started within three months from the date of publication of the management contract in a newspaper authorised to receive legal notices.

#### **Article L. 144-7**

Until publication of the contract for delegation of management and for a period of six months with effect from this publication, the lessor of the business shall be jointly liable with the lessee-manager for debts entered into by the latter during the operation of the business.

#### **Article L. 144-8**

The provisions of Articles L. 144-3, L. 144-4 and L. 144-7 shall not apply to contracts for delegation of management entered into by court-appointed agents charged in any capacity whatsoever with the administration of a business, on condition that they have been authorised for the purposes of these contracts by the authority having given them their mandate and that

they have complied with the specified publication measures.

#### **Article L. 144-9**

Termination of the leasing-management shall render immediately due all debts relating to the operation of the business or the craft establishment entered into by the lessee-manager during the period of management.

#### **Article L. 144-10**

Any contract for delegation of management and any other agreement containing similar clauses granted by the owner or the operator of a business which does not comply with the conditions specified in the articles above shall be null and void. However, the contracting parties may not invoke this nullity against third parties.

The nullity specified in the preceding paragraph shall lead to forfeiture of the contracting parties' rights which they could potentially have held from the provisions of Chapter V of this Title regulating relations between lessors and lessees with respect to the renewal of building leases or of premises used for commercial, industrial or craft purposes.

#### **Article L. 144-11**

If the real estate management contract includes an escalator clause, a rent revision may be requested, notwithstanding any agreement to the contrary, whenever the rent calculated in accordance with this clause is increased or reduced by more than one quarter in comparison with the price previously determined contractually or by court order.

Should one of the factors used for the calculation of the escalator clause disappear, the revision may be requested and carried out only if the economic conditions are changed to the point of causing a variation of more than one quarter in the rental value of the business.

#### **Article L. 144-12**

The party wishing to request the revision must notify the other party of this by registered letter with recorded delivery or by extra-judicial notice.

In the absence of amicable agreement, proceedings shall be instigated and judged in accordance with the provisions laid down for the revision of prices of leases of immovable properties or of premises used for commercial or industrial purposes.

The judge shall take account of all the factors to be assessed and shall adjust the range of the sliding scale to the fair rental value on the day of notification. The new price shall apply as of that date, unless the parties agree on an earlier or later date before or during the proceedings.

#### **Article L. 144-13**

The provisions of Articles L. 144-11 and L. 144-12 shall not apply to leasing transactions with regard to businesses or craft establishments mentioned in 3° of Article 1 of Law No 66-455 of 2 July 1966 relating to businesses engaged in leasing activities.

The provisions of Article L. 144-9 shall not apply if the lessee-manager having leased a business or a craft establishment by means of a leasing contract exercises the purchase option.

### **LEGISLATIVE PART**

#### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE IV: THE BUSINESS**

##### **CHAPTER V: COMMERCIAL LEASES**

##### ***Section 1: Scope***

#### **Article L. 145-1**

I. - The provisions of this Chapter shall apply to leases of immovable properties or premises in which a business is operated irrespective of whether this business is owned by a trader or a manufacturer registered in the Commercial and Companies Register or to the head of an undertaking registered in the trades register, whether performing commercial acts or not, and also:

1° To leases for premises or immovable properties ancillary to the operation of a business where their loss would be likely to compromise the operation of the business and where they belong to the owner of the premises or the real property where the principal place of business is located. Should there be more than one owner, the ancillary premises must have been leased to the certain knowledge of the lessor with a view to shared use;

2° To leases of undeveloped land on which buildings for commercial, industrial or craft use are erected, either before or after the lease, on condition that these buildings have been erected or operated with the explicit consent of the owner.

II. - If the business is operated under the form of leasing-management pursuant to Chapter IV of this Title, the owners of the business shall nevertheless benefit from these provisions without having to prove registration in the Commercial and Companies Register or in the trades

register.

III. - If the lease is granted to several lessees or tenants in common, the operator of the business or craft establishment shall benefit from the provisions of this chapter, even where the co-lessees or joint tenants in common not involved in operating the business are not registered in the commercial and companies register or in the trades register.

In the event of the death of the lease holder, these same provisions shall apply to his heirs or legal successors who, although not involved in operating the business or craft establishment, request that their assignees remain in place for the purposes of settling his estate.

#### **Article L. 145-2**

I. - The provisions hereof shall also apply:

1° To leases for premises or immovable properties housing educational institutions;

2° To leases granted to municipalities for immovable properties or premises used for services operated under State control, either at the time of the lease or later and with the express or tacit consent of the owner;

3° To leases for principal or ancillary immovable properties or premises necessary for the continuation of operations of public undertakings and public establishments of an industrial or commercial nature, within the limits defined by the legislation and regulations governing them and provided that these leases do not involve any control over the public domain;

4° Subject to the provisions of Article L. 145-26 on leases for premises or immovable properties belonging to the State, to territorial authorities and public establishments, where these premises or immovable properties meet the provisions of Article L. 145-1 or 1° and 2° above;

5° To leases for immovable properties housing either cooperatives organised under commercial law or with a commercial object, or to cooperative credit societies, or to savings and provident banks;

6° To leases for premises granted to artists admitted to contribute to the social security fund of the Maison des Artistes and recognised as the authors of graphic and plastic works as defined in Article 98 A of Annex III of the General Tax Code;

7° As an exception to Article 57 A of Law No. 86-1290 of 23 December 1986 intended to promote rental investments, access to social home ownership and the development of available property, to leases for premises used solely for business purposes if the parties have agreed to adopt this system.

II. - However, the provisions of this Chapter shall not apply to licences for occupation of a building granted by the administration on a building acquired by it subsequent to its being declared of public interest. They shall also not apply, for the two-year period specified in paragraph 1 of Article L. 214-2 of the Town Planning Code, to craft establishments, to businesses or



to commercial leases pre-empted pursuant to Article L. 214-1 of the same Code.

### **Article L. 145-3**

The provisions of this chapter shall not apply to long leases except as regards rent revision. However, they shall apply in the cases specified in Articles L. 145-1 and L. 145-2 to leases entered into by long leaseholders, provided that the period of renewal granted to their subtenants does not have the effect of extending occupation of the premises beyond the expiration date of the long lease.

### *Section 2: Term*

### **Article L. 145-4**

The term of the lease contract may not be less than nine years.

However, in the absence of agreement to the contrary, the lessee shall have the option of giving notice on expiration of a term of three years in the forms and deadline set out in Article L. 145-9.

The lessor shall have the same option if they intend to invoke the provisions of Articles L. 145-18, L. 145-21, L. 145-23-1 and L. 145-24 in order to build, rebuild or raise the height of the existing building, reassign the ancillary dwelling for this purpose or execute work stipulated or authorised under a property restoration operation and, in the case of demolition of the building, under an urban renewal project.

A lessee having made a request to take advantage of their rights to retirement from the social security system to which they subscribe or having been accepted as a beneficiary of an invalidity pension allocated within the framework of the social security system shall have the option of giving notice in the forms and deadline set out in Article L. 145-9.

The provisions of the preceding paragraph shall apply to the sole member of a single member limited liability company or a majority shareholder manager of at least two years' tenure of a limited liability company when they are the leaseholder.

### **Article L. 145-5**

When the lessee enters the premises, the parties may depart from the provisions of this chapter on condition that the total term of the lease or of the successive leases is no more than two years.

If the lessee remains and is allowed to remain in possession on expiration of this term, a new lease shall be formed, the effect of which shall be regulated by the provisions of this chapter.

On expiration of this term, the same shall apply in the event of express renewal of the lease or of agreement between the same parties of a new

lease for the same premises.

The provisions of the two preceding paragraphs shall not apply if the lease is of a seasonal nature.

#### **Article L. 145-6**

During the course of the original lease or a renewed lease, the lessor of premises used for commercial, industrial or craft purposes may retake possession of the premises in whole or in part to carry out works requiring the evacuation of the premises included within a sector or perimeter specified in Articles L. 313-4 and L. 313-4-2 of the Town Planning Code and authorised or prescribed within the conditions specified in those articles, on condition of offering to transfer the lease to equivalent premises within the same real property or within another real property. This offer must specify the characteristics of the premises offered, which must enable continuation of the exercise of the tenant's previous activity. The offer must be notified one year in advance.

Within a deadline of two months, the tenant must either communicate their acceptance or refer the reasons for their refusal to the competent court, in the absence of which they shall be deemed to have accepted the offer.

#### **Article L. 145-7**

A tenant whose lease is assigned shall be entitled to dispossession compensation which includes compensation for the prejudicial consequences of temporary loss of occupation taking account, if applicable, of the provisional installation carried out at the lessor's expense and reimbursement of their normal removal and relocation expenses.

Once the offer has been accepted or acknowledged as being valid by the competent court and after expiration of the deadline of one year with effect from confirmation of the offer, the tenant must leave the premises with effect from the premises offered being made effectively available and payment of provisional compensation of an amount determined as specified in Article L. 145-19.

The price and ancillary terms and conditions of the lease may be amended at the request of the first to act.

#### **Article L. 145-7-1**

Commercial leases entered into by owners and operators of holiday residences specified in Article L. 321-1 of the Tourism Code shall be for a minimum term of nine years, with no option to terminate after the expiration of three years.

### *Section 3: Renewal*

#### **Article L. 145-8**

The right to renewal of a lease may be invoked only by the owner of the business which is operated in the premises.

In the absence of legitimate reasons, the converted business must, if appropriate, in the conditions specified in Section 8 of this Chapter, have been operated effectively during the three years prior to the date of expiration of the lease or of its extension as specified in Article L. 145-9, this latter date being either the date for which the notice has been given or, if a request for renewal has been made, the first day of the calendar quarter following this request.

#### **Article L. 145-9**

Notwithstanding articles 1736 and 1737 of the civil code, leases for premises subject to the provisions of this chapter shall end only by virtue of notice given at least six months in advance or a request for renewal.

In the absence of notice or request for renewal, the written lease shall be extended tacitly beyond the term set by the contract. During the tacit extension, notice must be given at least six months in advance and for the last day of the calendar quarter.

Beyond the term of nine years, a lease with a period conditional upon an event, the occurrence of which will authorise the lessor to request its cancellation, shall terminate only by virtue of notice given six months in advance and for the last day of the calendar quarter. This notice must state the occurrence of the event specified in the contract.

If the lease is for several terms and the lessor terminates the lease at the end of the first nine years or on expiration of one of the subsequent terms, the notice must be given within the deadline stated in paragraph one above.

The notice must be given by extra-judicial means. In order to be valid, it must state the reasons for which it is given and state that a tenant wishing either to dispute the notice or demand payment of compensation for eviction must refer the matter to the court within a deadline of two years with effect from the date for which the notice has been given.

#### **Article L. 145-10**

In the absence of notice, a tenant wishing to renew their lease must request this either within the six months prior to expiration of the lease or, if appropriate, at any time during its extension.

The request for renewal must be served on the lessor by extra-judicial means. In the absence of conditions or notifications to the contrary on the

part of this latter, it may be addressed equally validly either to the lessor or to the manager, who shall be deemed to be authorised to receive it. Should there be more than one owner, a request addressed to one of them shall be valid in respect of them all in the absence of conditions or notifications to the contrary.

In order to be valid, it must reproduce the terms of the paragraph below.

Within three months of service of the request for renewal, the lessor must inform the lessee, within the same forms, if they refuse the renewal, stating the reasons for this refusal. Should the lessor fail to communicate their intentions within this deadline, the lessor shall be deemed to have accepted the principle of renewal of the previous lease.

In order to be valid, the extra-judicial notice of refusal to renew the lease must state that a lessee wishing either to contest the refusal to renew the lease or to demand payment of compensation for eviction must refer the matter to the court before the expiration of a period of two years with effect from the date on which notice of the refusal to renew was served.

#### **Article L. 145-11**

A lessor wishing, while not being opposed to the principle of renewal, to obtain an amendment of the price of the lease must give notice of the rent they propose within the period of notice specified in Article L. 145-9 or in the reply to the request for renewal specified in Article L. 145-10, in the absence of which the new price shall be due only with effect from a request made subsequently in accordance with the terms and conditions defined by decree of the Conseil d'Etat.

#### **Article L. 145-12**

The term of the renewed lease shall be nine years unless the parties agree on a longer term.

The provisions of paragraphs two and three of Article L. 145-4 shall apply during the term of the renewed lease.

The new lease shall take effect from expiration of the preceding lease or, if appropriate, from its extension, this latter date being either that for which the notice had been given or, if a request for renewal has been made, the customary term which follows this request.

However, if the lessor has communicated, either by giving a period of notice or by refusal of renewal, their intention not to renew the lease and if, subsequently, they decide to renew it, the new lease shall take effect from the date on which this acceptance has been communicated to the lessee by extra-judicial notice.

#### **Article L. 145-13**

Subject to the provisions of the Law of 28 May 1943 relating to the

application to foreigners of the laws on rental leases and farm leases, the provisions of this Section may be invoked by traders, manufacturers and persons registered in the trades register of foreign nationality, acting directly or via an intermediary only if they have fought in the French or Allied armies during the 1914 and 1939 wars or if they have children holding French nationality.

The preceding paragraph shall not apply to citizens of Member States of the European Community or of Member States of the European Economic Area.

#### *Section 4: Refusal of renewal*

##### **Article L. 145-14**

A lessor may refuse the renewal of a lease. However, except in cases of the exceptions specified in Articles L. 145-17 et seq., the lessor must pay the evicted tenant compensation for eviction equal to the losses caused by the absence of renewal.

This compensation shall include in particular the market value of the business, determined in accordance with custom and practice of the profession, potentially increased by the normal expenses of removal and reinstallation, plus the expenses and duties of assignment of a business of the same value, except where the owner provides proof that the loss is lower.

##### **Article L. 145-15**

Irrespective of their form, clauses, conditions and arrangements which have the effect of frustrating the right of renewal laid down by this Chapter or the provisions of Articles L. 145-4, L. 145-37 and L. 145-41, paragraph one of Article L. 145-42 and Articles L. 145-47 to L. 145-54 shall be null and void.

##### **Article L. 145-16**

Irrespective of their form, agreements whose object is to prohibit the tenant from assigning their lease or the rights held by virtue of this chapter to a purchaser of their business or company shall also be null and void.

In the event of the merger of companies or the contribution of part of the assets of a company carried out within the conditions specified in Articles L. 236-6-1, L. 236-22 and L. 236-24, the company resulting from the merger or the company receiving the contribution shall, notwithstanding any stipulation to the contrary, replace the party in whose favour the lease was granted in respect of all rights and obligations resulting from this lease.

If the obligation of surety can no longer be maintained within the terms and conditions of the agreement in the event of assignment, merger or

contribution, the court may substitute any guarantees it deems sufficient.

#### **Article L. 145-17**

I. - A lessor may refuse the renewal of a lease without being obliged to pay any compensation if:

1° They can provide proof of a serious and legitimate reason against the tenant whose lease is ending. However, should this involve either failure to perform an obligation or cessation of operation of a business in the absence of genuine and legitimate reason, taking into account the provisions of Article L. 145-8, the infringement committed by the lessee may be invoked only if it has been continued or repeated more than one month after the lessor has given formal notice to cause it to cease. In order to be valid, this formal notice must be served by extra-judicial means, stating the reason invoked and reproducing the terms of this paragraph;

2° If proof is provided that the building must be totally or partially demolished due to being recognised by the administrative authority as being in an unfit condition for occupation or if proof is provided that it may no longer be occupied without danger due to its condition.

II. - In the event of rebuilding of a new building containing commercial premises by the owner or their legal successor, the tenant shall have a preferential right to enter into a lease in the rebuilt building, subject to the terms and conditions specified in Articles L. 145-19 and L. 145-20.

#### **Article L. 145-18**

A lessor shall be entitled to refuse the renewal of a lease in order to build or rebuild the existing building, subject to payment to the ejected tenant of the compensation for eviction specified in Article L. 145-14.

The same shall apply for the carrying out of works requiring the evacuation of the premises included within a sector or perimeter specified in Articles L. 313-4 and L. 313-4-2 of the Town Planning Code and authorised or prescribed within the conditions specified in those articles.

However, the lessor may avoid payment of this compensation by offering the ejected tenant premises corresponding to their needs and means located in an equivalent site.

If applicable, the tenant shall receive compensation for their temporary loss of occupation and for the depreciation of their business. The tenant's normal removal and installation expenses shall also be reimbursed.

Should a lessor invoke the benefit of this article, they must refer to the provisions of paragraph 3 and specify the new terms and conditions of rental in the document refusing to renew the lease or in the notice. Within a deadline of three months, the tenant must either communicate their acceptance by extra-judicial notice or refer the matter to the competent court within the conditions specified in Article L. 145-58.

Should the parties disagree only in respect of the terms and conditions of the new lease, these shall be determined in accordance with the procedure specified in Article L. 145-56.

#### **Article L. 145-19**

In order to exercise the preferential right specified in Article L. 145-17, on leaving the premises or no later than three months of so doing, a tenant must give notice to the owner of their desire so to do by extra-judicial means, informing the owner of their new domicile; as a condition of validity, the tenant must also give notice of any subsequent change of domicile.

Prior to letting or occupying the new premises themselves, an owner having received such notice must advise the tenant in the same way that they are prepared to grant them a new lease. In the absence of agreement between the parties on the terms and conditions of this lease, these shall be determined in accordance with the procedure specified in Article L. 145-56.

The tenant shall have a maximum period of three months in which to confirm their decision or to refer the matter to the competent court. In order to be valid, this deadline must be stated in the notice referred to in the preceding paragraph. On expiration of this deadline, the owner may dispose of the premises.

An owner failing to comply with the provisions of the preceding paragraphs shall be liable, at the request of their tenant, to pay damages to this latter.

#### **Article L. 145-20**

Should the building rebuilt within the conditions specified in Article L. 145-17 have a surface area greater than that of the original building, the preferential right shall be limited to those premises with a surface area equivalent to that of the premises previously occupied or likely to satisfy the same commercial needs as such premises.

Should the rebuilt building not permit the reinstallation of all the occupants, preference shall be given to those tenants holding the oldest leases and having communicated their intention to occupy the premises.

#### **Article L. 145-21**

An owner may also defer renewal of the lease for a period of up to three years if they intend to raise the height of the building and if this raising necessitates the temporary eviction of the tenant. In such an event, the tenant shall be entitled to compensation equal to the loss suffered up to a maximum of three years' rent.

#### **Article L. 145-22**

An owner shall be entitled to refuse the renewal of a lease exclusively in respect of the part involving the living accommodation associated with commercial premises in order to occupy them themselves or to enable their spouse, their relatives in direct ascending line and descendants or those of their spouse to occupy them, subject to the beneficiary of the takeover not having access to accommodation corresponding to their normal needs and those of the members of their family normally living or domiciled with them.

However, a takeover in the conditions stated above may not be exercised on premises used for hotel purposes or for furnished rentals, nor on premises used for hospital or teaching purposes.

Similarly, a takeover may not be exercised if the tenant provides proof that the loss of occupation of the living accommodation causes a serious difficulty to the operation of the business or if the commercial premises and the living accommodation form an indivisible whole.

Should the building have been bought against payment, the lessor may benefit from the provisions of this article only if their deed of purchase has a legal date more than six years prior to the refusal of renewal.

The beneficiary of the takeover right shall be bound to place the accommodation which may be left vacant by the exercise of this right, if any, at the disposal of the tenant whose premises they take over.

In the event of partial takeover as specified in this article, the rent for the renewed lease shall take into account the prejudice caused to the tenant or to their legal successor in the exercise of their activity.

Unless prevented by a legitimate reason, the beneficiary of the takeover must occupy the premises personally within a deadline of six months with effect from the date of departure of the evicted tenant and for a term of no less than six years, failing which the dispossessed tenant shall be entitled to compensation for eviction in proportion to the size of the premises taken over.

#### **Article L. 145-23**

The provisions of Article L. 145-22 shall not apply to lessors of foreign nationality, whether they act directly or through an intermediary, unless they fought in the French or allied forces during the wars of 1914 and 1939 or have children with French nationality.

The preceding paragraph shall not apply to citizens of Member States of the European Community or of Member States of the European Economic Area.

#### **Article L. 145-23-1**

Upon the expiry of a three-year period, within the forms specified in



Article L. 145-9 and at least six months in advance, the lessor may take over the living accommodation rented on an ancillary basis along with the commercial premises where such living accommodation is used for residential purposes. Such a takeover may only be exercised if, after a period of six months following notice given to this effect, the accommodation is not used for residential purposes.

However, a takeover in the conditions stated in paragraph 1 may not be exercised on premises used for hotel purposes or for furnished rentals, or on premises used for hospital or teaching purposes.

Similarly, a takeover may not be exercised if the tenant provides proof that the loss of occupation of the living accommodation causes a serious difficulty to the operation of the business or if the commercial premises and the living accommodation form an indivisible whole.

In the case of partial takeover as set out in this Article, the rent of the lease shall be reduced to take account of the reduced surface area. However, this takeover may not in itself constitute a substantial change to the factors of the rental value mentioned in Article L. 145-33.

#### **Article L. 145-24**

The right to renewal shall not be binding against an owner having obtained a building permit for living accommodation on all or part of one of the plots of land referred to in 2° of Article L. 145-1.

Irrespective of the circumstances, this right of takeover may be exercised only in respect of that part of the land essential for the building. Should its effect be to cause the mandatory cessation of commercial, industrial or craft operations, the provisions of Article L. 145-18 shall apply.

#### **Article L. 145-25**

An owner or principal tenant being simultaneously the lessor of the premises and the vendor of the business operated there and having received the total price may refuse the renewal only on condition of payment of the compensation for eviction specified in Article L. 145-14, unless able to provide proof of an acknowledged serious and legitimate reason against the lessee.

#### **Article L. 145-26**

The renewal of leases concerning immovable properties owned by the State, territorial authorities and public establishments may not be refused without the owning entity being obliged to pay the compensation for eviction specified in Article L. 145-14, even if its refusal is justified in the public interest.

#### **Article L. 145-27**

Should it be proved that a lessor has exercised the rights conferred upon them by Articles L. 145-17 et seq. purely with a view to fraudulently frustrating the rights of a tenant, in particular through letting and resale transactions, irrespective of whether these transactions are of a civil or commercial nature, the tenant shall be entitled to compensation equal to the amount of the loss suffered.

#### **Article L. 145-28**

No tenant entitled to claim compensation for eviction may be forced to vacate the premises before having received such compensation. They shall be entitled to remain in the premises under the terms of the expired lease contract until payment of this compensation. However, the occupation compensation shall be determined in accordance with the provisions of sections 6 and 7, taking into consideration all the relevant factors.

By derogation from the preceding paragraph, in the single case specified in paragraph two of Article L. 145-18, the tenant shall be obliged to vacate the premises upon payment of provisional compensation determined by the Presiding Judge of the Tribunal de Grande Instance ruling in the light of an expert assessment previously ordered within the forms determined by decree of the Conseil d'Etat in application of Article L. 145-56.

#### **Article L. 145-29**

In the event of eviction, the premises must be handed back to the lessor upon the expiry of a period of three months following the payment of the compensation for eviction to the tenant themselves or notification to the tenant that the compensation has been paid to a receiver. In the absence of agreement between the parties, the receiver shall be appointed by the judgement ordering payment of the compensation or, by default, by ordinary order made on an ex parte application.

The receiver shall pay the compensation to the tenant against their sole receipt if there are no objections on the part of creditors and in exchange for the keys to the vacant premises upon proof of payment of taxes, rents and subject to tenant's repairs.

#### **Article L. 145-30**

In the event of failure to hand over the keys on the date specified and after formal notice has been served, the receiver shall withhold 1% per day of delay of the amount of the compensation and shall return this amount withheld to the lessor against their sole receipt.

Should the deadline of two weeks specified in Article L. 145-58 have ended without the lessor having exercised their right to rescind, the

compensation for eviction must be paid to the tenant or, potentially, to a receiver within a deadline of three months with effect from the date of a final notice to pay by extra-judicial means which, in order to be valid, must reproduce this paragraph.

#### *Section 5: Subleasing*

##### **Article L. 145-31**

Unless otherwise stated in the lease or with the lessor's agreement, no sub-leasing, whether total or in part, shall be allowed.

In the event of authorised sub-leasing, the owner shall be called upon to be a party to the deed.

Should the sub-leasing rent be in excess of the primary lease price, the owner shall have the option of requiring a corresponding increase in the rent for the primary lease, which increase, in the absence of agreement between the parties, shall be determined in accordance with a procedure laid down by decree of the Conseil d'Etat in application of the provisions of Article L. 145-56.

The tenant must notify the owner of their intention to sub-lease by extra-judicial means or by registered letter with recorded delivery. Within two weeks of receipt of this notice, the owner must give notice of whether they intend to be a party to the deed. Should the lessor refuse or fail to reply despite the authorisation specified in paragraph one, they shall be disregarded.

##### **Article L. 145-32**

A subtenant may request the renewal of their lease from the primary tenant to the extent of the rights held by this latter with respect to the owner. The lessor shall be called upon to be a party to the document, as specified in Article L. 145-31.

On expiration of the primary lease, the owner shall be obliged to renew only if they have explicitly or tacitly authorised or agreed to the sub-leasing and if, in the event of partial sub-leasing, the premises comprising the object of the primary lease do not form an indivisible whole materially or in the joint intention of the parties.

#### *Section 6: Rent*

##### **Article L. 145-33**

The amount of the rent payable under the renewed or revised leases corresponds to their rental value.

Failing agreement thereon, this value shall be determined on the basis of:  
1° The features of the premises concerned;

- 2° The use of the premises;
- 3° The respective obligations of the parties;
- 4° Local market factors;
- 5° The prices commonly applied in the vicinity.

A decree of the Conseil d'Etat shall determine the relative weightings of these elements.

#### **Article L. 145-34**

Barring any substantial change in the factors indicated in 1° to 4° of Article L. 145-33, the rate of change applied to the rent payable upon entry into force of the renewed lease, if the term thereof does not exceed nine years, cannot exceed the variation in the quarterly national Construction Cost Index or, where applicable, the quarterly index of commercial rents or the quarterly index of rents for tertiary activities specified in paragraphs 1 and 2 of Article L. 112-2 of the Monetary and Financial Code, published by the National Institute for Statistics and Economic Studies since the date on which the initial rent for the expired lease was determined. Failing any contractual clause specifying the reference quarter for this index, the variation in the quarterly national construction cost index calculated over the nine-year period preceding the most recently published index, or, where applicable, the quarterly index of commercial rents or the quarterly index of rents for tertiary activities shall be used.

If renewal takes place subsequent to the date initially stipulated for expiry of the lease, the variation shall be calculated on the basis of the most recently published index for a term equal to the time elapsed between the initial date of the lease and the date of its effective renewal.

The provisions of the above paragraph do not apply when, through the effects of tacit extension, the term of the lease exceeds twelve years.

#### **Article L. 145-35**

Disputes arising from the application of Article L. 145-34 shall be submitted to a departmental mediation committee comprising an equal number of lessors and tenants and of persons meeting professional requirements. The committee shall endeavour to reconcile the parties and give an opinion.

Should the matter be referred to a court in parallel with the competent committee by one or other of the parties, it may not rule until the committee has given its opinion.

The committee shall be disseized if it fails to give an opinion within a deadline of three months.

The composition of the committee, the method of appointment of its members and its operating rules shall be determined by decree.

#### **Article L. 145-36**

The factors to be used in determining the prices of leases of land, premises built with a view to single occupation and premises exclusively for office use shall be laid down by decree of the Conseil d'Etat.

By way of exception to Articles L. 145-33 et seq. of this Code, the price of the lease for premises built or converted for use as a cinema theatre as defined in Article L. 212-2 of the Cinema and Moving Image Code shall be determined solely in accordance with usual practice in this sector.

#### **Article L. 145-37**

The rents for leases of immovable properties and premises regulated by the provisions of this Chapter, whether renewed or not, may be revised at the request of one or other of the parties, subject to the reservations specified in Articles L. 145-38 and L. 145-39 and under the conditions laid down by decree of the Conseil d'Etat.

#### **Article L. 145-38**

Application for a review cannot be made until at least three years have elapsed since the date on which the lessee entered into possession or since the commencement of the renewed lease.

Further applications may be made every three years with effect from the date on which the new amount becomes applicable.

Notwithstanding the provisions of Article L. 145-33, and failing production of proof of a material change in the local market factors which has of itself given rise to a variation of more than 10% in the rental value, the rent increase or decrease following a triennial review shall not exceed the variation in the quarterly Construction Cost Index or, where applicable, the quarterly index of commercial rents or the quarterly index of rents for tertiary activities specified in paragraphs 1 and 2 of Article L. 112-2 of the Monetary and Financial Code since the previous amicable or judicial determination of the rent.

Under no circumstances shall any investment made by the lessee or any capital gains or losses resulting from its management during the term of the lease be taken into account for calculation of the rental value.

#### **Article L. 145-39**

Furthermore and by derogation from Article L. 145-38, should the lease include an escalator clause, a revision may be requested whenever the rent calculated in accordance with this clause is increased or reduced by more than one quarter in comparison with the price previously determined contractually or by court order.

#### **Article L. 145-40**

Rents paid in advance, in whatever form and even as a guarantee, shall bear interest for the account of the tenant at the rate charged by the Banque de France for advances against securities, for amounts in excess of that corresponding to the price of the rent for more than two terms.

#### *Section 7: Termination*

#### **Article L. 145-41**

Any clause inserted in a lease providing for termination by operation of law shall not take effect until after final notice to pay has not been complied with after one month. In order to be valid, the final notice to pay must state this deadline.

A court to which an application is made within the forms and conditions specified in articles 1244-1 to 1244-3 of the civil code may, by granting deadlines, suspend the execution and the effects of termination clauses if the termination is not determined or pronounced by a court order having acquired the status of judgement *res judicata*. The termination clause shall not take effect if the tenant discharges themselves in accordance with the conditions determined by the court.

#### **Article L. 145-42**

Termination clauses by operation of law for cessation of activity shall cease to take effect during the time necessary for the execution of conversions carried out in application of the provisions of section 8.

This period may not exceed six months from the date of agreement on non-specialisation or the court order authorising it.

#### **Article L. 145-43**

Traders and persons registered in the trades register who are tenants of the premises in which their business is located, who are allowed to follow a conversion training course or a promotional training course within the meaning of Article L. 900-2 (3° and 5°) of the Labour Code, the minimum duration of which is fixed by order and the maximum duration of which may not exceed one year unless it involves a promotional training course authorised under Article L. 961-3 of this Code shall be exempted from the obligation to operate during the term of their training course.

#### **Article L. 145-44**

Should the trader or craftsperson, on conclusion of one of the training courses specified in Article L. 145-43, vacate the premises of which they

are the tenant to convert their activity by transferring it into other premises or to take up paid employment, the lease shall be cancelled by operation of law and without compensation on expiration of a deadline of three months with effect from the date that this is notified to the lessor.

#### **Article L. 145-45**

Reorganisation and judicial liquidation shall not cause the termination by operation of law of the lease on immovable properties used for the debtor's industry, trade or craft, including premises annexed to these properties and used as their living accommodation or that of their family. Any stipulation to the contrary shall be deemed unwritten.

#### **Article L. 145-46**

If the lessor is simultaneously the owner of the leased real property and of the business operated therein and if the lease relates to both simultaneously, the lessor must pay the tenant, on their departure, compensation corresponding to the profit that they may draw from the asset appreciation contributed either to the business or to the rental value of the real property by material improvements carried out by the tenant with the owner's explicit agreement.

### *Section 8: On non-specialisation*

#### **Article L. 145-47**

A tenant may add related and/or complementary activities to the activity specified in the lease.

To this end, they must notify the owner of their intention by extra-judicial means, stating the activities they envisage exercising. This formality shall be deemed to be equivalent to formal notice to the owner to give notice, within a deadline of two months on pain of forfeiture, of whether they dispute the related and/or complementary nature of these activities. In the event of objection, the Tribunal de Grande Instance to which the matter is referred by the first to act shall rule in accordance in particular with the evolution of commercial practice.

At the time of the first three-year revision following the notification referred to in the preceding paragraph, by derogation from the provisions of Article L. 145-38, additional commercial activities may be taken into account in determining the rent if these have, in themselves, caused a change in the rental value of the rented premises.

#### **Article L. 145-48**

A tenant may, at their request, be authorised to exercise in the rented premises one or more different activities from those specified in the lease,

taking into account the economic climate and the necessities of rational organisation of distribution when these activities are compatible with the intended purpose, characteristics and location of the real property or group of properties.

However, the principal tenant of premises included in a whole constituting a commercial unit defined by a building programme may not exercise this option during a period of nine years with effect from the date on which they took possession.

#### **Article L. 145-49**

In order to be valid, the request made to the lessor must include a statement of the activities whose exercise is envisaged. It shall be constituted by extra-judicial means and notice shall be given in the same form to secured creditors of the business. Secured creditors may request that the change of activity should be subject to conditions of a nature that safeguards their interests.

Within one month of this request, the lessor must give notice, in the same form, to those of their tenants with respect to which they may be obliged not to let with a view to the exercise of similar activities to those referred to in the request. On pain of debarment, these must give notice of their attitude within one month of this notification.

Where the lessor has not notified their refusal, acceptance or the conditions to which their agreement is subject within three months of the request, they shall be deemed to have acquiesced to the request. This acquiescence shall not constitute an obstacle to the exercise of the rights specified in Article L. 145-50.

#### **Article L. 145-50**

A change of activity may evidence the payment by the tenant of compensation equal to the amount of the loss that the lessor shall be able to prove.

In exchange for the benefit procured, at the time of the conversion this latter may also request the amendment of the price of the lease without the provisions of Articles L. 145-37 to L. 145-39 being applicable.

The rights of secured creditors shall be exercised on the converted business in accordance with their previous ranking.

#### **Article L. 145-51**

If a tenant who has applied to exercise their rights to retirement or who has been granted the benefit of an invalidity pension allowed by the invalidity/life insurance scheme for the craft, industrial or commercial professions has given notice to their landlord and to secured creditors of the business of their intention to assign their lease, stating the nature of the



activities the exercise of which is envisaged and the proposed price, the lessor shall have a preferential right of repurchase within a deadline of two months subject to the terms and conditions stated in the notification. Should the lessor fail to exercise this right, their agreement shall be deemed to have been obtained if they have not referred the matter to the Tribunal de Grande Instance within this same deadline of two months.

The nature of the activities whose exercise is envisaged must be compatible with the intended purpose, characteristics and location of the real property.

The provisions of this article shall apply to the sole member of a single member limited liability company or a manager who has been a majority shareholder of a limited liability company for at least two years where the company is the leaseholder.

#### **Article L. 145-52**

The Tribunal de Grande Instance may authorise the total or partial conversion despite the refusal of the lessor if this refusal is not justified by a serious and legitimate reason.

Should the parties disagree only in respect of the price of the new lease, this shall be determined in accordance with the procedure specified for determining the prices of revised leases. In other cases, the matter shall be referred to the court.

#### **Article L. 145-53**

Refusal to convert shall be sufficiently justified if the lessor proves that they intend to reoccupy the premises on expiration of the current three-year term, either in application of Articles L. 145-18 to L. 145-24, or with a view to carrying out works prescribed or authorised within the framework of an urban renovation or real property restoration transaction.

A lessor who has fraudulently invoked one of the reasons specified in the preceding paragraph or who has not satisfied the conditions given to justify the refusal of a tenant's request may not object to a new request for a conversion of activity other than for serious and legitimate reasons unless they can be held responsible for failure of execution. They may also be ordered by a court to pay the tenant compensation equal to the loss suffered by this latter.

#### **Article L. 145-54**

The asset appreciation conferred upon the business by the conversion specified in Article L. 145-48 shall not be taken into account if the real property in which the business is operated must be demolished or restored, or if the business must be expropriated as part of a property renovation or restoration transaction decided upon less than three years after the request

specified in paragraph 1 of that Article.

#### **Article L. 145-55**

A tenant who has made a request in accordance with Articles L. 145-47, L. 145-48 or L. 145-49 may withdraw it at any time up to the expiration of a deadline of two weeks with effect from the date on which the decision has become a judgement *res judicata* by notifying the lessor by extra-judicial means and, in this event, shall bear all the expenses of the proceedings.

#### *Section 9: Procedure*

#### **Article L. 145-56**

The rules of competence and procedure for disputes relating to a lease shall be laid down by decree of the Conseil d'Etat.

#### **Article L. 145-57**

The tenant shall be obliged to continue paying the rents due at the previous price or, if applicable, at the price which may in all events be determined provisionally by the court to which the matter has been referred during the term of the proceedings relating to determination of the price of the revised or renewed lease, unless there is to be a reckoning between the lessor and the lessee after definitive determination of the price of the rent.

The parties shall draw up a new lease on the terms and conditions laid down by the court within one month following service of notice of the definitive decision unless the tenant declines the renewal or the lessor refuses this, subject to the party expressing their disagreement being liable to bear all the expenses. Should the lessor fail to have sent the draft lease drawn up in accordance with the aforementioned decision to the lessee for signature within this deadline or, in the absence of agreement within one month of the draft lease being sent, the order or judgement setting the price or the terms and conditions of the new lease shall be deemed to constitute the lease.

#### **Article L. 145-58**

Until the expiration of a deadline of two weeks with effect from the date on which the decision has become a judgement *res judicata*, the owner may decline to pay the compensation subject to being liable to bear the expenses of the proceedings and to agreeing to the renewal of the lease, the terms and conditions of which shall be determined, in the event of disagreement, in accordance with the regulatory provisions laid down to this effect. This right may be exercised only if the tenant is still occupying the premises and has not already rented or purchased another real

property intended for their reinstallation.

#### **Article L. 145-59**

The owner's decision to refuse renewal of the lease in application of the last paragraph of Article L. 145-57 or to decline to pay the compensation in accordance with the conditions specified in the last paragraph of Article L. 145-58 shall be irrevocable.

#### **Article L. 145-60**

All proceedings exercised by virtue of this chapter shall be time-barred after two years have elapsed.

### **LEGISLATIVE PART**

#### ***BOOK I: COMMERCE IN GENERAL***

#### **TITLE IV: THE BUSINESS**

##### **CHAPTER VI: NOMINEE MANAGERS**

#### **Article L. 146-1**

Natural persons or legal entities that manage a business in return for payment of a commission proportionate to the turnover are known as "nominee managers" when the contract entered into with the principal on behalf of whom they manage that business, sometimes within the framework of a network, who remains the owner thereof and bears the risks associated with its operation, confers a mission on them which gives them a free hand within the framework thus established to determine their working conditions, to take on staff and to arrange substitutes for themselves within the business at their own expense and under their own responsibility.

The mission shall stipulate, where applicable, the management and operating standards of the business that must be upheld and the oversight arrangements likely to be carried out by the principal. These commercial clauses shall not be of a nature to change the nature of the contract.

The nominee manager shall be registered in the commercial and companies register and, if applicable, the trades register. The contract is referred to in these registers and details thereof are published in a newspaper authorised to publish legal notices.

The provisions of the present chapter do not apply to professions governed by Chapter II of Title VIII of Book VII of the Labour Code.

#### **Article L. 146-2**

The principal shall provide the nominee manager with all the information he needs for his work, as specified by decree, before the contract is signed, to enable him to commit himself in full knowledge of the facts.

#### **Article L. 146-3**

A framework agreement entered into by the principal and the nominee managers to whom he is contractually bound, or their representatives, shall determine, inter alia, the amount of the guaranteed minimum commission payable under all nominee-management contracts entered into by the principal. This minimum commission shall take account of the size of the establishment and its operational facilities.

Failing agreement thereon, the minister responsible for small and medium-sized businesses shall determine the amount of the minimum commission.

#### **Article L. 146-4**

The contract binding the principal and the nominee manager may be terminated at any time under terms determined by the parties. If the contract is terminated by the principal, however, with no serious fault being attributable to the nominee manager, the principal shall, unless the parties have agreed more favourable terms, pay him compensation equal to the amount of the commissions earned, or the guaranteed minimum commission referred to in Article L. 146-3, earned during the six months preceding termination of the contract, or during the term of the contract if it is shorter than six months.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS<sup>1</sup> AND ECONOMIC INTEREST GROUPINGS***

##### **TITLE 1: PRELIMINARY PROVISIONS**

#### **Article L. 210-1**

The commercial nature of a company shall be determined by its form or by its objects.

Sociétés en nom collectif<sup>2</sup>, sociétés en commandite<sup>3</sup>, sociétés à

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<sup>1</sup> The French term "société" includes the equivalent of partnerships for which there is no separate legal term.

<sup>2</sup> Commercial partnerships with partial legal personality. See from Article L221-1 of this Code.

responsabilité limitée<sup>4</sup> and joint-stock companies are trading companies by virtue of their form, irrespective of their objects.

#### **Article L. 210-2**

The form, the duration of the company - which may not exceed ninety-nine years - the business name, the registered office, the purpose of the company and the amount of the registered capital shall be determined by the company's constitution or partnership deed.

#### **Article L. 210-3**

Companies whose registered office is located in France shall be subject to French law.

Third parties may rely for legal purposes on the registered office mentioned in the constitution or partnership deed. However, the company shall not be entitled to raise this against them if its actual office is located elsewhere.

#### **Article L. 210-4**

The mandatory publication formalities at the time of formation of the company or subsequently in the case of acts and deliberations shall be laid down by Conseil d'Etat decree.

#### **Article L. 210-5**

The transactions of a société à responsabilité limitée and joint-stock companies occurring prior to the sixteenth day from publication in the Bulletin Officiel des Annonces Civiles et Commerciales of acts and other notifications, publications of which is obligatory, shall not be effective against third parties who can prove that it had been impossible for them to have become acquainted therewith.

The deadline specified in the first paragraph shall run from the date of registration of acts and other notifications in the commercial and companies register for sociétés à responsabilité limitée and sociétés par actions simplifiées (simplified joint-stock companies) the single member of which, if they are a natural person, personally assumes the management or chairmanship of the company. (1)

Should there be any discrepancy in the publication of acts and notifications relating to sociétés à responsabilité limitée and joint-stock companies between the text filed with the commercial and companies register and the text published in the Bulletin Officiel des Annonces Civiles

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<sup>3</sup> Similar to English limited partnerships. See from Article L222-1 of this Code.

<sup>4</sup> A hybrid limited company with partnership-type shares ("parts"). See from article L223-1 of this Code.

et Commerciales, the version in the said Bulletin shall not be effective against third parties, who may, however, rely on it for legal purposes unless the company is able to prove that they have been acquainted with the text filed with the commercial and companies register.

#### **Article L. 210-6**

Trading companies shall have legal personality with effect from their registration in the commercial and companies register. The conversion in due form of a company shall not give rise to the creation of a new legal person. The same shall apply with respect to extension of the duration of a company.

Persons who have acted in the name of a company in formation before it has acquired legal personality shall be held to have solidary<sup>5</sup> responsibility for the acts thus accomplished unless the company, after having been formed and registered in due form, adopts the commitments thus entered into. These commitments shall then be deemed to have been entered into from the start by the company.

#### **Article L. 210-7**

A company shall be registered after the clerk of the competent register office of the court has verified the due form of its formation in accordance with the conditions laid down by the law and regulations relating to the commercial and companies register.

If the constitution does not contain all the statements required by law and the regulations or if a formality laid down by the said constitution for the formation of the company has been omitted or not accomplished in due form, any interested party shall be entitled to apply to a court to order that the formation be rectified, subject to a progressive fine. The Public Prosecutor's Office<sup>6</sup> is competent to act for the same purposes.

The provisions of the preceding paragraphs shall apply in the event of amendment of the constitution.

The proceedings specified in paragraph two shall be time-barred after three years have elapsed with effect from either registration of the company in the commercial and companies register or the amending entry in the said register and the filing in the annex of the said register of the documents amending the constitution.

#### **Article L. 210-8**

The founders of the company and the initial members of its management,

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<sup>5</sup> See the Civil Code, from Article 1197.

<sup>6</sup> Approximately translates the "ministère public", a collective body of investigating judges not solely concerned with prosecution.

administration, executive and monitoring bodies shall have solidary responsibility for any prejudice caused by an error in any obligatory statement in the constitution as well as by any omission or failure to accomplish in due form any formality specified by law and the regulations for the formation of the company.

The provisions of the preceding paragraph shall apply in the event of amendment of the constitution, to the members of management, administration, executive, monitoring and audit bodies holding office at the time of the said amendment.

Proceedings shall be time-barred after ten years have elapsed with effect from the accomplishment of one or the other of the formalities referred to in paragraph four of Article L. 210-7, as the case may be.

#### **Article L. 210-9**

Neither the company nor third parties, in order to avoid their obligations, may avail themselves of an irregularity in the appointment of persons charged with managing, administrating or directing the company if this appointment has been published in due form.

The company may not avail itself, with respect to third parties, of appointments and removals from office of the persons referred to above while these have not been published in due form.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER I: SOCIETES EN NOM COLLECTIF<sup>7</sup>**

#### **Article L. 221-1**

The partners in a société en nom collectif<sup>8</sup> shall all be deemed to be businessmen and shall have solidary liability for the debts of the partnership.

A partnership's creditors may not pursue payment of the debts of the partnership against a partner until after having fruitlessly given the partnership formal extra-judicial notice to pay.

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<sup>7</sup> Commercial partnerships with legal personality not fully detached from their members, often referred to as companies in other chapters and titles.

<sup>8</sup> Who are referred to as members where a generic term with companies is needed.

#### **Article L. 221-2**

A société en nom collectif shall be designated by its business name, in which may be incorporated the names of one or more partners and which must be immediately preceded or followed by the words "société en nom collectif".

#### **Article L. 221-3**

All the partners shall be managers unless otherwise specified in the partnership deed<sup>9</sup>, which may appoint one or more managers, who may or may not be partners, or provide for such appointment by means of a subsequent deed.

Should a legal entity be a manager, its executives shall be subject to the same conditions and obligations and incur the same civil and penal liabilities as though they were managers in their own right, without prejudice to the solidary liability of the legal entity which they manage.

#### **Article L. 221-4**

In dealings between partners and in the absence of limitation of their powers by the partnership deed, the manager may perform all acts of management in the interest of the partnership.

In the event of there being more than one manager, each shall hold separately the powers specified in the preceding paragraph, except that each shall have the right to object to any transaction prior to its conclusion.

#### **Article L. 221-5**

In dealings with third parties, the manager shall bind the partnership by acts within the purpose of the company.

In the event of there being more than one manager, each shall hold separately the powers specified in the preceding paragraph. An objection to the acts of one manager formulated by another manager shall have no effect against third parties unless it is proven that they had knowledge thereof.

Clauses of the constitution limiting the powers of the managers resulting from this article shall be ineffective against third parties.

#### **Article L. 221-6**

Decisions that exceed the powers accorded to the managers shall be taken by unanimous agreement of the partners. However, the partnership deed may specify that certain decisions shall be taken by a specified majority.

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<sup>9</sup> In other chapters referred to as a constitution where a generic term is needed.



The partnership deed may also specify that decisions shall be taken by means of consultation through exchange of letters if a general meeting is not requested by one of the partners.

#### **Article L. 221-7**

The management report, inventory and annual accounts drawn up by the managers shall be subject to approval by the meeting of members within six months of the close of the said financial year.

To that end, the documents referred to in the previous paragraph, the draft resolutions and, where applicable, the auditor's report, the consolidated accounts and the group's management report, shall be sent to the members in the manner and within the time limits determined in a Conseil d'Etat decree.

Any deliberation that violates the provisions of this paragraph and its implementing decree may be declared void.

Any clause contrary to the provisions of this article and its implementing decree shall be deemed unwritten.

The third to sixth paragraphs of Article L. 225-100 and Article L. 225-100-1 shall apply to the management report when all the shares are held by persons having one of the following forms: société anonyme<sup>10</sup>, société en commandite par actions<sup>11</sup> or société à responsabilité limitée.

#### **Article L. 221-8**

Partners who are not managers shall have the right to obtain, twice per year, disclosure of the state of the partnership's books and documents and to ask written questions on the company's management, to which written replies must be given.

#### **Article L. 221-9**

The partners may appoint one or more auditors in the forms specified in Article L. 221-6.

Those partnerships which exceed, at the end of the financial year, the figures laid down by Conseil d'Etat decree for two of the following criteria shall be obliged to designate at least one auditor: their balance sheet total, the amount of their turnover excluding VAT or the average number of employees during the financial year.

Even if these thresholds are not reached, one partner may apply to the court for an auditor to be appointed.

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<sup>10</sup> The French form for the largest companies. See from Article L225-1 of this Code.

<sup>11</sup> A limited partnership where limited partners have company-type shares ("actions"), regulated by a mix of partnership law (for active partners) and company law (for limited partners).

#### **Article L. 221-11**

The documents referred to in paragraph one of Article L. 221-7 shall be made available to the auditor subject to the conditions and deadlines laid down by Conseil d'Etat decree.

#### **Article L. 221-12**

If all the partners are managers or if one or more managers chosen from among the partners are designated in the partnership deed, the removal from office of one of them may be decided only by unanimous agreement of the other partners. This shall cause the dissolution of the partnership unless its continuation is specified in the partnership deed or if the other partners unanimously agree to this. The dismissed manager may then decide to withdraw from the partnership and demand the repayment of his shares, the value of which shall be determined in accordance with Article 1843-4 of the Civil Code.

Any clause contrary to Article 1843-4 of the said code shall be deemed unwritten.

If one or more of the partners are managers and are not designated in the partnership deed, each of them may be dismissed from their office subject to the conditions specified in the partnership deed or, in the absence thereof, by unanimous decision taken by the other partners, whether or not they are managers.

A manager who is not a partner may be dismissed subject to the conditions specified in the partnership deed or, in the absence thereof, by a unanimous decision by the partners.

Should the dismissal be decided without due cause, it may give rise to damages.

#### **Article L. 221-13**

Partnership shares may not be represented by negotiable securities. They may be sold only with the consent of all the partners.

Any clause to the contrary shall be deemed unwritten.

#### **Article L. 221-14**

The assignment of partnership shares must be determined in writing. The assignment shall be rendered effective against the partnership under the terms specified in Article 1690 of the Civil Code.

However, service of notice may be replaced by the deposit of an original of the deed of assignment at the registered office in exchange for a certificate of this deposit issued by the manager.

It shall not be raised against third parties until after these formalities have been accomplished and, moreover, after publication in the commercial and companies register.

#### **Article L. 221-15**

The partnership shall terminate on the death of one of the partners, subject to the provisions of this article.

Should it have been specified that, in the event of the death of one of the partners, the partnership should continue with their heir or only with the surviving partners, these provisions shall be followed except that it should be specified that the heir must be approved by the partnership in order to become a partner.

The same shall apply if it has been specified that the partnership should continue with the surviving spouse, or with one or more of the heirs, or with any other person designated by the partnership deed, if these so authorise, by the provisions of a will.

If the partnership continues with the surviving partners, the heir shall be simply a creditor of the partnership and shall be entitled only to the value of the deceased partner's shares. The heir shall similarly be entitled to this value if it has been specified that they must be approved by the partnership in order to become a partner and if this approval has been refused.

If the partnership continues subject to the conditions specified in paragraph three above, the beneficiaries of the specification shall owe the estate the value of the shares allocated to them.

In all the situations specified in this article, the value of the shares shall be determined as of the date of death in accordance with Article 1843-4 of the Civil Code.

In the event of continuation and if one or more of the partner's heirs are minors who have not attained their majority, they shall be liable for the debts of the partnership only to the extent of the share of the debts due from the estate of the deceased partner. Moreover, the partnership must be converted, within a deadline of one year from the death, into a limited partnership in which the minor becomes a limited partner. In the absence thereof, it shall be dissolved.

#### **Article L. 221-16**

When a winding-up order is made or a total assignment plan is imposed, or when a prohibition on involvement in a commercial business or an incapacity order becomes final in regard to a partner, the company is dissolved unless its continuation is stipulated in the partnership deed or unless the other partners unanimously so decide.

If the company continues, the value of the shares and voting rights to be repaid to the departing partner is determined pursuant to Article 1843-4 of the Civil Code.

Any clause contrary to Article 1843-4 of the said code shall be deemed unwritten.

#### **Article L. 221-17**

Notwithstanding the provisions of Articles L. 221-2 and L. 222-3, sociétés en nom collectif which were using the name of one or more deceased founding partners in their business name on 1 April 1967, may be authorised to retain this name in their business name.

A Conseil d'Etat decree shall determine the conditions to which this authorisation shall be subject.

This decree shall also define the conditions under which an objection may be referred by third parties to private law courts.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER II: SOCIETES EN COMMANDITE SIMPLE<sup>12</sup>**

#### **Article L. 222-1**

Limited partners shall have the status of active partners.

Limited partners shall be liable for the debts of the partnership only up to the extent of their contribution. This may not be a contribution in the form of services.

#### **Article L. 222-2**

The provisions relating to sociétés en nom collectif shall apply to sociétés en commandite, subject to the rules specified in this chapter.

#### **Article L. 222-3**

A société en commandite simple<sup>13</sup> shall be designated by its business name, in which may be incorporated the names of one or more partners<sup>14</sup> and which must be immediately preceded or followed by the words "société en commandite simple".

#### **Article L. 222-4**

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<sup>12</sup> Limited partnerships, in other chapters and titles often referred to as a company.

<sup>13</sup> As compared to the société en commandite par actions below, where limited partners have company-type shares ("actions").

<sup>14</sup> Elsewhere referred to as members where a generic term is needed.

The partnership deed<sup>15</sup> of the partnership must contain the following information:

1. The amount or the value of the contributions of all the partners;
2. The share in this amount or this value of each active partner and limited partner;
3. The total share of the active partners and the share of each limited partner in the distributed profits and in the surplus.

#### **Article L. 222-5**

Decisions shall be taken in accordance with the conditions specified in the partnership deed. However, a general meeting of all the partners shall be legally convened if requested by either one active partner or one quarter by number and by capital of the limited partners.

#### **Article L. 222-6**

A limited partner may not carry out any external act of management, even by virtue of a power of attorney.

In the event of infringement of the prohibition specified in the preceding paragraph, the limited partner shall be held to have solidary liability with the active partners for any debts and obligations of the partnership which may result from the prohibited acts. According to the number and size of these, they may be declared to have solidary responsibility for all or only part of the obligations of the partnership.

#### **Article L. 222-7**

Limited partners shall have the right to obtain, twice per year, communication of the state of the partnership's books and documents and to ask written questions on the company's management, to which written replies must be given.

#### **Article L. 222-8**

I. - Shares in a société en nom collectif may be assigned only with the consent of all the partners.

II. - However, the partnership deed may specify:

1. That the shares of limited partners may be freely assigned between partners;
2. That the shares of limited partners may be freely assigned to third parties outside the partnership with the consent of all the active partners and the majority by number and by capital of the limited partners;
3. That an active partner may assign some of its shares to a limited partner or to a third party outside the partnership subject to the conditions

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<sup>15</sup> In other chapters and titles referred to as a constitution where a generic term is needed.

specified in 2 above.

#### **Article L. 222-9**

The partners may not change the nationality of the company other than by unanimous agreement.

All other amendments of the partnership deed may be decided upon with the consent of all the active partners and the majority by number and by capital of the limited partners.

Clauses imposing more onerous majority conditions shall be deemed unwritten.

#### **Article L. 222-10**

The partnership shall continue despite the death of a limited partner.

Should it be specified that, despite the death of an active partner, the partnership shall continue with their heirs, these shall become limited partners if they are minors who have not attained their majority. Should the deceased partner have been the sole active partner and if their heirs are all minors who have not attained their majority, the deceased partner must be replaced by a new active partner or the partnership must be converted within a deadline of one year with effect from the death. Failing which, the partnership shall be dissolved ipso jure on expiration of this deadline.

#### **Article L. 222-11**

In the event of an order for bankruptcy, liquidation or judicial restructuring of the business of one of the active partners, a disqualification from the practice of a commercial profession or the incapacity of one of the active partners, the partnership shall be dissolved unless its continuation is specified in its partnership deed or if the partners unanimously agree on the continuation, or there are one or more other active partners,. In this event, the provisions of paragraph two of Article L. 221-16 shall apply.

#### **Article L. 222-12**

The provisions of Article L. 221-17 shall apply to sociétés en commandite simple.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER III: SOCIETES A RESPONSABILITE LIMITEE<sup>16</sup>**

###### **Article L. 223-1**

A société à responsabilité limitée may be established by one or more persons who shall bear its losses only up to the amount of their contributions.

When the company consists of one person only, this person shall be referred to as the "single member". The single member shall exercise the powers conferred on the general meeting by the provisions of this chapter. A decree shall determine the standard form of constitution for sociétés à responsabilité limitée, where the single member, who is a natural person, personally takes responsibility for the management and the conditions under which the interested party is informed of the constitution. These standard forms of constitution shall apply unless the interested party produces a different constitution during the application to register the company.

The société à responsabilité limitée, the single member of which, if they are a natural person and personally assume the management, is subject to simplified publication formalities determined by Conseil d'Etat decree. This decree provides the conditions for exemption from the obligation to publish in the Bulletin Officiel des Annonces Civiles et Commerciales. (1)

The company is designated by a registered company name, to which may be added the name of one or more partners, and which must be immediately preceded or followed by the words "société à responsabilité limitée" or the initials "SARL" and the amount of its registered capital.

Insurance, investment and savings companies cannot adopt the legal form of a société à responsabilité limitée.

###### **Article L. 223-2**

The amount of the company's capital is determined by the constitution. It is divided into equal shares.

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<sup>16</sup> A hybrid limited company with partnership-type shares.

#### **Article L. 223-3**

A société à responsabilité limitée cannot have more than one hundred members. If such a company comes to have more than one hundred members, it shall be dissolved at the end of a one-year period unless the number of members has become equal to or lower than one hundred, or the company has been converted, during that period.

#### **Article L. 223-4**

Should all the shares in a société à responsabilité limitée belong to a single member, the provisions of Article 1844-5 of the Civil Code relating to court-ordered dissolution shall not apply.

#### **Article L. 223-5**

A société à responsabilité limitée may not have another single-member société à responsabilité limitée as its single member.

In the event of infringement of the provisions of the preceding paragraph, any interested party may apply for the dissolution of irregularly constituted companies. If the irregularity results from the ownership of all the company's shares by one member where this is a company with more than one member, the application for dissolution may not be made less than one year after the gathering together of the shares. At any event, a court may give the company six months to rectify the situation and may not order the dissolution if compliance has taken place on the date on which the court gives judgement on the merits of the case.

#### **Article L. 223-6**

All the members must be parties to the deed of formation of the company, either in person or via an attorney on production of a special authorisation.

#### **Article L. 223-7**

All shares must be subscribed to by the members. They must be fully paid if they represent contributions in kind. At least one-fifth of the face value of shares representing contributions in money must be paid up. The balance may be paid in one or more payments at the managing member's discretion, within a time limit that must not exceed five years with effect from registration of the company in the commercial and companies register. Nevertheless, in order for a new issue of shares to be subscribed to in money to be valid, the existing registered capital must be fully paid up.

If applicable, the constitution shall specify the terms and conditions under which shares may be subscribed in the form of services.

The ownership of the shares shall be stated in the constitution.

Funds arising from the payment for shares must be deposited within the



conditions and deadlines specified by Conseil d'Etat decree.

#### **Article L. 223-8**

The company's authorised representative shall not withdraw the funds resulting from the paying-up of the shares until the company is entered in the commercial and companies register.

If the company has not been formed within six months of the first deposit of funds, or if it is not entered in the commercial and companies register within that same period, the contributors may individually apply to the courts for permission to withdraw the amount of their contributions. In the same circumstances, a representative of all the contributors may directly request withdrawal of the funds from the custodian.

If the contributors subsequently decide to form the company, they must deposit the funds once again.

#### **Article L. 223-9**

The constitution must contain a valuation of each contribution in kind. This shall be made in the light of a report appended to the constitution and drawn up by and as the personal responsibility of a valuation expert appointed by unanimous decision of the future members or, in the absence thereof, by a court order applied for by the first future partner to do so.

However, the future members may unanimously decide that the use of a valuation expert shall not be required if no contribution in kind exceeds an amount set by decree and if the total value of all the contributions in kind not subject to valuation by an expert does not exceed half the capital.

If the company is formed by only one person, the valuation expert shall be appointed by the single member.

However, the use of a valuation expert shall not be mandatory if the conditions specified in the preceding paragraph are complied with.

Where there is no valuation expert or if the stated value is different from that suggested by the valuation expert, the members shall have solidary responsibility for five years to third parties for the value attributed to contributions in kind at the time of formation of the company.

#### **Article L. 223-10**

The first managers and members to whom invalidity of the company is attributable shall have solidary responsibility with the other members and third parties for the prejudice resulting from cancellation. Proceedings shall be time-barred by the deadline specified in paragraph one of Article L. 235-13.

#### **Article L. 223-11**

A société à responsabilité limitée that is required, by virtue of Article L.

223-35, to appoint an auditor and whose accounts for the last three twelve-month accounting periods have been duly approved by its members, may issue registered bonds on condition that it does not make a public offering of these bonds.

The bond issue is decided by the meeting of the members pursuant to the provisions applicable to general meetings of shareholders. Such securities are subject to the provisions applicable to bonds issued by joint-stock companies, with the exception of those set out in Articles L. 228-39 to L. 228-43 and L. 228-51.

Upon each issue of bonds by a company which fulfils the conditions of the first paragraph, the company shall make a notice available to the subscribers concerning the conditions of issue and an information document as determined in a Conseil d'Etat decree.

For the guarantee to be valid, a société à responsabilité limitée is prohibited from guaranteeing an issue of transferable securities unless the issue is made by a regional development company or is a bond issue which benefits from a subsidiary guarantee from the State.

#### **Article L. 223-12**

Partnership shares may not be represented by negotiable securities.

#### **Article L. 223-13**

The shares are freely transferable through succession or in the event of liquidation of the community of property between spouses and are freely assignable between spouses and between ascendants and descendants.

The constitution may nevertheless stipulate that the spouse, an heir, an ascendant or a descendant may only become a member after having been approved as provided for in Article L. 223-14.

The time limit set for the company to decide on an application for approval shall not exceed that determined in Article L. 223-14, and the majority required shall not be greater than that determined in the said article, failing which the stipulation shall be null and void. If approval is refused, the provisions of the third and fourth paragraphs of Article L. 223-14 shall apply.

If none of the solutions specified in those paragraphs is arrived at within the time allowed, approval is deemed to have been granted.

The constitution may stipulate that in the event of the death of a member, the company shall continue with his heir or with the surviving members only. If the company continues with the surviving members only, or if the heir is refused approval, the latter is entitled to the value of the shares and voting rights of his predecessor in title.

It may also be stipulated that the company shall continue with the surviving spouse, with one or more of the heirs, or with any other person

designated in the constitution or, if this so authorises, by the provisions of a will.

In the cases specified in this article, the value of the shares and voting rights is determined on the day of death pursuant to Article 1843-4 of the Civil Code.

#### **Article L. 223-14**

Partnership shares may only be assigned to third parties outside the company with the consent of the majority of the members representing at least one half of the shares, unless the constitution stipulates a greater majority.

If the company has more than one member, the proposed assignment shall be notified to the company and to each of the members. If the company has not made its decision known within three months of the date of the last notification given pursuant to this paragraph, it shall be deemed to have consented to the assignment.

If the company has refused to consent to the assignment, the members shall be required, within three months of such refusal, to purchase or arrange the purchase of the shares at a fixed price as provided for in Article 1843-4 of the Civil Code, unless the assignor waives his right to assign his shares. The valuation fees are borne by the company. If the manager so requests, this time limit may be extended by a court decision, which extension shall not exceed six months.

The company may also decide, with the assigning member's consent, within the same time limit, to reduce its capital by the amount of the nominal value of that member's shares and buy up those shares at a price determined as provided for above. The company may be granted a time limit for payment of not more than two years by a court decision, if duly justified by the evidence. The sums owed shall bear interest at the legal rate applicable to commercial transactions.

If, upon expiry of the time allowed, none of the solutions specified in the third and fourth paragraphs above has been arrived at, the member may proceed with the assignment as initially planned.

With the exception of succession, liquidation of community of property between spouses, or a donation in favour of a spouse, an ascendant or a descendant, the assigning member may only avail himself of the provisions of the third and fifth paragraphs above if he has held his shares for at least two years.

Any clause contrary to the provisions of this article is deemed unwritten.

#### **Article L. 223-15**

If the company has agreed to a proposal to the taking of a pledge<sup>17</sup> against partnership shares subject to the conditions specified in paragraphs one and two of Article L. 223-14, this consent shall imply consent to the assignee in the event of the forced sale of the shares pledged in accordance with the provisions of paragraph one of Article 2078 of the Civil Code unless the company prefers to repurchase the shares after the assignment with a view to reducing its capital.

#### **Article L. 223-16**

Shares may be freely assigned between members.

Should the constitution contain a clause limiting assignability, the provisions of Article L. 223-14 shall apply. However, in this event the constitution may reduce the majority or shorten the deadline specified in the said article.

#### **Article L. 223-17**

The assignment of partnership shares shall be subject to the provisions of Article L. 221-14.

#### **Article L. 223-18**

The société à responsabilité limitée shall be managed by one or more natural persons.

The managers may be chosen from outside the members.

They are appointed by the members, in the company's constitution or by a subsequent act, under the conditions specified in Article L. 223-29.

Under the same conditions, members may decide to remove reference to the name of a manager in the company's constitution in the event of the termination of the duties of this manager for any reason whatsoever.

They shall be appointed for the duration of the company, in the absence of any provisions to the contrary in the company's constitution.

In dealings among members, the powers of managers shall be determined by the constitution or by Article L. 221-4 if the constitution does not specify these.

In dealings with third parties, the manager shall be vested with the most extensive powers to act on behalf of the company in all circumstances, subject to the powers expressly attributed to members by the law. The company shall be bound even by those acts of the manager not covered by the purpose of the company unless it is able to prove that the third party

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<sup>17</sup> "Nantissement": See the Civil Code, Article 2355, sometimes to be translated as "pledge of incorporeal moveables".

was aware that the act exceeded this purpose or that could not have known it in view of the circumstances, except that the mere publication of the constitution shall not of itself be sufficient proof thereof.

Clauses of the constitution limiting the powers of the managers resulting from this article shall be ineffective against third parties.

In the event of multiple managers, these shall separately hold the powers specified in this article. An objection to the acts of one manager formulated by another manager shall have no effect against third parties unless it is proven that they had knowledge thereof.

The manager or managers may decide to move the company's registered office within the same department or to an adjacent department, subject to the ratification of the said decision by the members under the conditions specified in the second paragraph of Article L. 223-30.

Under the same conditions, the manager may bring the constitution in line with the mandatory provisions of the law and regulations.

When the shares have been leased pursuant to Article L. 239-1, the manager may enter in the constitution the lease and name of the lessee beside the name of the member concerned, subject to the ratification of the said decision by the members under the conditions specified in Article L. 223-29.

He may, under the same conditions, remove this entry in the event that the lease is not renewed or is cancelled.

#### **Article L. 223-19**

The manager or the auditor, if one is appointed, shall submit to the general meeting or append to the documents communicated to the members in the event of a consultation by exchange of letters a report on agreements entered into directly or via intermediaries by the company and any of its managers or members. The general meeting shall decide on this report. The managers or members concerned may not participate in the vote and their shares shall not be taken into account for the calculation of the quorum and the majority.

However, should no auditor have been appointed for this, the agreements entered into by a manager who is not a member shall be subject to the prior approval of the general meeting.

Notwithstanding the provisions of paragraph one, if a company enters into an agreement with its single member, this shall simply be entered in the register of decisions.

Agreements that have not been approved shall, nevertheless, remain effective subject to the contracting manager and, if applicable, with members having individual or solidary responsibility according to the case, for any consequences of the agreement prejudicial to the company.

The provisions of this article shall extend to agreements entered into with a company of which a member with unlimited liability, manager, director,

general manager, member of the management or member of the supervisory board is simultaneously a manager or member of the société à responsabilité limitée.

#### **Article L. 223-20**

The provisions of Article L. 223-19 shall not apply to agreements relating to ordinary transactions conducted under normal conditions.

#### **Article L. 223-21**

Managers and members other than the legal entities themselves shall be prohibited from taking out loans in any form whatsoever from the company, arranging for it to grant them current account overdraft facilities or other facility, or to let the company stand surety for them or act as their guarantor for their commitments to third parties. Any such arrangement shall be null and void. This prohibition shall apply to legal agents of members that are legal entities.

The prohibition shall apply to the spouse and relatives in the ascending and descending line of the persons referred to in the preceding paragraph, as well as to any intermediary.

However, if the company operates a financial establishment, this prohibition shall not apply to current commercial transactions entered into subject to normal terms and conditions.

#### **Article L. 223-22**

Managers shall have individual or solidary responsibility, according to the circumstances, to the company or to third parties for breaches of the legislative or regulatory provisions applicable to sociétés à responsabilité limitée, for breaches of the constitution, or for their errors of management.

If more than one manager participated in the same acts, the court shall determine the share to be contributed by each of them to the compensation awarded. In addition to action for redress for the loss suffered personally, members may individually or as a group institute civil liability proceedings against the managers, in accordance with conditions laid down by Conseil d'Etat decree.

The plaintiffs shall be authorised to seek redress for the entire loss suffered by the company for which, if applicable, damages may be granted.

Any clause in the constitution having the effect of subordinating the issue of proceedings to prior notice to or authorisation of the general meeting, or which contains a waiver of the exercise of these proceedings shall be deemed unwritten.

No decision by the general meeting may have the effect of terminating proceedings against the managers for errors committed in the performance of their office.

#### **Article L. 223-23**

The court action for liability specified in Articles L. 223-19 and L. 223-22 shall be time-barred after three years with effect from the prejudicial act or, if it has been concealed, from its disclosure. However, proceedings shall be time-barred after ten years if the act is classified as an indictable offence.

#### **Article L. 223-24**

In the event of the opening of judicial restructuring<sup>18</sup> or liquidation proceedings pursuant to the provisions of Book VI, Title II, the persons referred to in these provisions may be rendered liable for the debts of the company and shall be subject to the prohibitions and forfeitures in accordance with the conditions specified by the said provisions.

#### **Article L. 223-25**

The manager may be dismissed by a decision of the members as provided for in Article L. 223-29, unless the constitution stipulates a larger majority. If dismissal is decided upon without just cause, it may give rise to damages.

The manager may also be dismissed by the courts on good grounds, at the request of any member.

Notwithstanding the first paragraph, the manager of a société à responsabilité limitée operating a press business within the meaning of Article 2 of Act No. 86-897 of 1 August 1986, which reforms the law and jurisdiction applicable to the press, may be dismissed only by a decision of the members representing at least three quarters of the share capital.

#### **Article L. 223-26**

The management report, the inventory and the annual accounts established by the managers are subject to approval by the meeting of members within six months of the close of the financial year. If the meeting of members has not met within this time limit, the Public Prosecutor's Office or any interested person may file a case with the competent presiding judge, ruling by way of summary proceedings, to order the managers, subject to a progressive coercive fine, if relevant, to convene the said meeting or appoint a representative to do so.

The documents referred to in the previous paragraph, the draft resolutions and, where applicable, the auditor's report, the consolidated accounts and the group's management report, are sent to the members in the manner and within the time limits determined in a Conseil d'Etat decree. Any deliberation that violates the provisions of this paragraph and its

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<sup>18</sup> "Redressement judiciaire", an insolvency process intended to rescue, see Book VI of this Code, from Article L. 631-1.

implementing decree may be declared void.

After receiving the documents referred to in the previous paragraph, any member is entitled to submit written questions that the manager must answer at the meeting.

As provided for in a Conseil d'Etat decree, the members may at any time obtain access to the company documents determined by the said decree pertaining to the previous three financial years.

Any clause contrary to the provisions of this article and its implementing decree shall be deemed unwritten.

The third to sixth paragraphs of Article L. 225-100 and Article L. 225-100-1 shall apply to the management report. Where relevant, Article L. 225-100-2 shall apply to the consolidated management report.

#### **Article L. 223-27**

Decisions are taken at general meetings. The constitution may nevertheless stipulate that, with the exception of those referred to in the first paragraph of Article L. 223-26, all decisions or certain decisions may be taken via written consultation of the members or may result from the consent of all the members expressed in an act.

Members shall be convened to general meetings in the manner and within the time limits determined in a Conseil d'Etat decree. The meeting shall be convened by the manager or, failing this, by the auditor, if there is one. The meeting shall not be held until the time limit for provision of the documents referred to in Article L. 223-26 has expired.

Except in cases where the general meeting deliberates on the operations mentioned in Articles L. 232-1 and L. 233-16 and where the constitution so provides, members participating in a meeting by video-conferencing or means of telecommunication that enable them to be identified, the nature and conditions of which shall be determined by a Conseil d'Etat decree, shall be deemed to be present at the said meeting for the purposes of calculating the quorum and majority. The constitution may provide for a right of objection to the use of these means for a given number of members and for a given deliberation.

One or more members holding one half of the shares or, if they represent at least one-tenth of the members, holding one tenth of the shares, may request that a meeting be convened. Any clause to the contrary shall be deemed unwritten.

Any member may ask the court to appoint a representative to convene the meeting and determine its agenda.

In the event of the death of the sole manager, the auditor or any member may convene a meeting of the members for the sole purpose of replacing the manager. Such meetings are convened in the manner and within the time limits determined in a Conseil d'Etat decree.

Any irregularly convened meeting may be annulled. An action for



invalidity is nevertheless inadmissible if all the members were present or represented.

#### **Article L. 223-28**

Each member shall be entitled to participate in the decisions and shall have a number of votes equal to that of the company's shares they hold.

A member may mandate their spouse to represent them on condition that the company is not composed only of the two spouses. If there are more than two members, a member may mandate another member to represent them.

They may not mandate any person other than those permitted by the constitution.

A member may not mandate another person to vote a proportion of their shares and vote the other proportion in person.

Any clause contrary to the provisions of paragraphs one, two or four above shall be deemed unwritten.

#### **Article L. 223-29**

In the general meetings or on the occasion of consultation by exchange of letters, decisions shall be passed by one or more members representing more than half the company's shares.

Should this majority not be obtained in the absence of specification to the contrary in the constitution, the members shall be summoned to a second meeting or consulted a second time, according to the circumstances, and decisions shall be passed by a majority of the votes cast, irrespective of the number of parties voting.

#### **Article L. 223-30**

The partners may not change the nationality of the company other than by unanimous agreement.

All other amendments to the constitution shall be decided by the members representing at least three quarters of shares. Any clause requiring a greater majority shall be deemed unwritten.

However, for amendments to the constitution of sociétés à responsabilité limitée formed after the publication of Act No. 2005-882 of 2 August 2005 in favour of small and medium-sized companies, the general meeting's proceedings shall be considered valid only if the members present or represented have at least the quarter of shares when first convened and the fifth of those shares if the meeting is reconvened. Failing this quorum, the second meeting may be postponed to a date not later than two months after the date originally scheduled. In any one of the two cases, the decision to amend shall be taken by a majority of two-thirds of the shares held by the members present or represented. The constitution may provide

for higher quorums or majority, but may not demand the unanimity of members for the majority.

Companies formed prior to the publication of the above-mentioned Act No. 2005-882 of 2 August 2005 may, upon a decision taken unanimously by the members, be governed by the provisions of the third paragraph.

The majority may under no circumstances oblige a member to increase his corporate commitment.

Notwithstanding the provisions of the second and third paragraphs, the decision to increase capital by the incorporation of profits or reserves is taken by members representing at least half of shares.

#### **Article L. 223-31**

The first three paragraphs of Article L. 223-26 and Articles L. 223-27 to L. 223-30 do not apply to companies with only one member.

In this case, the management report, inventory and annual financial statements are prepared by the manager. The single member shall approve the accounts, if necessary after the auditors' report, within six months as from the end of the financial year. When the single member is the company's only manager, the filing of the duly signed inventory and annual accounts with the commercial and companies register, within the same deadline, shall be considered as approval of the financial statements without the need for the single member to enter in the register specified in the next paragraph, the receipt issued by the registry<sup>19</sup> of the Tribunal de Commerce<sup>20</sup>.

The single member may not delegate their powers. His decisions, taken in place of the general meeting, shall be listed in a register.

Decisions taken in breach of the provisions of this article may be cancelled at the request of any interested party.

#### **Article L. 223-32**

In the event of an increase in capital by the subscription of shares in money, the provisions of the last paragraph of Article L. 223-7 shall apply. These shares must be paid up, at the time of their subscription, for at least twenty-five per cent of their nominal value. Payment of the balance must be made in one or more instalments within five years of the date on which the increase in share capital became final.

Funds arising from the subscription of shares may be withdrawn by the company officer's official agent after the deposit receipt has been issued.

Should the increase in capital not be carried out within the six-month time limit starting from the first deposit of the funds, the provisions of the second

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<sup>19</sup> The Registre du Commerce et des Sociétés, or court registry the full name of which is often implicit in the Code. Registration is locally based in the Tribunal de Commerce.

<sup>20</sup> The first instance specialist commercial court.

paragraph of Article L. 223-8 may be applied.

#### **Article L. 223-33**

If the capital increase is carried out, either in part or in whole, through contributions in kind, the provisions of the first paragraph of Article L. 223-9 shall apply. The valuation expert is appointed unanimously by the members or failing which, by a court decision, at the request of a member or the manager.

When no valuation expert has been appointed, or when the valuation used differs from that proposed by the valuation expert, the company's managers and the persons who subscribed to the capital increase have solidary responsibility for five years, towards third parties, for the value assigned to the said contributions.

#### **Article L. 223-34**

A capital reduction may be authorised by the general meeting deciding in accordance with the conditions laid down for amendments to the constitution. Under no circumstances may it interfere with the equality of the members.

If auditors have been appointed, they shall be notified of the proposed capital reduction within the time limit established by Conseil d'Etat decree. They shall make their opinion on the causes and conditions of the reduction known to the general meeting.

Should the general meeting approve a proposed reduction of capital not justified by losses, creditors whose debt predates the date on which the minutes of the deliberation are filed at the registry of the Tribunal de Commerce may lodge an objection to the reduction within the time limit established by Conseil d'Etat decree. A court decision shall reject the objection or order either the repayment of the debts or the formalization of guarantees if the company offers them and if they are judged adequate. Capital reduction transactions may not begin during the period allotted for objections.

A company cannot purchase its own shares. However, a general meeting that has voted for a capital reduction not justified by losses may authorise the manager to buy a specified number of shares in order to cancel them.

#### **Article L. 223-35**

Members may appoint one or more auditors as provided for in Article L. 223-29.

Sociétés à responsabilité limitée that exceed, at the end of their accounting period, financial figures which meet two of the following criteria laid down by Conseil d'Etat decree: the balance sheet total, the amount of turnover excluding VAT or the average number of employees during the

financial year shall be obliged to designate at least one auditor.

Even if these thresholds are not reached, one or more members representing at least one tenth of the capital may apply to the court for an auditor to be appointed.

#### **Article L. 223-36**

Members who are not managers may send questions in writing to the manager, twice per financial year, concerning any matter that is liable to compromise the continuity of business. The auditor shall be informed of the manager's reply.

#### **Article L. 223-37**

One or more members representing at least one tenth of the registered capital may, either individually or as a group under any form whatsoever, petition the court to appoint one or more experts charged with presenting a report on one or more management operations.

The Public Prosecutor's Office and the works council may make a petition for the same purpose.

Should the court decide in favour of the petition, the court decision shall determine the scope of the mission and the powers of the experts. It may rule that the fees shall be borne by the company.

The report shall be addressed to the petitioner, the Public Prosecutor's Office, the works council, the auditor and the manager. This report must also be appended to the one drawn up by the auditor for the next general meeting and be published in the same manner.

#### **Article L. 223-39**

At the latest, the auditors shall be notified of general meetings and consultations at the same time as the members. They shall have access to general meetings.

The documents referred to in paragraph one of Article L. 223-26 shall be made available to the auditor subject to the conditions laid down by Conseil d'Etat decree.

#### **Article L. 223-40**

The repayment of dividends not corresponding to profits actually made may be imposed upon the members who have received them.

Proceedings for repayment shall be time-barred after three years with effect from the date on which the dividends became payable.

#### **Article L. 223-41**

A société à responsabilité limitée shall not be dissolved if a court order for

the court-ordered winding-up, personal bankruptcy, disqualification from management as specified by Article L. 625-8 or legal disability order is made with respect to one of the members.

It shall also not be dissolved by the death of a member unless otherwise specified in the constitution.

#### **Article L. 223-42**

If, on account of losses recorded in the accounting documents, the company's capital falls below half of the value of the share capital, the partners shall, within four months of approving the accounts that show that loss, decide whether there are grounds for early dissolution of the company.

If the dissolution is not decided by the majority required for the amendment of the constitution, the company is required, no later than the closing of the second financial year following that in which the losses were recorded, to reduce its capital by an amount at least equal to that of the losses which could not be charged to reserves, if, during that period, the general equity has not been reconstituted to a level at least equal to one half of the share capital.

In either case, the resolution adopted by the partners is published in accordance with the terms prescribed in a Conseil d'Etat decree.

Should the manager or the auditor fail to secure a decision, or if the partners are unable to validly consider this, any interested party may ask the court to dissolve the company. The same applies if the provisions of the second paragraph above have not been applied. In any such case, the court may grant the company a maximum period of six months to rectify its situation.

The Court shall not order the winding-up if the said rectification takes place on the day judgement is given on the merits.

The provisions of the present Article do not apply to companies subject to a safeguarding or judicial restructuring plan or order.

#### **Article L. 223-43**

The conversion of a société à responsabilité limitée into a société en nom collectif, a société en commandite simple or a société en commandite par actions shall require the unanimous agreement of all its members.

Conversion into a société anonyme must be decided by the majority required for amendments to the partnership deed. However, it may be decided upon by members representing the majority of the partnership shares if the company's capital stated on the last balance sheet exceeds 750,000 Euros.

The decision must be preceded by a report by a registered auditor on the company's situation.

Any conversion carried out in breach of the rules in this article shall be null and void.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER IV: GENERAL PROVISIONS APPLICABLE TO JOINT-STOCK COMPANIES**

###### **Article L. 224-1**

A joint-stock company shall be designated by a business name, which must be immediately preceded or followed by a statement of the form of the company and the amount of the registered share capital.

The name of one or more members may be included in the business name. However, the names of limited partners may not be included in the business name of société en commandite par actions<sup>21</sup>.

###### **Article L. 224-2**

The share capital must be at least 37,000 Euros.

A reduction of the share capital to a lesser amount may be decided upon only subject to the condition precedent that there is an increase in capital intended to raise this to an amount at least equal to the amount specified in the preceding paragraph unless the company is converted into another form of company. In the event of failure to comply with the provisions of this paragraph, any interested party may apply to the court for the dissolution of the company. This dissolution may not be ordered if the situation has been rectified on the date on which the court gives judgement on the merits of the case.

Notwithstanding paragraph one, the capital of press journalist's companies must be at least 300 Euros if they are formed as a société anonyme.

###### **Article L. 224-3**

When a company of any form whatsoever, which does not have an auditor, is converted into a joint-stock company, one or more experts,

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<sup>21</sup> A limited partnership where limited partners have company-type shares, regulated by a mix of partnership law (for active partners) and company law (for limited partners).

responsible for estimating the value of the items that comprise the corporate assets and special advantages, are appointed by a decision of the court at the request of one or more of the company's executives, unless the partners unanimously decide otherwise. The experts may be tasked with drafting the report on the company's situation referred to in the third paragraph of Article L. 223-43.

In this case, only one report is written. The experts are subject to the incompatibility rules referred to in Article L. 225-224.

The company's auditor can be appointed as an expert. The report is made available to the partners.

The partners adjudicate on the valuation of the assets and the awarding of the special advantages. They can only reduce them unanimously.

The conversion shall be null and void failing the express approval of the members duly recorded in the minutes.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER V: SOCIÉTÉS ANONYMES**

###### **Article L. 225-1**

A société anonyme (the main form of joint-stock company) is a company whose capital is divided into shares and which is formed among members who shall bear any losses only up to the amount of their contributions. The number of members may not be less than seven.

###### *Section 1: Formation of sociétés anonymes.*

Subsection 1: Formation with an initial public offering.

###### **Article L. 225-2**

The draft constitution shall be drawn up and signed by one or more founding shareholders, who shall file one copy at the registry of the Tribunal de Commerce of the district in which the registered office is located.

The founding shareholders shall publish a notice in accordance with the conditions laid down by Conseil d'Etat decree.

No subscription may be received if the formalities specified in paragraphs

one and two above have not been complied with.

Persons who are barred from the right of directorship or management of a company or who are disqualified from holding these offices cannot be founding shareholders.

#### **Article L. 225-3**

The capital must be fully subscribed.

Shares subscribed in money must be paid up for at least fifty percent of their face value. The balance may be paid in one or more instalments, at the discretion of the board of directors or the management as the case may be, within a time limit that may not exceed five years with effect from registration of the company in the commercial and companies register.

Shares subscribed for in kind must be paid up in full at the time of their issue.

Shares may not represent contributions in the form of services.

#### **Article L. 225-4**

The subscription of shares in money shall be evidenced by a subscription form drawn up in accordance with the conditions laid down by Conseil d'Etat decree.

#### **Article L. 225-5**

Funds arising from subscriptions in money and the subscribers' list, specifying the amounts paid by each subscriber, shall be deposited in accordance with the conditions laid down by Conseil d'Etat decree, which shall also determine the conditions under which the right to disclosure of this list shall be opened.

With the exception of the deposits referred to by the decree specified in the preceding paragraph, no party may hold the sums gathered on behalf of a company in formation for more than eight days.

#### **Article L. 225-6**

Subscriptions and payments shall be evidenced by a receipt issued by the appointed depository at the time of deposit of the funds, on presentation of the subscription forms.

#### **Article L. 225-7**

Once the receipt of deposit has been issued, the founding shareholders shall convene an initial statutory general meeting in accordance with the conditions and time limits laid down by Conseil d'Etat decree.

This meeting shall confirm that the capital has been fully subscribed and that the amount due for the shares has been paid. It shall decide on the



adoption of the constitution, which may be amended only by unanimous decision of all the subscribers, appoint the first directors or members of the supervisory board and designate one or more auditors. The minutes of the meeting shall record, if applicable, the acceptance of their office by the directors or members of the supervisory board and by the auditors.

#### **Article L. 225-8**

In the event of contributions in kind or in the event of the stipulation of special advantages for persons who may or may not be members of the company, one or more experts shall be designated unanimously by the founding shareholders or failing this, by court order at the request of one or more of the founding shareholders.

They shall be subject to the incompatibility rules specified by Article L. 822-11. The said experts shall assess the value of the contributions in kind and the special benefits, for which they are personally responsible.

The report, filed with the clerk of the register of companies and of commerce, with the draft constitution, shall be held at the disposal of the subscribers in accordance with the conditions laid down by Conseil d'Etat decree.

The initial statutory general meeting shall decide on the valuation of the contributions in kind and the granting of special benefits. It may reduce them only by unanimous decision of all the subscribers.

In the absence of explicit approval by the contributors and the beneficiaries of special benefits stated in the minutes, the company shall not be formed.

#### **Article L. 225-8-1**

I. - Article L. 225-8 shall not apply, upon a decision by the founding shareholders, when the contribution in kind is made up of:

1° Transferable securities giving access to capital mentioned in Article L. 228-1 or money market instruments as defined in Article 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, if they have been valued at the average weighted price at which they have been traded on one or more regulated markets during the three months prior to the effective date of the capital contribution;

2° Items forming part of assets other than the transferable securities or the money-market instruments mentioned in 1°, if, within the six months preceding the effective realisation of the contribution, these items have already been the object of a fair value valuation by a valuation expert under the conditions defined in Article L. 225-8.

II. - The contribution in kind must be revalued under the conditions mentioned in Article L. 225-8, at the initiative and as the personal responsibility of the founding shareholders, when:

1° In the case specified in 1° of I of this article, the price has been affected by exceptional circumstances that may significantly change the value of the asset element on the date of the actual implementation of the contribution;

2° In the case specified in 2° of the same I, the price has been affected by exceptional circumstances that may significantly change the value of the asset element on the date of the actual implementation of the contribution.

III. - Subscribers shall be notified of the information relating to contributions in kind mentioned in 1° and 2° of I under the conditions defined by Conseil d'Etat decree.

#### **Article L. 225-9**

Subscribers of shares shall participate in the vote or mandate another person to represent them in accordance with the conditions specified in Articles L. 225-106, L. 225-110 and L. 225-113.

The initial statutory general meeting shall deliberate in accordance with the conditions as to quorum and majority specified for extraordinary general meetings.

#### **Article L. 225-10**

Should the general meeting deliberate on the approval of a contribution in kind or the granting of a special benefit, the shares of the contributor or the beneficiary shall not be taken into account in calculating the majority.

The contributor or the beneficiary shall not be entitled to participate in the deliberation either in person or as a proxy-holder.

#### **Article L. 225-11**

Funds arising from subscriptions in money may not be withdrawn by the company's official agent before the registration of the company in the commercial and companies register.

Should the company not be formed within the six-month limit as from the filing of the draft constitution with the registry, any subscriber may apply to a court for the appointment of an agent authorised to withdraw the funds and return them to the subscribers, subject to deduction of the expenses of distribution.

A new deposit of funds and the declaration specified in Articles L. 225-5 and L. 225-6 must be made if the company founders decide subsequently to form the company.

#### **Article L. 225-11-1**

Voting rights and rights to dividend of shares or subdivided shares issued in breach of the provisions relating to the formation with initial public offering of sociétés anonymes specified in this subsection shall be suspended until the situation has been rectified.

Any vote issued or any dividend paid during the suspension shall be null and void.

Subsection 2: Formation without an initial public offering.

#### **Article L. 225-12**

When there is no initial public offering, the provisions of subsection 1 shall apply, with the exception of Articles L. 225-2, L. 225-4, L. 225-7, the second, third and fourth paragraphs of Article L. 225-8, and Articles L. 225-9 and L. 225-10.

#### **Article L. 225-13**

Payments shall be recorded by a certificate issued by the depository at the time of deposit of the funds, on presentation of the list of shareholders, stating the amounts paid by each of them.

#### **Article L. 225-14**

The constitution must contain a valuation of contributions in kind. This shall be carried out by a valuation expert, who shall draw up a report to be annexed to the constitution for which they are personally responsible.

The same procedure must be followed if special benefits are specified.

#### **Article L. 225-15**

The constitution must be signed by the shareholders either in person or via an attorney on production of a special power of attorney, after the issue of the deposit receipt and after the report specified in Article L. 225-14 has been placed at the disposal of the shareholders in accordance with the conditions and time limits laid down by Conseil d'Etat decree.

#### **Article L. 225-16**

The first directors and the first members of the supervisory board and the first auditors shall be designated in the constitution.

#### **Article L. 225-16-1**

The voting rights and rights to dividend for shares or subdivided shares issued in breach of this subsection shall be suspended until the situation

has been rectified. Any vote issued or any dividend paid during the suspension shall be null and void.

*Section 2: The management and administration of sociétés anonymes*

Subsection 1: Board of directors of the general management.

**Article L. 225-17**

A société anonyme is administered by a board of directors consisting of at least three members. The constitution must stipulate the maximum permissible number of board members, which shall not exceed eighteen.

The appointment of the board of directors must seek to achieve a balanced representation of men and women.

However, in the event of the death, resignation or removal from office of the president of the board of directors, the board may, if it has been unable to replace him from among its members, and without prejudice to the provisions of Article L. 225-24, appoint an additional director to perform the president's functions.

**Article L. 225-18**

The directors shall be appointed by the initial statutory general meeting or by the ordinary general meeting. In the circumstances specified by Article L. 225-16, they shall be designated in the constitution. The term of their duties shall be determined by the constitution and may not exceed six years. However, in the event of merger or demerger, the appointment may be made by extraordinary general meeting.

The directors shall be eligible for re-election unless otherwise specified in the constitution. They may be dismissed at any time by the ordinary general meeting.

Any appointment made in breach of the preceding provisions shall be null and void, with the exception of those which may be made in accordance with the conditions specified in Article L. 225-24.

**Article L. 225-19**

The constitution must stipulate an age limit for the exercise of the functions of a director, applicable either to all directors or to a specific percentage of them.

In the absence of an explicit provision in the constitution, the number of directors over the age of seventy years may not be more than one third of the directors in office.

Any appointment made in breach of the provisions in the preceding paragraph shall be null and void.

In the absence of an explicit provision in the constitution specifying

another procedure, the oldest director shall be deemed to be retiring from office when the age limit for the directors specified in the constitution or by law is exceeded.

#### **Article L. 225-20**

A legal entity may be appointed as a director. On their appointment, they must designate a permanent representative, who shall be subject to the same conditions and obligations and who shall incur the same civil and penal liabilities as if they were a director in their own name, without prejudice to the solidary liability of the legal entity they represent.

Should the legal entity dismiss its representative, it must appoint their replacement at the same time.

#### **Article L. 225-21**

No natural person shall concurrently hold more than five directorships of sociétés anonymes having their registered office on French territory.

Contrary to the provisions of the first paragraph, this shall not apply to directorships or supervisory board memberships of companies which are controlled, within the meaning of Article L. 233-16, by the company of which that natural person is a director.

For the purposes of this Article, directorships of companies whose shares are not quoted on a regulated stock market within the meaning of Article L. 233-16 and are held by a single company count as one directorship, subject to the number of such directorships held not exceeding five.

Any natural person who is in breach of the provisions of this article shall resign from one of his directorships within three months of being appointed, or from the directorship in question within three months of the occurrence of the event which resulted in a condition of the previous paragraph no longer being met. Upon expiry of that period, he shall be deemed to have resigned either from his new directorship or from the directorship which no longer meets the conditions laid down in the previous paragraph, whichever applies, and shall return the remuneration received. This shall not affect the validity of the deliberations in which he participated.

#### **Article L. 225-21-1**

A director can become an employee of a société anonyme of which he is a board member if this company does not exceed, at the end of the financial year, the thresholds defining small and medium-sized companies specified in Article 2 of the appendix to Commission recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, and if the director's employment contract relates to an actual employment.

Any director mentioned in the first paragraph of this article is included in

the number of directors bound to the company by an employment contract mentioned in Article L. 225-22.

#### **Article L. 225-22**

An employee of the company can only become a director if his contract of employment relates to an actual employment. He shall not lose the benefit of that contract of employment. Any directorship conferred in breach of this paragraph is null and void. Such invalidity shall not entail the invalidity of the deliberations in which the illegally appointed director participated.

The number of directors bound to a company by a contract of employment shall not exceed one third of the serving directors.

However, directors elected by the employees or designated pursuant to Article L. 225-27-1, directors representing the employee shareholders or the collective fund pursuant to Article L. 225-23, and, in sociétés anonymes with worker participation, the representatives of the workers' cooperative society, are not included in the number of directors bound to the company by a contract of employment referred to in the previous paragraph.

In the case of a merger or demerger, the contract of employment may have been entered into with one of the merged companies or with the demerged company.

#### **Article L. 225-22-1**

In companies whose securities are admitted to trading on a regulated market, in the event of the appointment to the duties of president, general manager or assistant general manager of a person bound by an employment contract to the company or any controlled company or a company that controls it as defined in II and III of Article L. 233-16, the provisions of the said contract corresponding, if necessary, to elements of remuneration, compensation or benefits due or likely to be due as a result of the termination or change in these duties, or subsequent to these duties, are subject to the regime set out in Article L. 225-42-1.

#### **Article L. 225-23**

In companies whose securities are admitted to trading on a regulated market, where the report presented to the general meeting by the board of directors pursuant to Article L. 225-102 establishes that the shares held by the companies' staff and by the staff of affiliated companies within the meaning of Article L. 225-180 represent more than 3% of the company's share capital, one or more directors shall be elected by the general meeting of shareholders on a proposal from the shareholders as provided for in Article L. 225-102.

The shareholders shall vote on these appointments under the conditions determined in the constitution. These directors shall be elected from among

the employee-shareholders or, if appropriate, from amongst the employee-members of the supervisory board of a collective fund which holds shares in the company. Such directors are not counted when the minimum and maximum numbers of directors are determined pursuant to Article L. 225-17.

The term of their office shall be determined pursuant to Article L. 225-18.

However, their term of office shall end if their employment contract expires or is terminated for any reason whatsoever.

If the extraordinary general meeting is not held within eighteen months of the report being presented, any employee-shareholder may request the presiding judge, ruling by way of summary proceedings, to direct the board of directors, on pain of a progressive coercive fine, to convene an extraordinary general meeting and submit draft resolutions to it aimed at amending the constitution as provided for in the preceding paragraph and in the final paragraph of this article.

If the request is upheld, the progressive coercive fine and the legal costs shall be paid by the directors.

Companies, the board of directors of which include one or more directors designated by the members of the supervisory boards of collective funds representing the members, or one or more employees elected pursuant to the provisions of Article L. 225-27, are exempted from the obligations referred to in the first paragraph.

If an extraordinary general meeting is convened pursuant to the first paragraph, it also decides on a draft resolution to provide for the election of one or more directors by the staff of the company and of the direct or indirect subsidiaries having their registered office in France. If appropriate, these representatives are designated as provided for in Article L. 225-27.

#### **Article L. 225-24**

In the event of vacancy due to the death or resignation of one or more directors, the board of directors may make appointments on a provisional basis between general meetings.

Should the number of directors have fallen below the legal minimum, the remaining directors must immediately convene an ordinary general meeting with a view to completing the board's numbers.

Should the number of directors have fallen below the minimum number specified in the constitution without, however, being below the legal minimum, the board of directors must make appointments on a provisional basis with a view to completing its numbers within a deadline of three months with effect from the date on which the vacancy arises.

The appointments made by the board by virtue of paragraphs one and two above shall be subject to confirmation by the very next ordinary general meeting. In the absence of confirmation, the deliberations made and the acts carried out beforehand by the board shall remain no less valid.

Should the board fail to make the required appointments or to convene the meeting, any interested party may apply to the court for the designation of a representative charged with convening the general meeting in order to make the appointments or to confirm the appointments specified in paragraph three.

#### **Article L. 225-25**

The constitution may impose that each director should own a number of company shares, determined by the said constitution.

Should a director not own the required number of shares on the date of his appointment or should he cease to own them during his term of office, he shall be deemed to have resigned from office if he has not rectified the situation within six months.

The provisions of the first paragraph shall not apply to employee-directors appointed pursuant to Article L. 225-23, nor to employees appointed as directors pursuant to Articles L. 225-27 and L. 225-27-1.

#### **Article L. 225-26**

The auditors shall ensure compliance with the provisions specified in Article L. 225-25 and shall give notice of any breach in their report to the annual general meeting, for which they are personally responsible.

#### **Article L. 225-27**

The constitution may specify that, in addition to the directors whose number and method of appointment are specified in Articles L. 225-17 and L. 225-18, the board of directors shall contain directors elected either by the company's employees or by the employees of the company plus those of its direct or indirect subsidiaries which have their registered office located on French territory. The number of these directors may not exceed four, or five in companies whose shares are listed on a regulated stock exchange, nor may they exceed one third of the number of the other directors. Should the number of directors elected by the employees be equal to or in excess of two, professional technical staff, executives and similar shall have at least one directorship.

Directors elected by employees shall not be included in the determination of the minimum number and the maximum number of directors specified in Article L. 225-17.

#### **Article L. 225-27-1**

I. - In the companies that employ, at the end of two consecutive financial years, at least five thousand permanent employees in the company and its direct or indirect subsidiaries, the registered office of which is located in France, or at least ten thousand permanent employees in the company and



its direct or indirect subsidiaries, the registered office of which is located in France and abroad, and that are obliged to establish a works council pursuant to Article L. 2322-1 of the Labour Code, it must be provided in the constitution that the board of directors comprises directors representing employees, in addition to the directors, the number and mode of appointment of which are specified in Articles L. 225-17 and L. 225-18 of this code.

A company is not subject to the obligation set out in the first paragraph of this I if it is a direct or indirect subsidiary of a company that is itself subject to this obligation.

II. - There shall be at least two directors representing employees in companies in which the number of directors mentioned in Articles L. 225-17 and L. 225-18 is more than twelve and at least one director if the number of directors is equal to or less than twelve.

Directors representing employees are not included in the minimum and maximum number of directors specified in Article L. 225-17, or for the application of the first paragraph of Article L. 225-18-1.

III. - Within six months after the end of the second of the two financial years mentioned in I, after taking the opinion, if applicable, of the group works council, the central works council of the business or the works council, the extraordinary general meeting shall amend the constitution to determine the conditions under which the directors representing employees are appointed, based on one of the following methods:

1° The organisation of an election by employees of the company and its direct or indirect subsidiaries, which have their registered office located in France under the conditions set out in Article L. 225-28;

2° The appointment, as the case may be, by the group works council specified in Article L. 2331-1 of the Labour Code, the central works council or the works council of the company mentioned in I of this article;

3° The appointment by the trade union organisation that obtained the most votes during the first round of the elections mentioned in Articles L. 2122-1 and L. 2122-4 of the said code in the company and its direct or indirect subsidiaries, of which the registered offices are located in France when only one director is to be appointed, or by each of the two trade union organisations that obtained the most votes in the first round of these elections when two directors are to be appointed;

4° When at least two directors are to be appointed, the appointment of one of the directors according to one of the methods set out in 1° to 3° and the other by the European works council, if there is one, or for European companies as defined by Article L. 2351-1 of the Labour Code, by the employee representative body mentioned in Article L. 2352-16 of the said code or, failing which, by the works council of the European company mentioned in Article L. 2353-1 of the said code.

Directors representing employees should be elected or appointed within

six months following the amendment of the constitution specified in the first paragraph of III.

IV. - If an extraordinary general meeting is not held within the time limit specified in the first paragraph of III, any employee may request the presiding judge of the court, ruling by way of summary proceedings, to direct the board of directors, under pain of a progressive coercive fine, to convene an extraordinary general meeting and submit draft resolutions to it aimed at amending the constitution as defined in III above.

If the constitution is not amended at the end of the time limit specified in the first paragraph of III, the directors representing the employees shall be designated through the election mentioned in 1° of III within six months after the said time limit has expired. Any employee may ask the presiding judge of the court, ruling by way of summary proceedings, to order the company, subject to a progressive coercive fine, to organise the election.

V. - The companies that meet the criteria set out in I of this article, and of which the board of directors comprises one or more members designated pursuant to Article L. 225-27 of this Code, to Article 5 of Act No. 83-675 of 26 July 1983 on the democratisation of the public sector or to Article 8-1 of Act No. 86-912 of 6 August 1986 on privatisation procedures, as well as their direct or indirect subsidiaries, are not subject to the obligation specified in I to III of this article when the number of these directors is at least equal to the number specified in II.

When the number of these administrators is lower than the number specified in II, I to IV shall apply at the expiry of the current term of office of the directors representing employees.

#### **Article L. 225-28**

The directors elected by the employees or appointed pursuant to Article L. 225-27-1 must have an employment contract with the company or with one of its direct or indirect subsidiaries which have their registered office located on French territory predating their appointment by at least two years and relating to an actual employment. As an exception, the second director elected by the employees pursuant to 4° of III of Article L. 225-27-1 must have an employment contract with the company or with one of its direct or indirect subsidiaries predating their appointment by at least two years and relating to an actual employment. However, the condition of length of service shall not be required if the company has been formed for less than two years on the date of their appointment.

All the company's employees and, if applicable, all the employees of its direct or indirect subsidiaries which have their registered office located on French territory, whose employment contract predates by three months the date of the election shall be electors. The ballot shall be by secret vote.

Where at least one directorship is reserved for professional technical staff, executives and similar, pursuant to Article L. 225-27, the employees

shall be divided into two electing bodies voting separately. The first electing body shall comprise professional technical staff, executives and similar, the second the other employees. The constitution shall determine the distribution of the directorships by electing body in accordance with the employee structure.

Where the said Article L. 225-27 is applied, the candidates or lists of candidates may be proposed either by one or more representative trade union organisations as defined by Article L. 423-2 of the Labour Code or by one twentieth of the electors or, if their number is in excess of two thousand, by one hundred of them. Where Article L. 225-27-1 of this code is applied, the candidates or lists of candidates shall be presented by one or more representative trade union organisations as defined in Article L. 2122-1 of the Labour Code.

Should there be one directorship to fill for the whole of the electoral body, a majority vote with two rounds of voting must be held. Should there be one directorship to fill in an electing body, the election must be held by majority vote with two rounds of voting within this electing body. In addition to the name of the candidate, each candidacy must include the name of a potential replacement. The candidate and the replacement must not be of the same sex. The candidate having obtained the absolute majority of the votes cast in the first round or the relative majority in the second round shall be declared elected.

In the other cases, the election shall be by proportional representation based on the list according to the highest vote and without vote splitting. Each list must comprise twice as many candidates as there are directorships to be filled and must be composed alternatively of a candidate of each gender. On each list, the difference between the number of candidates of each gender may not exceed one.

In the event of a tied vote, the candidates with the earliest-dated employment contracts shall be declared elected.

The other terms and conditions of the vote shall be determined by the constitution.

Disputes relating to the electorate, eligibility and the due form of the electoral operations shall be brought before the trial judge, who shall give a final decision in accordance with the conditions specified by paragraph one of Article L. 433-11 of the Labour Code.

#### **Article L. 225-29**

The term of office of the director elected by employees or appointed pursuant to Article L. 225-27-1 is determined by the constitution and may not exceed six years. The directors shall be eligible for re-election unless otherwise specified in the constitution.

Any appointment made in breach of Articles L. 225-27, L. 225-27-1, L. 225-28 and this article shall be null and void. Such invalidity shall not entail

the invalidity of the deliberations in which the illegally appointed director participated.

#### **Article L. 225-30**

The office of director elected by the employees or appointed pursuant to Article L. 225-27-1 shall be incompatible with any office of trade union representative, with membership of the works council, or the group works council, with the office of employee representative or with membership of the company's health, safety and working conditions committee. It shall also be incompatible with any term of office as member of a European works council, if there is one, or for European companies as defined in Article L. 2351-1 of the Labour Code, with membership of the employee representative body mentioned in Article L. 2352-16 of same code or with membership of a works council of the European company mentioned in Article L. 2353-1 of the said code. A director who holds one or more of these offices during his election or appointment pursuant to Article L. 225-27-1 of this code shall have eight days to resign. Should they fail to do so, they shall be deemed to have resigned their office of director.

#### **Article L. 225-30-1**

Directors elected by employees or designated pursuant to Article L. 225-27-1 shall have the time necessary to effectively exercise their office, under the conditions defined by Conseil d'Etat decree.

#### **Article L. 225-30-2**

Directors elected by employees or designated pursuant to Article L. 225-27-1 shall receive, at their request, training suited to the exercise of their office, paid for by the company and under the conditions defined by Conseil d'Etat decree. This training time shall not be deducted from the credited time specified in Article L. 225-30-1.

#### **Article L. 225-31**

Directors elected by employees or designated pursuant to Article L. 225-27-1 shall not lose the benefit of their employment contract. Their remuneration as an employee may not be reduced as a result of the exercise of their office.

#### **Article L. 225-32**

The termination of the employment contract shall end the term of office of the directors elected by employees or designated pursuant to Article L. 225-27-1.

Directors elected by employees or designated pursuant to Article L. 225-

27-1 may not be dismissed other than for fault in the performance of their office by order of the presiding judge of the Tribunal de Grande Instance<sup>22</sup>, ruling by way of summary proceedings at the request of the majority of the members of the board of directors. The order shall be immediately enforceable.

#### **Article L. 225-34**

I. - In the event of the vacancy of an office of a director elected by the employees or designated pursuant to Article L. 225-27-1 due to death, resignation, dismissal, breach of employment contract or for any other reason whatsoever, the vacant office shall be filled in the following manner:

1° If the election has taken place by majority vote with two rounds, by the replacement ;

2° If the election has taken place by list, by the candidate appearing on the same list immediately after the last candidate elected.

3° If the appointment was made according to the procedure specified in 2° to 4° of III of Article L. 225-27-1, by an employee appointed under the same conditions.

II. - The term of office of the director thus appointed shall end at the end of the normal term of office of the other directors elected by the employees or designated pursuant to Article L. 225-27-1.

#### **Article L. 225-35**

The board of directors determines the broad lines of the company's business activities and ensures their implementation. Without prejudice to the powers expressly invested in meetings of the shareholders, and within the objects of the company, the board of directors deals with all matters relating to the conduct of the company's business and decides all pertinent issues through its deliberations.

In its dealings with third parties, the company is bound even by acts of its board of directors which do not come within the purview of the company's objects, unless it can prove that the third party knew that a specific action was extraneous to that object or, given the circumstances, could not have been ignorant of that fact, and mere publication of the constitution does not suffice to constitute such proof.

The board of directors shall carry out the inspections and verifications which it considers appropriate. The company's president or general manager is required to send all the documents and information necessary to perform this task to each director.

Avals<sup>23</sup> and guarantees given by companies other than banks or other

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<sup>22</sup> The first instance general court, also administering specialist, small claims and some criminal cases.

<sup>23</sup> A species of guarantee. See from Article L. 511-21 of this Code.

financial institutions must be authorised by the board of directors as prescribed in a Conseil d'Etat decree. That decree also determines the conditions under which any transaction which exceeds that authorisation can be raised against third parties.

#### **Article L. 225-36**

The transfer of the registered office within the same department or within an adjacent department may be decided upon by the board of directors, subject to confirmation of this decision by the next ordinary general meeting.

#### **Article L. 225-36-1**

The company's constitution shall determine the rules relating to the convening and deliberations of the board of directors.

Should it not have met for more than two months, at least one third of the members of the board of directors may call upon the president to convene it with a specified agenda.

The general manager may also call upon the president to convene the board of directors with a specified agenda.

The president shall be bound by the requests addressed to them by virtue of the two preceding paragraphs.

#### **Article L. 225-37**

The board of directors may validly deliberate only if at least half of its members are present. Any clause to the contrary shall be deemed unwritten.

Unless the constitution requires a larger majority, the decisions are taken on a majority vote of the members present or represented.

Unless the board is convened to deal with matters referred to in Articles L. 232-1 and L. 233-16, and barring any contrary provision in the constitution, the internal regulations may provide for directors who participate in the meeting via videoconferencing or via a telecommunications medium which permits their identification and guarantees their effective participation to be deemed to be present for calculation of the quorum and the majority. The nature of, and implementing regulations for, such media are determined in a Conseil d'Etat decree. The constitution may limit the nature of the decisions which may be made at such meetings and provide for a right of objection for a given number of directors.

Barring any contrary provision in the constitution, the president of the meeting has a casting vote in the event of a split vote.

The directors, and any other persons invited to attend board meetings, are bound by secrecy in regard to any information of a confidential nature

presented as such by the president of the board of directors.

In companies whose financial securities are admitted to trading on a regulated market, the president of the board of directors must report on the composition of the board in a report appended to the report mentioned in Articles L. 225-100, L. 225-102, L. 225-102-1 and L. 233-26, concerning the application of the principle of gender-balanced representation on the board, the conditions for preparing and organising the work of the board, as well as on the internal control and risk management procedures put in place by the company, and in particular giving the details of those procedures concerning the preparation and treatment of accounting and financial information for the corporate financial statements and, if relevant, for the consolidated financial statements. Without prejudice to the provisions of Article L. 225-56, the said report also indicates any limitations the board of directors places on the powers of the general manager.

When a company refers voluntarily to a code of corporate governance drawn up by organisations representing companies, the report specified in this article shall also set out the provisions that have been ruled out and the reason for this decision.

The report shall also specify the place where this code may be consulted.

If a company does not refer to such a code of corporate governance, this report shall indicate the rules used in addition to the legal requirements and state the reasons why the company has decided not to apply any provision of this code of corporate governance.

The report specified in this article shall also set out the special procedures relating to the participation of shareholders in the general meeting or refers to the provisions of the constitution that set out these procedures.

This report shall also present the principles and rules set by the board of directors to determine the remuneration and benefits of all types granted to company officers and shall mention the publication of the information specified in Article L. 225-100-3.

The report defined in this article shall be approved by the board of directors and shall be made public.

#### **Article L. 225-37-1**

The board of directors shall deliberate each year on the company's gender equality and wage policies. In companies required to draft the report on the comparative situation of the general working and training conditions of women and men in the company set out in Article 2323-57 of the Labour Code and in those in which they implement a plan for professional equality between men and women referred to in Article L. 1143-1 of the same code, the supervisory board shall hold its discussions on this basis.

#### **Article L. 225-38**

Any agreement entered into, either directly or through an intermediary, between the company and its general manager, with one of its assistant general managers, one of its directors, one of its shareholders holding a fraction of the voting rights greater than 10% or, in the case of a corporate shareholder, with the company which controls it within the meaning of Article L. 233-3, must be subject to the prior consent of the board of directors.

The same applies to agreements in which a person referred to in the previous paragraph has an indirect interest.

Agreements entered into between the company and another firm are also subject to prior consent if the company's general manager, one of its assistant general managers or one of its directors is the owner, a fully liable partner, a manager, a director or a member of that firm's supervisory board or, more generally, a person in any way involved in its management.

#### **Article L. 225-39**

The provisions of Article L. 225-38 shall not apply to agreements relating to ordinary transactions conducted under normal conditions.

#### **Article L. 225-40**

The interested party must inform the board immediately upon becoming aware of an agreement to which Article L. 225-38 applies.

He may not participate in the vote on the requested prior approval of the Board.

The president of the board of directors shall advise the auditors of all agreements authorised and shall submit them to the general meeting for approval.

The auditors shall present a special report on the agreements to the meeting, which shall decide on this report.

The interested party may not participate in the vote and his shares shall not be taken into account for the calculation of the quorum and the majority.

#### **Article L. 225-41**

Agreements approved by the meeting shall be effective against third parties, as shall those which it refuses, unless they are cancelled in the event of fraud.

Even where there is no fraud, the interested party, and other members of the board of directors if appropriate, may be held liable for any consequences of unapproved agreements that are damaging to the company.



#### **Article L. 225-42**

Without prejudice to the liability of the interested party, agreements referred to in Article L. 225-38 and entered into without the prior authorisation of the board of directors may be cancelled if they have prejudicial consequences for the company.

Nullity proceedings shall be time-barred after three years with effect from the date of the agreement. Nevertheless, if the agreement was concealed, time shall begin to run with effect from the date on which its existence became known.

Invalidity may be confirmed by a vote of the general meeting taken on the special report of the auditors setting out the circumstances by virtue of which the authorisation procedure has not been followed. The provisions of paragraph four of Article L. 225-40 shall apply.

#### **Article L. 225-42-1**

In companies whose securities are admitted to trading on a regulated market, commitments made in favour of their presidents, managing directors or deputy managing directors, by the company itself or by any company that it controls or that controls it as defined in II and III of Article L. 233-16, and corresponding to elements of remuneration, compensation or benefits payable or likely to be payable as a result of the ceasing or change in these functions, or subsequently thereto, shall be subject to the provisions of Articles L. 225-38 and L. 225-40 to L. 225-42.

Elements of remuneration, compensation or benefits, the benefit of which is not conditional upon compliance with conditions linked to the beneficiary's performance, assessed in relation to the performance of the company of which he is the president of the board of directors or the general manager or deputy general manager, shall be prohibited.

The authorisation given by the board of directors in accordance with Article L. 225-38 is made public according to procedures and within the time limits determined by Conseil d'Etat decree.

A specific resolution is made for each beneficiary on submission for approval to the general meeting pursuant to Article L. 225-40. This approval is required at each renewal of the office exercised by the persons mentioned in the first paragraph.

No payment, of any kind whatsoever, may be made before the board of directors has noted, during or after the termination or effective change in the duties, accordance with the specified conditions. This decision is made public according to the procedures and within the time limits determined by Conseil d'Etat decree. Any payment made in disregard of the provisions of this paragraph shall be automatically null and void.

Commitments corresponding to compensation in consideration of a

clause prohibiting the beneficiary, after the termination of his duties in the company, from exercising professional activity in competition that will adversely affect the company's interests are not subject to the provisions of paragraph one. The same shall apply to defined-benefit pension commitments corresponding to the characteristics of the schemes mentioned in Article L. 137-11 of the Social Security Code as well as commitments corresponding to the characteristics of collective and mandatory pension and provident schemes covered by Article L. 242-1 of the said code.

#### **Article L. 225-43**

It shall be prohibited for directors other than legal entities to obtain loans from the company in any form, or overdraft facilities, on a current account or otherwise, or to obtain any pledge of security or guarantee from the company for any obligations they may contract to third parties. Any agreement to do so shall be void.

However, if the company operates a banking or financial institution, the prohibition shall not apply to ordinary transactions concluded on normal terms and conditions in the course of its business.

The same prohibition shall apply to the general manager, to assistant general managers and to permanent representatives of directors which are legal entities. It shall also apply to the spouse and relatives in the ascending and descending line of the persons referred to in this article, as well as to any intermediary.

#### **Article L. 225-44**

Subject to Articles L. 225-21-1, L. 225-22, L. 225-23, L. 225-27 and L. 225-27-1, the directors may not receive any permanent or other remuneration from the company other than those specified in Articles L. 225-45, L. 225-46, L. 225-47 and L. 225-53.

Any clause to the contrary in the constitution shall be deemed unwritten and any decision to the contrary shall be deemed null and void.

#### **Article L. 225-45**

As remuneration for their activities and in the form of directors' attendance fees, the general meeting may grant the directors an annual fixed amount which this meeting shall determine without being bound by the provisions of the constitution or previous decisions. The amount of these shall be charged to operating expenses. Their distribution among the directors shall be determined by the board of directors.

#### **Article L. 225-46**

The board of directors may grant exceptional remuneration for missions

or offices conferred upon directors. In such cases, this remuneration shall be charged to operating expenses and subject to the provisions of Articles L. 225-38 to L. 225-42.

#### **Article L. 225-47**

The board of directors shall elect a president from among its members who, in order for their appointment to be valid, must be a natural person. It shall determine their remuneration.

The president shall be appointed for a term which may not exceed their term of office as a director. They shall be eligible for re-election.

The board of directors may dismiss them at any time. Any provision to the contrary shall be deemed unwritten.

#### **Article L. 225-48**

The constitution must specify an age limit for the performance of the office of president of the board of directors which, in the absence of explicit provision, shall be fixed at sixty-five years.

Any appointment made in breach of the provisions specified in the preceding paragraph shall be deemed null and void.

A president of the board of directors shall be deemed to have retired from office on reaching the age limit.

#### **Article L. 225-50**

In the event of the temporary incapacity or death of the president, the board of directors may delegate a director to the office of the president.

In the event of temporary incapacity, this delegation shall be made on a limited term. It may be renewed. In the event of death, it shall be valid until the election of the new president.

#### **Article L. 225-51**

The president of the board of directors organises and oversees the work of the board and reports to the general meeting thereon. He supervises the company's management structures to ensure that they function well and ensures, in particular, that the directors are able to accomplish their task.

#### **Article L. 225-51-1**

The general management of the company shall be undertaken by either the president of the board of directors or by another natural person appointed by the board of directors and bearing the title of general manager, as his personal responsibility.

In accordance with the conditions defined by its constitution, the board of directors shall choose between the two forms of performance of the general

management referred to in paragraph one. The shareholders and third parties shall be informed of this choice in accordance with the conditions laid down by Conseil d'Etat decree.

If the general management of the company is undertaken by the president of the board of directors, the provisions of this subsection relating to the general manager shall apply to them.

#### **Article L. 225-52**

In the event of the instigation of a judicial restructuring or winding-up procedure in application of Title II of Book VI, the persons referred to by these provisions may be rendered liable for the debts of the company and shall be subject to the prohibitions and forfeitures in accordance with the conditions specified by these provisions.

#### **Article L. 225-53**

On the proposal of the general manager, the board of directors may appoint one or more natural persons charged with assisting the general manager, with the title of deputy general manager.

The constitution shall determine the maximum number of deputy general managers, which may not exceed five.

The board of directors shall determine the remuneration of the general manager and the deputy general managers.

#### **Article L. 225-54**

The constitution shall specify an age limit for the performance of the office of general manager and the deputy general manager which, in the absence of an explicit provision, shall be fixed at sixty-five years.

Any appointment made in breach of the provisions specified in the preceding paragraph shall be deemed null and void.

A general manager or deputy general manager shall be deemed to have retired from office on reaching the age limit.

#### **Article L. 225-54-1**

No natural person shall concurrently act as a general manager of more than one limited company having its registered office on French territory.

Contrary to the provisions of the first paragraph:

- a natural person can concurrently act as a general manager, a director or the sole managing director of another company which is controlled, within the meaning of Article L. 233-16, by the company of which that natural person is a general manager;

- a natural person who is a general manager of one company may also be a managing director, a director or the sole managing director of another company, provided that its shares are not quoted on a regulated stock

market.

Any natural person who is in breach of the provisions of this Article shall resign from one of his directorships within three months of being appointed, or from the directorship in question within three months of the occurrence of the event which resulted in a condition laid down in the previous paragraph no longer being met. Upon expiry of that period, he shall be deemed to have resigned either from his new directorship or from the directorship which no longer meets the conditions laid down in the previous paragraph, whichever applies, and shall return the remuneration received. This shall not affect the validity of the deliberations in which he participated.

#### **Article L. 225-55**

The general manager may be dismissed at any time by the board of directors. The same shall apply, on the proposal of the general manager, to the assistant general managers. Should the dismissal be decided without good cause, it may give rise to damages, except when the general manager assumes the office of president of the board of directors.

Should the general manager cease to or be unable to perform his office, the assistant general managers shall retain their office and remuneration, unless decided otherwise by the board, until the appointment of the new general manager.

#### **Article L. 225-56**

I. - The general manager shall be invested with the most extensive powers to act on behalf of the company in all circumstances. They shall exercise their powers within the objects of the company and subject to those that the Law allocates explicitly to general meetings and to the board of directors.

They shall represent the company in its dealings with third parties. The company shall be bound even by those acts of the general manager not covered by the purpose of the company unless it is able to prove that the third party was aware that the act exceeded these objects or that could not have known it in view of the circumstances, the mere publication of the constitution being excluded from constituting this proof.

Provisions in the constitution and decisions of the board of directors limiting the powers of the managers resulting from this article shall not be effective against third parties.

II. - In agreement with the general manager, the board of directors shall determine the scope and the term of the powers conferred upon the deputy general managers.

The deputy general managers shall have the same powers as the general manager with respect to third parties.

## Subsection 2: The executive and supervisory boards.

### **Article L. 225-57**

The constitution of any société anonyme may stipulate that it is governed by the provisions of this subsection. In this case, the company continues to be subject to all the rules applicable to sociétés anonymes, excluding those specified in Articles L. 225-17 to L. 225-56.

The insertion into or removal of this stipulation from the constitution may be decided during the company's existence.

### **Article L. 225-58**

The société anonyme shall be managed by an executive board consisting of not more than five members. Where the company's shares are admitted to trading on a regulated market, the said number may be increased to seven by the constitution.

In sociétés anonymes with a share capital of less than 150,000 Euros, the functions conferred on the executive board may be exercised by a single person.

The executive board shall exercise its functions under the supervision of a supervisory board.

### **Article L. 225-59**

The members of the executive board shall be appointed by the supervisory board, which shall appoint one of the said members as president.

Where a single person exercises the functions conferred on the management, that person shall take the title of sole managing director.

Members of the executive board, or the sole managing director, must be natural persons, failing which their appointment shall be void. They may be chosen from outside the shareholders.

### **Article L. 225-60**

The constitution must lay down an age limit for the exercising of the functions of a member of the executive board or of a sole managing director. In the absence of any express provision, the said age limit shall be sixty-five years.

Any appointment made in breach of the provisions specified in the preceding paragraph shall be deemed null and void.

On attaining the said age, a member of the management or the sole managing director shall be deemed to have resigned from office.

#### **Article L. 225-61**

The members of the executive board or the sole managing director may be dismissed by the general meeting, and also, if the constitution so provides, by the supervisory board. Should the dismissal be decided without due cause, it may give rise to damages.

If the interested party has entered into a contract of employment with the company, their dismissal from the post of member of the executive board shall not have the effect of terminating the said contract.

#### **Article L. 225-62**

The constitution shall determine the term of office of the executive board within limits of between two and six years. In the absence of any provision in the constitution, the term of office shall be four years. If any post becomes vacant during the said term, the replacement member shall be appointed for the remainder of the office of the current executive board.

#### **Article L. 225-63**

The deed of appointment shall fix the method and amount of the remuneration to be paid to each member of the executive board.

#### **Article L. 225-64**

The executive board shall have the widest powers to act on the company's behalf in any circumstances. It shall exercise its said powers within the limits of the purpose of the company and subject to the powers expressly attributed by the Law to the supervisory board and general meetings.

In dealings with third parties, the company shall be bound even by acts of the executive board that do not relate to its objects, unless it can prove that the third party was aware that the act in question was beyond the scope of the said objects or that in the circumstances it could not have been unaware of that fact. Mere publication of the constitution is not considered as sufficient proof.

Provisions of the constitution limiting the powers of the executive board shall not be binding on third parties.

The executive board shall consider and take its decisions in accordance with the conditions laid down by the constitution.

#### **Article L. 225-65**

The supervisory board may decide to move the company's registered office within the same department or to an adjacent department, subject to the ratification of the said decision by the next ordinary general meeting.

#### **Article L. 225-66**

The president of the executive board or the sole managing director, as the case may be, shall represent the company in its dealings with third parties.

Nevertheless, the constitution may empower the supervisory board to attribute the same power of representation to one or more other members of the executive board, who will then be known as the managing director(s).

Provisions of the constitution limiting the powers of representation of the company shall not be binding on third parties.

#### **Article L. 225-67**

No natural person shall concurrently hold more than one directorship or sole managing directorship of companies having their registered office on French territory.

Contrary to the provisions of the first paragraph:

a natural person can concurrently act as a managing director or the sole managing director of another company which is controlled, within the meaning of Article L. 233-16, by the company of which that natural person is a director or the sole managing director ;

a natural person who is a director or sole managing director of a company may also be a managing director or the sole managing director of another company, provided that its shares are not quoted on a regulated stock market.

Any natural person who is in breach of the provisions of this article shall resign from one of his directorships within three months of being appointed, or from the directorship in question within three months of the occurrence of the event which resulted in a condition of the previous paragraph no longer being met. Upon expiry of that period, he shall be deemed to have resigned either from his new directorship or from the directorship which no longer meets the conditions laid down in the previous paragraph, whichever applies, and shall return the remuneration received. This shall not affect the validity of the deliberations in which he participated.

#### **Article L. 225-68**

The supervisory board permanently supervises the executive board's management of the company.

The constitution may make execution of the latter's transactions subject to prior approval from the supervisory board. However, the assignment of immovables by nature, the total or partial assignment of equity holdings, the provision of security, as well as suretyships, avals and guarantees shall require the supervisory board's approval as determined in a Conseil d'Etat decree unless the company is a banking or financial institution. That decree also determines the conditions under which any transaction which exceeds



that authorisation can be raised against third parties.

Throughout the year, the supervisory board shall carry out the verifications and inspections it considers appropriate and may request sight of any document it considers necessary for the accomplishment of its mission.

The executive board shall present a report to the supervisory board at least once each quarter.

Following the close of each accounting period and within a time limit determined in a Conseil d'Etat decree, the executive board also presents to it, for verification and inspection purposes, the documents referred to in the second paragraph of Article L. 225-100.

The supervisory board shall present its observations on the executive board's report and the accounts for the period to the general meeting referred to in Article L. 225-100.

In companies whose financial securities are admitted to trading on a regulated market, the president of the supervisory board must also report on the composition of the board in a report appended to the report mentioned in the previous paragraph and Articles L. 225-102, L. 225-102-1 and L. 233-26, as well as on the application of the principle of gender-balanced representation on the board, the conditions for preparing and organising the work of the board, as well as the internal control and risk management procedures put in place by the company, and in particular giving the details of those procedures concerning the preparation and treatment of accounting and financial information for the corporate financial statements and, if relevant, for consolidated financial statements.

When a company refers voluntarily to a corporate governance code drawn up by the representative organisations for companies, the report specified in paragraph seven of this article shall also set out the provisions that have been ruled out and the reason for this decision. The report shall also specify the place where this code may be consulted. If a company does not refer to such a corporate governance code, the report shall indicate the rules used in addition to the legal requirements and explain the reasons why the company has decided not to apply any provision of this corporate governance code.

The report specified in paragraph seven of this article shall also set out the special procedures relating to the participation of shareholders in the general meeting or refers to the provisions of the constitution that set out these procedures.

This report shall also present the principles and rules set by the supervisory board to determine the remuneration and benefits of all types granted to company officers and shall mention the publication of the information specified in Article L. 225-100-3.

The report defined in paragraph seven of this article shall be approved by the supervisory board and shall be made public.

#### **Article L. 225-69**

The supervisory board shall consist of at least three members. The constitution shall fix the maximum number of members of the board, which shall be limited to eighteen.

The membership of the supervisory board shall be made with a concern for the equal representation of women and men.

#### **Article L. 225-70**

The constitution must stipulate an age limit for the exercise of the functions of a member of the supervisory board, applicable either to all members of the supervisory board or to a specific percentage of them.

In the absence of any express provision in the constitution, the number of members of the supervisory board over the age of seventy years must not exceed one third of the members of the supervisory board currently in office.

Any appointment made in breach of the provisions specified in the preceding paragraph shall be deemed null and void.

In the absence of any express provisions in the constitution stipulating some other procedure, where the limit fixed by the constitution or the law as to the age of members of the supervisory board is exceeded, the oldest member of the supervisory board shall be deemed to have automatically resigned from his post.

#### **Article L. 225-71**

In companies whose securities are admitted to trading on a regulated market, where the report presented to the general meeting by the executive board pursuant to Article L. 225-102 establishes that the shares held by the companies' staff and by the staff of affiliated companies within the meaning of Article L. 225-180 represent more than 3% of the company's share capital, one or more directors shall be elected by the general meeting of shareholders on a proposal from the shareholders as provided for in Article L. 225-102.

The shareholders shall vote on these appointments under the conditions determined in the constitution. These members shall be elected from among the employee-shareholders or, if appropriate, from among the employee-shareholders who are members of the supervisory board of a collective fund which holds shares in the company. Such members are not counted when the minimum and maximum numbers of supervisory board members are determined pursuant to Article L. 225-69.

The term of their office shall be determined pursuant to Article L. 225-18.

However, their term of office shall end if their employment contract expires or is terminated for any reason whatsoever.

If an extraordinary general meeting is not held within eighteen months of

the report being presented, any employee-shareholder may request the presiding judge of the court, ruling by way of summary proceedings, to direct the executive board, under pain of a progressive coercive fine, to convene an extraordinary general meeting and submit draft resolutions to it aimed at amending the memorandum and constitution as provided for in the preceding paragraph and in the final paragraph of this Article.

If the request is upheld, the progressive coercive fine and the legal costs shall be paid by the executive board members.

Companies whose supervisory board includes one or more members designated by the members of the supervisory boards of collective funds representing the members, or one or more employees elected pursuant to the provisions of Article L. 225-79, are exempted from the obligations referred to in the first paragraph.

If an extraordinary general meeting is convened pursuant to the first paragraph, it also decides on a draft resolution to provide for the election of one or more members of the supervisory board by the staff of the company and of the direct or indirect subsidiaries having their registered office in France. If appropriate, these representatives are designated as provided for in Article L. 225-79.

#### **Article L. 225-72**

The constitution may impose that each member of the supervisory board own a number of company shares, determined by the said constitution.

If, on the day of their appointment, a member of the supervisory board does not own the requisite number of shares or if, during their period of office, they shall cease to own the same, they shall be deemed to have resigned their post, unless they shall have remedied the said situation within a period of six months.

The provisions of the first paragraph shall not apply to employee shareholders appointed as members of the supervisory board pursuant to Article L. 225-71, or to employees appointed as members of the supervisory board pursuant to Articles L. 225-79 and L. 225-79-2.

#### **Article L. 225-73**

The auditors shall ensure compliance with the provisions specified in Article L. 225-72 and shall give notice of any breach in their report to the annual general meeting as their personal responsibility.

#### **Article L. 225-74**

No member of the supervisory board may be a member of the executive board.

#### **Article L. 225-75**

Members of the supervisory board shall be appointed by the initial general meeting or the ordinary general meeting. In the circumstances specified by Article L. 225-16, they shall be designated in the constitution. The term of their duties shall be determined by the constitution and may not exceed six years. However, in the event of merger or demerger, the appointment may be made by extraordinary general meeting.

They shall be eligible for re-election unless otherwise stipulated by the constitution. They may be dismissed at any time by ordinary general meeting.

Any appointment made in breach of the preceding provisions shall be null and void, with the exception of those which may be made in accordance with the conditions specified in Article L. 225-78.

#### **Article L. 225-76**

A legal entity may be appointed on to the supervisory board. On appointment, it must designate a permanent representative who shall be subject to the same conditions and obligations and shall incur the same civil and penal liabilities as if they were a member of the Board in their own name, without prejudice to the solidary liability of the legal person they represent.

Should the legal entity dismiss its representative, it must appoint their replacement at the same time.

#### **Article L. 225-77**

No natural person shall concurrently be a member of the supervisory board of more than five sociétés anonymes having their registered office on French territory.

As an exception to the provisions of the first paragraph, this shall not apply to supervisory board membership or directorships of companies which are controlled, within the meaning of Article L. 233-16, by the company on whose supervisory board that natural person sits.

For the purposes of this Article, seats on the supervisory board of companies whose shares are not quoted on a regulated stock market, within the meaning of Article L. 233-16, that are held by a single company count as one directorship, subject to the number of such directorships held not exceeding five.

Any natural person who is in breach of the provisions of this article shall resign from one of his memberships within three months of being appointed, or from the membership in question within three months of the occurrence of the event which resulted in a condition of the previous paragraph no longer being met. Upon expiry of that period, he shall be

deemed to have resigned either from his new membership or from the membership which no longer meets the conditions laid down in the previous paragraph, whichever applies, and shall return the remuneration received. This shall not affect the validity of the deliberations in which he participated.

#### **Article L. 225-78**

Should one or more vacancies on the supervisory board occur through death or resignation, the board may make temporary appointments between two general meetings.

Where the number of members of the supervisory board shall have fallen below the legal minimum, the executive board must immediately call an ordinary general meeting to complete the membership of the supervisory board.

Where the number of members of the supervisory board shall have fallen below the minimum required by the constitution, although not below the legal minimum, the supervisory board must make temporary appointments with the object of completing the membership of the board within three months of the date on which the vacancy occurs.

Appointments made by the board pursuant to the first and third paragraphs above shall be subject to ratification by the next ordinary general meeting. In the absence of confirmation, the deliberations made and the acts carried out beforehand by the board shall remain no less valid.

Where the board neglects to make the requisite appointments or if the meeting is not called, any interested party may bring a legal action for the appointment of a representative to be responsible for calling a general meeting, with the object of making or ratifying the appointments referred to in the third paragraph.

#### **Article L. 225-79**

It may be stipulated in the constitution that, apart from those members whose number and method of appointment are specified in Articles L. 225-69 and L. 225-75, the supervisory board shall include members elected either by the company's employees or by the employees of the company and those of its direct or indirect subsidiaries whose registered offices are located on French territory.

The number of members of the supervisory board elected by the employees may not exceed four, nor a third of the number of other members. Where the number of members elected by the employees is two or more, professional technical staff, executives and similar shall have at least one seat.

Members of the supervisory board elected by the employees shall not be taken into account when determining the minimum and maximum number

of members stipulated in Article L. 225-69.

#### **Article L. 225-79-1**

In companies whose securities are admitted to trading on a regulated market, in the event of the appointment to the duties of member of the executive board of a person bound by an employment contract to the company or any controlled company or a company that controls it as defined in II and III of Article L. 233-16, the provisions of the said contract corresponding, if necessary, to elements of remuneration, compensation or benefits due or likely to be due as a result of the termination or change in these duties, or subsequent to these duties, are subject to the regime set out in Article L. 225-90-1.

#### **Article L. 225-79-2**

I. - In the companies that employ, at the end of two consecutive financial years, at least five thousand permanent employees in the company and its direct or indirect subsidiaries, the registered office of which is located in France, or at least ten thousand permanent employees in the company and its direct or indirect subsidiaries, the registered office of which is located in France and abroad, and that are obliged to establish a works council pursuant to Article L. 2322-1 of the Labour Code, it is stipulated in the constitution that the supervisory board should comprise, aside from the members, the number and mode of appointment of which are specified in Articles L. 225-69 and L. 225-75 of this code, members representing employees.

A company is not subject to the obligation set out in the first paragraph of this I if it is a direct or indirect subsidiary of a company that is itself subject to this obligation.

II. - There shall be at least two members of the supervisory board representing employees in companies in which the number of members appointed according to the procedures mentioned in Articles L. 225-75 is more than twelve and at least one member if the number of members is equal to or less than twelve.

Members of the supervisory board representing employees are not included in the minimum and maximum number of members of the supervisory board specified in Article L. 225-69, or for the application of the first paragraph of Article L. 225-69-1.

III. - Within six months after the end of the second of the two financial years mentioned in I, after taking the opinion, if applicable, of the group works council, the central works council of the business or the works council, the extraordinary general meeting shall amend the constitution to determine the conditions under which the members of the supervisory board representing employees are appointed, based on one of the

following methods:

1° The organisation of an election by employees of the company and its direct or indirect subsidiaries, which have their registered office located in France under the conditions set out in Article L. 225-28;

2° The appointment, as the case may be, by the group works council specified in Article L. 2331-1 of the Labour Code, the central works council or the works council of the company mentioned in I of this article;

3° The appointment by the trade union organisation that obtained the most votes during the first round of the elections mentioned in Articles L. 2122-1 and L. 2122-4 of the Labour Code in the company and its direct or indirect subsidiaries, which have their registered office located in France when only one member is to be appointed, or by each of the two trade union organisations that obtained the most votes in the first round of these elections when two members are to be appointed;

4° When at least two members are to be appointed, the appointment of one of the members according to one of the methods set out in 1° to 3° and the other by the European works council, if there is one, or for European companies as defined by Article L. 2351-1 of the Labour Code, by the employee representative body mentioned in Article L. 2352-16 of the said code or, failing which, by the works council of the European company mentioned in Article L. 2353-1 of the said code.

Members of the supervisory board representing employees are elected or appointed within six months following the amendment of the constitution specified in the first paragraph of III.

IV. - If an extraordinary general meeting is not held within the time limit specified in the first paragraph of III, any employee may request the presiding judge of the court, ruling by way of summary proceedings, to direct the executive board, under pain of a progressive coercive fine, to convene an extraordinary general meeting and submit draft resolutions to it aimed at amending the constitution as defined in III above.

If the constitution is not amended at the end of the time limit specified in the first paragraph of III, the members of the supervisory board representing the employees shall be designated through the election mentioned in 1° of III within six months after the said time limit has expired. Any employee may ask the presiding judge of the court, ruling by way of summary proceedings, to order the company, subject to a progressive coercive fine, to organise the election.

V. - The companies that meet the criteria set in I of this article, the supervisory board of which comprises one or more members designated pursuant to Article L. 225-79 of this Code, to Article 5 of Act No. 83-675 of 26 July 1983 on the democratisation of the public sector or Article 8-1 of Act No. 86-912 of 6 August 1986 on privatisation procedures, as well as their direct or indirect subsidiaries, are not subject to the obligation specified in I to III of this article when the number of these directors is at

least equal to the number specified in II.

When the number of these members is lower than the number specified in II, I to IV shall apply at the expiry of the current term of office of the members of the supervisory board representing employees.

#### **Article L. 225-80**

Conditions relating to eligibility, the electorate, the composition of electing bodies, voting methods, objections, terms and conditions of office, dismissal, the protection of contracts of employment and the replacement of members of the supervisory board elected by the employees or appointed pursuant to Article L. 225-79-2 shall be fixed in accordance with the rules defined in Articles L. 225-28 to L. 225-34.

#### **Article L. 225-81**

The supervisory board shall elect from among its own members a president and a deputy president who shall be responsible for calling meetings and conducting its discussions. It shall determine their remuneration if it sees fit.

The president and deputy president of the supervisory board must be natural persons, failing which their appointment shall be void. They shall hold office throughout the term of office of the supervisory board.

#### **Article L. 225-82**

The Supervisory Board may validly deliberate only if at least half of its members are present.

Unless the constitution requires a larger majority, the decisions are taken on a majority vote of the members present or represented.

Unless the board is convened to deal with matters referred to in the fifth paragraph of Article L. 225-68, and barring any contrary provision in the constitution, the internal regulations may provide for that supervisory board members who participate in the meeting via videoconferencing or via a telecommunications medium which permits their identification and guarantees their effective participation for calculation of the quorum and the majority shall be deemed present. The nature of, and implementing regulations for, such media are determined in a Conseil d'Etat decree. The constitution may limit the nature of the decisions which may be made at such meetings and provide for a right of objection for a given number of supervisory board members.

Barring any contrary provision in the constitution, the president of the meeting has a casting vote in the event of a split vote.

#### **Article L. 225-82-1**

The supervisory board shall meet every year to discuss the company's



policy in matters concerning professional and wage equality. In companies required to draft the report on the comparative situation of the general working and training conditions of women and men in the company set out in Article 2323-57 of the Labour Code and in those in which they implement a plan for professional equality between men and women referred to in Article L. 1143-1 of the same code, the supervisory board shall hold its discussions on this basis.

#### **Article L. 225-83**

The general meeting may allocate to members of the supervisory board, in remuneration for their work, by way of attendance fees, a fixed annual sum to be determined by the said meeting, which shall not be bound by the provisions of the constitution or previous decisions. The amount of these shall be charged to operating expenses. The distribution thereof among the members of the supervisory board shall be fixed by the latter.

#### **Article L. 225-84**

The supervisory board may allocate extraordinary payments in remuneration of duties or mandates entrusted to members of the board. In such cases, this remuneration shall be charged to operating expenses and subject to the provisions of Articles L. 225-86 to L. 225-90.

#### **Article L. 225-85**

Members of the supervisory board shall not receive any remuneration, whether permanent or otherwise, from the company, other than that provided in Articles L. 225-81, L. 225-83 and L. 225-84, and, if appropriate, those payable under a contract of employment which relates to an actual employment.

The number of members of the supervisory board bound to the company by a contract of employment must not exceed a third of the members in office at any given time. Nevertheless, members of the supervisory board elected in accordance with Articles L. 225-79 and L. 225-80 and those appointed in accordance with the provisions of Article L. 225-71 shall not be counted when determining the said number.

Any clause to the contrary in the constitution shall be deemed unwritten and any decision to the contrary shall be deemed null and void.

#### **Article L. 225-86**

Any agreement entered into, either directly or through an intermediary, between the company and a member of the executive board or of the supervisory board, one of its shareholders holding a fraction of the voting rights greater than 10% or, in the case of a corporate shareholder, the company which controls it within the meaning of Article L. 233-3, must be

subject to the prior consent of the supervisory board.

The same applies to agreements in which a person referred to in the previous paragraph has an indirect interest.

Agreements entered into between the company and another firm are also subject to prior consent if a member of the company's executive board or supervisory board is the owner, a fully liable partner, a manager, a director or a member of that firm's supervisory board or, more generally, is in any way involved in its management.

#### **Article L. 225-87**

The provisions of Article L. 225-86 shall not apply to agreements relating to ordinary transactions conducted under normal conditions.

#### **Article L. 225-88**

The interested party must inform the supervisory board as soon as they become aware of an agreement to which Article L. 225-86 applies. If they sit as a member of the supervisory board, they may not take part in the vote on the consent requested.

The president of the supervisory board shall advise the auditors of all agreements authorised and shall submit them to the general meeting for approval.

The auditors shall present a special report on the agreements to the meeting, which shall decide on this report.

The interested party may not participate in the vote and his shares shall not be taken into account for the calculation of the quorum and the majority.

#### **Article L. 225-89**

Agreements approved by the meeting shall be effective against third parties, as shall those which it refuses, unless they are cancelled in the event of fraud.

Even where there is no fraud, the interested party, and other members of the executive board if appropriate, may be held liable for any consequences of unapproved agreements that are damaging to the company.

#### **Article L. 225-90**

Without prejudice to the liability of the interested party, agreements referred to in Article L. 225-86 and entered into without the prior authorisation of the supervisory board may be cancelled if they have prejudicial consequences for the company.

Nullity proceedings shall be time-barred after three years with effect from the date of the agreement. Nevertheless, if the agreement was concealed, time shall begin to run with effect from the date on which its existence

became known.

Invalidity may be confirmed by a vote of the general meeting taken on the special report of the auditors setting out the circumstances by virtue of which the authorisation procedure has not been followed. The provisions of paragraph four of Article L. 225-88 shall apply.

#### **Article L. 225-90-1**

In companies whose securities are admitted to trading on a regulated market, commitments made in favour of a member of the executive board, by the company itself or by any company that it controls or that controls it as defined in II and III of Article L. 233-16, and corresponding to elements of remuneration, compensation or benefits payable or likely to be payable as a result of the ceasing or change in these functions, or subsequently thereto, shall be subject to the provisions of Articles L. 225-86 and L. 225-88 to L. 225-90.

Elements of remuneration, compensation or benefits the benefit of which is not conditional upon compliance with conditions linked to the beneficiary's performance, assessed in relation to the performance of the company of which he is a member of the executive board are forbidden.

The authorisation given by the supervisory board in accordance with Article L. 225-86 is made public according to procedures and within the time limits determined by Conseil d'Etat decree.

A specific resolution is made for each beneficiary on submission for approval to the general meeting pursuant to Article L. 225-88. This approval is required at each renewal of the office exercised by the persons mentioned in the first paragraph.

No payment, of any kind whatsoever, may be made before the supervisory board has noted, during or after the termination or effective change in the duties, its conformity with the specified conditions. This decision is made public according to the procedures and within the time limits determined by Conseil d'Etat decree. Any payment made in disregard of the provisions of this paragraph shall be automatically null and void.

Commitments corresponding to compensation in consideration of a clause prohibiting the beneficiary, after the termination of his duties in the company, from exercising professional activity in competition that will adversely affect the company's interests are not subject to the provisions of paragraph one. The same shall apply to defined-benefit pension commitments corresponding to the characteristics of the schemes mentioned in Article L. 137-11 of the Social Security Code as well as commitments corresponding to the characteristics of collective and mandatory pension and provident schemes covered by Article L. 242-1 of the said code.

#### **Article L. 225-91**

It shall be prohibited for members of the executive board and non-corporate members of the supervisory board to obtain loans from the company in any form, or overdraft facilities, on a current account or otherwise, or to obtain any pledge of security or guarantee from the company for any obligations they may contract to third parties. Any agreement to do so shall be void.

This prohibition shall apply to permanent representatives of corporate members of the supervisory board. It shall also apply to the spouse and relatives in the ascending and descending line of the persons referred to in this article, as well as to any intermediary.

However, if the company operates a banking or financial institution, the prohibition shall not apply to ordinary transactions concluded on normal terms and conditions in the course of its business.

#### **Article L. 225-92**

Members of the executive board and the supervisory board, and likewise any person called to attend meetings of the said boards, shall be required to maintain the secrecy of any information of a confidential nature given as such by the president.

#### **Article L. 225-93**

In the event of the instigation of a judicial restructuring or winding-up procedure in application of Title II of Book VI, the persons referred to by these provisions may be rendered liable for the debts of the company and shall be subject to the prohibitions and forfeitures in accordance with the conditions specified by these provisions.

Subsection 3: Provisions common to company officers of sociétés anonymes.

#### **Article L. 225-94**

The limitation of the number of seats on the executive or the supervisory board that any one natural person can occupy concurrently by virtue of Articles L. 225-21 and L. 225-77 is applicable to the concurrent holding of seats on both the board of directors and the supervisory board.

For the purposes of Articles L. 225-54-1 and L. 225-67, it is permissible for a natural person to hold the post of general manager of one company and that of another company which is controlled by that company within the meaning of Article L. 233-16.

#### **Article L. 225-94-1**

Without prejudice to the provisions of Articles L. 225-21, L. 225-54-1, L. 225-67, L. 225-77 and L. 225-94, no natural person shall concurrently hold more than five posts as managing director, member of the executive board, sole managing director, director or member of the supervisory board of sociétés anonymes having their registered office on French territory. For the purposes of these provisions, the assumption of general management duties by a director counts as a single post.

Contrary to the above provisions, this shall not apply to executive directorships, or supervisory board memberships, of companies which are controlled, within the meaning of Article L. 233-16, by the company in which a post referred to in the first paragraph is occupied. (1)

Any natural person who is in breach of the provisions of this article shall resign from one of his directorships within three months of being appointed, or from the directorship in question within three months of the occurrence of the event which resulted in a condition of the previous paragraph no longer being met. Upon expiry of that period, he shall be deemed to have resigned either from his new directorship or from the directorship which no longer meets the conditions laid down in the previous paragraph, whichever applies, and shall return the remuneration received. This shall not affect the validity of the deliberations in which he participated.

#### **Article L. 225-95**

In the event of a merger of sociétés anonymes, the number of members of the board of directors or supervisory board, as the case may be, may exceed the total of eighteen specified in Articles L. 225-17 and L. 225-69, for a period of three years from the date of the merger, as laid down in Article L. 236-4, but may not exceed twenty-four.

#### **Article L. 225-95-1**

Notwithstanding the provisions of Articles L. 225-21, L. 225-77 and L. 225-94-1, an office as a permanent representative of a venture capital company referred to in Article 1 of Act No. 85-695 of 11 July 1985 relating to various provisions of an economic and financial nature, or of an innovation venture capital company referred to in III (B) of Article 4 of Act No 72-650 of 11 July 1972 relating to various provisions of an economic and financial nature, or of a management company authorised to manage collective funds governed by Articles L. 214-28 and L. 214-30 of the Monetary and Financial Code, are not taken into account.

If the conditions stipulated in this article are no longer met, any natural person shall have three months to resign from the functions which do not meet the requirements of Articles L. 225-21, L. 225-77 and L. 225-94-1. Upon expiry of that period, he shall be deemed to no longer represent the legal entity and must return the remuneration received. This shall not affect

the validity of the deliberations in which he has taken part.

Notwithstanding Articles L. 225-21, L. 225-54-1, L. 225-67 and L. 225-94-1, offices as president, general manager, sole general manager, executive board member or director of a local semi-public limited company performed by a representative of a territorial authority or of a group of territorial authorities are not taken into account for application of the rules relating to plurality of offices.

### *Section 3: Shareholders' general meetings.*

#### **Article L. 225-96**

Only an extraordinary general meeting is authorised to amend any provision of the constitution. Any clause to the contrary shall be deemed unwritten. The extraordinary general meeting may nevertheless not increase the shareholders' commitments, without prejudice to transactions resulting from a properly executed share consolidation.

It may validly deliberate when first convened only if the shareholders present or represented hold at least one quarter of the voting shares and, if reconvened, one fifth of the voting shares. Failing this, the second meeting may be postponed to a date not later than two months after the date originally scheduled. Companies whose shares are not admitted to trading on a regulated market may provide for higher quorums in their constitution.

The extraordinary general meeting shall make its decisions on a majority of two thirds of the votes held by the shareholders present or represented.

#### **Article L. 225-97**

The extraordinary general meeting may change the nationality of the company, provided that the new host country shall have entered into a special agreement with France permitting the company to acquire its nationality and to transfer its registered office to the new host country's territory, while retaining its legal personality.

#### **Article L. 225-98**

The ordinary general meeting makes all decisions other than those referred to in Articles L. 225-96 and L. 225-97.

It may validly deliberate when first convened only if the shareholders present or represented hold at least one fifth of the voting shares. Companies whose shares are not admitted to trading on a regulated market may provide for a higher quorum in their constitution. If it is reconvened, no quorum is required.

It makes its decisions on a majority of the votes held by the shareholders present or represented.

#### **Article L. 225-99**

The holders of shares in a given category attend special shareholders' meetings.

A decision to vary the rights relating to a share category taken at a general meeting is not final until it has been approved by that category's special shareholders' meeting.

Special shareholders' meetings may validly deliberate only if the shareholders present or represented, when first convened, hold at least one third of the voting shares whose rights are to be varied and, if reconvened, one fifth of those shares. Failing this, the second meeting may be postponed to a date not later than two months after the date originally scheduled. Companies whose shares are not admitted to trading on a regulated market may provide for higher quorums in their constitution.

They make their decisions as stipulated in the third paragraph of Article L. 225-96.

#### **Article L. 225-100**

An ordinary general meeting is held at least once each year within six months of the close of the financial year, without prejudice to any extension of that time limit by a court decision. If the ordinary general meeting has not met within this time limit, the Public Prosecutor's Office or any shareholder may file a case with the competent presiding judge, ruling by way of summary proceedings, to order the managers, subject to a progressive coercive fine, if relevant, to convene the said meeting or appoint a representative to do so.

The board of directors or the executive board presents its report and the annual accounts to the meeting and also, where applicable, the consolidated accounts and the management report relating thereto.

This report includes an objective and exhaustive analysis of the company's business development, results and financial position, and in particular its borrowings relative to the volume and complexity of the business. To the extent necessary for an understanding of the company's business development, results or position, and independently of the key performance indicators of a financial nature which must be included in the report by virtue of other provisions of this code, the analysis includes, where appropriate, the key performance indicators of a non-financial nature which relate to the company's specific business, such as information pertaining to environmental issues and personnel matters.

The report shall also include a description of the main risks and uncertainties that the company faces.

The analysis referred to in the third paragraph contains, where applicable, references to the figures shown in the annual accounts and additional explanations relating thereto.

The report must also contain indications concerning the company's use of financial instruments, when this is relevant for an evaluation of its assets, its liabilities, its financial position and its profits or losses. These indications relate to the company's objectives and policy in regard to financial risk management, including its policy on the hedging of each main transaction category envisaged for which hedge accounting is used. They also relate to the company's exposure to price, credit, liquidity and cash-flow risks.

A summary table of the powers granted to the board of directors or the executive board by the general meeting of shareholders in connection with capital increases pursuant to Articles L. 225-129-1 and L. 225-129-2 is attached to the said report.

The table shows the use made of those powers during the financial year.

In their report, the auditors comment on the fulfilment of the task entrusted to them by Articles L. 823-9, L. 823-10 and L. 823-11.

The meeting deliberates and decides on all matters relating to the annual accounts and, where applicable, the consolidated accounts, for the previous financial year.

It exercises the powers vested in it, inter alia, by Article L. 225-18, the fourth paragraph of Article L. 225-24, the third paragraph of Article L. 225-40, the third paragraph of Article L. 225-42 and Article L. 225-45, or, where applicable, Article L. 225-75, the fourth paragraph of Article L. 225-78, Article L. 225-83, the third paragraph of Article L. 225-88 and the third paragraph of Article L. 225-90.

#### **Article L. 225-100-1**

The third to sixth paragraphs of Article L. 225-100 do not apply to companies which, at the close of the financial year, do not exceed the figures determined by decree for two of the following criteria: the balance sheet total, the net amount of their turnover or the average number of permanent staff employed during the financial year. This paragraph does not apply to companies whose financial instruments referred to in 1 or 2 of II of Article L. 211-1 of the Monetary and Financial Code are admitted to trading on a regulated market.

Companies which, at the close of the financial year, do not exceed the figures determined by decree for two of the following criteria: the balance sheet total, the net amount of their turnover or the average number of permanent staff employed during the financial year, are not required to provide the information of a non-financial nature referred to in the last sentence of the third paragraph of Article L. 225-100. This paragraph does not apply to companies whose financial instruments referred to in 1 or 2 of II of Article L. 211-1 of the Monetary and Financial Code are admitted to trading on a regulated market.



#### **Article L. 225-100-2**

When the company draws up consolidated accounts pursuant to Article L. 233-16, the consolidated management report includes an objective and exhaustive analysis of the business development, of the results and of the financial position of all the companies included in the consolidation, and in particular their borrowings relative to the volume and complexity of the business. To the extent necessary for an understanding of the companies' business development, results or situation, the analysis should include the key performance indicators of a financial and, where applicable, non-financial nature which relate to the companies' specific business, such as information pertaining to environmental issues and personnel matters.

The report must also include a description of the main risks and uncertainties faced by all the companies included in the consolidation.

The analysis referred to in the first paragraph should contain, where applicable, references to the figures shown in the consolidated accounts and additional explanations relating thereto.

The report must also contain indications concerning the company's use of financial instruments, when this is relevant for an evaluation of its assets, its liabilities, its financial position and its profits or losses. These indications relate to the company's objectives and policy in regard to financial risk management, including its policy on the hedging of each main transaction category envisaged for which hedge accounting is used. They also relate to the company's exposure to price, credit, liquidity and cash-flow risks.

#### **Article L. 225-100-3**

For companies whose securities are admitted to trading on a regulated market, the report covered by Article L. 225-100 should set out and, if necessary, explain the following elements when they are liable to have an impact in the event of a public offering:

- 1° The structure of the company's capital;
- 2° The restrictions on the exercise of voting rights and share transfers or the clauses of agreements provided for in the constitution brought to the notice of the company pursuant to Article L. 233-11;
- 3° The direct and indirect equity interests of which the company has knowledge by virtue of Articles L. 233-7 and L. 233-12;
- 4° The list of holders of any securities conferring special rights of control and description of these securities;
- 5° The control procedures provided for any employee share-ownership plans when the employees do not exercise this control themselves;
- 6° Shareholder agreements of which the company is aware and that could restrict share transfers and the exercise of voting rights;
- 7° The rules applicable to the appointment and replacement of members

of the board of directors or the executive board and to the amendment of the company's constitution;

8° The powers of the board of directors or the executive board, in particular, share issues or buybacks;

9° Agreements to which the company is party and which are altered or terminated in the event of a change of control of the company, save if this disclosure, except in the case of a legal obligation of disclosure, would cause serious harm to its interests;

10° Agreements providing for the payment of compensation to members of the board of directors or the executive board or employees in the event of their resignation or dismissal without real and serious cause or if their employment were to be terminated as a result of a tender offer.

#### **Article L. 225-101**

Where, within two years of registration, a company acquires an asset belonging to a shareholder which is worth at least one-tenth of its share capital, an auditor shall be appointed by a Court order to value the asset in question as his or her personal responsibility, on an application by the president of the board of directors or the executive board, as the case may be. The appointment of this auditor shall be subject to the incompatibility rules set out in Article L. 225-224.

The auditor's report shall be made available to the shareholders. The ordinary general meeting shall decide on the valuation of the asset, failing which the acquisition shall be void. The seller shall not have the right to vote either on their own behalf or as a representative.

The provisions of this Article shall not apply where the acquisition is effected on the Stock Exchange, under the supervision of a judicial authority or in connection with the company's ordinary business, concluded on normal terms and conditions.

#### **Article L. 225-102**

The report submitted to the ordinary shareholders' meeting by the board of directors or the executive board, as the case may be, shall give an annual account of the number of shares of the company's capital held by employees at the last day of the financial year and shall establish the proportion of the share capital represented by shares held by company employees and employees of companies associated with it for the purposes of Article L. 225-180 under a company savings scheme as provided for by Articles L. 443-1 to L. 443-9 of the Employment Code and by employees and former employees in connection with collective funds governed by Chapter III of Act No 88-1201 of 23 December 1988 relating to collective funds in personal securities and creating debt investment funds. Shares directly held by employees during the periods of non-assignability

specified in Articles L. 225-194 and L. 225-197, in Article 11 of Act No 86-912 of 6 August 1986 relating to privatisation procedures and Article 442-7 of the Labour Code shall also be taken into account.

Securities acquired by employees in connection with the buy-out of a company by its employees, as specified in Act No 84-578 of 9 July 1984 on the development of economic initiatives, or by employees of a production workers' co-operative within the meaning of Act No 78-763 of 19 July 1978 laying down rules for production co-operatives shall not be taken into account when valuing the proportion of capital as mentioned in the preceding paragraph.

Where the Annual Report does not contain the information referred to in the first paragraph, any interested party may apply to the Presiding Judge of the Court, ruling by way of summary proceedings, for an order to the effect that the board of directors or the management, as the case may be, must disclose the said information, subject to a progressive coercive fine if it fails to do so.

Where the application is granted, any fine and the expenses of the proceedings shall be payable by the members of the board of directors or the executive board, as the case may be.

#### **Article L. 225-102-1**

The report referred to in Article L. 225-102 itemises the total remuneration and benefits of all kinds paid to each company officer during the accounting period including any allotment of capital securities, debt instruments or securities giving access to the capital or giving entitlement to an allotment of debt instruments of a company or companies referred to in Articles L. 228-13 and L. 228-93.

It also indicates the amount of the remuneration and benefits of all kinds which each company officer received from controlled companies within the meaning of Article L. 233-16 or from the company which controls the company in which the duties are performed within the meaning of that same article during the accounting period.

The said report also describes and distinguishes between the fixed, variable and exceptional elements that make up that remuneration and those benefits as well as the criteria used to calculate them or the circumstances giving rise to them. It must mention, should this be the case, the enforcement of the second paragraph, as the case may be, of Article L. 225-45 or Article L. 225-83.

It also indicates the commitments of all kinds made by the company in favour of the company officers relating to elements of remuneration, compensation or benefits payable or likely to be payable on account of them taking up or ceasing their functions or of their functions changing, or subsequently thereto. The information provided in this regard must specify the method used to determine those commitments. Except for

arrangements made in good faith, payments and commitments made in violation of the provisions of this paragraph may be cancelled.

The report also includes a list of all the offices and functions performed in each company by each company officer during the accounting period. It also includes all information concerning the way in which the company deals with the social and environmental consequences of its business and its societal commitments to promote sustainable development and diversities, whilst fighting against discrimination. A Conseil d'Etat decree will set out two lists specifying the information covered in this paragraph and how it is presented to enable the comparison of data, depending on whether or not the company is admitted to trading on a regulated market.

The preceding paragraph applies to companies whose securities are admitted to trading on a regulated market as well as to companies whose balance sheet total or turnover and workforce exceed the thresholds defined by Conseil d'Etat decree. Where the company publishes consolidated accounts, the information provided is consolidated and concerns the company itself and all its subsidiaries as defined in Article L. 233-1 or companies that it controls as defined in Article L. 233-3.

Subsidiaries or controlled companies that exceed the thresholds mentioned in the first sentence of this paragraph are not bound to publish the information mentioned in the fifth paragraph of this article when this information is published by the company that controls them as defined in Article L. 233-3, in detail for each subsidiary and controlled company and when these subsidiaries or controlled companies state how to reach such information in their own management report. When the subsidiaries or controlled companies are established in France and include classified sites subject to authorisation or registration, the information provided covers each one of the said companies when the information cannot be consolidated.

Social and environmental information included or to be included in accordance with legal and regulatory obligations shall be audited by an independent third-party organisation, according to the procedure defined by Conseil d'Etat decree. This audit shall lead to an opinion that is sent to the meeting of shareholders at the same time as the report of the board of directors or the executive board.

The preceding paragraph shall apply as from the financial year that started after 31 December 2011 for companies whose securities are admitted to trading on a regulated market. It shall apply as from the financial year ended 31 December 2016 for all companies concerned by this article.

The opinion of the independent third-party organisation shall comprise, inter alia, a certificate stating that all the information to be included in accordance with legal and regulatory obligations has been included. This certificate must be provided as from the financial year that started after 31

December 2011 for all companies concerned by this article.

The provisions of the last two paragraphs of Article L. 225-102 apply to the information covered by this article.

The provisions of the first to third paragraphs do not apply to companies whose securities are not admitted to trading on a regulated market and which are not controlled within the meaning of Article L. 233-16 by a company whose securities are admitted to trading on a regulated market. Moreover, these provisions do not apply to company officers who do not hold any office in a company whose securities are admitted to trading on a regulated market.

As from 1 January 2013, the Government shall present a report on the application of the provisions referred to in the fifth paragraph by companies and on the actions that it is promoting in France, Europe and at the international level to encourage corporate social responsibility.

#### **Article L. 225-102-2**

For companies that operate at least one installation of a type indicated on the list provided in IV of Article L. 515-8 of the Environmental Code, the report referred to in Article L. 225-102 of this code shall:

- provide details of the technological accident risk-prevention policy that the company applies;
- explain how the company has covered its civil liability in regard to property and persons which the use of such installations gives rise to;
- specify the measures the company has put in place to ensure proper compensation of the victims in the event of it incurring liability for a technological accident.

#### **Article L. 225-103**

I. - General meetings shall be convened by the board of directors or the executive board, as the case may be.

II. - Failing this, a general meeting may also be convened:

1° By the auditors;

2° By a representative appointed by the Court, on an application either by any interested party, in the event of emergency, or by one or more shareholders who together hold more than 5% of the share capital, or by an association of shareholders in accordance with the conditions laid down in Article L. 225-120;

3° By the liquidators;

4° By the majority shareholders in terms of capital or voting rights after a public take-over bid or exchange offer or the transfer of a controlling block of shares.

III. - In companies subject to Articles L. 225-57 to L. 225-93, a general meeting may be convened by the supervisory board.

IV. - The foregoing provisions shall apply to special shareholders' meetings. Shareholders applying for the appointment of a judicial representative must hold at least one twentieth of the shares of the relevant category.

V. - Unless otherwise provided by the constitution, general meetings shall be held at the registered office or anywhere else in the same department.

#### **Article L. 225-104**

General meetings shall be convened in the manner and subject to time limits to be laid down by a Conseil d'Etat decree.

Any irregularly convened meeting may be annulled.

An application for annulment shall not, however, be admissible where all the shareholders were present or represented.

#### **Article L. 225-105**

The agenda for general meetings shall be determined by the convener.

However, one or more shareholders representing at least 5% of the capital, or a shareholders' association which meets the conditions laid down in Article L. 225-120, are entitled to request the inclusion of items or draft resolutions on the agenda. Such items or draft resolutions are included on the agenda for the meeting and brought to the knowledge of the shareholders in the manner determined in a Conseil d'Etat decree. The said decree may reduce the percentage imposed by this paragraph if the share capital exceeds a level specified therein.

The meeting cannot deliberate on an item that is not on the agenda. It may nevertheless remove one or more directors or supervisory board members from office and replace them, in any circumstances.

The agenda for the meeting cannot be amended when a second notice to attend is sent out.

When the meeting is called upon to deliberate on changes to the company's financial or legal organisation in respect of which the works council has been consulted pursuant to Article L. 432-1 of the Labour Code, that body's opinion is conveyed to the meeting.

#### **Article L. 225-106**

I. - Shareholders may elect to be represented by another shareholder, their spouse or the partner with whom they have signed a civil pact of solidarity.

They may also elect to be represented by any other natural or legal person of their choosing:

1° When the company's shares are admitted to trading on a regulated market;

2° When the company's shares are admitted to trading in a multilateral

trading system that is governed by legislative or regulatory provisions designed to protect investors from insider trading, price fixing and the disclosure of misleading information under the conditions specified by the General Regulations of the Financial Markets Authority, shown on a list prepared by the authority under conditions established by its General Regulations, and when the company's constitution so provides.

II. - The proxy and, where appropriate, its revocation are in writing and sent to the company. The rules governing the application of this paragraph shall be specified by a Conseil d'Etat decree.

III. - Before each general meeting, the president of the board of directors or the executive board, as the case may be, may organise a consultation with the shareholders mentioned in Article L. 225-102 to enable them to appoint one or more representatives to represent them at the meeting in accordance with the provisions of this Article.

This consultation is mandatory where, following the amendment of the constitution pursuant to Article L. 225-23 or Article L. 225-71, the ordinary general meeting is required to appoint to the board of directors or the supervisory board, as the case may be, one or more shareholder employees or members of the supervisory boards of the collective funds that hold the company's shares.

This consultation is also mandatory where an extraordinary general meeting is required to decide on an amendment to the constitution pursuant to Article L. 225-23 or Article L. 225-71.

Any clauses that conflict with the provisions of the preceding paragraphs shall be deemed unwritten.

For every recorded proxy of a shareholder without a pre-indicated proxy-vote, the president of the general meeting shall vote in favour of adopting the draft resolutions submitted or approved by the board of directors or the executive board, as the case may be, and vote against the adoption of all other draft resolutions. To make any other vote, the shareholder must appoint a proxy who agrees to vote in the manner indicated by the principal.

#### **Article L. 225-106-1**

Where, in the cases set out in the third and fourth paragraphs of I of Article L. 225-106, shareholders elect to be represented by a person other than their spouse or partner with whom they have signed a civil pact of solidarity, their proxy-holder shall inform them of any fact that allows them to assess the risk that the proxy-holder would pursue an interest other than their own.

This information concerns in particular the fact that the proxy-holder or, if applicable, the person on whose behalf he is acting:

1° Controls, within the meaning of Article L. 233-3, the company for which the general meeting has been convened;

2° Is a member of the management, administrative or supervisory body of this company or of a person who controls the company within the meaning of Article L. 233-3;

3° Is employed by this company or by a person that controls the company within the meaning of Article L. 233-3;

4° Is controlled or exercises one of the functions mentioned in 2° or 3° in a person or entity controlled by a person who controls the company, within the meaning of Article L. 233-3.

This information is also given when there is a family tie between the proxy-holder or, where applicable, the person on whose account he is acting, and a natural person placed in one of the positions set out in 1° to 4°.

The proxy-holder shall immediately notify the principal if one of the facts mentioned in the preceding paragraphs occurs during the proxy. Failure by the person creating the proxy to expressly confirm this mandate shall make the proxy null and void.

The proxy-holder shall immediately notify the company that the power of attorney has become null and void.

The implementing provisions of this article shall be specified by a Conseil d'Etat decree.

#### **Article L. 225-106-2**

Anyone who actively solicits proxies, by proposing directly or indirectly to one or more shareholders, in any form and by any means whatsoever, to receive proxy to represent them at the meeting of a company mentioned in the third and fourth paragraphs of Article L. 225-106, shall announce their voting policy.

That person can also announce their voting intentions on the draft resolutions presented to the shareholders. In that case, for any proxy received without voting instructions, the person shall vote in consistently with the voting intentions announced.

The implementing provisions of this article shall be specified by a Conseil d'Etat decree.

#### **Article L. 225-106-3**

The Tribunal de Commerce in the jurisdiction of which the company has its registered head office may, at the request of the principal and for a period not exceeding three years, deprive the proxy-holder of the right to participate in this capacity in any meeting of the company concerned in the event that the proxy-holder does not comply with the mandatory disclosure provided for in the third to seventh paragraphs of Article L. 225-106-1 or the provisions of Article L. 225-106-2.

The court may decide to publish this decision at the proxy-holder's



expense.

The court may pronounce the same penalties against the proxy-holder at the request of the company in the event the provisions of Article L. 225-106-2 are not complied with.

#### **Article L. 225-107**

I. Any shareholder may vote by post, using a form the wording of which shall be established by a Conseil d'Etat decree. Any provisions to the contrary contained in the constitution shall be deemed unwritten.

When calculating the quorum, only forms received by the company before the meeting shall be taken into account, under the conditions established by a Conseil d'Etat decree. Forms not indicating any vote or expressing an abstention shall be considered as negative votes.

II. If the constitution so provides, shareholders participating in a meeting by video-conferencing or means of telecommunication that enable them to be identified, the nature and conditions of which shall be determined by a Conseil d'Etat decree, shall be deemed to be present at the said meeting for the purposes of calculating the quorum and majority.

#### **Article L. 225-107-1**

The owners of securities referred to in the seventh paragraph of Article L. 228-1 may arrange to be represented by a registered intermediary as provided for in the said article.

#### **Article L. 225-108**

The board of directors or executive board, as the case may be, must send or make available to the shareholders the necessary documents to enable them to make decisions based on knowledge of the facts and arrive at an informed judgement on the management and progress of the company and its business.

The nature of the said documents and the conditions under which they are sent or made available to shareholders are determined by a Conseil d'Etat decree.

From the date of the delivery of the documents specified in the first paragraph, any shareholder shall be entitled to submit written questions, to which the board of directors or the executive board, as the case may be, is required to reply in the course of the meeting. A single response may be given to these questions in so far as they present the same content.

The answer to a written question is deemed to have been given insofar as it is published on the company's website in a section devoted to questions and answers.

#### **Article L. 225-109**

The president, managing directors and members of the executive board of a company, and any natural or legal persons exercising the functions of a director or member of the supervisory board, and also permanent representatives of legal persons exercising the said functions, shall be required, upon conditions to be determined by a Conseil d'Etat decree, to register these in the name of the shareholder or to securely deposit any shares belonging to themselves or their unemancipated minor children which have been issued by the company itself, by its subsidiaries or parent company or by other subsidiaries of its parent company, where the said shares are admitted to trading on a regulated market.

Spouses of the persons mentioned in the preceding paragraph shall (unless judicially separated) be subject to the same obligation.

The voting rights and entitlements to dividend for shares held by any person who has not fulfilled the obligations of this article shall be suspended until the situation is duly rectified. Any vote issued or any dividend payment made during the suspension shall be void.

#### **Article L. 225-110**

Where shares are subject to a usufruct<sup>24</sup>, voting rights attached thereto shall belong to the usufructuary<sup>25</sup> thereof at ordinary general meetings and to the naked owner<sup>26</sup> at extraordinary general meetings.

Joint owners of undivided shares shall be represented at general meetings by one of them or by a single proxy-holder. In the event of disagreement, the proxy-holder shall be appointed by the Court at the request of the joint owner taking the initiative.

Voting rights shall be exercised by the owner in the case of shares pledged by way of security<sup>27</sup>. To that end, the pledgee shall, at the debtor's request, place the shares he holds as a pledge on deposit, on conditions and within time limits to be fixed by a Conseil d'Etat decree.

The constitution may create exceptions to the rule contained in the first paragraph hereof.

#### **Article L. 225-111**

The company shall not be entitled to voting rights attached to shares it

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<sup>24</sup> A time-limited proprietary interest. "Proprietary" here is in English terms. See the Civil Code from Article 578.

<sup>25</sup> Holder of a usufruct (*usufruit*). See note above.

<sup>26</sup> The person to whom the whole ownership reverts on expiry of the usufruct (see note above).

<sup>27</sup> "Gage": see the Civil Code, Article 2333, sometimes to be translated as "pledge of corporeal movables".

shall itself have subscribed, acquired or taken as a pledge. Such shares shall not be taken into account when calculating the quorum.

#### **Article L. 225-113**

Any shareholder may take part in extraordinary general meetings and any shareholder holding shares of the type referred to in Article L. 225-99 may take part in special shareholders' meetings. Any clause to the contrary shall be deemed unwritten.

#### **Article L. 225-114**

Each meeting shall keep an attendance sheet, the wording of which shall be determined by Conseil d'Etat decree and to which shall be appended the powers given to each proxy-holder.

Decisions taken at the meeting must be noted in minutes the wording of which shall be determined by a Conseil d'Etat decree.

In case of non-compliance with this article, the deliberations of the meeting may be cancelled.

#### **Article L. 225-115**

Any shareholder is entitled, under the conditions and subject to the time limits determined in a Conseil d'Etat decree, to communication of:

1. The annual accounts and the list of directors or members of the executive board and the supervisory board, and, where applicable, the consolidated accounts;

2. The reports of the board of directors or the executive board and the supervisory board, as applicable, and the auditors, which shall be presented to the meeting;

3. Where applicable, the text of, and the objects and reasons for, the proposed resolutions, as well as information concerning candidates for the board of directors or the supervisory board, whichever applies;

4. The total amount, certified as accurate by the auditors, of the remuneration paid to the highest-paid persons, the number of such persons being ten or five depending on whether or not the workforce exceeds two hundred employees;

5. The total amount, certified as accurate by the auditors, of the payments made pursuant to 1 and 4 of Article 238 bis of the General Tax Code, as well as a list of the registered shares under sponsorship and the registered shares under patronage;

- 6° [Repealed]

#### **Article L. 225-116**

Before any general meeting is held, every shareholder shall be entitled, subject to conditions and time limits to be determined by a Conseil d'Etat

decree, to obtain the disclosure of the list of shareholders.

#### **Article L. 225-117**

Every shareholder shall be entitled at any time to obtain the disclosure of the documents referred to in Article L. 225-115 relating to the last three financial years, and the minutes and attendance sheets of meetings held during the said three years.

#### **Article L. 225-118**

The right to disclosure of documents, provided in Articles L. 225-115, L. 225-116 and L. 225-117, shall be equally enjoyed by each joint owner in the case of undivided shares, and the naked owner and the usufructuary in the case of shares subject to a usufruct.

#### **Article L. 225-120**

I. - In companies whose shares are admitted to trading on a regulated stock market, shareholders whose shares have been registered for at least two years and who hold at least 5% of the voting rights may form associations to represent their interests within the company. In order to exercise the rights to which they are entitled under Articles L. 225-103, L. 225-105, L. 823-6, L. 225-231, L. 225-232, L. 823-7 and L. 225-252, such associations must have notified the company and the French Financial Markets Authority [Autorité des Marchés Financiers] of their legal status.

II. - Where, however, the company's capital exceeds 750,000 Euros, the share of voting rights to be represented pursuant to the preceding paragraph is reduced according to the number of the voting rights relating to the capital, as follows:

- 1° 4% over 750,000 Euros and up to 4,500,000 Euros;
- 2° 3% over 4,500,000 Euros and up to 7,500,000 Euros;
- 3° 2% over 7,500,000 Euros and up to 15,000,000 Euros;
- 4° 1% over 15,000,000 Euros.

#### **Article L. 225-121**

Decisions taken by meetings in breach of Articles L. 225-96, L. 225-97, L. 225-98, the third and fourth paragraphs of Article L. 225-99, the second paragraph of Article L. 225-100 and Article L. 225-105 shall be void.

In the event of breach of the provisions of Articles L. 225-115 and L. 225-116 or their implementing decree, the meeting may be declared null and void.

#### **Article L. 225-122**

- I. - Subject to the provisions of Articles L. 225-10, L. 225-123, L. 225-124,

L. 225-125 and L. 225-126, voting rights attached to capital or dividend shares shall be in proportion to the share of the capital they represent and each share shall entitle the holder to at least one vote. Any clause to the contrary shall be deemed unwritten.

II. - In joint-stock companies, whose capital is partly owned by the State, departments, municipalities or public institutions for a reason arising from the general interest, and those whose object is to operate businesses under licence from the competent Government authorities, outside mainland France, such voting rights shall be governed by the constitution in force at 1 April 1967.

#### **Article L. 225-123**

A voting right equivalent to twice that attributed to other shares may be attributed to fully paid-up shares which can be proved to have been registered in the name of the same shareholder for at least two years, depending on the proportion of the share capital they represent, by the constitution or an extraordinary general meeting.

Furthermore, in the event of a capital increase by incorporation of reserve funds, profits or premiums on the issue of securities, a double voting right may be conferred, from the date of issue, on registered shares allocated to a shareholder free of charge by reason of any former shares by which he used to benefit from that right.

The voting right provided in the first and second paragraphs above may be reserved to French shareholders and those that are nationals of a Member State of the European Community or a Member State of the European Economic Area.

#### **Article L. 225-124**

Any share converted into a bearer share or changing hands shall lose the right to a double vote attributed pursuant to Article L. 225-123.

Nevertheless, a transfer on succession, or on the partition of property jointly owned by spouses, or by a gift inter vivos to a spouse or a relative entitled to succeed to the donor's estate shall not cause the right to be lost, nor interrupt the period of time referred to in the first paragraph of Article L. 225-123.

The same shall apply, unless otherwise specified in the constitution of the company that awarded the double voting right, in case of transfer subsequent to a merger or demerger of a shareholding company.

The merger or demerger of a company shall have no effect on double voting rights capable of being exercised within the beneficiary company or companies, where the constitution of these beneficiary companies has provided for this.

#### **Article L. 225-125**

The constitution may limit the number of votes attributed to each shareholder at meetings, provided that any such limitation shall be imposed on all shares irrespective of their class, other than priority-dividend shares without voting rights.

The effects of the limitation mentioned in the previous paragraph, set out in the constitution of a company that has been the subject of a take-over bid and the shares of which are admitted to trading on a regulated market, shall be suspended at the first general meeting following the termination of the bid where the author of the bid, acting alone or together with other parties, comes to hold a fraction of the capital or voting rights of the company targeted by the bid greater than a percentage fixed by the General Regulations of the Financial Markets Authority, at least equal to that required to amend the articles and within the limit of three quarters.

#### **Article L. 225-126**

I. - Where the shares of a company whose registered office is established in France are admitted to trading on a regulated market in a European Union Member State or Member State of the European Economic Area, any person, except for the persons specified in 3° of IV of Article L. 233-7, who holds, alone or with other parties, a number of shares representing more than two-hundredth of the voting rights on the basis of one or more temporary transfer transactions regarding these shares or of any transaction granting him the right to sell or return those shares to the transferor or assigning to him the obligation to do so, shall inform the company and the Financial Markets Authority, no later than midnight on the third business day preceding the general meeting, Paris time, and where the contract organising this transaction remains in force on that date, shall inform those bodies of the total number of shares that he owns on a temporary basis. This declaration must include, in addition to the number of shares acquired through one of the above-mentioned transactions, the transferor's identity, the date and maturity of the contract for the transaction and if any, the voting agreement. The company shall publish this information under the conditions and according to the terms set out by the General Regulations of the Financial Markets Authority.

II. - In the absence of such disclosure to the company and to the Financial Markets Authority under the conditions specified in I, the shares earned under one of the transactions mentioned under I shall be deprived of voting right for the general meeting concerned and for any shareholder meeting that would be held until the resale or return of the said shares. The decisions taken by the general meeting in breach of point II herein may be cancelled.

III. - The Tribunal de Commerce in the jurisdiction where the company

has its registered office may, after hearing the Public Prosecutor's Office, on the application of the representative of the company, shareholder or Financial Markets Authority, declare the total or partial suspension of voting rights for a period that cannot exceed five years, of any shareholder who fails to carry out the disclosure specified in I.

*Section 4: Changes to share capital and the body of employee-shareholders*

Subsection 1: Capital increases

**Article L. 225-127**

The company's share capital is increased either by an issue of ordinary shares or preference shares, or by increasing the nominal value of the existing equity capital.

It may also be increased by exercise of the rights attached to transferable securities giving access to equity, as provided for in Articles L. 225-149 and L. 225-177.

**Article L. 225-128**

The new capital securities are issued either for their nominal value, or for that value plus a share premium.

They are paid up either by a money contribution, including compensation set against liquid and due receivables on the company, or by a contribution in kind, or by incorporation of reserves, profits or share premiums, or as a result of a merger or demerger.

They may also be paid up following the exercise of a right attached to transferable securities giving access to equity, including, where applicable, payment of the corresponding sums.

**Article L. 225-129**

Only an extraordinary general meeting is competent to decide a capital increase immediately on or after a set term, on the basis of a report from the board of directors or the executive board. It may delegate this competence to the board of directors or the executive board in the manner indicated in Article L. 225-129-2.

Without prejudice to the provisions of Articles L. 225-129-2 and L. 225-138, the capital increase must be effected within five years of that decision or delegation being made. This time limit does not apply to capital increases made subsequent to the exercise of a right attached to a transferable security giving access to equity or subsequent to the exercise of options as envisaged in Article L. 225-177, or due to the final award of free shares specified in Article L. 225-179-1.

#### **Article L. 225-129-1**

When the extraordinary general meeting decides to effect a capital increase, it may delegate the power to determine the terms and conditions of the issue of securities to the board of directors or the executive board.

#### **Article L. 225-129-2**

When the extraordinary general meeting delegates its power to determine a capital increase to the board of directors or the executive board, it determines the period during which that delegation may be used, which shall not exceed twenty-six months, and the overall ceiling for that increase.

Such delegation renders any prior delegation having the same object ineffective.

The issues mentioned in Articles L. 225-135 to L. 225-138-1 and L. 225-177 to L. 225-186, L. 225-197-1 to L. 225-197-3 as well as the issues of preference shares mentioned in Articles L. 228-11 to L. 228-20 must be the subject of specific resolutions.

Within the limits of the delegation given by the general meeting, the board of directors or the executive board shall have the necessary powers to determine the conditions of issue, to implement the resultant capital increases and to make the appropriate amendment to the constitution.

#### **Article L. 225-129-4**

In sociétés anonymes whose capital securities are admitted to trading on a regulated market or on a multilateral trading platform which is subject to legislative and regulation provisions aimed at protecting investors against insider trading, price fixing and the publication of misleading information:

a) The board of directors may, within limits which it has previously set, delegate to the general manager or, with his agreement, to one or more deputy managing directors, the power to decide to proceed with the issue, or to postpone it;

b) The executive board may delegate to its president or, with his agreement, to one or more of its members, the power to decide to proceed with the issue, or to postpone it.

The designated persons must report to the board of directors or the executive board on the use made of that power in the manner stipulated by the latter.

#### **Article L. 225-129-5**

When use is made of delegations as provided for in Articles L. 225-129-1 and L. 225-129-2, the board of directors or the executive board must draw up a supplementary report for the next ordinary general meeting in the conditions determined in a Conseil d'Etat decree.



#### **Article L. 225-129-6**

When any capital increase via a money contribution takes place, unless it results from a prior issue of transferable securities giving access to equity, an extraordinary general meeting shall decide on a draft resolution to work towards a capital increase as provided for in Articles L. 3332-18 to L. 3332-24 of the Labour Code, where the company has employees. An extraordinary general meeting shall also decide on such a draft resolution when it delegates its power to increase the capital pursuant to Article L. 225-129-2.

Every three years, an extraordinary general meeting is convened to decide on a draft resolution to increase the capital as provided for in section 4 of chapter II of title III of the third part of the Labour Code if, in view of the report presented to the general meeting by the board of directors or the executive board pursuant to Article L. 225-102, the securities held by the staff of the company and of any companies linked to it within the meaning of Article L. 225-180 represent less than 3% of the capital. This time limit is postponed to five years if, under the conditions provided for in the first paragraph of this article, an extraordinary general meeting has issued an opinion within less than three years on a draft resolution regarding the performance of a capital increase under the conditions specified in the same section 4.

The first and second paragraphs are not applicable to companies controlled within the meaning of Article L. 233-16 of this code where the company controlling them has set up under the conditions provided for in the second paragraph of Article L. 3344-1 of the Labour Code, a capital increase mechanism from which the employees of the controlled company can benefit.

#### **Article L. 225-130**

Where the capital increase, whether through the issue of new capital securities or by raising the nominal amount of existing securities, is made through capitalisation of reserves, benefits or share premiums, the general meeting, by exemption to the provisions of Article L.225-96 must deliberate under the conditions of quorum and majority set out in Article L. 225-98.

In which case, it may decide that the rights attached to fractional shares are neither negotiable nor assignable and that the corresponding capital securities must be sold. The proceeds of the sale are allocated to the holders of rights within a time limit determined in a Conseil d'Etat decree.

With the exception of the cases envisaged in the previous paragraph, a capital increase carried out by increasing the nominal value of the capital securities may only be decided with the unanimous consent of the shareholders.

#### **Article L. 225-131**

The capital must be fully paid up before any issue of new shares to be paid up in money.

Moreover, the capital increase by way of offer to the public carried out less than two years after the formation of a company pursuant to Articles L. 225-12 to L. 225-16 must be preceded, as provided for in Articles L. 225-8 to L. 225-10, by verification of the assets and liabilities, and, where applicable, the specific benefits granted.

#### **Article L. 225-132**

The shares confer a preferential right to subscribe to capital increases.

Shareholders have a preferential right to subscribe to shares issued for money in connection with a capital increase in proportion to the value of their shares.

Throughout the subscription period, that right is transferable when it is detached from shares which are themselves transferable. When this is not the case, it is assignable in the same way as the shares themselves.

Shareholders may individually waive their preferential rights.

A decision to convert preference shares entails the waiving of the shareholders' preferential right to subscribe to the shares resulting from the conversion.

The decision bringing about the issue of transferable securities giving access to equity also entails the waiving of the shareholders' preferential right to subscribe to the capital securities to which the personal securities issued give entitlement.

#### **Article L. 225-133**

If the general meeting or, in the event of delegation as provided for in Article L. 225-129, the board of directors or the executive board, expressly so decides, capital securities which are not subscribed without reduction are allotted to the shareholders who have subscribed a number of securities greater than that which they could subscribe to on preferential terms, in proportion to the subscription rights they hold and, in any event, within the limit of their requests.

#### **Article L. 225-134**

I. - If the subscriptions without reduction and, where applicable, the subscriptions with reduction, have not absorbed the total capital increase:

1° The amount of the capital increase may be limited to the amount of the subscriptions unless the general meeting decides otherwise. Under no circumstances shall the amount of the capital increase be less than three quarters of the increase decided;

2° Unsubscribed shares may be freely allotted, in whole or in part, unless

the meeting decides otherwise;

3° Unsubscribed shares may be offered to the public, in whole or in part, if the meeting has made express provision for such an eventuality.

II. - The board of directors or the executive board may use the rights provided for above, or certain of them, in whatever order it determines. The capital increase is not carried out if, after exercise of those rights, the amount of the subscriptions received does not amount to the total capital increase, or three quarters of that increase in the case envisaged in 1° of I.

III. - However, the board of directors or the executive board may, as a matter of course and in all instances, limit the capital increase to the amount received when the unsubscribed shares represent less than 3% of the capital increase. Any contrary decision shall be deemed unwritten.

#### **Article L. 225-135**

The meeting which decides or authorises a capital increase, either by determining all the procedures itself, or by delegating its power or competence under the conditions set out in Articles L. 225-129-1 or L. 225-129-2, may cancel the right to preferential shares for the entirety of the capital increase or for one or several tranches of this increase, according to the terms specified by Articles L. 225-136 to L. 225-138-1.

This decision shall be taken on the basis of the report from the board of directors or the executive board. Where it decides on the capital increase, either by determining the procedures itself, or by delegating its power under the conditions set out in Article L. 225-129-1, it also decides on the auditors' report, except in the case mentioned in the first paragraph of 1 of Article L. 225-136.

Where a delegation of power or authority is used, the board of directors or the executive board as well as the auditors shall each prepare a report on the final conditions of the operation presented to the next ordinary general meeting. The board of directors' or executive board's report must fulfil the duty set out in Article L. 225-129-5.

For companies whose capital securities are admitted to trading on a regulated market, the meeting may require that the capital increase it decides on or authorises has a subscription priority period in favour of the shareholders of a minimum duration determined by a Conseil d'Etat decree. It may also delegate to the board of directors or the executive board the task of determining whether such a priority period is warranted and, should this be the case, of establishing its duration on the same basis.

A Conseil d'Etat decree shall determine the particulars of the auditor's reports referred to in the present article.

#### **Article L. 225-135-1**

When a capital increase is effected, with or without a right to preferential

subscription, the meeting may request that the number of securities be increased for a period determined in a Conseil d'Etat decree, within the limits of a fraction of the initial issue determined in that same decree, and at the same price as that initial issue. The limit specified in 1° of I of Article L. 225-134 is then increased in the same proportion.

#### **Article L. 225-136**

The issue of capital securities without a right to preferential subscription through an offer to the public or through an offer specified in II of Article L. 411-2 of the Monetary and Financial Code is subject to the conditions below:

1° For companies whose capital securities are admitted to trading on a regulated market and insofar as the capital securities to be issued immediately or subsequently have equivalent status, the issue price of the said securities must be determined as stipulated in a Conseil d'Etat decree issued following consultation with the Financial Markets Authority;

However, subject to a limit of 10% of the share capital per annum, the extraordinary general meeting may authorise the board of directors or the executive board to set the issue price on the basis of terms which it shall determine in light of a report from the board of directors or the executive board, and a special report from the auditor. Where such authorisation is used, the board of directors or the executive board shall draw up a supplementary report, certified by the auditor, which describes the definitive conditions of the operation and provides information which facilitates assessment of the effective impact on the shareholder's situation.

2° In other cases, the issue price or the conditions for setting that price shall be determined by the extraordinary general meeting on a report of the board of directors or the executive board and on a special report from the auditor.

3° The issue of capital securities made through an offer specified in II of Article L. 411-2 of the Monetary and Financial Code is limited to 20% of the share capital a year.

#### **Article L. 225-138**

I. - The general meeting that decides on the capital increase may reserve it for one or more persons specifically named or for categories of persons that meet determined characteristics. To this end, it may cancel the preferential subscription right. The specifically named persons who benefit from this arrangement may not take part in voting. The quorum and majority required are calculated after deduction of the shares held by such persons. The procedure specified in L. 255-147 does not apply.

Where the extraordinary general meeting cancels the right to preferential subscription in favour of one or more categories of persons who meet the

characteristics that it has set, it may delegate to the Board of Directors or to the executive board the task of compiling the list of beneficiaries within this or these categories and the number of securities to be allocated to each of them, within the limits of the ceilings set in the first paragraph of Article L. 225-129-2.

Where this delegation is used, the board of directors or the executive board shall prepare a supplementary report for the next ordinary general meeting, certified by the auditors, describing the final conditions of the operation.

II. - The issue price or the conditions for setting that price shall be determined by the extraordinary general meeting on a report of the board of directors or the executive board and on a special report from the auditor.

III. - The issue must be carried out within eighteen months from the general meeting which decided thereon or which voted the delegation specified in Article L. 225-129.

#### **Article L. 225-138-1**

For application of the first paragraph of Article L. 443-5 of the Labour Code relating to capital increases reserved for members of a company savings plan, when the general meeting has removed the right to preferential subscription in favour of employees of the company or of the companies affiliated to it within the meaning of Article L. 225-180, the provisions of I and II of Article L. 225-138 apply and:

1° The subscription price shall still be determined in the conditions described in Article L. 443-5 of the Labour Code;

2° The capital increase is only put into effect, to the extent of the total capital securities subscribed by the employees individually or through a collective fund or of the securities issued by unit trusts governed by Article L. 214-40-1 of the Monetary and Financial Code. It does not give rise to the formalities referred to in Articles L. 225-142, L. 225-144 and L. 225-146;

3° (deleted)

4° The time granted to subscribers for paying up their securities shall not exceed three years;

5° Capital securities or transferable securities giving access to equity may be paid up, at the request of the company or the subscriber, either by periodic payments, or by equal and regular deductions from the subscriber's salary;

6° The capital securities or transferable securities giving access to equity thus subscribed which shall be delivered prior to expiry of the five-year period referred to in Article L. 443-6 of the Labour Code are not transferable until they are fully paid up;

7° The capital securities or transferable securities giving access to equity reserved for members of the savings plans referred to in Article L. 443-1 of the Labour Code may, contrary to the provisions of the first paragraph of

Article L. 225-131 of this code, be issued even when the share capital has not been fully paid up.

The fact that the securities referred to in the previous paragraph have not been fully paid up does not prevent the issue of capital securities from being paid up in money.

Members of the company savings plan referred to in Article L. 443-1 of the Labour Code may cancel or reduce their commitment to subscribe or to hold capital securities or transferable securities giving access to equity issued by the company in the circumstances and conditions laid down in the Conseil d'Etat decrees referred to in Article L. 442-7 of that same code.

#### **Article L. 225-139**

A Conseil d'Etat decree determines the elements which must appear in the reports referred to in Articles L. 225-129, L. 225-135, L. 225-136 and L. 225-138, and also in the reports provided for in the event of preference shares or transferable securities giving access to equity.

#### **Article L. 225-140**

When capital securities are subject to a usufruct, the right attached to them of preferential subscription shall belong to the naked owner. If the latter sells the subscription rights, the proceeds of the sale or the property he purchases therewith shall be subject to the usufruct. If the naked owner fails to exercise his right, the usufructuary may subscribe new shares or sell the rights in his place. In the latter case, the naked owner may demand re-use of the proceeds from the sale. The property thus acquired is subject to the usufruct.

The new shares shall belong to the naked owner for the period of the naked ownership and to the usufructuary during the usufruct. However, where funds are paid out by the naked owner or the usufructuary to pay for or complete a subscription, the new shares shall belong to the naked owner or the usufructuary only up to the value of the subscription rights. Any surplus on the new shares shall be the absolute property of he who paid out the funds.

A Conseil d'Etat decree shall determine the conditions of application of the present article, the provisions of which shall also apply in the event of securities being allotted at no cost.

The provisions of the present article shall apply in the absence of any agreement between the parties.

#### **Article L. 225-141**

The period within which shareholders must exercise their subscription right shall not be less than five trading days after the opening date for subscriptions.

The said period shall in fact end as soon as all subscription rights without reduction are exercised or as soon as the capital increase is fully subscribed following individual waivers of subscription rights by the non-subscribing shareholders.

#### **Article L. 225-142**

Before the opening date of subscription, the company shall deal with the publication formalities, the details of which shall be fixed by a decree approved by the Conseil d'Etat.

#### **Article L. 225-143**

The subscription agreement for capital securities or transferable securities giving access to equity must be based on an application form drawn up as determined in a Conseil d'Etat decree.

An application form is not required, however, from credit institutions and investment service providers who subscribe on behalf of a client, provided that they can produce evidence of their instructions.

#### **Article L. 225-144**

Shares paid in money must be paid up to at least a quarter of their nominal value and the whole of any issue premium on subscription. Payment of the balance must be made by one or more instalments within five years of the date on which the increase in share capital became final.

The provisions of the first paragraph of Article L. 225-5 shall apply, except those relating to the subscribers' list. A representative of the company may withdraw funds derived from subscriptions paid in money when the deposit certificate has been issued.

If the increase in capital is not carried out within six months of the opening subscription date, the provisions of the second paragraph of Article L. 225-11 may be applied.

#### **Article L. 225-145**

In companies which, for the placement of their shares, make public offerings or offerings referred to in Article L. 411-2 of the Monetary and Financial Code, an increase in capital is deemed to have taken place when one or more investment service providers authorised to provide the investment service referred to in 6° of Article L. 321-1 of the Monetary and Financial Code, or persons referred to in Article L. 532-18 of that code authorised to provide the same service in their country of origin, have irrevocably guaranteed its proper execution. The paid-up fraction of the nominal value and the entirety of the issue premium must be settled within thirty-five days of the close of the subscription period.

#### **Article L. 225-146**

Subscriptions and payments shall be evidenced by a receipt issued by the appointed depository at the time of deposit of the funds, on presentation of the subscription forms.

Payment of shares by set-off against debts which are due and payable owed by the company shall be recorded by a notarial or auditor's certificate. Such a certificate shall replace the deposit certificate.

#### **Article L. 225-147**

When contributions in kind are made or special privileges are stipulated, one or more experts must be appointed by unanimous decision of the shareholders or, failing which, by a court decision. They shall be subject to the incompatibilities specified by Article L. 822-11.

The said experts shall assess the value of the contributions in kind and the special privileges under their own liability. A Conseil d'Etat decree shall determine the main headings of their report, the time limit for its submission, and the conditions in which it is made available to the shareholders. The provisions of Article L. 225-10 apply to the extraordinary general meeting.

If the meeting approves the valuation of the contributions and the grant of special privileges, it shall declare the capital increase to have been effected.

If the meeting reduces the valuation of the contributions in kind and the grant of special privileges, express approval of the changes is required from the contributors and the beneficiaries, or their duly authorised representatives. Failing this, the capital increase shall not be carried out.

The capital securities issued in respect of a contribution in kind must be fully paid up at the time of issue.

The extraordinary general meeting of a company whose securities are admitted to trading on a regulated market may delegate to the board of directors or the executive board, for a maximum period of twenty-six months, the powers required to carry out a capital increase of not more than 10% of its share capital in order to compensate the contributions in kind made to the company in return for capital securities or transferable securities giving access to equity, when the provisions of Article L. 225-148 are not applicable. The board of directors or the executive board shall decide on approval, in conformity with the third or fourth paragraph above of the report of the valuer(s) of contributions in kind referred to in the first and second paragraphs above.

#### **Article L. 225-147-1**

I. - Article L. 225-147 is not applicable, following a decision of the board of directors or executive board, where the contribution in kind is composed



of:

1° Transferable securities giving access to equity mentioned in Article L. 228-1 or money-market instruments, as defined in Article 4 of directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 concerning the financial instruments market, amending Council directives 85/611/EEC and 93/6/EEC and directive 2000/12/EC of the European Parliament and the Council and repealing Council directive 93/22/EC if they were valued at the weighted average price at which they were traded on one or more regulated markets during the three months preceding the effective realisation date of the contribution.

2° Items forming part of assets other than the transferable securities or the money-market instruments mentioned in 1°, if, within the six months preceding the effective realisation of the contribution, these items have already been the object of a fair value valuation by a valuation expert under the conditions defined in Article L. 225-147.

II. - The contribution in kind is revalued under the conditions mentioned in the first two paragraphs of Article L. 225-147 at the initiative and as the responsibility of the board of directors or the executive board, where:

1° In the case specified in 1° of I of this article, the price has been affected by exceptional circumstances that may significantly change the value of the asset element on the date of the actual implementation of the contribution;

2° In the case specified in 2° of the same I, the price has been affected by exceptional circumstances that may significantly change the value of the asset element on the date of the actual implementation of the contribution. In the absence of such revaluation, one or more shareholders representing at least 5% of the capital on the date of the decision to increase the capital or an association of shareholders meeting the conditions set in Article L. 225-120, may request a valuation by a valuation expert under the conditions mentioned in the first two paragraphs of Article L. 225-147.

III - Information on contributions in kind mentioned in 1° and 2° of I shall be brought to the attention of the shareholders under the conditions defined by Conseil d'Etat decree.

#### **Article L. 225-148**

The provisions of Article L. 225-147 are not applicable in the event of a company whose shares are admitted to trading on a regulated market effecting a capital increase for the purpose of paying for securities contributed through an exchange offer for the securities of another company whose shares are admitted to trading on a regulated market of a European Economic Area member state or a member state of the Organisation for Economic Cooperation and Development.

The capital increase shall take place as provided for in Articles L. 225-129 to L. 225-129-6.

However, the auditors may express an opinion on the conditions and consequences of the issue in the prospectus distributed at the time of its implementation and in their report to the first ordinary general meeting held subsequent to the issue.

#### **Article L. 225-149**

A capital increase resulting from the exercise of the rights attached to transferable securities giving access to equity is not subject to the formalities referred to in Article L. 225-142, the second paragraph of Article L. 225-144 and Article L. 225-146.

Where the holder of a transferable security issued pursuant to Article L. 225-149-2 is not entitled to a whole number of shares, a money payment shall be made in respect of the fractional shares pursuant to a calculation method determined in a Conseil d'Etat decree.

The capital increase shall be definitively effected simply upon exercise of the rights and, where applicable, payment of the sums due.

At any time during the financial year then current, and at the first meeting held subsequent to its close, at the latest, the board of directors or the executive board shall record the number and nominal value of the shares, if any, created for the benefit of the holders of rights during the previous financial year and make the necessary amendments to the constitution relative to the amount of the share capital and the number of securities that represent it.

The president of the executive board or the general manager may, if duly empowered by the executive board or the board of directors, proceed with such transactions at any time during the financial year, and within the time limit set in a Conseil d'Etat decree at the latest.

#### **Article L. 225-149-1**

In the event of new capital securities or new transferable securities giving access to equity being issued, and likewise in the event of a merger or demerger of the company issuing such securities, the board of directors or the executive board may, during a maximum period determined in a Conseil d'Etat decree, suspend the option to obtain an allotment of capital securities through exercise of the right referred to in Article L. 225-149 or Article L. 225-178.

Except as otherwise provided in the issuance contract, the capital securities obtained after the suspension period through exercise of the rights attached to transferable securities give entitlement to the dividends paid in respect of the financial year during which they were issued.

#### **Article L. 225-149-2**

The rights attached to shares giving access to equity that have been

used or acquired by the issuing company or by the company issuing the new capital securities will be cancelled by the issuing company.

### **Article L. 225-149-3**

The reports and formalities mentioned in Article L. 225-129-2, in the second paragraph of Article L. 225-131, in 1° and 2° of Article L. 225-136, in Articles L. 225-138, L. 225-142 and L. 225-143, in the last paragraph of Article L. 225-144, in Articles L. 225-145 to L. 225-147, in the second paragraph of Article L. 225-148, in the penultimate paragraph of Article L. 225-149 and Article L. 225-149-2 may result in an order to perform according to the procedures defined in Articles L. 238-1 and L. 238-6.

Decisions taken in breach of the first paragraph of Articles L. 225-129 and L. 225-129-1, of the first two paragraphs of Article L. 225-129-2, of the first paragraph of Article L. 225-129-6, of the first sentence of the first paragraph and of the second paragraph of Article L. 225-130, of the first paragraph of Article L. 225-131, of the second paragraph of Article L. 225-132 and of the last paragraph of Article L. 225-147 are null and void.

Decisions taken in breach of Article L. 233-32 as well as decisions taken in breach of the provisions of this subsection 1, other than those mentioned in the second paragraph of this article may be cancelled.

The provisions of this article shall not apply to Articles L. 225-127 and L. 225-128, to the first paragraph of Articles L. 225-132 and L. 225-135, to Article L. 225-140 and to the first paragraph of Article L. 225-148.

### **Article L. 225-150**

Voting rights and rights to dividend for shares or subdivided shares issued in breach of this subsection shall be suspended until the situation has been rectified. Any vote issued or any dividend payment made during the suspension shall be void.

Subsection 2: Subscription and purchase of shares by employees.

Paragraph 1: Stock options for new or existing shares

### **Article L. 225-177**

On the basis of a report from the board of directors or the executive board, as applicable, and the auditors' special report, the extraordinary general meeting may authorise the board of directors or the executive board to grant stock options to some or all of the company's staff. The extraordinary general meeting shall determine the period during which the said authorisation may be used by the board of directors or the executive board, which shall not exceed thirty-eight months. However, authorisations granted before the publication date of Act No. 2001-420 of 15 May 2001 relating to the new financial regulations shall remain valid until they expire.

The board of directors or the executive board shall determine the conditions under which the options shall be granted. These conditions may include a prohibition on the immediate reselling of some or all of the shares, but the period imposed for retaining the shares shall not exceed three years from the date on which the option is exercised.

Options may be granted or exercised even before the share capital has been fully paid up.

The subscription price is determined by the board of directors or the executive board, on the day on which the option is granted, in the manner stipulated by the extraordinary general meeting based on the auditors' report. If the company's shares are not admitted to trading on a regulated market, the subscription price is determined in accordance with the objective methods applicable to the valuation of shares which take account of the company's net assets position, profitability and business prospects, applying a weighting specific to each case. These criteria are assessed, if appropriate, on a consolidated basis or, failing that, by taking the financial elements of their significant subsidiaries into account. Failing this, the subscription price is determined by dividing the amount of the revalued net assets by the number of securities in existence calculated on the basis of the most recent balance sheet. If the company's shares are admitted to trading on a regulated market, the subscription price cannot be lower than 80% of the average of the prices quoted at the twenty stock-exchange trading days preceding that day, and no option shall be granted less than twenty stock-exchange trading days after detachment from the shares of a coupon giving entitlement to a dividend or a capital increase.

In a company whose securities are admitted to trading on a regulated market, options shall not be granted:

1° During the ten stock-exchange trading days preceding and following the date on which the consolidated accounts, or failing that the annual accounts, are published;

2° During the period between the date on which the company's management bodies have knowledge of information which, were it to be published, could have a significant impact on the price of the company's securities, and the subsequent date of ten stock-exchange trading days after the date on which the said information is published.

Options to subscribe to securities which are not admitted to trading on a regulated market may only be granted to employees of the company granting them or to those of the companies referred to in 1° of Article L. 225-180.

#### **Article L. 225-178**

The authorisation given by the extraordinary general meeting entails an express waiver by the shareholders, in favour of the option holders, of their preferential right to subscribe to the shares that are issued as and when the

options are exercised.

The capital increase resulting from the exercise of those options does not give rise to the formalities referred to in Article L. 225-142, the second paragraph of Article L. 225-144 and Article L. 225-146.

This increase is definitively completed simply upon the declaration that the option has been exercised, together with the application form and payment of the appropriate sum in money or through offsetting against sums owed by the company.

At its first meeting following each financial year-end, the board of directors or the executive board, as applicable, shall duly record the number and value of the shares, if any, issued during the financial year as a result of options being exercised, and make the necessary amendments to the constitution to reflect the new amount of the share capital and the number of shares that represent it. The board of directors may delegate to the managing director or, in agreement with the latter, to one or more deputy managing directors, the authority to carry out, within the month following the financial year-end, the operations mentioned in the previous sentence. The executive board may, for the same purpose, delegate the same powers to its president or, in agreement with the latter, to one or more of its members. The board of directors or the executive board, or the persons who have received delegation, may also, at any time, carry out these operations for the ongoing financial year.

#### **Article L. 225-179**

The extraordinary general meeting may also authorise the board of directors or the executive board, as applicable, to grant some or all of the company's employees options to purchase shares deriving from a repurchase of its own shares effected by the company itself prior to the launch of the option in the conditions described in Articles L. 225-208 or L. 225-209.

The extraordinary general meeting shall determine the period during which the said authorisation may be used by the board of directors or the executive board, which shall not exceed thirty-eight months. However, authorisations granted before the publication date of Act No. 2001-420 of 15 May 2001 relating to the new financial regulations shall remain valid until they expire.

In such cases, the provisions of the second and fourth to seventh paragraphs of Article L. 225-177 are applicable. Moreover, the share price on the day on which the option is granted cannot be lower than 80% of the average purchase price of the shares held by the company by virtue of Articles L. 225-208 and L. 225-209.

Options entitling the holder to purchase securities which are not admitted to trading on a regulated market may be granted only to employees of the company granting the option or those of the companies referred to in 1° of

#### **Article L. 225-180**

I. - Options may be granted, under the same conditions as set forth in Articles L. 225-177 to L. 225-179 above:

1° To the employees of companies or economic interest groups having at least 10% of their shares or voting rights directly or indirectly held by the company granting the options;

2° Or to the employees of companies or economic interest groupings directly or indirectly holding at least 10% of the capital or voting rights of the company granting the options;

3° Or to the employees of companies or economic interest groups having at least 50% of their shares or voting rights directly or indirectly held by a company which itself directly or indirectly holds at least 50% of the capital of the company granting the options.

II. - The ordinary general meeting of the company, which has direct or indirect majority control of the company granting the options, is informed as provided for in Article L. 225-184.

III. - Options may also be granted under the same conditions as set forth in Articles L. 225-177 to L. 225-179 by a company which is directly or indirectly and solely or jointly controlled by a central body, central bodies or by credit institutions affiliated thereto within the meaning of Articles L. 511-30 to L. 511-32 of the Monetary and Financial Code, to employees of the said companies and those of entities having more than 50% of their shares held directly or indirectly and solely or jointly by that central body, central bodies or its affiliated institutions.

#### **Article L. 225-181**

The price established for the subscription or purchase of the shares may not be changed during the option period.

However, when the company proceeds with a capital write-off or reduction, a change to the appropriation of profits, a free allotment of shares, a capitalisation of reserves, profits or share premiums, a distribution of reserves or any issue of capital securities or securities giving entitlement to an allotment of capital securities conferring a subscription right reserved for shareholders, it must take the necessary measures to protect the interests of the option holders as provided for in Article L. 228-99.

#### **Article L. 225-182**

The total number of options open and not yet exercised shall not constitute entitlement to subscribe to a number of shares in excess of a fraction of the share capital determined in a Conseil d'Etat decree.

Options shall not be granted to employees and executives holding more than 10% of the share capital.

#### **Article L. 225-183**

The extraordinary general meeting shall determine the period during which the options must be exercised.

The rights deriving from the options granted are non-transferable until the option has been exercised.

In the event of the option holder's death, his heirs shall have a period of six months starting on the date of his death in which to exercise the option.

#### **Article L. 225-184**

A special report must inform the ordinary general meeting each year of the transactions carried out by virtue of the provisions of Articles L. 225-177 to L. 225-186.

This report shall also indicate:

- the number, expiry dates and price of the stock options for new or existing shares which, during the year and owing to the offices and functions performed in the company, have been granted to each of those officers by the company and the companies affiliated to it as provided for in Article L. 225-180;

- the number, expiry dates and price of the stock options for new or existing shares which have been granted during the year to each of those officers, owing to the offices and functions they perform in the said companies, by companies controlled within the meaning of Article L. 233-16;

- the number and price of the shares subscribed or purchased by the company's officers during the financial year through exercise of one or more of the options held on the companies referred to in the previous two paragraphs.

This report shall also indicate:

- the number, price and expiry dates of the stock options for new or existing shares granted during the year by the company and the companies or groups associated with it as provided for in Article L. 225-180 to each of the ten non-corporate officer employees of the company who were granted the highest number of options;

- the number and price of the shares which have been subscribed or purchased during the year through the exercise of one or more options held for the companies referred to in the previous paragraph by each of the ten non-corporate officer employees of the company, with the highest number of shares purchased or subscribed to in this manner.

This report shall also indicate the number, the price and the maturity dates of the stock options for new or existing shares allotted during the

year by the companies specified in the previous paragraph, to all the employee beneficiaries as well as the number of such employees and the distribution of the awarded options between the classes of beneficiaries.

#### **Article L. 225-185**

Options giving entitlement to subscribe to shares may be granted for a period of two years, commencing on the date of the company's registration, to executives who are natural persons and who participate with employees in the formation of a company.

Such options may also be granted, for a period of two years with effect from the purchase, to executives of a company who are natural persons and who, together with employees, acquire the majority of the voting rights in order to ensure the company's continued existence.

In the event of options being granted within two years of a company's creation or of the buy-out of the majority of a company's shares by its employees or corporate officers, the maximum indicated in the last paragraph of Article L. 225-182 is increased to one third of the capital.

The president of the board of directors, the managing director, the deputy managing directors, the members of the executive board or the chief executive of a joint-stock company may be granted options by that company which confer entitlement to subscribe or purchase shares as provided for in Articles L. 225-177 to L. 225-184 and L. 225-186-1.

However, notwithstanding these provisions, the board of directors or, as the case may be, the supervisory board, may either decide that the options cannot be exercised by the interested parties prior to the termination of their duties, or set the quantity of shares resulting from the exercise of options that they are required to hold in nominal form until the termination of their functions. The corresponding information is published in the report mentioned in Article L. 225-102-1.

They may also be granted options under the same conditions, which give entitlement to subscribe to or purchase the shares of an associated company as provided for in Article L. 225-180, provided that the said company's shares are admitted to trading on a regulated market.

#### **Article L. 225-186**

Articles L. 225-177 to L. 225-185 are applicable to the investment certificates, certificates of cooperative investment and the certificates in cooperatives of partners.

#### **Article L. 225-186-1**

In a company whose securities are admitted to trading on a regulated market, options granting access to the subscription or purchase of shares cannot be awarded to the persons mentioned in the fourth paragraph of



Article L. 225-185 unless the company meets at least one of the conditions below in respect of the ongoing financial year during which the options are allocated.

1° When the company proceeds, under the conditions set out in Articles L. 225-177 to L. 225-186, to the award of options for the benefit of all of its employees and at least 90% of all the employees of its subsidiaries as defined in Article L. 233-1 and set out in Article L. 210-3;

2° When the company proceeds, under the conditions set out in Articles L. 225-197-1 to L. 225-197-5, to the free award of shares for the benefit of all of its employees and at least 90% of all the employees of its subsidiaries as defined in Article L. 233-1 and set out in Article L. 210-3;

3° When a profit-sharing agreement as defined in Article L. 3312-2 of the Labour Code, an excepted participation agreement as defined by Article L. 3324-2 of the same code or a voluntary participation agreement as defined by Article L. 3323-6 of the same code must be in force within the company and for the benefit of at least 90% of all the employees of its subsidiaries within the meaning of Article L. 233-1 and governed by Article L. 210-3 of this code. If, in the company or in the aforesaid subsidiaries, agreements are in place or were in place in respect of the previous financial year, the first award authorised by a general meeting subsequent to the publication date of Law No. 2008-1258 of 3 December 2008 in favour of work proceeds cannot be implemented unless the companies concerned change the procedures for calculating each of these agreements through an agreement or a rider to an agreement or pay a collective profit-sharing supplement within the meaning of Article L.3314-10 of the Labour Code or a participation supplement from a special reserve as defined in Article L. 3324-9 of the same code.

Paragraph 2: Issue and purchase on the stock market of shares reserved for employees.

#### **Article L. 225-187-1**

Articles L. 225-192 to L. 25-194 and Article L. 225-197 remain applicable in their form prior to the publication of Law No. 2001-152 of 19 February 2001 on employee savings until expiry of a period of five years from this publication.

Paragraph 3: The allotment of free shares

#### **Article L. 225-197-1**

I. - The extraordinary general meeting may, on the basis of a report from the board of directors or the executive board, as applicable, and the auditors' special report, authorise the board of directors or the executive board to make an allotment of existing or new shares free of charge to the company's salaried personnel or to certain employee categories.

The extraordinary general meeting determines the maximum percentage of the share capital which may be awarded under the conditions indicated in the first paragraph. The total number of shares allotted free of charge may not exceed 10% if the share capital on the date the board of directors or executive board decides to award the shares. In companies whose securities are not admitted to trading on a regulated market or on a multilateral trading platform and not exceeding on the financial year-end date, the thresholds defining small and medium-sized companies provided for in Article 2 of the appendix to European Commission recommendation 2003/361/EC of 6 May 2003, concerning the definition of micro, small and medium-sized companies, the constitution may provide for a higher percentage, which may not exceed 15% of the share capital on the date the board of directors or executive board decides to award the shares.

It also determines the period during which the board of directors or the executive board may use the said authorisation. This period shall not exceed thirty-eight months.

Where the award concerns shares to be issued, the authorisation given by the extraordinary general meeting automatically includes, for the benefit of the beneficiaries of the shares allotted free of charge, a waiver by shareholders of their right to preferential subscription. The corresponding capital increase shall be definitely completed by the simple fact of the final award of shares to the beneficiaries.

The shares shall be definitively allotted to beneficiaries at the end of a vesting period of at least two years, which shall be determined by the extraordinary general meeting. However, the meeting may provide for the definitive award of shares before the end of the vesting period in the case of incapacity of a beneficiary which corresponds to the classification in the second or third classes specified in Article L. 341-4 of the Social Security Code.

The extraordinary general meeting shall also determine the minimum period during which the beneficiaries must hold the shares. The said period shall run from the date of the definitive award of the shares, but shall never be less than two years. However, the shares shall be freely transferable in the case of incapacity of the beneficiaries corresponding to their classification in the aforesaid classes of the Social Security Code.

If the extraordinary general meeting has retained for the vesting period mentioned in the fifth paragraph a period at least equal to four years for all or part of the awarded shares, it can shorten or waive the duration of the compulsory holding period for the shares, mentioned in the sixth paragraph.

In a company whose securities are admitted to trading on a regulated market, even when the compulsory holding period has expired, the shares may not be sold:

1° During the ten stock-exchange trading days preceding and three

stock-exchange trading days following the date on which the consolidated accounts, or failing that, the annual accounts, are published;

2° During the period between the date on which the company's management bodies have knowledge of information which, were it to be published, could have a significant impact on the price of the company's securities, and the subsequent date of ten stock-exchange trading days after the date on which the said information is published.

The board of directors or, where applicable, the executive board, shall determine the identity of the beneficiaries of the share awards referred to in the first paragraph. It must also lay down the conditions and, where applicable, the allotment criteria, applicable to the shares.

II. - The president of the board of directors, the general manager, the deputy general managers, the members of the executive board or the chief executive of a joint-stock company may be allotted shares in the company in the same way as other staff members and in compliance with the conditions mentioned in Article L. 225-197-6.

They may also be allotted shares in an associated company as provided for in Article L. 225-197-2, provided that the said company's shares are admitted to trading on a regulated market and in compliance with the conditions mentioned in Article L. 225-197-6.

Shares may not be allotted to employees and company officers who individually hold more than 10% of the share capital. Moreover, a free allotment of shares shall not result in individual employees and company officers holding more than 10% of the share capital.

Notwithstanding the previous provisions, for the shares thus awarded to the president of the board of directors, to the managing director, to the deputy managing director, to the members of the executive board or to the manager of a joint-stock company, the board of directors or, as the case may be, the supervisory board must either decide that these shares cannot be transferred by the interested parties prior to the termination of their functions, or set the quantity of these shares that they are required to hold in registered form until the termination of their functions. The corresponding information is published in the report mentioned in Article L. 225-102-1.

III. - In case of exchange without a balance of shares resulting from a merger or demerger in accordance with the regulation in force during the vesting or holding periods provided for under I, the provisions of this article and specifically, the aforesaid periods, for their outstanding period on the date of the exchange, remain applicable to the rights to allotment and to the shares received in exchange. The same applies to the exchange resulting from a takeover-bid, demerger or merger operation in accordance with the regulations in force which occurs during the holding period.

In case of contribution to a company or to a collective fund whose assets are exclusively comprised of equity securities or securities giving access to equity issued by the company or by a company affiliated thereto within the

meaning of Article L. 225-197-2, the mandatory holding period set out in I remains applicable to the shares or units received as consideration for the contribution, for the outstanding duration on the contribution date.

#### **Article L. 225-197-2**

I. - Shares may be allotted, under the same conditions as those referred to in Article L. 225-197-1:

1° To the employees of companies or economic interest groups having at least 10% of their shares or voting rights directly or indirectly held by the company allotting the shares;

2° Or to the employees of companies or economic interest groups directly or indirectly holding at least 10% of the capital or voting rights of the company allotting the shares;

3° Or to the employees of companies or economic interest groupings having at least 50% of their shares or voting rights directly or indirectly held by a company which itself directly or indirectly holds at least 50% of the capital of the company allotting the shares.

Shares which are not admitted to trading on a regulated market can only be allotted as provided for above to employees of the company making the allotment or to those referred to in 1°.

II. - Shares may also be allotted under the same conditions as set forth in Article L. 225-197-1 by a company that is directly or indirectly and solely or jointly controlled by a central body, central bodies or by credit institutions affiliated thereto within the meaning of and pursuant to Articles L. 511-30 to L. 511-32 of the Monetary and Financial Code, to employees of these companies and those of entities having more than 50% of their shares held directly or indirectly and solely or jointly by that central body, central bodies or those credit institutions.

#### **Article L. 225-197-3**

The rights deriving from the free allotment of shares are non-transferable until the end of the acquisition period.

In the event of the beneficiary's death, his heirs may request allotment of the shares within six months of the date of his death. These shares are freely transferable.

#### **Article L. 225-197-4**

A special report informs the ordinary general meeting each year of the transactions carried out by virtue of the provisions of Articles L. 225-197-1 to L. 225-197-3.

This report shall also indicate:

- the number and value of the shares which have been freely allotted to each of those officers by the company and the companies affiliated to it, as

provided for in Article L. 225-197-2, owing to the offices and functions performed in the company during the year;

- the number and value of the shares which have been freely allotted during the year to each of those officers by controlled companies within the meaning of Article L. 233-16 owing to the offices and functions they perform.

The said report shall also indicate the number and value of the shares which, during the year, have been freely allotted by the company and by the companies or groups associated with it, as provided for in Article L. 225-197-2, to each of the ten non-corporate officer employees of the company who received the highest number of freely allotted shares.

This report shall also indicate the number and value of the shares freely allotted during the year by the companies specified in the previous paragraph, to all the employee beneficiaries as well as the number of such employees and the distribution of the awarded shares between the classes of beneficiaries.

#### **Article L. 225-197-5**

The ordinary general meeting of the company which has direct or indirect majority control of the company making the free allotment of shares is informed as provided for in Article L. 225-197-4.

#### **Article L. 225-197-6**

In a company whose securities are admitted to trading on a regulated market, shares cannot be awarded in the context of the first and second paragraphs of II of Article L. 225-197-1 unless the company meets at least one of the following conditions in respect of the financial year in which the shares are awarded:

1° When the company proceeds, under the conditions set out in Articles L. 225-197-1 to L. 225-197-5, to the award of free shares for the benefit of all of its employees and at least 90% of all the employees of its subsidiaries as defined in Article L. 233-1 and governed by Article L. 210-3;

2° When the company proceeds, under the conditions set out in Articles L. 225-177 to L. 225-186, to the award of options for the benefit of all of its employees and at least 90% of all the employees of its subsidiaries as defined in Article L. 233-1 and governed by Article L. 210-3;

3° When a profit-sharing agreement as defined in Article L. 3312-2 of the Labour Code, an excepted participation agreement as defined by Article L. 3324-2 of the same code or a voluntary participation agreement as defined by Article L. 3323-6 of the same code must be in force within the company and for the benefit of at least 90% of all the employees of its subsidiaries within the meaning of Article L. 233-1 and governed by Article L. 210-3 of this code. If, in the company or in the aforesaid subsidiaries, agreements

are in place or were in place in respect of the previous financial year, the first award authorised by a general meeting subsequent to the publication date of Act No. 2008-1258 of 3 December 2008 in favour of work proceeds cannot be implemented unless the companies concerned change the procedures for calculating each of these agreements through an agreement or a rider to an agreement or pay a collective profit-sharing supplement within the meaning of Article L.3314-10 of the Labour Code or a participation supplement from a special reserve as defined in Article L. 3324-9 of the same code.

#### Subsection 3: Capital write-offs.

##### **Article L. 225-198**

Capital write-offs shall be effected by virtue of a stipulation in the constitution or by a decision of the extraordinary general meeting by making use of distributable sums within the meaning of Article L. 232-11.

Such write-offs may only be effected through equal redemption of every share within a given category and do not entail any capital reduction.

The fully redeemed shares are known as dividend-only shares.

##### **Article L. 225-199**

The fully or partially redeemed shares will lose entitlement, *pari passu*, to the first dividend referred to in Article L. 232-19 and to repayment of the nominal value of the share. They retain all their other rights.

##### **Article L. 225-200**

When the capital is divided either into capital shares and fully or partially redeemed shares or into unequally redeemed shares, the general meeting of shareholders may decide, applying the procedure used to amend the constitution, to convert the fully or partially redeemed shares into capital shares.

To that end, it shall make provision for a compulsory deduction to be made, in proportion to the redeemed amount of the shares to be converted, from the portion of the company's profits, for one or more financial years, that correspond to those shares, after payment of the first dividend or any cumulative preferred interest to which the partially redeemed shares may give entitlement.

##### **Article L. 225-201**

The shareholders may be authorised, in the same circumstances, to pay the company the redeemed amount of their shares and, where applicable, the first dividend or the cumulative preferred interest for the elapsed portion of the then current financial year and, where appropriate, the previous

financial year.

#### **Article L. 225-202**

The decisions referred to in Articles L. 225-200 and L. 225-201 are subject to ratification by the special meetings of each shareholder category having the same rights.

#### **Article L. 225-203**

The board of directors or the executive board, as applicable, shall make the necessary amendments to the constitution, insofar as these amendments correspond materially to the actual results of the transactions referred to in Articles L. 225-200 and L. 225-201.

#### **Subsection 4: Capital reductions**

#### **Article L. 225-204**

A capital reduction is authorised or decided by the extraordinary general meeting, which may delegate to the board of directors or the executive board, as applicable, all powers required to effect it. Under no circumstances shall it jeopardise equality among the shareholders.

An auditors' report on the planned transaction is sent to the company's shareholders within a time limit determined in a Conseil d'Etat decree. The meeting will deliberate on the auditors' report which presents their assessment of the reasons for and conditions of the reduction.

When the board of directors or the executive board, as applicable, is duly empowered by the general meeting to proceed with the reduction, it must draw up a report thereon which must be published in the commercial and companies register and makes the appropriate amendment to the constitution. In case of non-compliance with the mandatory publication requirement, the decisions for the performance of this operation may be annulled.

#### **Article L. 225-205**

When the meeting approves a capital reduction plan which is not motivated by losses, the representative of the general body of bondholders and creditors whose debt predates the date on which the minutes of the meeting were filed at the court registry, may raise an objection to the reduction within a time limit stipulated in a Conseil d'Etat decree.

A court order shall reject the objection or order either the repayment of debts or the provision of guarantees if the company offers them and if they are judged adequate.

The capital reduction procedure shall not commence during the time limit for raising an objection, nor, where applicable, before a decision on first

hearing has been given on any objection raised.

If the judge of first instance finds in favour of the objection, the capital reduction procedure shall be immediately halted until sufficient guarantees are provided or until the debts are repaid. If he rejects it, the reduction procedure may recommence.

Subsection 5: The subscription, purchase or taking a pledge of their own shares by companies

#### **Article L. 225-206**

I. - The company is prohibited from subscribing to its own shares, either directly or through a person acting in their own name but on the company's behalf.

The founders, or, in the case of a capital increase, the members of the board of directors or the executive board, as applicable, are required, as provided for in Article L. 225-251 and the first paragraph of Article L. 225-256, to pay up any shares subscribed by the company in breach of the first paragraph.

When the shares have been subscribed by a person acting in their own name but on the company's behalf, that person is obliged to pay up the shares, a solidary obligation with the founders or, as applicable, the members of the board of directors or the executive board. The said person is, moreover, deemed to have subscribed those shares for his own account.

II. - The purchase by a company of its own shares is authorised in the circumstances and pursuant to the terms indicated in Articles L. 225-207 to L. 225-217.

The purchasing of shares by a person acting on behalf of the company is prohibited unless the said person is an investment service provider or a member of a regulated market acting as provided for in I of Article 43 of Act No. 96-597 of 2 July 1996 on the modernisation of financial activities.

#### **Article L. 225-207**

A general meeting which has decided a capital reduction, which is not for the reason of losses, may authorise the board of directors or the executive board, as applicable, to purchase a specified number of shares in order to cancel them.

#### **Article L. 225-208**

Companies which allot shares to their employees under a profit-sharing scheme, those which allot their shares as provided for in Articles L. 225-197-1 to L. 225-197-3, and those which grant share options as provided for in Articles L. 225-177 et seq., may repurchase their own shares for such



purposes. The shares must be allotted, or the options must be granted, within one year of the repurchase.

#### **Article L. 225-209**

The general meeting of a company whose shares are admitted to trading on a regulated market or on a multilateral trading platform regulated by legislative or regulatory provisions aimed at protecting investors against insider trading, price fixing and the disclosure of false information under the conditions specified in the General Regulations of the Financial Markets Authority, and included on the list compiled by this authority under the conditions set by its General Regulations, may authorise the board of directors or the executive board, as appropriate, to buy a number of shares representing up to 10% of the company's capital. The general meeting shall define the purposes and terms of the transaction, as well as its ceiling. Such authorisation may not be given for a period longer than eighteen months. The works council is informed of the resolution adopted by the general meeting.

Where the shares are repurchased to improve liquidity under the conditions defined by the General Regulations of the Financial Markets Authority, the number of shares taken into account for calculating the 10% limit set out in the first paragraph must correspond to the number of shares purchased, after deducting the number of shares resold during the period of the authorisation.

The board of directors may delegate to the general manager or, with his agreement, to one or more deputy general managers, the powers required to execute the transaction mentioned in the first paragraph. The executive board may delegate to its president or, with his agreement, to one or more of its members, the powers required to execute such transactions. The designated persons must report to the board of directors or the executive board on the use made of that power in the manner stipulated by the latter.

The acquisition, assignment or transfer of the said shares may be effected by any means. Shares representing up to 10% of the company's capital may be cancelled every twenty-four months.

Companies that enable their employees to participate in the benefits of their expansion by allotting their own shares to them, those companies which allot their shares as provided for in Articles L. 225-197-1 to L. 225-197-3 and those which plan to grant stock options to their employees may use for such purposes some or all of the shares acquired as provided for above. They may also offer their own shares to them as provided for in Articles L. 3332-1 et seq. of the Labour Code.

The number of shares the company acquires and retains for possible subsequent use for payment or exchange purposes within the framework of a merger, demerger or contribution cannot exceed 5% of its capital. These provisions apply to programmes for repurchase submitted to general

meetings for approval from 1 January 2006 onwards.

In the event of shares purchased being cancelled, the capital reduction shall be authorised or decided by an extraordinary general meeting, which may delegate full powers to effect such cancellation to the board of directors or the executive board, as applicable. A special report on the planned transaction, drawn up by the auditors, shall be sent to the company's shareholders within a time limit determined in a Conseil d'Etat decree.

#### **Article L. 225-209-2**

In companies whose shares are not admitted to trading on a regulated market or on a multilateral trading platform regulated by legislative or regulatory provisions aimed at protecting investors against insider trading, price fixing and the disclosure of false information, the ordinary general meeting may authorise the board of directors or the executive board, as appropriate, to buy a number of the company's shares to offer them or allocate them:

- # in the year of their repurchase, to the beneficiaries of an operation mentioned in Article L. 225-208 or occurring in the context of Articles L. 3332-1 et seq. of the Labour Code;

- # within two years of their repurchase, in payment or in exchange for assets acquired by the company in the context of an operation for external growth, merger, demerger or contribution;

- # within five years of their repurchase, to shareholders who show the company their intention to acquire them on the occasion of a sale organised by the company itself within three months of each annual ordinary general meeting.

The number of shares purchased by the company may not exceed:

- # 10% of the company's capital where the repurchase is authorised for the purpose of a transaction specified in the second or fourth paragraph of this article;

- # 5% of the company's capital where the repurchase is authorised for the purpose of a transaction specified in the third paragraph;

The ordinary general meeting shall specify the purpose of the transaction. It must state the maximum number of shares for which it must authorise the acquisition, the price or the procedures for setting the price as well as the duration of the authorisation which cannot exceed twelve months.

The price of the purchased shares is paid for by way of a debit from the reserves of which the general meeting is entitled to dispose pursuant to the second paragraph of Article L. 232-11 of this code.

The purchased shares shall be automatically cancelled if they are not used for the purposes and within the time frames stated in the second to fourth paragraphs of this article.

The ordinary general meeting shall review the conditions under which the

purchase price was set in light of a report drafted by an independent expert, under the conditions defined in a decree approved by the Conseil d'Etat, and of an auditors' special report stating their assessment.

In order to be valid, the share price may not be greater than the highest value or lower than the lower value stated in the valuation report of the independent expert disclosed to the general meeting. The board of directors may delegate to the managing director or, with his agreement, to one or more deputy managing directors, the powers required to execute these transactions. The executive board may delegate to its president or, with his agreement, to one or more of its members, the powers required for the purpose of executing such transactions. The designated persons shall report to the board of directors or the executive board on the use made of that power in the manner stipulated by the latter.

The auditors shall present to the annual ordinary general meeting a special report on the conditions under which the shares were purchased and used during the financial year ended.

The purchased shares may be cancelled every twenty-four months within the limit of 10% of the company capital. In the event of shares purchased being cancelled, the capital reduction shall be authorised or decided by an extraordinary general meeting, which may delegate full powers to effect such cancellation to the board of directors or the executive board, as applicable.

By way of exception to the provisions of the tenth paragraph, the unused purchased shares may, on decision of the ordinary general meeting, be used for another of the final purposes in this article.

Under no circumstances shall it jeopardise equality among the shareholders.

#### **Article L. 225-210**

The company shall not hold, either directly or through a person acting in their own name but on the company's behalf, more than 10% of the total of its own shares, or more than 10% of any given category. These shares must be registered in the name of the shareholder, with the exception of shares purchased to improve the liquidity of the company's securities and fully paid up at acquisition. Failing this, the members of the board of directors or the executive board, as applicable, are required, as stipulated in Article L. 225-251 and the first paragraph of Article L. 225-256, to pay up their shares.

The acquisition of the company's shares shall not have the effect of reducing the share capital to an amount below that of the capital plus the non-distributable reserves.

The company must have reserves, in addition to the legal reserve, of an amount at least equal to the value of all the shares it holds.

The shares held by the company do not give entitlement to dividends and

are stripped of voting rights.

In the event of the capital being increased by share subscriptions in money, the company may not exercise the preferential subscription right itself. The general meeting may decide not to take account of such shares when determining the preferential subscription rights attached to the other shares. Failing this, the rights attached to the shares held by the company must be either sold on the stock market or distributed among the shareholders in proportion to their individual rights before the end of the subscription period.

#### **Article L. 225-211**

The company or person responsible for the administration of its securities must keep registers of the purchases and sales made pursuant to Articles L. 225-208 and L. 225-209, as stipulated in a Conseil d'Etat decree.

The board of directors or the executive board, as applicable, must indicate in the report referred to in Article L. 225-100 the number of shares bought and sold during the financial year pursuant to Articles L. 225-209-2, L. 225-208 and L. 225-209, the average prices of the purchases and sales, the trading commission, the number of shares registered in the company's name at the close of the financial year, their value based on the buying price, their nominal value, for each of the purposes, the number of shares used, any reallocations that have been made and the fraction of the capital that they represent.

#### **Article L. 225-212**

Companies are required to report to the Financial Markets Authority the transactions that they plan to carry out in application of the provisions of Article L. 225-209.

They shall report each month to the Financial Markets Authority on the acquisitions, disposals, cancellations and transfers that they have made.

The Financial Markets Authority may ask them to provide any explanation or proof in this regard which it considers necessary.

If such requests are not complied with, or if it finds that the transactions violate the provisions of Article L. 225-209, the Financial Markets Authority may take all necessary measures to prevent the execution of orders transmitted directly or indirectly by such companies.

#### **Article L. 225-213**

The provisions of Articles L. 225-209-2, L. 225-206 and L. 225-209 do not apply to fully paid-up shares acquired subsequent to the transfer of assets on succession under a universal title or following a court decision.

The shares must nevertheless be sold within two years of the date of acquisition if the company holds more than 10% of its capital. The shares

must be cancelled upon expiry of the said period.

#### **Article L. 225-214**

Shares held in violation of Articles L. 225-206 to L. 225-209-1 and L. 225-210 must be sold within one year of their subscription or acquisition. The shares must be cancelled upon expiry of the said period.

#### **Article L. 225-215**

The company is prohibited from taking a pledge over its own shares, either directly or through a person acting in their own name but on the company's behalf.

Shares taken in pledge by the company must be returned to their owner within one year. They may be returned within two years if the transfer of the pledge to the company results from a transfer of assets on succession under universal title or by a court decision. Failing this, the contract of pledge shall be automatically null and void.

The prohibition referred to in the present article shall not apply to the ordinary transactions of credit institutions.

#### **Article L. 225-216**

A company shall not advance funds, grant loans or grant sureties to enable a third party to subscribe or purchase its own shares.

The provisions of the present article do not apply to the ordinary transactions of credit institutions or transactions carried out to enable employees to buy shares in the company, one of its subsidiaries or a company included in a group savings scheme as provided for in Article L. 444-3 of the Labour Code.

#### **Article L. 225-217**

Articles L. 225-206 to L. 225-216 are applicable to investment certificates.

### *Section 5: The supervision of sociétés anonymes*

#### **Article L. 225-218**

In each company, the auditing function is performed by one or more auditors.

#### **Article L. 225-228**

The auditors are proposed for appointment by the general meeting in a draft resolution from the board of directors or the supervisory board or, in the circumstances defined in Section 3 of the present Chapter, the shareholders. If the company's shares are admitted to trading on a

regulated market, the board of directors chooses the auditors which it plans to propose, but the managing director and the deputy managing director, do not participate in the voting if they are directors.

#### **Article L. 225-230**

The action mentioned in Article L. 823-6 may be exercised by an association that meets the requirements set out in Article L. 225-120.

#### **Article L. 225-231**

An association meeting the requirements laid down in Article L. 225-120, or one or more shareholders representing at least 5% of the share capital, either individually or as a group of any kind, may submit written questions to the president of the board of directors or the executive board on one or more of the company's management operations, and also, if this applies, those of companies it controls for the purposes of Article L. 223-3.

In the latter case, the application must be evaluated in the light of the group's interests. The reply must be sent to the auditors.

If no reply is received within one month, or if the information contained in the reply is unsatisfactory, these shareholders may file a claim for the appointment by way of summary judgement of one or more experts to submit a report on one or more management transactions.

The Public Prosecutor's Office, the works council, and, in companies whose shares are admitted to trading on a regulated market, the Financial Markets Authority may likewise file a claim for the appointment by way of summary judgement of one or more experts to submit a report on one or more management transactions.

Should the court decide in favour of the petition, the court order shall determine the scope of the mission and the powers of the experts. It may rule that the fees shall be borne by the company.

The report shall be sent to the petitioner, the Public Prosecutor's Office, the works council, the auditor and the board of directors or executive board, as the case may be, and also, in companies whose shares are admitted to trading on a regulated market, to the Financial Markets Authority. This report must also be annexed to the auditors' report prepared for the next general meeting and must be similarly published.

#### **Article L. 225-232**

One or more shareholders representing at least 5% of the share capital, or an association meeting the requirements laid down in Article L. 225-120, may submit written questions to the president of the board of directors or the executive board twice a year on any matter of such a nature as to threaten the continuity of the company's business. The reply must be sent to the auditor.

#### **Article L. 225-233**

The action mentioned in Article L. 823-7 may be taken by an association that meets the requirements set out in Article L. 225-120.

#### **Article L. 225-235**

The auditors shall present, in a report appended to the report mentioned in the second paragraph of Article L. 225-100, their observations on the report mentioned, as the case may be, in Article L. 225-37 or in Article L. 225-68 for those of the internal control and risk management procedures which pertain to the preparation and treatment of accounting and financial information. They shall certify the preparation of the other disclosures required by Articles L. 225-37 and L. 225-68.

### *Section 6: The conversion of sociétés anonymes*

#### **Article L. 225-243**

Any société anonyme may be converted into a company of another form if, at the time of conversion, it has been in existence for at least two years and if it has drawn up balance sheets for its first two financial years and had them approved by the shareholders.

#### **Article L. 225-244**

The decision to change the form of a société anonyme shall be taken on a report by the company's auditors. The report must certify that the equity capital is at least equal to the amount of the share capital.

The conversion shall be subject, if necessary, to the approval of the meetings of bond holders and holders of dividend-only or founders' shares.

The conversion decision is subject to the publishing requirements determined by a Conseil d'Etat decree.

#### **Article L. 225-245**

Conversion into a société en nom collectif shall require the agreement of all the partners. If such agreement is obtained, the conditions laid down in Articles L. 225-243 and the first paragraph of Article L. 225-244 shall not be required.

Conversion into a société en commandite simple, or a société en commandite par actions, shall be decided in accordance with the conditions laid down for the amendment of the constitution and subject to the agreement of all the members who agree to be active partners.

Conversion into a société à responsabilité limitée shall be decided in accordance with the conditions laid down for the amendment of the constitution for companies incorporated in that legal form.

#### **Article L. 225-245-1**

In the event of a société anonyme being converted into a European company, the first paragraph of Article L. 225-244 shall not apply.

The company shall draw up a plan to convert the company into a European company. This plan must be filed at the clerk's office of the court having jurisdiction at the place where the company is registered and is published as provided for in a Conseil d'Etat decree.

One or more independent experts appointed by judicial authority shall prepare, as their personal responsibility, a report addressed to the shareholders of the company involved in the conversion certifying that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law. They shall be subject to the incompatibilities specified by Article L. 822-11.

Conversion into a European company is decided pursuant to the provisions of Articles L. 225-96 and L. 225-99.

#### *Section 7: The winding-up of sociétés anonymes.*

#### **Article L. 225-246**

The early winding-up of a company must be decided by an extraordinary general meeting.

#### **Article L. 225-247**

The Tribunal de Commerce may, on a petition filed by any interested party, order the winding-up of a company, if it has had less than seven shareholders for more than a year.

The court may allow the company a maximum period of six months to rectify the situation. It shall not make a winding-up order if rectification has taken place on the day judgement is given on the merits.

#### **Article L. 225-248**

If, as a result of losses duly recorded in the accounting documents, a company's equity capital falls below half of its share capital, the board of directors or executive board, as the case may be, must call an extraordinary general meeting within four months of the approval of the accounts revealing the said loss to decide whether the company should be prematurely dissolved.

If no decision is taken to wind-up the company, the company must, by no later than the end of the second financial year after the year in which the losses were recorded, and subject to the provisions of Article L. 224-2, reduce its capital to a sum at least equal to that of any losses not charged to reserves unless the equity capital has been restored to a figure at least equivalent to half the share capital within that time.



In either case, the decision of the general meeting shall be published as required by a Conseil d'Etat decree.

If no general meeting is held, or if the meeting was unable to hold a valid session on last call, any interested party may file a petition for the winding up of the company. The same applies if the provisions of the second paragraph above have not been applied. In any case, the court may grant the company a maximum period of six months to rectify the situation. The court shall not order the winding up if the said rectification has taken place on the day judgement is given on the merits.

The provisions of the present Article do not apply to companies subject to a safeguarding or judicial restructuring plan or order.

#### *Section 8: Civil liability*

##### **Article L. 225-249**

The founders of a company held responsible for the nullity, and its directors in office at the time the said invalidity comes to pass, may be declared to have solidary responsibility for any loss or damage to its shareholders or to third parties arising from the de-registration of the company.

Those shareholders whose contributions and privileges have not been verified and approved may similarly be held to have solidary responsibility.

##### **Article L. 225-250**

Any action for liability based on the invalidity of the company must be brought in the conditions laid down in Article 235-13.

##### **Article L. 225-251**

The directors and managing director shall have individual or solidary responsibility to the company or third parties either for infringements of the laws or regulations applicable to sociétés anonymes, or for breaches of the constitution, or for tortious or negligent acts of management.

If more than one director, or more than one director and the managing director, have participated in the same acts, the court shall determine the share to be contributed by each of them to the compensation awarded.

##### **Article L. 225-252**

Apart from actions for personal loss or damage, shareholders may either individually or in an association fulfilling the conditions laid down in Article L. 225-120, or acting as a group in accordance with conditions to be laid down by a Conseil d'Etat decree, bring a claim against its directors or managing director on behalf of the company. The plaintiffs shall be authorised to seek redress for the entire loss suffered by the company for

which, if applicable, damages may be granted.

#### **Article L. 225-253**

Any clause in the constitution which results in making the exercise of an action on behalf of the company subject to the prior opinion or authorisation of the general meeting, or which includes a waiver of such action in advance, shall be deemed unwritten.

No decision of the general meeting shall have the effect of extinguishing an action for liability against the directors or managing director for a tortious or negligent act committed in the performance of their duties.

#### **Article L. 225-254**

Any action for liability against the directors or managing director, either by an individual or individuals or by the company, must be brought within three years of the act or event causing the loss or damage, or, if the same was concealed, the discovery thereof. However, proceedings shall be time-barred after ten years if the act is classified as an indictable offence.

#### **Article L. 225-255**

Where proceedings for judicial restructuring or compulsory liquidation are brought pursuant to Titles III and IV of Book VI relating to the judicial restructuring and compulsory liquidation of companies, the persons referred to in the said provisions may be held liable for the debts of the company and shall be subject to the prohibitions and forfeiture of rights, as stipulated by those provisions.

#### **Article L. 225-256**

Where a company is subject to the provisions of Articles L. 225-57 to L. 225-93, the members of the executive board shall be subject to the same liability as directors in the circumstances specified in Articles L. 225-249 to L. 225-255.

Where proceedings for judicial restructuring or compulsory liquidation are brought pursuant to Title II of Book VI relating to the judicial restructuring and compulsory liquidation of companies, the persons referred to in the said provisions may be held liable for the debts of the company and shall be subject to prohibitions and forfeiture of rights, in accordance with the conditions stipulated by these.

#### **Article L. 225-257**

Members of the supervisory board shall be liable for negligent or tortious acts committed by them in a personal capacity in the performance of their duties. They shall incur no liability for acts of management or the result

thereof. They may be held liable in civil law for criminal offences committed by members of the executive board if, having been aware thereof, they did not report the said offences to the general meeting.

The provisions of Articles L. 225-253 and L. 225-254 shall apply to them.

*Section 9: Sociétés anonymes with worker participation.*

**Article L. 225-258**

It may be stipulated in the constitution of any société anonyme that the company has worker participation.

Companies whose constitution does not contain such a stipulation may change their legal form to that of companies with worker participation, using the procedure laid down in Article L. 225-96.

Companies with worker participation shall be subject to the provisions of this section, irrespective of the general rules applicable to sociétés anonymes.

**Article L. 225-259**

Where the company exercises the power to issue employee shares, that fact must be stated in all deeds and documents to be delivered to third parties by the addition of the words "à participation ouvrière" [with worker participation].

**Article L. 225-260**

The shares of the company shall consist of:

- 1° Equity shares or subdivided equity shares;
- 2° Shares known as "employee shares".

**Article L. 225-261**

Employee shares shall be collectively owned by paid personnel (employees and workers), in the form of a commercial workers' co-operative. This co-operative must be exclusively formed by all paid employees who have been with the company for at least one year and are aged above eighteen years. The loss of a paid job with the company shall result in the loss by the employee of all their rights in the workers' co-operative, without compensation. The liquidated value of the rights in the company acquired by the interested party during the last financial year before their departure shall be calculated on the basis of the proportion of that period they spent in the company's service, and the provisions of Article 225-269.

Where a company is incorporated from the outset as a société anonyme with worker participation, the constitution of the société anonyme must provide for the setting aside of the employee shares for collective

ownership by employees until the end of the year. At the end of that period, the shares shall be delivered to the legally formed co-operative.

Dividends allocated to workers and employees belonging to the workers' co-operative must be distributed between them according to the rules laid down by the constitution of the co-operative and the decisions of its general meetings. Nevertheless, the constitution of the société anonyme must provide that, before any distribution of dividends, there shall be deducted from the profits a sum corresponding to that which would produce the capital paid out, for the benefit of holders of capital shares, at the interest rate that they shall fix.

Under no circumstances shall employee shares be individually allocated to employees of the company who are members of the workers' co-operative.

#### **Article L. 225-262**

Employee shares must be registered in the name of the workers' co-operative, and are non-transferable throughout the existence of the company with worker participation.

#### **Article L. 225-263**

Members of the workers' co-operative shall be represented at general meetings of the société anonyme by representatives elected by these members at a general meeting of the co-operative.

Representatives so elected must be chosen from among the members. The number of representatives shall be fixed by the constitution of the société anonyme.

The number of votes held by these representatives at each general meeting of the société anonyme shall be fixed according to the number of votes held by the other shareholders present or represented, depending on the proportion of employee shares to capital shares that results from the application of the company's constitution. This shall be determined at the start of each general meeting according to the details in the attendance sheet.

Representatives present shall likewise share the votes attributed to them equally between themselves. Any remainder shall be allocated to the oldest representatives.

The general meeting of the workers' co-operative shall meet every year within a period fixed by the constitution, or, if they contain no such provisions, within four months after the general meeting of the société anonyme.

#### **Article L. 225-264**

Each participant at the general meeting of the workers' co-operative has

one vote.

The constitution may nevertheless allocate more than one vote to the participants, commensurate with their pay, within the limit of a maximum number of votes based on the numerical correlation between an individual's annual pay, established on the basis of the accounts at the end of the previous financial year, and the lowest annual salary paid by the company to employees aged above eighteen years.

The constitution may make provision for the participants to be divided into electoral bodies, each specific to a personnel category, with each body electing its representative(s) and the agreement of each body, with majorities as specified in the constitution, being necessary for amendments to the co-operative's constitution and other decisions indicated in the constitution.

#### **Article L. 225-265**

The general meeting of the workers' co-operative shall take valid decisions only if, at the first call, two thirds of the members of the co-operative are present or represented at the meeting. The constitution shall fix the requisite quorum for a meeting held on second call. If the constitution contains no such provisions, the quorum shall be half of the members of the co-operative present or represented.

The general meeting shall take decisions on a simple majority of votes cast. Where a ballot is held, blank votes shall not be included in the count.

Nevertheless, for amendments to the constitution and other decisions listed therein, the quorum shall not be less than half the members of the co-operative. Furthermore, the same decisions shall be taken on a two-thirds majority of votes cast. Where a ballot is held, blank votes shall not be included in the count.

#### **Article L. 225-266**

In the event of a legal action, the representatives elected at the last general meeting shall appoint one or more from among their number to represent the members. If no representatives have not yet been elected, or if none of the representatives is a member of the workers' co-operative, an election of special representatives shall be held, in the manner and in accordance with the conditions laid down in the first paragraph of Article L. 225-263 and in Articles L. 225-264 and L. 225-265.

#### **Article L. 225-267**

However, the general meetings of sociétés anonymes with worker participation deliberating on amendments to the constitution or on proposals for the company's continuity beyond the term set for its duration or early winding-up are not correctly constituted and may not hold valid

deliberations unless they include a number of shareholders representing three quarters of the capital shares. The constitution may decide otherwise.

Where a decision of the general meeting includes a change in the rights attached to employee shares, this decision shall not be final until it has been ratified by a general meeting of the workers' co-operative.

#### **Article L. 225-268**

The board of directors of a société anonyme with worker participation must include one or more representatives of the workers' co-operative. These representatives shall be elected by the general meeting of shareholders and chosen from among the representatives who represent the co-operative at the said general meeting. Their number shall be fixed according to the ratio of employee shares to capital shares. They shall be appointed for the same term as the other directors and shall similarly be eligible for re-election. Nevertheless, their term of office shall end if they cease to be paid employees of the company and, therefore, members of the co-operative. If the board of directors consists of only three members, it must include at least one member of the co-operative.

#### **Article L. 225-269**

In the event of winding-up, the company's share capital shall not be distributed among the shareholders until the capital shares have been fully amortised.

The proportion representing employee shares shall then be distributed, in accordance with decisions taken by a general meeting of the workers' co-operative called for that purpose, between members and former members with at least ten years' consecutive service with the company, or at least an uninterrupted period of service equivalent to half the duration of the company, and who have left the company for one of the following reasons: voluntary retirement or official retirement with pension rights, sickness or disablement involving incapacitation for the post previously occupied, or redundancy caused by reduction in the number of jobs or a reduction in personnel.

Nevertheless, former members who fulfil the conditions set out in the preceding paragraph shall be included in the distribution only for a share corresponding to their length of service reduced by a tenth of the total thereof for every year since they ceased to be employed by the company.

The winding-up of the société anonyme shall entail the winding-up of the workers' co-operative.

#### **Article L. 225-270**

I. - Where a société anonyme with worker participation finds itself in the situation referred to in Article L. 225-248, and a winding-up decision is not

taken, an extraordinary general meeting may decide, within the period fixed in the second paragraph of the same Article, to amend the constitution to provide for the loss of the status of a société anonyme with worker participation, and consequently the winding-up of the workers' co-operative, notwithstanding the provisions of the second paragraph of Article L. 227-267 and any provision to the contrary in the constitution.

Nevertheless, the implementation of any such decision shall be subject to the existence of a collective company agreement with one or more unions or associations, representing employees within the meaning of Article L. 132-2 of the Labour Code, providing for the winding-up of a workers' co-operative. Where there is an existing collective company agreement, covering the same subject-matter and entered into in accordance with the same conditions, dating from before the entry into force of Act No 94-679, of 8 August 1994, introducing miscellaneous economic and financial provisions, the stipulations contained in this paragraph shall be considered to have been complied with.

II. - If the workers' co-operative is wound-up pursuant to the provisions of I above, the participants and former participants mentioned in the second paragraph of Article L. 225-269 shall receive compensation.

The amount of the said compensation, the calculation of which must specifically take the nature and specific scope of the rights attached to employee shares into account, shall be fixed by an extraordinary general meeting of the shareholders of the société anonyme after consulting the representatives of the workers' co-operative and in the light of a report to be provided by an independent expert appointed by methods laid down by a Conseil d'Etat decree.

III. - On the decision of an extraordinary general meeting of shareholders of the société anonyme, compensation may take the form of an exclusive allocation of shares to the members and former members mentioned in the second paragraph of Article L. 225-269.

These shares may be created by deduction from available premiums and reserve funds. Notwithstanding the provisions of Article L. 225-206, the société anonyme may also acquire its own shares in order to allocate them, within a period of one year from the date of acquisition, to the members and former members mentioned in the second paragraph of Article L. 225-269.

Shares so allocated may not be disposed of within a period of three years after the winding-up date of the workers' co-operative.

Notwithstanding the provisions of the preceding paragraph, an extraordinary general meeting of the shareholders of the société anonyme may decide to assign the management of the shares in question to a collective fund governed by the provisions of Article 21 of Act No 88-1201 of 23 December 1988, relating to undertakings for collective investment in transferable securities and to the creation of fund for investment in loan

stock, specially and exclusively formed for this purpose no later than on the share allocation day. In any case, the units of the collective fund and the shares that constitute its assets may not be disposed of within the period mentioned in the preceding paragraph. The rules governing this collective fund shall be approved by a collective employees' agreement.

IV. - For the purposes of the provisions of this Article, decisions taken by the general meeting of the shareholders of the société anonyme shall automatically be binding on every shareholder and every bearer or holder of bonds or other securities giving immediate or future access to its share capital.

V. - The compensation referred to in II shall be distributed between those entitled thereto, taking into account the length of their service with the company, their length of membership of the workers' co-operative and their pay levels.

Following the winding-up of a workers' co-operative, and within six months of the decision of an extraordinary general meeting of the shareholders of the société anonyme fixing the amount and form of compensation, this compensation shall be distributed in accordance with the decisions taken by the general meeting of the workers' co-operative on a proposal by its representatives. Should this distribution not take place within six months, it shall be implemented by a liquidator appointed by the Presiding Judge of the Tribunal de Commerce of the jurisdiction within which the company's registered office is located.

The provisions of the third paragraph of Article L. 225-269 shall apply in the case referred to in the present V.

VI. -The compensation referred to in II or, if appropriate, the value of the shares allocated pursuant thereto shall not be counted as income for the purposes of the employment and social security legislation. The said items shall not be used as the basis of calculation for any taxes, charges or deductions affecting wages, salaries or income, subject to the provisions of Article 94A of the General Tax Code.



## LEGISLATIVE PART

### **BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS**

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### CHAPTER VI: SOCIETES EN COMMANDITE PAR ACTIONS<sup>28</sup>

###### **Article L. 226-1**

A société en commandite par actions, the capital of which is divided into shares, shall be formed by one or more active partners<sup>29</sup>, who shall have the capacity of businessmen and who shall have indefinite solidary responsibility for the company's debts, and by limited partners who shall have the capacity of shareholders and who shall support the losses only up to the amount of their contributions. The number of limited partner-shareholders may not be less than three.

Where they are compatible with the special provisions specified by this chapter, the rules on sociétés en commandite and sociétés anonymes, with the exception of Articles L. 225-17 to L. 225-93, shall apply to sociétés en commandite par actions.

###### **Article L. 226-2**

The initial manager or managers shall be appointed by the constitution. The companies shall carry out the incorporation formalities incumbent upon the founders of sociétés anonymes pursuant to Articles L. 225-2 to L. 225-16.

During the existence of the company, unless otherwise specified in the constitution, the manager or managers shall be appointed by the ordinary shareholders' meeting with the agreement of all the limited partners.

The manager, whether or not a partner, shall be dismissed in accordance with the conditions specified by the constitution.

In addition, the manager may be dismissed by the Tribunal de Commerce for a legitimate reason, at the request of any partner or the company. Any clause to the contrary shall be deemed unwritten.

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<sup>28</sup> Combined limited partnership-companies where only limited partners have company-type shares.

<sup>29</sup> Often referred to as members in other chapters and books where a generic term is needed.

#### **Article L. 226-3**

The constitution shall specify, in order to carry out the duties of manager, an age limit which, failing an express provision, shall be fixed at sixty-five years.

Any appointment made in breach of the provisions specified in the preceding paragraph shall be deemed null and void.

When managers reach the age limit, they shall be deemed to have automatically resigned.

#### **Article L. 226-4**

The ordinary shareholders' meeting shall appoint, in accordance with the conditions fixed by the constitution, a supervisory board composed of at least three shareholders.

The membership of the supervisory board shall be made with a concern for the equal representation of women and men.

In order for their appointment to be valid, active partners may not be members of the supervisory board. Shareholders who have the capacity of active partner may not participate in appointing the members of this board.

Unless otherwise specified in the constitution, the rules on the appointment and term of office of directors of sociétés anonymes shall apply.

#### **Article L. 226-5**

The constitution must stipulate an age limit for the exercise of the functions of a member of the supervisory board, applicable either to all members of the supervisory board or to a specific percentage of them.

In the absence of any express provision in the constitution, the number of members of the supervisory board over the age of seventy years must not exceed one third of the members of the supervisory board currently in office.

Any appointment made in breach of the provisions specified in the preceding paragraph shall be deemed null and void.

In the absence of any express provisions in the constitution stipulating some other procedure, where the limit fixed by the constitution or the law as to the age of members of the supervisory board is exceeded, the oldest member of the supervisory board shall be deemed to have automatically resigned.

#### **Article L. 226-5-1**

In companies that meet the criteria fixed in I of Article L. 225-79-2, employees are represented on the supervisory board under the conditions set out in Articles L. 225-79-2 and L. 225-80.

The amendment of the constitution required to determine the conditions under which the members of the supervisory board representing employees shall be adopted in accordance with the rules defined in this chapter. If the meeting of limited partners or active partners is not held within the time set out in the first paragraph of III of Article L. 225-79-2, any employee may ask the presiding judge of the court, ruling by way of summary proceedings, to compel a manager or one of the managers, subject to a progressive coercive fine, to convene a meeting of limited or active partners and to submit to such meeting the draft resolutions aimed at amending the constitution within the meaning set forth in III.

#### **Article L. 226-6**

The ordinary general meeting shall appoint one or more auditors.

#### **Article L. 226-7**

The manager shall be invested with the widest powers in order to act under all circumstances on behalf of the company.

In relations with third parties, the company shall be bound even by acts of the manager which do not fall within the company's object, unless the latter proves that the third party knew that the act exceeded this object or that the third party could not be unaware of this given the circumstances. It is excluded that the mere publication of the constitution be considered as sufficient proof.

The clauses of the constitution limiting the powers of the manager which result from this article shall not be binding on third parties.

In the event of multiple managers, these shall separately hold the powers specified in this article. An objection to the acts of one manager formulated by another manager shall have no effect against third parties unless it is proven that they had knowledge thereof.

Subject to the provisions of this chapter, the manager shall have the same obligations as the board of directors of a société anonyme.

#### **Article L. 226-8**

Any remuneration other than that specified in the constitution may be allocated to the manager only by the ordinary general meeting. This may only occur with the agreement of the active partners given unanimously, unless otherwise specified.

#### **Article L. 226-9**

The supervisory board shall carry out the permanent supervision of the company's management. It shall have, to this end, the same powers as the auditors.

It shall submit to the annual ordinary general meeting a report in which it

shall indicate, in particular, the irregularities and inaccuracies identified in the annual accounts and, where applicable, the consolidated financial statements for the financial year.

It shall receive, at the same time as the auditors, the documents made available to the auditors.

It may convene the general meeting of shareholders.

#### **Article L. 226-9-1**

The supervisory board shall meet every year to discuss the company's policy in matters concerning professional and wage equality. In companies required to draft the report on the comparative situation of the general working and training conditions of women and men in the company set out in Article 2323-57 of the Labour Code and in those in which they implement a plan for professional equality between men and women referred to in Article L. 1143-1 of the same code, the supervisory board shall hold its discussions on this basis.

#### **Article L. 226-10**

The provisions of Articles L. 225-38 to L. 225-43 are applicable to agreements entered into, either directly or through an intermediary, between the company and one of its managers, a member of its supervisory board, one of its shareholders holding a fraction of the voting rights greater than 10% or, in the case of a corporate shareholder, the company which controls it within the meaning of Article L. 233-3.

These provisions are likewise applicable to agreements in which such a person is indirectly involved.

They are also applicable to agreements entered into between a company and a firm if one of the company's managers or a member of its supervisory board is the owner, an active partner with indefinite liability, a manager, a director or a managing director of that firm or a member of its executive board or supervisory board.

The authorisation referred to in the first paragraph of Article L. 225-38 is given by the supervisory board.

#### **Article L. 226-10-1**

Where the company's financial securities are admitted for trading on a regulated market, the president of the supervisory board shall draft a report attached to the report set out in Articles L. 225-102, L. 225-102-1 and L. 233-26 which includes the information mentioned in the seventh to ninth paragraphs of Article L. 225-68.

This report is approved by the supervisory board and is made public.

The auditors shall present their observations on this report for those of the internal control and risk management procedures which relate to the

preparation and processing of accounting and financial information, under the conditions set out in Article L. 225-235.

They certify the preparation of the other information required under the same conditions.

#### **Article L. 226-11**

The amendment of the constitution shall require, unless otherwise specified, the agreement of all the active partners.

The amendment of the constitution resulting from an increase in capital shall be acknowledged by the managers.

#### **Article L. 226-12**

The provisions of Articles L. 225-109 and L. 225-249 shall apply to the managers and to members of the supervisory board.

The provisions of Articles L. 225-52, L. 225-251 and L. 225-255 shall apply to managers, even where they are not partners.

#### **Article L. 226-13**

The members of the supervisory board shall not incur any liability due to the acts of the management and the result thereof.

They may be declared civilly liable for the misdemeanours committed by the managers if they were aware of these and did not reveal them to the general meeting. They shall be liable for personal faults committed in the performance of their mandate.

#### **Article L. 226-14**

The conversion of the société en commandite par actions into a société anonyme or a société à responsabilité limitée shall be decided by an extraordinary general meeting of shareholders, with the agreement of the majority of the active partners.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER VII: SOCIÉTÉS PAR ACTIONS SIMPLIFIÉES (SIMPLIFIED JOINT-STOCK COMPANIES)**

#### **Article L. 227-1**

A société par actions simplifiée<sup>30</sup> may be established by one or more persons who shall support its losses only up to the amount of their contributions.

When this company consists of one person only, the latter shall be referred to as the "single member". The single member shall exercise the powers conferred on the members when this chapter specifies collective decision-making.

Where they are compatible with the special provisions specified by this chapter, the rules on sociétés anonymes, with the exception of Articles L. 224-2, L. 225-17 to L. 225-126, L. 225-243 and I of Article L. 233-8, shall apply to the société par actions simplifiée. In order to apply these rules, the powers of the board of directors or its president shall be exercised by the president of the société par actions simplifiée or by those of its directors which the constitution specifies for this purpose.

The société par actions simplifiée may issue inalienable shares resulting from industrial contributions as defined in Article 1843-2 of the Civil Code.

The constitution determines the subscription and share allocation methods. They also set the deadline at the end of which, after their issue, these shares are valued under the conditions set out in Article L. 225-8.

The société par actions simplifiée for which the single member, who is a natural person and personally holds the presidency, is subject to the simplified publication formalities set by a Conseil d'Etat decree. This decree provides the conditions for exemption from the obligation to publish in the Bulletin Officiel des Annonces Civiles et Commerciales.

#### **Article L. 227-2**

The société par actions simplifiée may not offer financial securities to the public nor have its shares admitted for trading on a regulated market. It may nevertheless carry out the offers defined in 2 and 3 of I and II of Article L. 411-2 of the Monetary and Financial Code.

#### **Article L. 227-3**

The decision to convert into a société par actions simplifiée shall be taken unanimously by the partners.

#### **Article L. 227-4**

If one person holds all the shares in a société par actions simplifiée, the provisions of Article 1844-5 of the Civil Code on winding-up proceedings shall not apply.

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<sup>30</sup> A simplified joint-stock company.

#### **Article L. 227-5**

The constitution shall fix the conditions in accordance with which the company is managed.

#### **Article L. 227-6**

The company is represented in its dealings with third parties by a president appointed as prescribed in the constitution. The president is invested with the most extensive powers to act on behalf of the company in all circumstances, within the limits of the corporate objects.

In its dealings with third parties, the company is bound even by acts of the president that do not come within the purview of the company's corporate objects, unless it can prove that the third party knew that a specific action was outside those objects or, given the circumstances, could not have been ignorant of that fact, and mere publication of the constitution does not suffice to constitute such proof.

The constitution may stipulate the circumstances in which one or more persons other than the president, having the title of managing director or deputy managing director, may exercise the powers conferred on the president by the present Article.

Provisions in the constitution which limit the president's powers cannot be raised against third parties.

#### **Article L. 227-7**

When a legal person is appointed president or director of a société par actions simplifiée, the directors of this legal person shall be subject to the same conditions and obligations and shall incur the same civil and criminal liabilities as if they were president or director in their own name, without prejudice to the solidary liability of the legal person which they manage.

#### **Article L. 227-8**

The rules establishing the liability of members of the board of directors and executive board of sociétés anonymes shall apply to the president and directors of the société par actions simplifiée.

#### **Article L. 227-9**

The constitution shall determine the decisions which must be taken collectively by the members in the forms and in accordance with the conditions which they specify.

However, the powers conferred on the extraordinary and ordinary general meetings of sociétés anonymes in terms of the increase, amortisation or reduction of capital, merger, demerger, dissolution, conversion into another form of company, appointment of auditors, annual accounts and profits

shall, in accordance with the conditions specified by the constitution, be exercised collectively by the members.

In companies consisting of only one member, the annual report, annual accounts and, where applicable, consolidated accounts shall be organised by the president. The single member shall approve the accounts, following a report from the auditor, if any, within six months of the end of the financial year. The single member may not delegate their powers. Their decisions shall be listed in a register. Where the single member is a natural person and personally acts as the president of the company, the filing, within the same time frame, in the commercial and companies register of the inventory and the annual accounts duly signed shall be accepted as approval of the accounts without the need for the single member to record in the register specified in the previous sentence the receipt delivered by the registry of the Tribunal de Commerce.

Decisions taken in breach of the provisions of this article may be cancelled at the request of any interested party.

#### **Article L. 227-9-1**

The members may appoint one or more auditors in accordance with the conditions specified in Article L. 227-9.

Sociétés par actions simplifiées which exceed, at the end of the financial year, the figures laid down by a Conseil d'Etat decree for two of the following thresholds shall be obliged to designate at least one auditor: their balance sheet total, the amount of their turnover excluding VAT or the average number of employees during the financial year.

Sociétés par actions simplifiées which control, within the meaning of II and III of Article L. 233-16 one or several companies or which are controlled, within the meaning of same II and III, are also required to appoint at least one auditor.

Even if these thresholds are not reached, one or more members representing at least one tenth of the capital may apply to the court for an auditor to be appointed.

#### **Article L. 227-10**

The auditor or, if no auditor has been appointed, the president of the company must present a report to the members on any agreement entered into, either directly or through an intermediary, between the company and its president, one of its directors, one of its shareholders holding a fraction of the voting rights greater than 10% or, in the case of a corporate shareholder, the company which controls it within the meaning of Article L. 233-3.

The members give a decision on that report.

Agreements which are not approved nevertheless produce their effects,



and the onus is on the person concerned and, on occasion, the president and the other directors, to bear any consequences which are prejudicial to the company.

Contrary to the provisions of the first paragraph, when the company has but a single member, only agreements entered into either directly or through an intermediary between the company and its director are recorded in the decisions register.

#### **Article L. 227-11**

Article L. 227-10 shall not apply to agreements relating to ordinary transactions conducted under normal conditions.

#### **Article L. 227-12**

The prohibitions specified in Article L. 225-43 shall apply, in accordance with the conditions determined by this article, to the president and directors of the company.

#### **Article L. 227-13**

The constitution of the company may specify the inalienability of the shares for a period not exceeding ten years.

#### **Article L. 227-14**

The constitution may subject any assignment of shares to prior approval by the company.

#### **Article L. 227-15**

Any assignment carried out in breach of the clauses of the constitution shall be null and void.

#### **Article L. 227-16**

In accordance with the conditions which they determine, the constitution may specify that a member may be required to assign the shares held thereby.

They may also specify the suspension of the non-financial rights of this member until the latter has carried out this assignment.

#### **Article L. 227-17**

The constitution may specify that member companies whose control is amended within the meaning of Article L. 233-3 must, on this amendment, inform the société par actions simplifiées thereof. The latter may decide, in accordance with the conditions fixed by the constitution, to suspend the exercise of the non-financial rights of these members and to exclude the

latter.

The provisions of the above paragraph may be applied, in accordance with the same conditions, to members who have acquired this capacity following a merger, demerger or winding-up operation.

#### **Article L. 227-18**

If the constitution does not specify the mechanisms for deciding the price for the assignment of the shares, when the company implements a clause introduced pursuant to Articles L. 227-14, L. 227-16 and L. 227-17, this price shall be fixed by agreement between the parties or, failing this, in accordance with the conditions specified in Article 1843-4 of the Civil Code.

When the shares are repurchased by the company, the latter shall be obliged to assign them within six months or to cancel them.

#### **Article L. 227-19**

The clauses of the constitution referred to in Articles L. 227-13, L. 227-14, L. 227-16 and L. 227-17 may be adopted or amended only with the unanimous agreement of the members.

#### **Article L. 227-20**

Articles L. 227-13 to L. 227-19 shall not apply to companies consisting of only one member.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER VIII: TRANSFERABLE SECURITIES ISSUED BY JOINT-STOCK COMPANIES**

##### ***Section 1: Transferable securities: common provisions***

#### **Article L. 228-1**

Joint-stock companies must issue all transferable securities as indicated in the present Book.

Transferable securities are financial securities within the meaning of Article L. 211-1 of the Monetary and Financial Code, which grants identical rights by category.

The transferable securities issued by joint-stock companies take the form

of bearer securities or registered securities, with the exception of companies for which the law or the constitution imposes the registered form only for some or all of the capital.

Notwithstanding any agreement to the contrary, any holder whose securities form part of an issue comprising both bearer securities and registered securities is entitled to convert his securities into the other form.

However, the conversion of registered securities is not possible in the case of companies for which the law or the constitution imposes the registered form for some or all of the capital.

These transferable securities, regardless of their form, must be registered in an account in the name of their holder, under the conditions specified in Articles L. 211-3 and L. 211-4 of the Monetary and Financial Code.

However, if the company's capital securities have been admitted to trading on a regulated market and their holder is not domiciled in France within the meaning of Article 102 of the Civil Code, any intermediary may be registered on behalf of that holder. Such registrations may be made in the form of a joint account or several individual accounts each corresponding to one holder.

When it opens its account with the issuing company or with the financial intermediary mentioned in Article L. 211-3 of the Monetary and Financial Code which keeps the securities account, the registered intermediary is required to declare its status, in the manner determined by decree, as an intermediary holding securities on behalf of others.

For assignment of transferable securities admitted to the operations of a central custodian or delivered in a settlement and delivery system referred to in Article L. 330-1 of the Monetary and Financial Code, the transfer of title takes place as provided for in Article L. 211-17 of the said code. In other cases, the transfer of title takes place when the transferable securities are registered in the buyer's account in the manner stipulated in a Conseil d'Etat decree.

#### **Article L. 228-2**

I. - For the purpose of identifying the holders of bearer securities, the issuing company's constitution may authorise it to request the central custodian administering its securities, at any time in return for payment of a fee, to provide it with the name or trading name, nationality, year of birth or incorporation, and address of the holders of securities which, immediately or eventually, confer the right to vote at its own general meetings, as well as the number of securities held by each of them and any restrictions applicable thereto.

The aforementioned central custodian gathers this information from the account-keeping institutions affiliated to it, which are required to provide it with this information within a time limit determined in a Conseil d'Etat decree. The central custodian then brings that information to the attention

of the company within five working days of receiving it.

If the time limit determined by decree is not observed, or if the information provided by the book-keeping institution is incomplete or erroneous, the central custodian may apply to the presiding judge of the Tribunal de Grande Instance for a summary ruling for performance of the duty to provide information, subject to a progressive coercive fine.

II. - Having followed the procedure described in I, and in the light of the list provided by the aforementioned central custodian, the issuing company is entitled to request, either through the said central custodian or directly, in the manner and subject to the penalties stipulated in Article L. 228-3-2, that any persons included in the said list whom the company suspects of being registered on behalf of third parties provide the information relating to the holders of securities indicated in I.

When such persons have intermediary status, they are required to disclose the identity of the owners of the securities. The information is provided directly to the intermediary mentioned in Article L. 211-3 of the Monetary and Financial Code holding the securities account, who is responsible for communicating it to the issuing company or the aforementioned central custodian, as applicable.

III. - The company shall not pass on the information thus obtained, even free of charge. Any violation of this provision shall incur the penalties referred to in Article 226-13 of the Penal Code.

### **Article L. 228-3**

In the case of securities in registered form giving access to capital immediately or after a defined term, the registered intermediary referred to in Article L. 228-1 is required, within a time limit determined in a Conseil d'Etat decree, to disclose the identity of the owners of those securities and the number of securities held by each of them whenever so requested by the issuing company or its representative.

The special rights attached to registered shares, and specifically those referred to in Articles L. 225-123 and L. 232-14, may only be exercised by a registered intermediary as provided for in Article L. 228-1 if the information provided by that intermediary facilitates verification of compliance with the conditions applicable to exercise of the said rights.

### **Article L. 228-3-1**

I. - Whenever the issuing company considers that certain holders whose identity has been communicated to it are acting on behalf of third-party holders of the securities, it is entitled to ask the said holders to disclose the identity of the holders of those securities and the number of securities held by each of them, as provided for respectively in the first paragraph of II of Article L. 228-2 for bearer securities and in the first paragraph of Article L.

228-3 for registered securities.

II. - Having done so, and without prejudice to the obligation to report significant equity holdings imposed by Articles L. 233-7, L. 233-12 and L. 233-13, the issuing company may ask any legal person holding shares in excess of one fortieth of its capital or voting rights to inform it of the identity of the persons who directly or indirectly hold more than one third of that legal person's share capital or the voting rights exercised at its general meetings.

#### **Article L. 228-3-2**

An intermediary having fulfilled the obligations stipulated in the seventh and eighth paragraphs of Article L. 228-1 may, by virtue of a general power of attorney of securities management, transfer a share owner's vote or powers of ownership as defined in the third paragraph of that same article to a general meeting.

Before transferring powers or votes to a general meeting, the registered intermediary referred to in Article L. 228-1 is required, at the request of the issuing company or its representative, to provide a list of any non-resident owners of the shares to which those voting rights are attached and the number of shares held by each of them. The said list is supplied as provided for in Articles L. 228-2 or L. 228-3, as applicable.

A vote or power issuing from an intermediary who has either not been declared as such pursuant to the eighth paragraph of Article L. 228-1 or the second paragraph of the present article, or has not disclosed the identity of the owners of the securities pursuant to Articles L. 228-2 or L. 228-3, shall not be counted.

#### **Article L. 228-3-3**

If the person who is the subject of a request pursuant to Articles L. 228-2 to L. 228-3-1 has failed to provide the information within the time limits stipulated in those articles or has provided incomplete or erroneous information regarding his own status or the owners of the securities or the number of securities held by each of them, the shares or securities giving immediate access to the capital or at the end of a term in relation to which the said person is registered are stripped of voting rights for any meeting of shareholders held prior to the date on which the identification information is corrected, and payment of the corresponding dividend is deferred until that date.

Moreover, in the event of the registered person deliberately failing to apply the provisions of Articles L. 228-1 to L. 228-3-1, the court having jurisdiction at the place where the company has its registered office may, at the request of the company or of one or more shareholders holding at least 5% of the capital, order the total or partial suspension of the voting rights

attached to the shares to which the order relates for a total period not exceeding five years, and deferral of the corresponding dividend payment for the same period.

#### **Article L. 228-3-4**

Any person who participates in any capacity in the management or administration of the central custodian of financial instruments, and likewise any person employed by it, by the issuing company or by the registered intermediary, who, through his professional activities, has knowledge of the information referred to in Articles L. 228-1 to L. 228-3-2 is bound by a professional duty of confidentiality under the conditions and subject to the penalties provided for in Articles 226-13 and 226-14 of the Penal Code. Professional confidentiality cannot be invoked against either the Financial Markets Authority or the judicial authorities.

#### **Article L. 228-4**

Under pain of being declared void, the issuing of participating shares or founder's shares is prohibited.

However, participating shares or founder's shares issued before 1 April 1967 shall continue to be governed by the laws applicable thereto.

#### **Article L. 228-5**

With regard to the company, the securities shall be indivisible, subject to the application of Articles L. 225-110 and L. 225-118.

#### **Article L. 228-6**

Notwithstanding any stipulations to the contrary in the constitution, companies which have carried out either exchanges of securities following an operation of merger or demerger, capital reduction, consolidation or division and compulsory conversion of bearer securities into registered securities, or distributions of securities allocated to the reserves or linked to a capital reduction, or distributions or allotments of free shares may, following the decision of the board of directors, executive board or managers, under the terms fixed by a Conseil d'Etat decree, sell the securities whose issue has not been requested by their legal successors, provided that they have carried out, at least two years in advance, the publication according to the mechanisms fixed by the said decree.

From the date of this sale, the former securities or the former rights to the distribution or allotment shall, as necessary, be cancelled and their holders may thereafter claim only for the distribution in money of the net proceeds from the sale of the unclaimed securities.

#### **Article L. 228-6-1**

In companies whose securities are admitted to trading on a regulated market, an extraordinary general meeting of shareholders which has authorised a merger or demerger, upon expiry of a period which must not exceed a limit determined in a Conseil d'Etat decree, and following the date of registration in their account of the whole number of shares allotted, may decide that a global sale of the unallotted shares corresponding to the rights attached to fractional shares shall take place under the conditions determined by this decree, with a view to distributing the funds among the parties concerned.

#### **Article L. 228-6-2**

The non-financial rights attached to transferable securities registered in a joint account are exercised by one or the other of the joint holders pursuant to conditions laid down in the agreement on opening of the account.

#### **Article L. 228-6-3**

Securities whose holders, despite compliance with the formalities for convening general meetings, are either unknown to the account-keeper or have not responded to notices to attend general meetings for over ten years, may be sold pursuant to the procedure referred to in Article L. 228-6.

Such sales shall take place upon expiry of a period determined in a Conseil d'Etat decree after fulfilment of the publication requirements stipulated in this article, provided that the account-keeper has taken all necessary measures during that period to make contact with the holders or their assigns in the conditions stipulated in that same decree.

#### *Section 2: Shares.*

#### **Article L. 228-7**

Shares 'de numéraire' (in money) are those whose amount is paid up in money or by offsetting, those shares which are issued following capitalisation of reserves, profits or share premiums and those whose payment derives partly from capitalisation of reserves, profits or share premiums and partly from money payment. These last-mentioned shares must be fully paid up on subscription.

Without prejudice to the specific rules applicable to shares deriving from a merger or demerger, all other shares are shares issued for a consideration other than money.

#### **Article L. 228-8**

The face-value of shares or subdivided shares may be fixed by the constitution. This option applies to all share issues.

#### **Article L. 228-9**

Shares paid in money shall be registered until they are fully paid up.

Failure to comply with the first paragraph may result in the cancellation of the said share.

#### **Article L. 228-10**

Shares are not negotiable until the company is entered in the commercial and companies register. In the event of a capital increase, the shares are negotiable with effect from its completion.

The trading of rights of pre-emption to acquire shares is prohibited unless they are shares yet to be created, for which an application has been made for admission to trading on a regulated market, or in the case of an increase in the capital of a company whose existing shares are already admitted to trading on a regulated market. In the latter case, trading is valid only if it is carried out subject to the condition precedent of completion of the capital increase. Failing this express indication, the said condition shall be presumed.

#### **Article L. 228-11**

Upon formation of the company or during its existence, preference shares may be created, with or without voting rights, which confer special rights of all kinds, either temporarily or permanently. These rights are defined by the constitution in compliance with the provisions of Articles L. 225-10 and L. 225-122 to L. 225-125.

The voting rights may be amended for a determined or determinable period. They may also be suspended for a determined or determinable period, or may be removed.

Non-voting preference shares shall not represent more than one half of the share capital, and in companies whose shares are admitted to trading on a regulated market, not more than one quarter of the share capital.

Any issue having the effect of increasing the proportion beyond these limits may be cancelled.

By way of exception to Articles L. 225-132 and L. 228-91, the preference shares without voting right at issue to which is attached a limited right to dividend participation, reserves or property sharing in case of liquidation are deprived of the right to preferential subscriptions for any capital increase in money, subject to the contrary stipulations of the constitution.



#### **Article L. 228-12**

A decision to issue, redeem or convert preference shares can only be taken by an extraordinary general meeting of shareholders on the basis of a special report from the auditors. It may delegate such power as provided for in Articles L. 225-129 to L. 225-129-6.

The methods for redeeming or converting preference shares may also be determined in the constitution.

At any time during the financial year then current, and at the first meeting held subsequent to its close, at the latest, the board of directors or the executive board shall record the number and nominal value of the shares, if any, issued from the conversion of preference shares during the previous financial year and make the necessary amendments to the constitution relative to the amount of the share capital and the number of securities that represent it.

The president of the executive board or the managing director may, if duly empowered by the executive board or the board of directors, proceed with such transactions at any time during the financial year, and within the time limit set in a Conseil d'Etat decree at the latest.

#### **Article L. 228-13**

The special rights referred to in Article L. 228-11 may be exercised in the company which directly or indirectly holds more than one half of the capital of the issuing company or in a company in which the issuing company directly or indirectly holds more than one half of the capital.

The issue must then be authorised by the extraordinary general meeting of the company issuing the preference shares and by that of the company in which the rights are exercised.

The auditors of the companies concerned must draw up a special report.

#### **Article L. 228-14**

Preference shares may be converted into ordinary shares or preference shares of a different category.

When preference shares are converted into shares which bring about a capital reduction not motivated by losses, creditors whose debt predates the filing at the court registry of the minutes of the general meeting or, in the event of delegation, of the board meeting or executive board, may raise an objection to the conversion within the time limit and as stipulated in a Conseil d'Etat decree.

The capital conversion procedure shall not commence during the time limit for raising an objection, nor, where applicable, before a decision on first hearing has been given on any objection raised.

#### **Article L. 228-15**

The creation of such shares gives rise to application of Articles L. 225-8, L. 225-14, L. 225-147 and L. 225-148 relating to special privileges if the shares are issued in favour of one or more shareholders designated by name. In such cases, the expert valuer of contributions referred to in the said articles must be an auditor who has not carried out an assignment in the company within the past five years and is not then carrying out such an assignment.

The holders of shares which are to be converted into preference shares in the new category shall not, on pain of the meeting's deliberations being declared void, participate in the vote on the creation of that category, and the shares they hold shall not be taken into account for calculation of the quorum and the majority, unless all the shares are to be converted into preference shares.

By way of exception to the first paragraph, where the issue concerns preference shares that fall under an already created class, the resulting special advantages are valued in the special report mentioned in Article L. 228-12.

#### **Article L. 228-16**

In the event of a change to the capital or a capital write-off, the extraordinary general meeting shall determine the effects that those procedures shall have on the rights of the preference shareholders.

These effects may also be recorded in the constitution.

#### **Article L. 228-17**

In the event of a merger or demerger, the preference shares may be exchanged for shares in the companies benefiting from the transfer of assets which confer equivalent special rights, or in accordance with a specific exchange of shares for parity which takes account of the special rights abandoned.

If there is no exchange for shares conferring equivalent special rights, the merger or demerger is subject to the approval of the special meeting referred to in Article L. 225-99.

#### **Article L. 228-18**

The dividend paid, where applicable, to the holders of preference shares may be distributed in the form of capital securities as laid down by the extraordinary general meeting or in the constitution.

#### **Article L. 228-19**

The holders of preference shares, together at a special meeting, are empowered to instruct one of the company's auditors to draw up a special report on the company's compliance with the special rights attached to the

preference shares. The said report shall be distributed to those shareholders at a special meeting.

#### **Article L. 228-21**

Shares may continue to be traded after the company is dissolved and until the end of the winding-up.

#### **Article L. 228-22**

The invalidity of the company or annulment of an issue of shares shall not lead to the nullity of the trading which occurred prior to the decision for an order for invalidity or annulment, if the securities are regular in form. However, the purchaser may bring an action to enforce a guarantee against the seller.

#### **Article L. 228-23**

In a company whose shares are not admitted to trading on a regulated market, the assignment of shares or transferable securities giving access to the capital, whatever the reason for it, may be made subject to the company's approval by a clause in the constitution.

An approval clause may only be required if the securities are registered by virtue of the law or the constitution.

This clause is inapplicable in the event of succession, settlement under a marriage contract or assignment to a spouse, an ascendant or a descendant. The provisions of the previous paragraph do not apply where a company, whose shares are not admitted for trading on a regulated market, sets aside shares for its employees, insofar as the approval consent clause seeks to prevent the said shares from being allotted or assigned to people without the status of company employees.

Any assignment effected in violation of an approval clause in the constitution is null and void.

#### **Article L. 228-24**

If an approval clause is stipulated, the application for approval indicating the assignee's name, forenames and address and the number of shares or transferable securities giving access to the capital in respect of which assignment is envisaged, and the price offered, is sent to the company. Approval is given either in writing or through the absence of any reply within three months of the application being made.

If the company does not approve the proposed assignee, the board of directors, the executive board or the managers, as applicable, shall, within three months of refusal being notified, arrange for the shares or transferable securities giving access to the capital to be purchased either by a shareholder or a third party, or, with the assignor's consent, by the

company in order to reduce the capital. Failing agreement between the parties, the price of the capital securities or transferable securities giving access to the capital is determined as provided for in Article 1843-4 of the Civil Code.

The assignor may at any time waive assignment of his shares or transferable securities giving access to the capital. Any clause contrary to Article 1843-4 of the said code shall be deemed unwritten.

If, upon expiry of the time limit stipulated in the previous paragraph, the purchase has not been effected, approval is deemed to have been granted. The time limit may nevertheless be extended by a court decision at the company's request.

#### **Article L. 228-26**

If the company has given its consent to a plan to pledge shares in accordance with the conditions specified in the first paragraph of Article L. 228-24, this consent shall include approval of the assignee in the event of the forced sale of the pledged shares according to the provisions of the first paragraph of Article 2078 of the Civil Code, unless the company prefers, after the assignment, to immediately repurchase the shares in order to reduce its capital.

#### **Article L. 228-27**

If the shareholder fails to pay up, at the times fixed by the board of directors, executive board or managers, as applicable, the sums remaining to be paid on the amount of the shares subscribed thereby, the company shall send the shareholder formal notice of intention to issue proceedings.

At least one month after this formal notice has not produced any effect, the company shall bring legal proceedings, without needing any court authorisation, to sell these shares.

Quoted shares shall be sold on the stock market. Unquoted shares shall be sold at public auction. The defaulting shareholder shall owe or receive the difference between the nominal value and the share price. The methods of application of this paragraph shall be determined by a Conseil d'Etat decree.

#### **Article L. 228-28**

The defaulting shareholder, the successive assignees and the subscribers shall have solidary responsibility for the amount of the share which is not paid up. The company may bring an action against them, either before or after the sale, or at the same time, in order to obtain both the sum due and the reimbursement of the expenses incurred.

The person who pays off the company shall have a right of action to recover the whole amount against the successive holders of the share. The

final burden of the debt shall be incumbent on the last of these.

Two years after the transfer of a securities account to another account, any subscriber or shareholder who has assigned their title shall cease to be liable for payments not yet requested.

#### **Article L. 228-29**

On the expiration of the period fixed by a Conseil d'Etat decree, the shares for which payments due have not been made shall cease to confer the right of admission to general meetings and the right to vote at these and shall be deducted when calculating the quorum.

The right to dividends and the preferential right to subscribe to increases in capital attached to these shares shall be suspended.

After payment of the sums due, in principal and interest, the shareholder may request the payment of dividends which have lapsed. The shareholder may not bring an action on account of the preferential right to subscribe to an increase in capital after the expiration of the period fixed for exercising this right.

#### **Article L. 228-29-1**

Shares having a nominal value lower than or equal to a value determined in a Conseil d'Etat decree and which are not admitted to trading on a regulated market may be combined notwithstanding any contrary provision of the law or in the constitution. Such combinations are decided by general meetings of shareholders deliberating in the conditions prescribed for amendments to the constitution and pursuant to the provisions of Article L. 228-29-2.

#### **Article L. 228-29-2**

The share combinations referred to in Article L. 228-29-1 entail the obligation for the shareholders to effect the purchases or assignments of shares necessary to complete them.

The nominal value of the combined shares shall not exceed a value determined in a Conseil d'Etat decree.

To facilitate such transactions, the company must obtain a commitment from one or more shareholders, before the general meeting makes a decision, to underwrite the consideration for both the purchases and the sales pertaining to the fractional shares or for the applications intended to complete the number of securities belonging to each shareholder concerned for a period of two years, at the price set by the meeting.

#### **Article L. 228-29-3**

Upon expiry of the time limit set by the decree referred to in Article L. 228-29-7, shares which have not been presented for combination lose their

voting rights and their dividend entitlement is suspended.

The decree referred to in the first paragraph may grant a further time limit to the shareholders who made the commitment referred to in the third paragraph of Article L. 228-29-2.

Dividends of which payment has been suspended pursuant to the first paragraph are, in the event of subsequent combination, paid to the owners of the former shares insofar as they are not affected by the statute of limitations.

#### **Article L. 228-29-4**

When the owners of securities do not have free administration of their assets, applications to exchange former securities and the purchases or assignments of fractional shares which are necessary to effect a combination are treated as simple administrative acts unless the new securities are requested in bearer form in exchange for registered securities.

#### **Article L. 228-29-5**

The new securities shall have the same characteristics and automatically confer the same rights in rem or rights to receive payment or other benefits as the old securities that they replace, without any formality being necessary.

Rights in rem and pledges are automatically carried over to the new securities allotted to replace the former securities thus encumbered.

#### **Article L. 228-29-6**

If the company should fail to comply with Articles L. 228-29-1 or L. 228-29-2 or the rules relating to the taking of decisions by general meetings or the publication formalities determined by the decree referred to in Article L. 228-29-7, combination remains optional for the shareholders. The provisions of Article L. 228-29-3 cannot be applied to shareholders.

If the shareholder(s) who made the commitment referred to in Article L. 228-29-2 fail(s) to comply with it, the combinations may be cancelled. In such cases, the purchases and sales of fractional shares may be cancelled at the request of the shareholders who proceeded therewith or their transferees, with the exception of any defaulting shareholders, and without prejudice to any damages where appropriate.

#### **Article L. 228-29-7**

A Conseil d'Etat decree shall determine the implementing provisions for Articles L. 228-29-1 to L. 228-29-6, including matters not addressed in Article L. 228-29-1 relating to the taking of decisions by general meetings of shareholders and the publication formalities associated with such

decisions.

*Section 3: Provisions applicable to classes of securities in course of extinction.*

Subsection 1: General provisions.

**Article L. 228-29-8**

No new securities may be issued pursuant to the articles of the present section save for any which might be issued pursuant to decisions of general meetings taken prior to the entry into force of Order No. 2004-604 of 24 June 2004 reforming the legislation applicable to transferable securities issued by commercial companies and the extension to the Overseas Departments and Territories of provisions amending the commercial legislation.

**Article L. 228-29-9**

Unless Article L. 225-138 applies, the holders of securities governed by the present section have a right to preferential subscription attaching to the preference shares referred to in Article L. 228-11 when these confer rights equivalent to those of the securities they hold.

Unless Article L. 225-138 applies, the holders of securities governed by the present section have a preferential right to subscribe to the transferable securities referred to in Article L. 228-91 when they give rise to an allotment of securities conferring rights equivalent to those of the securities they hold.

**Article L. 228-29-10**

Priority-dividend shares without voting rights and existing investment certificates are taken into account for calculation of the quotas referred to in Article L. 228-11.

However, application of the provisions of the previous paragraph shall not impede maintenance of the rights of the holders of existing securities.

Subsection 2: Investment certificates.

**Article L. 228-30**

The extraordinary general meeting of a joint-stock company or, in companies which do not have such meetings, the organ which performs the same function, may decide, on the basis of a report from the board of directors or the executive board, as applicable, and that of the auditors, to create, in a proportion which shall not exceed one quarter of the share capital, investment certificates and voting-rights certificates respectively representing the financial rights and other rights attached to the shares

issued when a capital increase or a split of the existing shares takes place.

When a capital increase is effected, shareholders and holders of investment certificates, if there are any, shall benefit from a preferential right to subscribe to the investment certificates issued through the procedure applied to capital increases. The holders of investment certificates must waive their preferential rights at a special meeting convened and deciding pursuant to the rules of the extraordinary general meeting of shareholders. The voting-rights certificates are distributed among the shareholders and the holders of voting-rights certificates, if any, in proportion to their rights.

When a share split is effected, the offer to create investment certificates is made to all the shareholders at the same time in proportion to their capital holdings. Upon expiry of a time limit set by the extraordinary general meeting, any unallotted capacity to create such rights is distributed among the shareholders who have requested the benefit of such an additional distribution in proportion to their share of the capital and, in every case, who have requested to benefit from this. Any balance remaining after this distribution, is distributed by the board of directors or the executive board, as applicable.

The voting-rights certificate must be in registered form.

The investment certificate is negotiable. Its nominal value is equal to that of the shares. When the shares are divided, the related investment certificates are also divided.

The voting-rights certificate may only be assigned if it is accompanied by an investment certificate. However, it may also be assigned to the holder of the investment certificate. The assignment automatically entails reconstitution of the share in either case. The share is also automatically reconstituted when held by the holder of an investment certificate and a voting-rights certificate. The latter shall report such assignment to the company within fifteen days, failing which the share is stripped of its voting rights until the situation is regularized and for one month thereafter.

A certificate shall not be issued for a fraction of a voting right. The general meeting shall determine the arrangements for issuing certificates for the rights attached to fractional shares.

In the event of a merger or demerger, the investment certificates and voting-rights certificates of a company which no longer exists may be exchanged for the shares of companies benefiting from the transfer of assets.

#### **Article L. 228-31**

The extraordinary general meeting of a company whose shares are admitted to trading on a regulated market and whose existing investment certificates represent 1% of the share capital at most may decide, on the basis of a report from the board of directors, to reconstitute existing



certificates as shares and to the reconstitution of those existing certificates that confer special share privileges conferring the same advantages on their holders.

The extraordinary general meeting referred to in the previous paragraph shall hold its discussions in the manner prescribed for the approval of special privileges by Article L. 225-147 after a meeting of the holders of voting-rights certificates, convened and deciding pursuant to the rules for special meetings of shareholders, has approved the plan by a majority of 95% of the holders present or represented. The assignment shall then be made to the company, notwithstanding the sixth paragraph of Article L. 228-30, at the price set by the extraordinary general meeting referred to in the first paragraph of the present article.

The price referred to in the previous paragraph is determined pursuant to the methods set forth in 2 of Article 283-1-1 of Act No. 66-537 of 24 July 1966 relating to commercial companies.

The amount of compensation due to the unidentified holders is duly recorded.

The reconstitution is effected through the assignment of the corresponding voting-rights certificates to the holders of investment certificates, at no cost.

To that end, the company may ask the holders of certificates to produce identification as indicated in Article L. 228-2, even if the constitution makes no express provision therefor.

#### **Article L. 228-32**

The holders of investment certificates may have sight of the company's documents in the same way as the shareholders.

#### **Article L. 228-33**

When a free distribution of shares takes place, new non-voting preference shares must be created with the same rights as the investment certificates and allotted to the owners of the old certificates free of charge in proportion to the number of new shares allotted for the old shares, unless some or all of the holders waive the benefit thereof.

#### **Article L. 228-34**

In the event of an increase of capital subscribed in money, with the exception of an increase reserved for the employees as provided for in Article L. 225-138-1, new non-voting preference shares shall be issued with the same rights as the investment certificates, the number thereof being calculated to ensure that the proportion of ordinary shares to investment certificates which existed prior to the increase is maintained after the increase, taking account of the said preference shares and assuming that

the increase will be effected in full.

The owners of the investment certificates shall have a right to preferential subscription without numerical reduction attached to the new preference shares proportionate to the number of securities that they own. At a special meeting convened and deciding pursuant to the rules for extraordinary general meetings of shareholders, the owners of the investment certificates may waive the said right. Unsubscribed preference shares are allotted by the board of directors or the executive board. The capital increase effected shall be based on the fraction thereof which corresponds to the issue of shares. However, contrary to the provisions of the first paragraph above, when the owners of certificates have waived their right to preferential subscription, new preference shares shall not be issued.

#### **Article L. 228-35**

If convertible loan stock is issued, the holders of investment certificates shall have a preferential right to subscribe to them without reduction proportionate to the number of securities that they hold. The special meeting of holders of investment certificates, convened and deciding pursuant to the rules for extraordinary general meetings of shareholders, may waive that right.

This stock may only be converted into non-voting preference shares having the same rights as the investment certificates.

Subsection 3: Shares with priority.

#### **Article L. 228-35-1**

Upon formation of the company or during its existence, preference shares may be created which confer advantages over all other shares, without prejudice to the provisions of Articles L. 225-122 to L. 225-125.

As an exception to Article L. 225-99, the constitution or the contract for issue may state that a decision to convert preference shares into ordinary shares taken at an extraordinary general meeting shall not be binding on the holders of such shares.

Subsection 4: Priority-dividend shares without voting rights.

#### **Article L. 228-35-2**

Priority-dividend shares without voting rights may even be created as provided for in Articles L. 228-35-3 to L. 228-35-11 without prejudice to the provisions of Articles L. 225-122 to L. 225-126.

#### **Article L. 228-35-3**

Priority-dividend shares without voting rights may be created through a

capital increase or through conversion of ordinary shares already issued. They may be converted into ordinary shares.

Priority-dividend shares without voting rights shall not represent more than one quarter of the total share capital. Their nominal value is equal to that of the ordinary shares or, where applicable, the ordinary shares of one of the categories previously issued by the company.

The holders of priority-dividend shares without voting rights benefit from the rights enjoyed by the other shareholders, with the exception of the right to participate in and vote at general meetings of the company's shareholders by reason of those shares.

If priority-dividend shares without voting rights are created through conversion of ordinary shares already issued, or if priority-dividend shares without voting rights are converted into ordinary shares, the extraordinary general meeting shall determine the maximum number of shares to be converted and the conditions of conversion on the basis of a special auditors' report. Its decision is not final until it is approved at the special meetings referred to in Articles L. 228-35-6 and L. 228-103.

The conversion offer is made to all the shareholders at the same time in proportion to their share in the company capital, with the exception of the persons referred to in Article L. 228-35-8.

The extraordinary general meeting shall determine the period during which the shareholders may accept the conversion offer.

As an exception to Article L. 225-99, the constitution or the contract for issue may state that a decision to convert priority-dividend shares without voting rights into ordinary shares taken at an extraordinary general meeting shall not be binding on the holders of such shares.

#### **Article L. 228-35-4**

Priority-dividend shares without voting rights confer entitlement to a priority dividend deducted from the distributable profits for the financial year before any other allotment is made. If it appears that the priority dividend cannot be fully paid on account of there being insufficient distributable profits, these shall be distributed up to the full amount between the holders of priority-dividend shares without voting rights. The right to payment of the priority dividend that has not been fully paid owing to insufficient distributable profits shall be carried forward to the next financial year and, if necessary, the following two financial years or, if the constitution so provides, subsequent financial years. This right shall be exercised primarily in relation to payment of the priority dividend due for the financial year.

The priority dividend shall not be lower than either the first dividend referred to in Article L. 232-16 or an amount equal to 7.5% of the amount of the paid-up capital that the priority-dividend shares without voting rights represent. Such shares shall not give entitlement to the first dividend.

After deduction of the priority dividend and, if the constitution so provides,

the first dividend, or a dividend of 5% for the benefit of all ordinary shares calculated as provided for in Article L. 232-16, priority-dividend shares without voting rights shall have the same rights as ordinary shares proportionate to their nominal value.

If the ordinary shares are divided into categories that give different entitlements to the first dividend, the amount of the first dividend referred to in the second paragraph of this article shall apply to the highest first dividend.

#### **Article L. 228-35-5**

When the priority dividends due for the three financial years have not been fully paid, the holders of the corresponding shares acquire a voting right equal to that of the other shareholders in proportion to the portion of the capital that those shares represent.

The voting right referred to in the previous paragraph shall remain in force until the end of the financial year in which the priority dividend is fully paid, including the dividend due in respect of previous financial years.

#### **Article L. 228-35-6**

The holders of priority-dividend shares without voting rights shall come together at special meetings as provided for in a Conseil d'Etat decree.

Any shareholder owning priority-dividend shares without voting rights may participate in special meetings. Any clause to the contrary shall be deemed unwritten.

A special meeting of the holders of priority-dividend shares without voting rights may express an opinion before any decision is taken at the general meeting. It shall then decide on a majority of the votes cast by the shareholders present or represented. Where a ballot is held, blank votes shall not be included in the count. The company is informed of the opinion expressed, which is brought to the notice of the general meeting and entered in the minutes.

If the constitution so provides, the special meeting may designate one or more representatives to represent the holders of priority-dividend shares without voting rights at general meetings of shareholders and, where appropriate, to express their opinion before any vote is taken. This opinion is entered in the minutes of the general meeting.

Without prejudice to Article L. 228-35-7, any decision that affects the rights of the holders of priority-dividend shares without voting rights does not become final until it is approved by the special meeting referred to in the first paragraph of this article under the quorum and majority conditions referred to in L. 225-99.

If an objection is raised to the designation of representatives to represent the holders of priority-dividend shares without voting rights at general

meetings of shareholders, the presiding judge of the court, ruling by way of summary proceedings, may designate a representative to act in that capacity at the request of any shareholder.

#### **Article L. 228-35-7**

If a capital increase is effected through money contributions, the holders of priority-dividend shares without voting rights have the same right to preferential subscription as ordinary shareholders. However, after obtaining the opinion of the special meeting referred to in Article L. 228-35-6, the extraordinary general meeting may decide to endow them with a preferential right to subscribe to new non-voting preference shares having the same rights as the non-voting, in the same way as priority-dividend shares without voting rights which shall be issued in the same proportion.

The allotment of free new shares, following a capital increase through incorporation of reserves, profits or share premiums, applies to holders of priority-dividend shares without voting rights. However, after obtaining the opinion of the special meeting referred to in Article L. 228-35-6, the extraordinary general meeting may decide that holders of priority-dividend shares without voting rights shall receive new non-voting preference shares carrying the same rights as the non-voting preferred-dividend shares that shall be issued in the same proportion, instead of ordinary shares.

Any increase in the nominal value of the existing shares following a capital increase through incorporation of reserves, profits or share premiums shall apply to priority-dividend shares without voting rights. The priority dividend referred to in Article L. 228-35-4 is then calculated, with effect from completion of the capital increase, on the new nominal value plus the share premium, if any, paid on subscription of the old shares.

#### **Article L. 228-35-8**

The president and the members of the board of directors, the managing directors, the members of the executive board and of the supervisory board of a société anonyme, or the executives of a société en commandite par actions and their spouse from whom they are not judicially separated and their children not declared of full age and capacity, shall not hold priority-dividend shares without voting rights issued by that company in any form whatsoever.

#### **Article L. 228-35-9**

A company that has issued priority-dividend shares without voting rights shall be prohibited from writing off its capital.

Repayments made before the full redemption or annulment of priority-dividend shares without voting rights may be annulled.

When a capital reduction which is carried out not by reason of losses,

priority-dividend shares without voting rights must be purchased before the ordinary shares, as provided for in the last two paragraphs of Article L. 228-35-10, and annulled. The purchase of ordinary shares that does not comply with the foregoing paragraph may be annulled.

However, these provisions do not apply to capital reductions made pursuant to Article L. 225-209.

In such cases, the provisions of Article L. 225-99 shall not apply if the shares were bought on a regulated market.

Priority-dividend shares without voting rights have the same rights as other shares, proportionate to their nominal value, to reserves distributed during the life of the company.

#### **Article L. 228-35-10**

The constitution may give the company the right to demand the repurchase of all of its own priority-dividend shares without voting rights or certain categories thereof, with each category being determined by its date of issue. The repurchase of a category of priority-dividend shares without voting rights must comprise all the shares in that category. The repurchase is decided by the general meeting deciding under the conditions set out in Article L. 225-204.

The provisions of Article L. 225-205 shall apply. The repurchased shares are annulled pursuant to Article L. 225-207 and the capital is automatically reduced.

The repurchase of priority-dividend shares without voting rights may only be demanded by the company if a specific stipulation to that effect was inserted in the constitution before the said shares were issued.

The value of priority-dividend shares without voting rights is determined on the repurchase date by mutual agreement between the company and a special meeting of the selling shareholders deciding under the quorum and majority conditions referred to in Article L. 225-99.

In the event of disagreement, Article 1843-4 of the Civil Code shall apply.

Priority-dividend shares without voting rights may be repurchased only if the preferred dividend due in respect of previous financial years and the current financial year has been fully paid.

#### **Article L. 228-35-11**

Non-voting preference shares are not taken into account when the percentage referred to in Article L. 233-1 or Article L. 233-2 is determined.

### *Section 4: Participating securities.*

#### **Article L. 228-36**

Joint-stock companies belonging to the public sector and cooperatives

established in the form of a société anonyme or a société à responsabilité limitée may issue participating securities. These securities shall be redeemable only in the event of the company's winding-up or, on its initiative, on the expiration of a period which may not be less than seven years and in accordance with the conditions specified in the agreement for issue.

Remuneration relating to these shall involve a fixed portion and a variable portion calculated by reference to elements relating to the activity or results of the company and based on the nominal value of the security. A Conseil d'Etat decree shall fix the conditions in accordance with which the basis of the variable portion of the payments shall be capped.

Participating securities may be traded.

In order to apply Article 26 of Act No 78-741 of 13 July 1978 on the orientation of savings towards the financing of undertakings, participating capital loans shall be repaid only after full payment of all the other preferential or unsecured creditors to the exclusion of owners of participating securities.

#### **Article L. 228-37**

The issue and redemption of participating securities shall be authorised in accordance with the conditions specified by the fifth paragraph of Article L. 225-100 and Articles L. 228-40 to L. 228-44.

Holders of participating securities from the same issue shall be grouped ipso jure for the defence of their common interests in a body that shall have civil personality. They shall be subject to the provisions of Articles L. 228-47 to L. 228-71, L. 228-73 and L. 228-76 to L. 228-90.

In addition, the body shall meet at least once a year to hear the report of the company directors on the situation and activity of the company during the last financial year and the report of the auditors on the accounts for the financial year and on the elements serving to determine the remuneration of the participating securities.

The representatives of the body shall attend general meetings. They shall be consulted on all issues put down on the agenda, except for those involving the appointment or dismissal of members of the company bodies. They may intervene at any time during the meeting.

Holders of participating securities may receive company documents in accordance with the same conditions as shareholders.

In public undertakings without a general meeting, the board of directors shall exercise the powers conferred on the ordinary general meeting for the issue of participating securities. The fourth paragraph of this article shall not apply.

*Section 5: Bonds.*

**Article L. 228-38**

As stated in Article L. 213-5 of the Monetary and Financial Code:

"Article L. 213-5 - Bonds are negotiable securities that, within a single issue, confer the same creditor rights for the same nominal value." »

**Article L. 228-39**

The issue of bonds by a joint-stock company that has not prepared two balance sheets duly approved by the shareholders must be preceded by a verification of the assets and liabilities in accordance with the conditions specified in Articles L. 225-8 and L. 225-10.

The issue of bonds shall be prohibited for companies whose capital is not fully paid up except where the shares which are not paid up have been reserved for employees, pursuant to Article L. 225-187 or Article L. 443-5 of the Labour Code, and except where this is carried out with a view to allocating bonds to employees as part of their share in the fruits of the company's expansion.

**Article L. 228-40**

The board of directors, the executive board and the manager(s) are empowered to decide or authorise the issue of bonds unless the constitution reserves such power for the general meeting, or if the general meeting decides to exercise the said power itself.

The board of directors may delegate to one or more of its members, to the general manager or, with the general manager's consent, to one or more deputy general managers or, in credit institutions, to any person of its choice, the powers required to implement the issue of bonds within one year and to determine the particulars thereof.

The executive board may delegate to its president and, with his consent, to one or more of its members or, in credit institutions, to any person of its choice, the powers required to implement the issue of bonds within that same time limit and to determine the particulars thereof.

The persons thus designated shall report to the board of directors or the executive board in the manner determined by those bodies.

**Article L. 228-44**

The company may not pledge its own bonds as security.

**Article L. 228-45**

Where the issuing company has continued to make payments for bonds



redeemable after drawing lots, it may not pay these sums again when these bonds are presented for redemption.

Any clause to the contrary shall be deemed unwritten.

#### **Article L. 228-46**

The holders of bonds from the same issue shall be grouped together ipso jure for the defence of their common interests in a body which shall have a civil personality.

However, in the event of successive issues of bonds, the company may, when a clause in each agreement for issue thus specifies, group together bondholders with identical rights into a single body.

#### **Article L. 228-47**

The body shall be represented by one or more representatives elected by the general meeting of bondholders. They may under no circumstances be more than three. Representatives may be designated in the agreement for issue.

#### **Article L. 228-48**

The mandate of representative of the body may be entrusted only to persons of French nationality or to nationals of a Member State of the European Community, domiciled in France, and to associations and companies with their registered office therein.

#### **Article L. 228-49**

The following may not be chosen as representatives of the body:

- 1° The debtor company;
- 2° Companies holding at least one-tenth of the capital of the debtor company or in which the latter holds at least one-tenth of the capital;
- 3° Companies acting as guarantor for all or part of the commitments of the debtor company;
- 4° Managers, directors, members of the executive board and supervisory board, managing directors, auditors or employees of the companies referred to in 1° and 3°, and their ascendants, descendants and spouses;
- 5° Persons who are prohibited from exercising the profession of banker or who are disqualified from running, administering or managing any type of company.

#### **Article L. 228-50**

In an emergency, the representatives of the body may be appointed by a court decision at the request of any interested party.

#### **Article L. 228-51**

Where they are not appointed in the agreement, the representatives of the body of bondholders with regard to a loan shall be appointed within one year of the opening of the subscription and at the latest one month before the first specified debt payment.

This appointment shall be made by the general meeting or, failing this, by a court decision at the request of any interested party.

#### **Article L. 228-52**

The representatives of the body may be relieved of their duties by the general meeting of bondholders.

#### **Article L. 228-53**

The representatives of the body shall, except where restricted as decided by the general meeting of bondholders, have the power to carry out on behalf of the body all the management acts for the defence of the common interests of the bondholders.

#### **Article L. 228-54**

The representatives of the body, duly authorised by the general meeting of bondholders, shall alone have the capacity to bring, on behalf of the said bondholders, actions to declare the invalidity of the company or annulment of decisions subsequent to its formation and also all actions intended to defend the common interests of the bondholders, and particularly to request the measure specified in Article L. 237-14.

Court actions directed against all the bondholders in the same body may be brought only against the representative of this body.

Any action brought contrary to the provisions of this article shall be declared automatically inadmissible.

#### **Article L. 228-55**

The representatives of the body may not be involved in the management of the company business. They shall have access to the general meetings of shareholders, but without a right to vote.

They shall be entitled to receive the documents provided to the shareholders in accordance with the same conditions as the shareholders.

#### **Article L. 228-56**

The remuneration of the representatives of the general body as determined by the general meeting or by the agreement for issue shall be paid by the debtor company.

If this remuneration is not determined, or if the amount thereof is

contested by the company, it shall be fixed by a decision of the court.

Without prejudice to any action for damages against the executives or the representative of the general body, any decision which grants remuneration to the representatives of the general body in breach of the provisions of the present Article shall be null and void.

#### **Article L. 228-57**

The general meeting of bondholders in the same body may meet at any time.

#### **Article L. 228-58**

The general meeting of bondholders shall be convened by the board of directors, executive board or managers, by the representatives of the body or by the liquidators during the winding-up period.

One or more bondholders, together holding at least one-thirtieth of the securities of a body, may submit to the company and to the representative of the body a request for the meeting to be convened.

If the general meeting has not been convened within the period fixed by a Conseil d'Etat decree, the originators of the request may entrust one of them to bring legal proceedings for the appointment of a representative who shall convene the meeting.

#### **Article L. 228-59**

The general meetings of bondholders shall be convened in accordance in the same form and with the same time limits as the shareholders' general meetings. Furthermore, the notices of the meetings shall contain special information which shall be determined by a Conseil d'Etat decree.

Any irregularly convened meeting may be cancelled. However, the action to annul this shall not be admissible when all the bondholders in the body in question are present or represented.

#### **Article L. 228-60**

The agenda for general meetings shall be determined by the convener.

However, one or more bondholders are entitled, as provided for in the second paragraph of Article L. 228-58, to require that draft resolutions be placed on the agenda.

Such resolutions shall be placed on the agenda and put to the vote by the president of the meeting.

The meeting cannot deliberate on an item that is not on the agenda.

The agenda for the meeting may not be amended on a second call.

#### **Article L. 228-60-1**

An attendance sheet shall be kept for each meeting.

The decisions taken at each meeting shall be recorded in minutes signed by the members of the committee which are entered in a special register kept at the registered office.

The items that must be included in the attendance sheet and the minutes are determined in a Conseil d'Etat decree.

#### **Article L. 228-61**

If there are several bodies of bondholders, they shall not in any circumstances hold a joint meeting.

All bondholders are entitled to participate in the meeting or to be represented by the representative of their choice.

Any bondholder may vote by post using a form as prescribed in a Conseil d'Etat decree. Any provisions to the contrary contained in the constitution shall be deemed unwritten.

When calculating the quorum, only forms received by the company before the meeting shall be taken into account, under the conditions established by a Conseil d'Etat decree. Forms not indicating any vote or expressing an abstention shall be considered as negative votes.

If the constitution so provides, bondholders who participate in the meeting via videoconferencing or via a telecommunications medium which permits their identification are deemed to be present for calculation of the quorum and the majority. The nature of the acceptable technical media and the implementing regulations for this provision are determined in a Conseil d'Etat decree.

The holders of redeemed bonds that were not repaid on account of the failure of the debtor company or a dispute relating to the conditions of repayment may participate in the meeting.

A company which holds at least 10% of the debtor company's capital shall not vote with the bonds it holds at the meeting.

#### **Article L. 228-62**

Managers, directors, members of the management and supervisory board, managing directors, auditors or employees of the debtor company or companies acting as guarantor for all or part of the commitments of the said company, and their ascendants, descendants and spouses, may not represent bondholders at general meetings.

#### **Article L. 228-63**

The representation of a bondholder may not be entrusted to persons who are prohibited from practising the profession of banker or who are

disqualified from running, administering or managing any type of company.

#### **Article L. 228-64**

The meeting shall be presided by a representative of the body. In the absence of these representatives or in the event of disagreement between them, the meeting shall appoint a person to fulfil the duties of president. If the meeting is convened by a judicially-appointed agent, he shall preside the meeting.

In the absence of a body of representatives appointed in accordance with the conditions specified in Articles L. 228-50 and L. 228-51, the first meeting shall be opened under the interim presidency of the person holding or the representative representing the highest number of bonds.

#### **Article L. 228-65**

I. - The general meeting shall deliberate on all measures intended to protect the bondholders and ensure performance of the loan agreement, and on any proposal seeking to amend the contract, including:

1° Any proposal relating to a change in the company's corporate purpose or status;

2° Any proposal for a settlement or a transaction concerning disputed rights or rights in respect of which court decisions have been handed down;

3° Proposals to merge or demerge the company in the cases referred to in Articles L. 236-13 and L. 236-18;

4° Any proposal relating to the issuing of bonds conferring a preferential right relating to the loans of the general body of bondholders;

5° Any proposal relating to total or partial abandonment of the guarantees conferred on the bondholders, to reschedule the due date for payment of interest or to change to the mechanisms governing redemption or the interest rate;

6° Any plan to relocate a European company's registered office to another Member State.

II. - The general meeting shall deliberate under the quorum conditions set out in the second paragraph of Article L. 225-98.

It decides on a majority of two thirds of the votes held by the bondholders present or represented.

#### **Article L. 228-66**

The right to vote in general meetings of bondholders shall belong to the naked owner.

#### **Article L. 228-67**

The right to vote attached to the bonds must be proportional to the portion of the loan amount which they represent. Each bond shall confer

the right to at least one vote.

#### **Article L. 228-68**

Meetings shall neither increase the financial burdens on bondholders nor establish inequitable treatment of bondholders within a single body.

They cannot decide to convert bonds into shares, without prejudice to the provisions of Article L. 228-106.

Any provision to the contrary shall be deemed unwritten.

#### **Article L. 228-69**

All bondholders shall be entitled to receive, in accordance with the conditions and time limits determined by a Conseil d'Etat decree, the text of resolutions to be proposed and of reports to be submitted to the general meeting.

They shall at all times have the same right with regard to the minutes and attendance sheets of the general meetings of the body to which they belong.

#### **Article L. 228-70**

Bondholders shall not be allowed individually to supervise the operations of the company or to request notification of company documents.

#### **Article L. 228-71**

The debtor company shall bear the cost of convening and holding the general meetings and of publishing their decisions, as well as expenses resulting from the procedure specified in Article L. 288-50.

Other management expenditure decided by the general meetings of the body may be deducted from the interest paid to the bondholders and its amount may be fixed by a court decision.

The deductions specified in the above paragraph may not exceed one-tenth of the annual interest.

#### **Article L. 228-72**

Failing approval by the general meeting of the proposals referred to in 1° and 4° of I. of Article L. 228-65, the board of directors, executive board or managers of the debtor company may carry on despite the lack of approval by offering to redeem the bonds within the period fixed by a Conseil d'Etat decree.

The decision of the board of directors, executive board or managers to carry on despite the lack of approval shall be published in accordance with the conditions fixed by a Conseil d'Etat decree which shall also determine the period during which the redemption must be requested.

#### **Article L. 228-73**

If a general meeting of the bondholders of the company acquired or split up has not approved a proposal referred to in 3 and 6 of I of Article L. 228-65 or has been unable to validly deliberate on account of the required quorum not being achieved, the board of directors, the executive board or the managers of the debtor company may carry on despite the lack of approval. The decision must be published as provided for in a Conseil d'Etat decree.

The bondholders then retain their status in the acquiring company or the companies receiving the contributions resulting from the demerger, as applicable.

The general meeting of bondholders may nevertheless empower the representatives of the general body of bondholders to lodge an objection to the transaction under the conditions, and with the effects, stipulated in Article L. 236-14.

#### **Article L. 228-74**

Bonds repurchased by the issuing company and bonds drawn and redeemed shall be cancelled and may not be put back into circulation.

#### **Article L. 228-75**

In the absence of special provisions in the contract for issue, the company may not impose the early redemption of bonds on bondholders.

#### **Article L. 228-76**

In the event of early dissolution of the company, not caused by a merger or demerger, the general meeting of bondholders may request the redemption of the bonds and the company may impose such redemption.

#### **Article L. 228-77**

In the event of an issue of bonds accompanied by special securities, these shall be established by the company before their issue, on behalf of the body of bondholders. Acceptance shall result solely from the subscription of the bonds. This decision shall be retroactive to the date of registration, for securities subject to registration, and to the date of their creation for other securities.

#### **Article L. 228-78**

The guarantees specified in Article L. 228-77 shall be given by the president of the board of directors, the representative of the executive board or the manager, following authorisation from the company body authorised to this end by the constitution.

#### **Article L. 228-79**

The securities shall be established in a special instrument. The publication formalities for these securities shall be completed before any subscription, on behalf of the body of bondholders being established.

Within six months of the issue being opened for subscription, the result of this subscription shall be recorded in a notarised document by the company's representative.

The mechanisms for the registration and renewal of the registration of securities shall be determined by a Conseil d'Etat decree.

The representatives of the body shall monitor, as their personal responsibility, the observation of the provisions for renewal of registration.

#### **Article L. 228-80**

The withdrawal of registration shall occur in accordance with the conditions determined by a Conseil d'Etat decree.

#### **Article L. 228-81**

The guarantees established after the issue of the bonds shall be given by the president of the board of directors, the representative of the executive board or the manager, following authorisation from the company body authorised to this end by the constitution. They shall be accepted by the representative of the body.

#### **Article L. 228-82**

The issue of bonds, the redemption of which is guaranteed by a financing company, is prohibited.

#### **Article L. 228-83**

In the event of a judicial restructuring order or winding-up proceedings of the company, the representatives of the body of bondholders shall be authorised to act on the body's behalf.

#### **Article L. 228-84**

On behalf of all the bondholders in the general body, the representatives of the general body shall declare the principal amount of the bonds remaining in circulation plus, for information, any matured but unpaid interest coupons, a detailed statement of which is drawn up by the court-appointed administrator, as liabilities in the company's judicial restructuring or liquidation proceedings. They are not required to present their principals' certificates in support of that declaration.



#### **Article L. 228-85**

Failing such a declaration by the representatives of the general body, a court decision, made at the request of the court-appointed administrator, shall appoint a representative to represent the general body in the judicial restructuring or liquidation proceedings and to declare the debt.

#### **Article L. 228-86**

Representatives of the general body are consulted by the court-appointed administrator concerning the terms of settlement for the bonds proposed pursuant to Article L. 626-4.

They give their consent as stipulated by the ordinary general meeting of bondholders convened for that purpose.

#### **Article L. 228-87**

The expenses incurred in representing bondholders during the safeguarding procedure or judicial restructuring of the company shall be incumbent on the company and shall be regarded as legal administrative expenses.

#### **Article L. 228-88**

The judicial restructuring or liquidation proceedings of the company shall not put an end to the operation and role of the general meeting of bondholders.

#### **Article L. 228-89**

In the event of closure due to insufficient assets, the representative of the body or the judicial administrator shall deal with the exercise of the rights of the bondholders.

#### **Article L. 228-90**

Unless otherwise specified in the agreement for issue, the provisions of Articles L. 228-46 to L. 228-69, L. 228-71, L. 228-72, L. 228-76 to L. 228-81 and L. 228-83 to L. 228-89 shall not apply to companies whose loans are subject to a special legal regime nor to loans guaranteed by the State, departments, municipalities or public establishments nor to loans issued abroad by French companies.

*Section 6: Transferable securities giving access to equity or giving an entitlement to allotment of loan stock.*

Subsection 1: General provisions.

**Article L. 228-91**

Joint-stock companies may issue transferable securities giving access to equity or giving an entitlement to allotment of loan stock.

The shareholders of a company issuing transferable securities giving access to equity have a preferential right to subscribe to those transferable securities in proportion to the value of their shares.

This right is governed by the provisions applicable to the right to preferential subscription attached to capital securities pursuant to Articles L. 225-132 and L. 225-135 to L. 225-140.

The contract for issue may stipulate that such transferable securities and the capital securities or loan stock to which they give entitlement shall only be assigned and traded together. In such cases, if the security originally issued is a capital security, this does not fall within a given category within the meaning of Article L. 225-99.

Capital securities shall not be converted or transformed into transferable securities representing loans. Any clause to the contrary shall be deemed unwritten.

Transferable securities issued pursuant to this article shall not be deemed to constitute a right of pre-emption for a share within the meaning of the second paragraph of Article L. 228-10.

**Article L. 228-92**

Issues of transferable securities giving access to equity or giving entitlement to allotment of loan stock governed by Article L. 228-91 shall be authorised by the extraordinary general meeting of shareholders pursuant to Articles L. 225-129 to L. 225-129-6.

The said meeting shall make its decision on the basis of a report from the board of directors or the executive board and the auditor's special report.

**Article L. 228-93**

A joint-stock company may issue transferable securities giving access to equity of the company which directly or indirectly holds more than half of its capital or a company of which it directly or indirectly holds more than one half of the capital.

To be valid, the issue must be authorised by the company's extraordinary general meeting called to issue those transferable securities and by that of the company in which the rights are exercised, in the conditions indicated in

Article L. 228-92.

#### **Article L. 228-95**

Decisions taken in violation of the second and third paragraphs of Article L. 228-91 are null and void.

#### **Article L. 228-97**

When transferable securities representing loans to issuing company are issued, including those giving entitlement to the subscription or purchase of a transferable security, it may be stipulated that such transferable securities shall not be repaid until the other creditors have been paid off, excluding or including holders of equity loans and participating securities, notwithstanding the provisions of Article L. 228-36 of this code and those of Articles L. 313-13 et seq. of the Monetary and Financial Code.

An order of priority for payments may also be stipulated for such categories of transferable securities.

Subsection 2: Provisions relating to transferable securities giving access to equity.

#### **Article L. 228-98**

With effect from the date of issue of transferable securities giving access to equity, the company which is to allot the securities shall not change its legal form or its object unless it is authorised to do so by the contract for issue or as provided for in Article L. 228-103.

Moreover, it may neither change the rules for allocating its profits, write off its capital, nor create preference shares leading to such a change or write-off, unless it is authorised to do so as provided for in Article L. 228-103, and subject to its taking the necessary steps to maintain the rights of the holders of the transferable securities giving access to equity in the conditions described in Article L. 228-99 or in the contract for issue.

Subject to those same restrictions, however, it may create preference shares.

In the event of its capital being reduced, on account of losses, through a reduction in the nominal value or the number of the securities comprising the capital, the rights of the holders of the transferable securities giving access to equity are consequently reduced, as if they had exercised them before the date on which the reduction of capital became final.

#### **Article L. 228-99**

The company which is to allot the capital securities or the transferable securities giving access to equity must take the necessary steps to protect the interests of the holders of the rights created, regardless of their form, if

it decides to proceed to the issue of new capital securities with a right to preferential subscription reserved for its shareholders, to distribute reserves, in money or in kind, and to share premiums, or to change the allocation of its profits through the creation of preference shares.

To that end, it must:

1° Permit the holders of those rights to exercise them, if the period stipulated for the contract for issue has not yet commenced, to enable them to participate immediately in the operations referred to in the first paragraph or to benefit therefrom;

2° Or take-up provisions which will allow them, should they subsequently exercise their rights, to subscribe without reduction to the new transferable securities issued, or to obtain a free allotment thereof, or to receive money or indeed benefits in kind similar to those which would have been distributed to them, in the same quantities or proportions and under the same conditions, save for the provisions on current enjoyment, as if they had been shareholders when those operations took place;

3° Or change the conditions of subscription, the bases of conversion, or the bases of exchange or the allotment initially laid down, in order to take account of the impact of the operations referred to in the first paragraph.

Unless otherwise stipulated in the contract for issue, the company may simultaneously take the measures indicated in 1° and 2°. It may, in all instances, replace them with the change authorised in 3°. This change must be stipulated in the contract for issue when the capital securities are not admitted to trading on a regulated market.

The implementing regulations of this article are determined in a Conseil d'Etat decree.

#### **Article L. 228-100**

The provisions of Articles L. 228-98 and L. 228-99 are applicable for as long as rights attached to any transferable securities element referred to in these articles remain in existence.

#### **Article L. 228-101**

If the company which issued the capital securities is taken over by another company or merges with one or more other companies to form a new company, or effects a demerger, the holders of transferable securities giving access to equity shall exercise their rights in the company, or companies, benefitting from their contributions. Article L. 228-65 shall not apply, unless otherwise stipulated in the contract for issue.

The number of capital securities they may claim in the acquiring companies or new companies is determined by adjusting the number of securities which the contract for issue proposes to issue or to allot in proportion to the number of shares to be created by the company, or

companies benefitting from the contributions. The valuation expert shall give an opinion on the number of securities thus determined.

Approval of the merger or demerger plan by the shareholders of the company, or companies, benefitting from the contributions or the new company, or companies, entails waiver by the shareholders and, where applicable, by the holders of those companies' investment certificates, of the right to preferential subscription referred to in Article L. 228-35 or the second paragraph of Article L. 228-91, for the benefit of the holders of transferable securities giving deferred access to equity.

The company or companies benefitting from the contributions or the new company, or companies, are automatically substituted for the issuing company in its obligations towards the holders of the said transferable securities.

#### **Article L. 228-102**

In the absence of special stipulations in the contract for issue, and save for early dissolution not resulting from a merger or demerger, the company shall not impose repurchase or repayment on the holders of transferable securities giving access to its capital.

#### **Article L. 228-103**

The holders of transferable securities giving deferred access to equity after detachment, where applicable, of the rights to the original security pursuant to this section are automatically grouped together, to protect their common interests, within a body which has legal personality and is subject to provisions identical to those of Articles L. 228-47 to L. 228-64, L. 228-66 and L. 228-90 applicable to bonds.

Where applicable, a separate body is formed for each category of securities conferring the same rights.

The general meetings of holders of such transferable securities are called upon to authorise any amendment to the contract for issue and to decide on any matter relating to the subscription or allotment conditions of capital securities determined at the time of issue.

Each transferable security giving access to equity entitles the holder to a vote. The quorum and majority conditions are as determined in the second and third paragraphs of Article L. 225-96.

The costs of meetings and, more generally, all costs associated with the functioning of the different bodies are borne by the company that is to issue or allot new transferable securities representing its share capital.

When the transferable securities issued pursuant to this section are bonds intended to be converted into or repaid with capital securities or exchanged for capital securities, the provisions of the second, third and fourth paragraphs of this article shall apply to the body created pursuant to

Article L. 228-46.

#### **Article L. 228-104**

Deliberations or stipulations made in violation of Articles L. 228-98 to L. 228-101 and L. 228-103 are null and void.

#### **Article L. 228-105**

As determined in a Conseil d'Etat decree, holders of transferable securities giving access to equity have, in relation to the company issuing the securities they are entitled to receive, a right to communication of the documents that that company sends, or makes available to, its shareholders or holders of investment certificates.

When the right to an allotment of a portion of the share capital is incorporated in or attached to bonds, the right to communication of documents shall be exercised by the representatives of the body of bondholders, pursuant to Article L. 228-55.

After detachment of the rights to the original security, the right to communication shall be exercised by the representatives of the body constituted pursuant to Article L. 228-103.

In all cases, the representatives of the different bodies shall have access to the general meeting of shareholders, but without entitlement to speak and vote. They may not interfere, in any way, in the management of the company's business.

#### **Article L. 228-106**

When safeguarding or judicial restructuring proceedings are initiated against a company which has issued transferable securities giving access to its capital as provided for in Article L. 228-91, the time limit stipulated for exercising the right to an allotment of a portion of the share capital runs from the judgement sanctioning the safeguarding plan or the judicial restructuring, at each holder's discretion, and as indicated in that plan.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE II: PROVISIONS SPECIFIC TO THE VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER IX: EUROPEAN COMPANIES**

###### **Article L. 229-1**

European companies registered in the commercial and companies register in France have legal personality with effect from their registration.

A European company is governed by the provisions of (EC) Council Regulation No. 2157/2001 of 8 October 2001 relating to the status of a European company, by those of this chapter and by those applicable to sociétés anonymes which are not contrary thereto.

A European company is subject to the provisions of Article L. 210-3.

The registered office location indicated in a European company's constitution cannot be dissociated from its principal administrative establishment.

###### **Article L. 229-2**

Any European company properly registered in the commercial and companies register may transfer its registered office to another Member State of the European Community. It must draw up a transfer plan. This plan must be filed at the clerk's office of the court having jurisdiction at the place where the company is registered and is published as provided for in a Conseil d'Etat decree.

Transfer of the registered office is decided by an extraordinary general meeting as provided for in Article L. 225-96 and is subject to ratification by the special meetings of shareholders referred to in Articles L. 225-99 and L. 228-35-6.

In the event of objection to a transaction, shareholders may be allowed to redeem their shares as provided for in a Conseil d'Etat decree.

The plan to transfer the registered office is submitted to the special meetings of investment-certificate holders deciding on the basis of the rules for general meetings of shareholders unless the company acquires those securities through a simple request and such acquisition has been agreed by their special meeting. The acquisition offer must be published according to a procedure determined by a Conseil d'Etat decree. Any investment-

certificate holder who has not assigned his securities within a time limit determined by a Conseil d'Etat decree retains that status subject to the exchange of those investment certificates and voting rights for shares.

The transfer plan is submitted to a meeting of the company's bondholders unless the said bondholders are offered the option of redeeming the securities upon request. The offer of redemption is subject to publication as determined in a Conseil d'Etat decree. Any bondholder who has not requested redemption within a time limit determined in a Conseil d'Etat decree retains his status in the company under the terms laid down in the transfer plan.

Non-bondholder creditors of a company transferring its registered office, whose debt predates the transfer of the registered office, may object to the transfer within a time limit determined in a Conseil d'Etat decree. A court decision shall reject the objection or order either the repayment of the debts or the provision of guarantees if the company transferring its registered office offers any and if they are judged to be sufficient. Failing such settlement of the debts or provision of the guarantees ordered, the transfer of the registered office may not be effective against those creditors. An objection lodged by a creditor does not have the effect of halting the process of transfer. The provisions of this paragraph shall not impede application of the agreements authorising the creditor to demand immediate repayment of his debt in the event of the transfer of the registered office.

There must be a notarised certificate conclusively attesting to compliance with the formalities which must be completed prior to the transfer.

### **Article L. 229-3**

I. - Within a time limit established by regulations, the clerk of the court having jurisdiction in the area in which the company participating in the transaction is registered, shall issue a certificate of compliance of acts and formalities prior to the merger, after carrying out the check specified in Article L. 236-6.

A notary or the clerk of the court in the jurisdictional area of which the merged company will be registered, must verify the legality of the merger and the formation of the new company created from the merger within a time limit established by regulations.

To that end each merging company shall submit to the notary or the court clerk the certificate referred to in Article 25 of (EC) Council Regulation No. 2157/2001 of 8 October 2001, within six months of its issue together with a copy of the draft terms of the merger approved by the company.

The notary or court clerk shall ensure in particular that the merging companies have approved draft terms of the merger in the same terms and that arrangements for employee involvement have been determined pursuant to chapters I to III of title V of book II of the second part of the



Labour Code.

He also verifies that the formation of a European company through a merger meets the conditions imposed by French law.

II. - The annulment of the proceedings of a meeting which decided a merger operation pursuant to the law applicable to a société anonyme, or failures to verify legality, constitute grounds for dissolution of a European company.

When it is possible to remedy an irregularity likely to cause dissolution, the tribunal before which an action for dissolution of a European company created by merger is brought must grant time to permit the rectification of the situation.

Actions for the dissolution of a European company shall lapse six months after the date of the last entry in the commercial and companies register made necessary by the operation.

When the dissolution of a European company is pronounced, it is liquidated pursuant to the provisions of its constitution and Chapter VII of Title III of this Book.

When a court ruling ordering the dissolution of a European company on grounds envisaged in the sixth paragraph of this article has become definitive, the said ruling is published as determined in a Conseil d'Etat decree.

#### **Article L. 229-4**

The authority empowered to lodge an objection against the transfer of the registered office of a European company registered in France pursuant to the provisions of 14 of Article 8 and Article 19 of the aforementioned (EC) Council Regulation No. 2157/2001 of 8 October 2001 which would result in a change of the applicable law, and likewise the formation of a European company through a merger involving a company governed by French law, is the State Prosecutor.

He initiates the case of his own motion or on the petition of any person or authority who considers that such an operation is contrary to the public interest.

The State Prosecutor's decision shall be open to appeal before the Paris Cour d'Appel<sup>31</sup>.

#### **Article L. 229-5**

The companies promoting the creation of a European holding company shall draw up a common plan to create a European company.

This plan is filed at the clerk's office of the court having jurisdiction at the place where the said companies are registered and is published as

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<sup>31</sup> Court of Appeal.

provided for in a Conseil d'Etat decree.

One or more court-appointed commissioners for European holding company formation must draw up a report for the shareholders of each company, for which they are personally responsible, the content of which is stipulated in a Conseil d'Etat decree.

By agreement between the companies promoting the operation, the commissioner(s) may draw up a written report for the shareholders of all the companies.

The provisions of the third and fourth paragraphs of Article L. 236-9 and Articles L. 236-13 and L. 236-14 shall apply if a European holding company is formed.

#### **Article L. 229-6**

As an exception to the second sentence of Article L. 225-1, a European company may form a European company in which it is the sole shareholder. It is subject to the provisions applicable to a European company and those relating to a société à responsabilité limitée held by a sole member set forth in Articles L. 223-5 and L. 223-31.

In such cases, the sole shareholder exercises the powers vested in the general meeting.

In the case of a single member European company, Articles L. 225-25, L. 225-26, L. 225-72 and L. 225-73 do not apply to that company's directors or the members of its supervisory board.

#### **Article L. 229-7**

The management and administration of a European company are governed by the provisions of Section 2 of Chapter V of this Title, with the exception of the first paragraph of Articles L. 225-37 and L. 225-82 and the fourth paragraph of Article L. 225-64.

As an exception to Article L. 225-62, however, if a seat becomes vacant on the executive board, the supervisory board may appoint one of its members to exercise the functions of an executive board member for a maximum period determined in a Conseil d'Etat decree. During this period, that member's functions on the supervisory board are suspended.

The provisions of the first paragraph of Article L. 225-17, the second paragraph of Article L. 225-22, Article L. 225-69 and the second paragraph of Article L. 225-79 shall not impede participation of the workers as defined in Article L. 439-25 of the Labour Code.

Each member of the supervisory board may request from the president of the executive board the documents which he considers necessary for the accomplishment of his mission.

A European company is managed by an executive board composed of seven members at most.

The constitution must contain rules similar to those set forth in Articles L. 225-38 to L. 225-42 and L. 225-86 to L. 225-90.

In the case of a company referred to in Article L. 229-6, however, an entry in the record of proceedings constitutes approval of the agreement.

#### **Article L. 229-8**

The general meetings of a European company are subject to the rules laid down in section 3 of Chapter V of this Title insofar as they are compatible with the aforementioned (EC) Council Regulation No. 2157/2001 of 8 October 2001.

#### **Article L. 229-9**

If the head office of a European company is no longer in France, any interested party may ask the court to regularise the situation by transferring the registered office or re-establishing the head office at the site of the registered office in France, subject to a progressive coercive fine if necessary.

The court shall impose a deadline for such regularization.

If the situation has not been regularised at the end of the deadline, the court shall pronounce the liquidation of the company as provided for in Articles L. 237-1 to L. 237-31.

Such decisions are sent to the State Prosecutor by the court registry. The judge's decision must indicate that the judgement emanated from the court registry.

Where it is established that the head office of a European company registered in another Member State of the European Community has been transferred to France in breach of Article 7 of the aforementioned (EC) Council Regulation No. 2157/2001 of 8 October 2001, State Prosecutor of the Tribunal de Grande Instance having jurisdiction at the place where the principal administrative establishment is located shall immediately inform the Member State in which its registered office is located.

Where it is established that the head office of a European company registered in France has been transferred to another Member State of the European Community in breach of Article 7 of the aforementioned (EC) Council Regulation No. 2157/2001 of 8 October 2001, the authorities of that Member State shall immediately inform the State Prosecutor of the Tribunal de Grande Instance having jurisdiction at the place where the company is registered.

#### **Article L. 229-10**

Any European company may be converted into a société anonyme if it has been registered for more than two years at the time of such conversion and its balance sheet for the first two accounting periods has been

approved.

The company draws up a draft proposal of conversion into a société anonyme. This draft is filed at the clerk's office of the court having jurisdiction at the place where the company's registered office is located and is published as provided for in a Conseil d'Etat decree.

One or more court-appointed conversion experts shall draw up a report for the converting company's shareholders, for which they are personally responsible, attesting that the company's equity is at least equivalent to the authorised capital. They shall be subject to the incompatibilities specified by Article L. 822-11.

Conversion into a société anonyme is decided upon as provided for in Articles L. 225-96 and L. 225-99.

#### **Article L. 229-11**

The constitution of a European company which does not intend to make an offer of its shares to the public may make any transfer of shares subject to restrictions on free negotiability but such restrictions shall not have the effect of rendering the shares inalienable for more than ten years.

Any assignment made in violation of such conditions in the constitution is null and void. This order for rescission is binding on the transferee or his successors in title. It may be regularised by a unanimous decision of the shareholders who are not parties to the contract or to the share-transfer transaction.

#### **Article L. 229-12**

Under the conditions of the constitution of a European company which does not intend to make an offer of its shares to the public, a shareholder may be required to transfer his shares. Likewise, that same shareholder's non-pecuniary rights may be suspended until such time as he effects this transfer.

#### **Article L. 229-13**

The constitution of a European company which does not intend to make a offer to the public of its shares may require that a shareholder of a company the control of which, as defined in Article L. 233-16, changes must inform the European company thereof as soon as the change takes place. The European Company may decide, under the terms of the constitution, to suspend exercise of that shareholder's non-pecuniary rights and exclude the shareholder.

The provisions of the first paragraph may apply under the same conditions to a legal entity which becomes a shareholder following a merger, demerger or dissolution.

#### **Article L. 229-14**

If the constitution does not specify a method for valuing the transfer price of the shares when a European company implements a clause adopted pursuant to Articles L. 229-11 to L. 229-13, the price is determined by agreement between the parties or, failing this, is determined as provided for in Article 1843-4 of the Civil Code.

When the shares are redeemed by a European company, it is required that these should be transferred or cancelled within six months.

#### **Article L. 229-15**

Clauses stipulated pursuant to Articles L. 229-11 to L. 229-14 may be adopted or amended only by a unanimous vote of shareholders.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER I: VARIABLE CAPITAL**

#### **Article L. 231-1**

The constitution of companies other than société anonyme, and of any cooperative, may stipulate that the share capital may be increased through successive payments made by the partners or the admission of new partners, and may be reduced by the total or partial withdrawal of the contributions made.

Companies whose constitution contains the above stipulation are subject to the provisions of this chapter regardless of the general rules specific to their status.

#### **Article L. 231-2**

If the company has used the option granted by Article L. 231-1, this circumstance shall be indicated, in all the instruments and documents originating from the company and intended for third parties, by the addition of the words "à capital variable" (with variable capital).

#### **Article L. 231-3**

Instruments recording increases or reductions of the share capital made

under the terms of Article L. 231-1 or the withdrawal of members, other than managers or directors, which have taken place in accordance with Article L. 231-6 shall not be subject to the filing and publication formalities.

#### **Article L. 231-4**

Shares or share coupons shall be registered, even after they are fully paid up.

They may be traded only after the definitive formation of the company.

Trading may take place only by means of transfer in the company registers, and the constitution may confer, either on the board of directors or on the general meeting, the right to object to the transfer.

#### **Article L. 231-5**

The constitution shall determine a sum below which the capital may not be reduced by the withdrawal of contributions authorised by Article L. 231-1.

This sum of capital may not be less than one-tenth of the share capital stipulated in the constitution or, for companies other than cooperatives, less than the minimum amount of capital required for the form of the company in question by the acts governing this.

Cooperative associations shall be definitively formed after the payment of one-tenth of this amount.

#### **Article L. 231-6**

Each member may withdraw from the company when this seems appropriate to him, her or it unless agreements stipulate to the contrary and except where the first paragraph of Article L. 231-5 applies.

It may be stipulated that the general meeting is entitled to decide, by the majority fixed for amending the constitution that one or more of the members shall cease to belong to the company.

A member who ceases to belong to the company, either by choice or following a decision by the general meeting, shall remain bound, for five years, towards the members and third parties, by all the obligations existing at the time of his withdrawal.

#### **Article L. 231-7**

The company, regardless of its form, shall be validly represented in court by its directors.

#### **Article L. 231-8**

The company shall not be dissolved by the death or withdrawal of a member, by a winding-up judgement, by a measure prohibiting the exercise

of a commercial profession, by a prohibition measure ordered with regard to one of the members or by the insolvency of a member. It shall continue ipso jure between the other members.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER II: INDIVIDUAL COMPANY ACCOUNTS**

##### ***Section 1: Accounting documents***

##### **Article L. 232-1**

I. - At the end of each financial year, the board of directors, executive board or managers shall prepare a balance sheet including an inventory and the annual accounts in accordance with the provisions of Section 2 of Chapter III of Title II of Book I and shall prepare a written annual report. They shall attach to the balance sheet:

1° A list of the sureties, avals and guarantees given by the company. This provision shall not apply to companies operating a credit institution or an insurance company;

2° A list of security transactions entered into by the company.

II. - The annual report shall set out the situation of the company during the previous financial year, its foreseeable development, the important events which have occurred between the end date of the financial year and the date when this report is prepared and its activities in terms of research and development.

III. - The documents indicated in this article shall, if applicable, be provided to the auditors in accordance with the conditions determined by a Conseil d'Etat decree.

IV. Sociétés à responsabilité limitée and sociétés par actions simplifiées whose single member is a natural person and personally assumes the management or the presidency, shall be exempted from the obligation to draw up an annual report if, at the end date of the financial year, the companies do not exceed two of the thresholds set by Conseil d'Etat decree relating to their balance sheet total, their net turnover and the average number of staff employed during the financial year.

#### **Article L. 232-2**

In commercial companies meeting one of the criteria defined by a Conseil d'Etat decree and where the criteria met are drawn from the number of employees or the turnover, taking into account the nature of the activity in that case, the board of directors, executive board or managers shall be required to prepare a statement of the liquid and available assets, excluding operating assets, and of the current liabilities, a projected profit and loss account and a financing table at the same time as the annual balance sheet and a projected financing plan.

The Conseil d'Etat decree indicated above shall specify the frequency, deadlines and mechanisms for preparation of these documents.

In order to determine the number of employees, those employees of companies, whatever their form, in which the company directly or indirectly holds over half of the capital shall be regarded as employees of the company.

#### **Article L. 232-3**

In sociétés anonymes, the documents referred to in Article L. 232-2 shall be analysed in written reports on the development of the company, prepared by the board of directors or executive board. The documents and reports shall be notified simultaneously to the supervisory board, auditor and works council.

If the provisions of Article L. 232-2 and the above paragraph are not observed, or if the information given in the reports referred to in the above paragraph requires observations therefrom, the auditor shall indicate these in a report to the board of directors or executive board, as applicable. The auditor's report shall be notified simultaneously to the works council. This report shall be brought to the attention of the next general meeting.

#### **Article L. 232-4**

In companies other than sociétés anonymes, the reports specified in Article L. 232-3 shall be prepared by the managers who shall submit them to the auditor, works council and, if applicable, supervisory board when this is established in these companies.

If the provisions of Article L. 232-2 and the above paragraph are not observed, or if the information given in the reports referred to in the above paragraph requires observations from the auditor, the auditor shall indicate these in a report to the manager or in the annual report. The auditor may request that the report is sent to the members or that it is brought to the attention of the general meeting of members. This report shall be notified to the works council.



#### **Article L. 232-5**

Companies that must prepare consolidated accounts in accordance with Articles L. 233-18 to L. 233-26 may, in accordance with the conditions specified in Article L. 123-17 and notwithstanding Article L. 123-18, enter the shares of the companies that they exclusively control, within the meaning of Article L. 233-16, into the assets side of the balance sheet according to the proportion of shareholders' equity controlled which these shares represent, determined in line with the consolidation rules. This valuation method, if chosen, shall apply to all shares that meet the above conditions. This choice shall be indicated in the notes to the accounts.

The consideration for the annual variation in the total portion of the company shareholders' equity representing these shares shall not constitute an item in the profit and loss account;

The latter shall be entered separately as an item under shareholders' equity.

It shall not be distributable and may not be used to offset losses.

However, if the total difference becomes negative, it shall be entered in the profit and loss account.

If a company uses the method specified in the above paragraphs, the companies that it controls shall apply the same method when they themselves control other companies under the same conditions.

A Conseil d'Etat decree shall fix the terms for applying this article.

#### *Section 2: Documents specific to companies making an offer to the public*

#### **Article L. 232-7**

Companies whose shares are admitted to trading on a regulated market shall attach to their annual accounts, a table relating to the distribution and allocation of the distributable sums which shall be proposed for approval to the general meeting.

I, III, IV and VII of Article L. 451-1-2 of the Monetary and Financial Code shall apply to the companies mentioned in the first paragraph, with the exception of sociétés d'investissement à capital variable (investment funds with variable capital).

#### *Section 3: Depreciation and provision*

#### **Article L. 232-9**

Subject to the provisions of the second paragraph of Article L. 232-15, the expenses of forming the company shall be written off before any distribution of profits and, at the latest, within five years.

The expenses of capital increase shall be written off at the latest by the end of the fifth financial year following that in which these expenses were

incurred. These expenses may be charged to the amount of the premiums resulting from this increase.

However, companies whose exclusive object is the construction and management of rented buildings mainly for residential use or property leasing and property companies for trade and industry may write off the expenses of forming the company and the expenses of increasing their capital under the same conditions as for their buildings. Companies approved for financing telecommunications may write off the formation expenses and the expenses for an increase in capital under the same conditions as their buildings and infrastructure and equipment.

#### *Section 4: Profits*

##### **Article L. 232-10**

With any decision to the contrary being invalid, sociétés à responsabilité limitée and joint-stock companies shall deduct from the profits for the financial year at least one-twentieth, less any previous losses, and allocate them to the formation of a reserve fund referred to as the "legal reserve".

This deduction shall cease to be compulsory when the reserve reaches one-tenth of the share capital.

##### **Article L. 232-11**

The distributable profit consists of the profit for the financial period, less the losses brought forward, plus the sums to be placed in reserve pursuant to the law or the constitution, plus any retained earnings.

The general meeting may, moreover, decide to distribute sums taken from the reserves available to it. In this case, the decision expressly indicates the reserve headings from which they are taken. The dividends are nevertheless taken primarily from the distributable profit for the period.

Unless a capital reduction is taking place, no distribution can be made to the shareholders when the share capital is, or would thereby become, lower than the amount of the capital plus the reserves which the law or the constitution requires in order for distribution to take place.

The differential on re-evaluation is not distributable. This may be wholly or partly incorporated into the capital.

##### **Article L. 232-12**

After the annual accounts are approved and the existence of distributable sums is recorded, the general meeting shall determine the portion to be allocated to the members in the form of dividends.

However, when a balance sheet established during or at the end of the financial year and certified by an auditor shows that the company, since the end of the previous financial year, after allowing for the necessary

amortissement and for necessary provision for different purposes, after deducting any previous losses and the sums to be entered into reserve pursuant to the law or the constitution and taking into account retained earnings, has made a profit, interim dividends may be distributed before the approval of the accounts for the financial year. The amount of these interim dividends may not exceed the amount of the profit defined in this paragraph. They shall be distributed in accordance with the terms and conditions fixed by a Conseil d'Etat decree.

Any dividend distributed in breach of the rules indicated above shall be a sham dividend.

#### **Article L. 232-13**

The mechanisms for paying the dividends which are approved by the general meeting shall be fixed thereby or, failing this, by the board of directors, executive board or managers, as applicable.

However, the payment of dividends must occur within a maximum period of nine months after the end of the financial year. This period may be extended by a court decision.

#### **Article L. 232-14**

The constitution may allocate an increase in dividends, up to 10%, to any shareholder who can prove that his shares have been registered for at least two years at year-end and that he still owns them on the date of payment of the dividends. The rate of this is determined by the extraordinary general meeting. In companies whose capital securities are admitted to trading on a regulated stock market, the number of securities eligible for this increase in dividends for a single shareholder cannot exceed 0.5% of the company's capital. The same increase may be allotted, under the same terms and conditions, in the event of a distribution of free shares.

This increase cannot be allotted before the close of the second financial year following the amendment to the constitution.

#### **Article L. 232-15**

It is prohibited to stipulate fixed or interim interest for the benefit of members. Any clause to the contrary shall be deemed unwritten.

The provisions of the above paragraph shall not apply when the State has granted the guarantee of a minimum dividend to the shares.

#### **Article L. 232-16**

The constitution may specify the allocation, by way of an initial dividend, of interest calculated on the paid-up and non-redeemed value of the shares. Unless otherwise specified in the constitution, the reserves shall

not be taken into account when calculating the initial dividend.

#### **Article L. 232-17**

The company may not request from shareholders any repayment to it of dividends, except when the following two conditions are met:

1° If the distribution has been carried out in breach of the provisions of Articles L. 232-11, L. 232-12 and L. 232-15;

2° If the company establishes that the recipients knew about the irregular nature of this distribution at the time or could not have been unaware of this given the circumstances.

#### **Article L. 232-18**

In joint-stock companies, the constitution may specify that the general meeting deciding on approval of the accounts for the financial year shall have the option of granting to each shareholder, for all or part of the dividend distributed or the interim dividends, a choice between the payment of the dividend or interim dividends in money or in shares.

When there are different categories of shares, the general meeting deciding on the accounts for the financial year shall have the option of deciding that the subscribed shares shall be of the same category as the shares having conferred the right to the dividend or interim dividends.

The offer to pay the dividend or interim dividends in shares must be made simultaneously to all shareholders.

#### **Article L. 232-19**

The issue price of shares issued in accordance with the conditions specified in Article L. 232-18 may not be less than the nominal value.

In companies in which the shares are accepted to trading on a regulated market, the issue price may not be less than 90% of the average price quoted in the twenty trading sessions prior to the day of the distribution decision, less the net amount of the dividend or interim dividends.

In other companies, the issue price shall be fixed, at the option of the company, either by dividing the amount of the net assets calculated according to the most recent balance sheet by the number of existing shares or according to the opinion of an expert appointed by the courts at the request of the board of directors or executive board, as applicable. The application of the rules determining the issue price shall be verified by the auditor who shall submit a special report to the general meeting referred to in Article L. 232-18.

When the amount of the dividends or interim dividends to which the shareholder is entitled does not correspond to a whole number of shares, the latter may receive the number of whole shares immediately below their total plus a balancing money adjustment or, if the general meeting has

requested this, the number of whole shares immediately above their total by their paying the difference in money.

#### **Article L. 232-20**

The request for payment of the dividend in shares, accompanied, if applicable, by the payment specified in the second paragraph of Article L. 232-19, must be made within a period fixed by the general meeting but which may not be more than three months from the date of the said general meeting. The increase in capital shall be effected solely by this request and, if applicable, by this payment and shall not give rise to the formalities specified in Article L. 225-142, in the second paragraph of Article L. 255-144 and in Article L. 255-146.

However, in the event of an increase in capital, the board of directors or the executive board, as applicable, may suspend the exercise of the right to obtain the payment of the dividend in shares for a period that may not exceed three months.

During its first meeting following the expiration of the period fixed by the general meeting pursuant to the first paragraph of this article, the board of directors or, as applicable, the executive board, shall record the number of shares issued pursuant to this article and shall make the necessary amendments to the clauses of the constitution relating to the amount of the share capital and the number of shares representing this. The president may, with authority from the board of directors or executive board, carry out these operations in the month following the expiration of a period fixed by the general meeting.

#### *Section 5: Publication of accounts*

#### **Article L. 232-21**

I. - Sociétés en nom collectif in which all the partners with unlimited liability are sociétés à responsabilité limitée or joint-stock companies shall be required to file the documents below, in duplicate, with the court registry, in order for these to be appended to the commercial and companies register, in the month following approval of the annual accounts by the ordinary meeting of partners or within two months following this approval when this filing is done by electronic means:

1° The annual accounts, and, if applicable, consolidated accounts, the group management report and auditors' reports on the annual accounts and consolidated accounts, completed if necessary, by the auditors' observations on the amendments made by the meeting and which have been submitted to those auditors;

2° The proposal for the allocation of profits submitted to the meeting and the allocation resolution approved or the allocation decision made.

The management report must be made available to anyone who so requests, under the conditions defined by Conseil d'Etat decree.

II. - In the event of refusal of approval or acceptance, a copy of the deliberations of the general meeting shall be filed within the same period.

III. - The obligations defined above shall also be imposed on sociétés en nom collectif or are sociétés en commandite simple in which all the fully liable partners are sociétés à responsabilité limitée or joint-stock companies.

IV - In order to apply this article, companies governed by foreign law with a comparable legal form shall be regarded as sociétés à responsabilité limitée or joint-stock companies.

#### **Article L. 232-22**

I. - All sociétés à responsabilité limitée shall be required to file the documents below with the court registry, in order that these should be appended to the commercial and companies register, in the month following approval of the annual accounts by the general meeting of members or the single member or within two months following this approval when the filing is done by electronic means:

1° The annual accounts, and, if applicable, the consolidated accounts, the group management report, the auditors' reports on the annual accounts and the consolidated accounts, completed if necessary with the auditor's observations on the amendments made by the general meeting or single member to the annual accounts which have been submitted to those auditors;

2° The proposal for allocation of profit submitted to the meeting or to the single member and the allocation resolution approved or the allocation decision made.

The management report must be made available to anyone who so requests, under the conditions defined by Conseil d'Etat decree.

II. - In the event of refusal of approval or of acceptance, a copy of the deliberation of the general meeting or of the decision of the single member shall be filed within the same period.

#### **Article L. 232-23**

I. - All joint-stock companies shall be required to file the documents below, in duplicate, with the court registry, in order for these to be appended to the commercial and companies register, in the month following approval of the annual accounts by the general meeting of shareholders or within two months when the filing is done by electronic means:

1° The annual accounts, the annual report and the auditors' report on the annual accounts, completed if necessary by the auditor's observations on

the amendments made by the general meeting to the annual accounts which were submitted thereto and, if applicable, the consolidated accounts, the annual report on the management of the group, the auditors' report on the consolidated accounts and the report of the supervisory board;

2° The proposal for the allocation of profits submitted to the general meeting and the allocation resolution approved by the meeting.

An exception to the obligation to file the management report shall apply to the companies mentioned in the first paragraph other than those whose securities are admitted to trading on a regulated market or a multilateral trading system that is governed by laws or regulations designed to protect investors from insider trading, stock price manipulation and the disclosure of misleading information under conditions specified by the General Regulations of the Financial Markets Authority. The management report must however be made available to anyone who so requests, under the conditions defined by Conseil d'Etat decree.

II. - In the event of a refusal to approve the annual accounts, a copy of the deliberation of the general meeting shall be filed within the same period.

#### **Article L. 232-24**

When the court clerk establishes that the documents specified in I of Articles L. 232-21 to L. 232-23 have not been filed, he shall inform the presiding judge of the Tribunal de Commerce who shall apply II of Article L. 611-2.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER III: SUBSIDIARIES, SHARE HOLDINGS BY OTHER COMPANIES AND CONTROLLED COMPANIES**

##### *Section 1: Definitions*

#### **Article L. 233-1**

When a company owns more than half of the capital of another company, the second company shall be regarded, in order to apply this chapter, as a subsidiary of the first company.

#### **Article L. 233-2**

When a company owns a percentage of the capital of between 10 and 50% in another company, the first company shall be regarded, in order to apply this chapter, as having a holding in the second company.

#### **Article L. 233-3**

I. - For the purposes of sections 2 and 4 of this chapter, a company is deemed to control another company:

1° When it directly or indirectly holds a fraction of the capital that gives it a majority of the voting rights at that company's general meetings;

2° When it alone holds a majority of the voting rights in that company by virtue of an agreement entered into with other partners, members or shareholders and this is not contrary to the company's interests;

3° When it effectively determines the decisions taken at that company's general meetings through the voting rights it holds;

4° When it is a partner in, or member or shareholder of that company and has the power to appoint or dismiss the majority of the members of that company's administrative, management or supervisory organs.

II. - It is presumed to exercise such control when it directly or indirectly holds a fraction of the voting rights above 40% and no other partner, member or shareholder directly or indirectly holds a fraction larger than its own.

III. - For the same sections of this chapter to apply, two or more companies acting in concert are deemed to jointly control another company when they effectively determine the decisions taken at its general meetings.

#### **Article L. 233-4**

Any capital held, even where this is less than 10%, by a controlled company shall be regarded as being indirectly held by the company controlling the controlled company.

#### **Article L. 233-5**

The Public Prosecutor's Office and the Financial Markets Authority for companies whose shares are admitted to trading on a financial instruments market mentioned in II of Article L. 233-7 shall be authorised to institute legal proceedings in order to ensure that the existence of control over one or more companies is recorded.

#### **Article L. 233-5-1**

The decision whereby a company that holds more than half the capital of another company within the meaning of Article L. 233-1, which has a



holding within the meaning of Article L. 233-2 or which controls another company within the meaning of Article L. 233-3 undertakes to bear responsibility, in the event of their affiliated company's failure, for all or part of the obligations to prevent and restore damage caused to the environment by that company pursuant to Articles L. 162-1 to L. 162-9 of the Environmental Code, shall be subject for that decision, depending on the company form, to the procedure mentioned in Articles L. 223-19, L. 225-38, L. 225-86, L. 226-10 or L. 227-10 of this code.

## *Section 2: Notifications and information*

### **Article L. 233-6**

When a company has acquired, during a financial year, a holding in a company whose registered office is in France, representing over one-twentieth, one-tenth, one-fifth, one-third or half of the capital of this company, or has obtained control of such a company, this shall be indicated in the report presented to the members on the operations for the financial year and, if applicable, in the auditors' report.

The board of directors, executive board or manager of a company shall record, in their report, the activity and results of the whole company, the subsidiaries of the company and the companies which it controls by sector of activity. When this company prepares and publishes consolidated accounts, the report indicated above may be included in the group management report indicated in Article L. 233-26.

### **Article L. 233-7**

I. - When the shares of a company having its registered office in France are admitted to trading on a regulated market of a Member State of the European Economic Area or a financial instruments market which permits trading in shares which may be entered in the books of an authorised intermediary mentioned in Article L. 211-3 of the Monetary and Financial Code, any natural or legal person, acting alone or in concert, who comes into possession of a number of shares representing more than one twentieth, one tenth, three twentieths, one fifth, one quarter, three tenths, one third, one half, two thirds, eighteen twentieths or nineteen twentieths of the capital or voting rights shall inform the company of the total number of shares or voting rights it holds within a time limit determined in a Conseil d'Etat decree commencing on the day on which the equity participation threshold was exceeded.

The information specified in the previous paragraph is also reported, within the same time limit, if the equity participation or voting rights falls or fall below the thresholds indicated in that paragraph.

Persons required to provide the information indicated in the first

paragraph shall also state in their declaration:

a) the number of securities they hold which give deferred access to future shares and the voting rights attached thereto;

b) Shares already issued that these persons may acquire, by virtue of an agreement or financial instrument mentioned in Article L. 211-1 of the Monetary and Financial Code, without prejudice to the provisions of 4° and 4° bis of I of Article L. 233-9 of this code.

The same shall apply to voting rights that these persons may acquire under the same conditions.

II. - Persons required to provide the information indicated in I shall also inform the Financial Markets Authority, within a time limit and under terms and conditions determined in its General Regulations, as soon as the participation threshold is exceeded, when the company's shares are admitted to trading on a regulated market or a financial instruments market other than a regulated market, at the request of the person managing that financial instruments market. In this case, the information may concern only a part of the thresholds mentioned in I, in accordance with the General Regulations of the Financial Markets Authority. This information shall be made known to the public in accordance with the General Regulations of the Financial Markets Authority.

The General Regulations also specify the method for calculating thresholds for holdings.

III. - The company's constitution may provide for an additional obligation for disclosure relating to the holding of fractions of capital or voting rights lower than the one twentieth referred to in I. The obligation relates to the holding of each such fraction, which cannot be below 0.5% of the capital or voting rights.

IV. - The disclosure obligations specified in I, II and III of this Article as well as the disclosure obligation specified in Article L. 225-126 shall not apply to the following:

1° Shares acquired solely for the purposes of clearing, settling or delivering financial instruments within the framework of the regular short-term settlement cycle described in the General Regulations of the Financial Markets Authority;

2° Shares held by book-keeping custodians in connection with their book-keeping and custodial activities;

3° Shares held in the trading portfolio of an investment service provider within the meaning of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, provided that such shares do not represent a percentage of the capital or voting rights of their issuer above a threshold set in the General Regulations of the Financial Markets Authority and that the voting rights attached to those securities are not exercised or otherwise used to participate in the issuer's management;

4° Shares lodged with members of the European System of Central Banks or lodged by them in the performance of their duties as monetary authorities, as determined in the General Regulations of the Financial Markets Authority.

V. - The disclosure requirements specified in I, II and III shall not apply:

1° To market makers when the threshold of one twentieth of the capital or voting rights is exceeded in connection with market making, provided that they do not participate in the issuer's management according to the conditions set by the General Regulations of the Financial Markets Authority;

2° When the person referred to in I is controlled, within the meaning of Article L. 233-3, by an entity subject to the requirement laid down in I to III for the securities held by that person or if that entity is itself controlled, within the meaning of Article L. 233-3, by an entity subjected to the requirement laid down in I to III for those same shares.

VI. - In the event of non-compliance with the disclosure requirement referred to in III, the company's constitution may specify that the provisions of the first two paragraphs of Article L. 233-14 shall apply only if requested by one or more shareholders holding a fraction of the issuing company's capital or voting rights at least equal to the smallest capital-holding which must be declared, and subject to this being duly recorded in the minutes of the general meeting. This fraction shall nevertheless not exceed 5%.

VI *bis.* - The General Regulations of the Financial Markets Authority sets out the cases and conditions under which a change in the share ownership structure between the different types of instruments mentioned in I of this article and Article L. 233-9 obliges the person required to provide the information mentioned in I and II of this article to declare the crossing of a threshold specified in I.

VII. - Where the company's shares are admitted to trading on a regulated market, the entity required to provide the information indicated in I shall also, when the thresholds of one tenth, three twentieths, one fifth or one quarter of the capital or voting rights are exceeded, declare the objectives that it intends to pursue during the next six months.

The entity shall state in its declaration:

- a) How the acquisition is to be financed;
- b) Whether it is acting alone or in concert;
- c) Whether or not it is planning to make further acquisitions and whether or not it is planning to acquire a controlling interest in the company;
- d) Its planned strategy in relation to the issuer of shares and the operations for its implementation;
- e) Its intentions relating to the reversal of the agreements and instruments mentioned in 4° and 4° bis of I of Article L. 233-9, if it is party to such agreements or instruments;
- f) Any temporary transfer agreement relating to the shares and voting

rights;

g) Whether it intends to seek an appointment for itself or for one or more persons as director, member of the executive board or member of the supervisory board.

The General Regulations of the Financial Markets Authority shall specify the contents of these elements, taking into account, where applicable, the level of the holding and the particulars of the entity making the declaration.

The declaration shall be sent to the company whose shares have been acquired and must be delivered to the Financial Markets Authority within the time limits set by a Conseil d'Etat decree. This information shall be made known to the public in accordance with the General Regulations of the Financial Markets Authority.

Should the stated intention change within six months of submission of the said declaration, a new declaration explaining the reasons for the change must be promptly sent to the company and to the Financial Markets Authority and made known to the public under the same conditions. After this new declaration, the six-month period referred to in the first paragraph shall start to run again.

#### **Article L. 233-7-1**

Where the company's shares are no longer admitted to trading on a regulated market because they are to be admitted to trading on a multilateral trading system that is governed by laws or regulations designed to protect investors from insider trading, stock price manipulation and the disclosure of misleading information, the person required to provide the information referred to in I of Article L. 233-7 shall also inform the Financial Markets Authority within a time limit and according to the procedures determined in its General Regulations, as soon as the threshold for the holding is crossed, for a period of three years with effect from the date on which these shares ceased to be admitted to trading on a regulated market. This information shall be made known to the public in accordance with the General Regulations of the Financial Markets Authority.

The preceding paragraph shall apply to companies with a market capitalisation of less than one billion Euros.

VII of Article L. 233-7 shall also apply to the individual or legal entity referred to in the first paragraph of this article.

#### **Article L. 233-8**

I. - Within fifteen days at most of an ordinary general meeting, all joint-stock companies must inform their shareholders of the total number of voting rights existing on that date. However, companies whose shares are not admitted to trading on a regulated market are not required to provide this information when the number of voting rights has not changed in

relation to the number reported to the previous ordinary general meeting. If, between two ordinary general meetings, the number of voting rights varies by a percentage determined by order of the Minister for the Economy in relation to the number previously declared, the company must inform its shareholders on becoming aware of it.

II. - The companies referred to in I of Article L. 233-7 whose shares are admitted to trading on a regulated market in a Member State of the European Economic Area or whose shares are admitted to trading on a multilateral trading system that is governed by legislative or regulatory provisions designed to protect investors from insider trading, stock price manipulation and the disclosure of misleading information in accordance with the General Regulations of the Financial Markets Authority, must publish the total number of voting rights and the number of shares that make up the company's capital each month if they have changed from those previously published. Such companies are deemed to have fulfilled the obligation referred to in I.

#### **Article L. 233-9**

I. - The following shall be treated as shares or voting rights owned by the individual or legal entity required to provide the information referred to in I of Article L. 233-7:

1° Shares or voting rights owned by other persons on behalf of the said individual or legal entity;

2° Shares or voting rights owned by companies which are controlled by this individual or legal entity within the meaning of Article L. 233-3;

3° Shares or voting rights owned by a third party with whom this individual or legal entity is acting in concert;

4° Shares already issued which this individual or legal entity, or an individual or legal entity referred to in 1° to 3° is entitled to acquire on his/its own initiative, immediately or in the future, by virtue of an agreement or a financial instrument referred to in Article L. 211-1 of the Monetary and Financial Code. The same shall apply to voting rights that said individual or legal entity may acquire under the same conditions.

4° bis Shares already issued concerned by any agreements or financial instruments mentioned in Article L. 211-1 of the Monetary and Financial Code paid in money and having the same economic effect as the possession of the said shares for this individual or legal entity or one of the individuals or legal entities referred to in 1° and 3°. The same shall apply to voting rights concerned, under the same conditions, by an agreement or financial instrument;

5° Shares in respect of which the said individual or legal entity is the usufructuary;

6° Shares or voting rights owned by a third party with whom the said individual or legal entity has entered into a temporary transfer agreement

covering these shares or voting rights;

7° Shares lodged with this individual or legal entity, provided that it may exercise the voting rights attached to them as it sees fit in the absence of specific instructions from the shareholders;

8° Voting rights that this individual or legal entity may freely exercise by virtue of a power of attorney in the absence of specific instructions from the shareholders concerned.

The General Regulations of the Financial Markets Authority establishes the conditions of application of 4° and 4° bis, and in particular the conditions under which an agreement or financial instrument is considered as having an economic effect similar to the possession of shares.

II. - The following shall not be treated as shares or voting rights owned by the individual or legal entity required to provide the information referred to in I of Article L. 233-7:

1° Shares held by undertakings for collective investment in transferable securities or SICAF unit trusts managed by a portfolio management company controlled by this individual or legal entity within the meaning of Article L. 233-3, and as provided for in the General Regulations of the Financial Markets Authority, barring any exceptions provided for in the said General Regulations;

2° Shares held in a portfolio managed by an investment service provider controlled by this individual or legal entity within the meaning of Article L. 233-3, in the context of a portfolio management service provided to third parties as specified in the General Regulations of the Financial Markets Authority, barring any exception provided for in the said General Regulations.

3° Financial instruments referred to in 4° and 4° bis of I, held in the trading portfolio of an investment service provider within the meaning of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and of credit institutions, provided that these instruments do not grant access to a percentage of the capital or voting rights of their issuer above a threshold set in the General Regulations of the Financial Markets Authority.

#### **Article L. 233-10**

I. - Individuals or legal entities that have entered into an agreement with a view to buying or selling or exercising voting rights, to implement a common policy in relation to the company or to obtain control of this company shall be deemed to be acting in concert.

II. - Such an agreement is presumed to exist:

1° Between a company, the president of its board of directors and its general managers or the members of its executive board or its managers;

2° Between a company and the companies it controls within the meaning of Article L. 233-3;

3° Between companies controlled by the same individual(s) or legal entity(ies);

4° Between the members of a société par actions simplifiée in relation to the companies it controls.

5° Between the fiduciary and the beneficiary of a contract for a fiduciary, if the beneficiary is the settlor.

III. - Individuals or legal entities acting in concert shall have solidary responsibility for the obligations imposed on them by the laws and regulations.

#### **Article L. 233-10-1**

Individuals or legal entities that have entered into an agreement with the initiator of a takeover bid with a view to securing control of the company which is the subject of the bid shall be deemed to be acting in concert. Individuals or legal entities that have entered into an agreement with the company which is the subject of the bid in order to thwart the bid shall also be deemed to be acting in concert.

#### **Article L. 233-11**

Any clause in an agreement that allows preferential terms and conditions to be applied to the sale and purchase of shares admitted to trading on a regulated market representing at least 0.5% of the capital or voting rights of the company which issued the said shares must be submitted to the company and to the Financial Markets Authority within five trading days of the signing of the agreement or of the addendum containing the clause concerned. Failing such submission, the effects of that clause shall be suspended, and the parties shall be released from their commitments while the take-over bid is in progress.

The company and the Financial Markets Authority must also be informed of the date on which the clause ceases to have effect.

Clauses in agreements entered into before the date of publication of Act No. 2001-420 of 15 May 2001 relating to the new economic regulations, which have not been sent to the Financial Markets Authority by that date must be sent to it in the same way, within six months, and with the effects indicated in the first paragraph.

The information referred to in the preceding paragraphs shall be made known to the public as prescribed in the General Regulations of the Financial Markets Authority.

#### **Article L. 233-12**

Where a company is directly or indirectly controlled by a joint-stock company, the latter shall notify the former and each of the companies participating in this control of holdings of the amount of the holding it

directly or indirectly holds in each of them, as well as any variations in this amount.

The notifications shall be made within one month from either the date when the assumption of control became known to the company with regard to the shares which it held before this date, or the date of the transaction for subsequent acquisitions or disposals.

#### **Article L. 233-13**

Based on the information received pursuant to Articles L. 233-7 and L. 233-12, the report presented to the shareholders on the business during the accounting period shall indicate the identity of any individual or legal entity directly or indirectly holding more than one twentieth, one tenth, three twentieths, one fifth, one quarter, one third, one half, two thirds, eighteen twentieths or nineteen twentieths of the authorised capital or voting rights at general meetings.

It shall also indicate any changes that took place during the financial year and the names of the controlled companies and the portion of the company's capital held by them. Where applicable, this information shall be noted in the auditors' report.

#### **Article L. 233-14**

A shareholder who has not regularly made the required declarations referred to in I, II, VI bis and VII of Article L. 233-7, shall be stripped of the voting rights attached to the shares in excess of the fraction that has not been regularly declared for any shareholders' general meeting held for two years from the date on which it rectifies the notification.

Under the same conditions, the voting rights attached to those shares that have not been duly declared cannot be exercised or delegated by the defaulting shareholder.

The Tribunal de Commerce having jurisdiction at the place where the company has its registered office may, having sought the opinion of the Public Prosecutor's Office, and at the request of the company's president, a shareholder or the Financial Markets Authority, order a total or partial suspension of voting rights, for a period not exceeding five years, against any shareholder who has not made the declarations referred to in Article L. 233-7 or who has failed to observe the content of the declaration referred to in VII of the said article during the six-month period following its publication as stipulated in the General Regulations of the Financial Markets Authority.

#### **Article L. 233-15**

The board of directors, executive board or manager of any company with subsidiaries or holdings shall append to the company's balance sheet a table showing the situation of the said subsidiaries and holdings.



**Article L. 233-16**

I. - Each year, the board of directors, the executive board or the manager(s) of commercial companies, as applicable, draw up and publish consolidated accounts and a group management report in respect of any companies which they control, either solely or jointly, or over which they exert a significant influence as defined hereunder.

II. - Sole control of a company exists:

1° When a majority of its voting rights are held by another company;

2° When a majority of the members of its administrative, executive or supervisory bodies are designated by another company for two successive financial years. The consolidating company is deemed to have effected such designations if, during that financial year, it held a fraction of the voting rights greater than 40%, and if no other partner, member or shareholder directly or indirectly held a fraction greater than its own;

3° When a dominant influence is exerted over the company by virtue of a contract or the terms and conditions of its constitution, where the applicable law allows this. (1)

III. - Joint control exists when control of a company operated jointly by a limited number of partners, members or shareholders is shared and decisions are made on the basis of agreement between them.

IV. - Significant influence over a company's management and its financial policy is deemed to exist when another company directly or indirectly holds a fraction of its voting rights equal to at least one fifth.

**Article L. 233-17**

Notwithstanding the provisions of Article L. 233-16, the companies indicated in the said article, with the exception of those issuing securities admitted to trading on a regulated market or negotiable debt securities, shall be exempted, in accordance with the conditions fixed by a Conseil d'Etat decree, from the obligation to prepare and publish consolidated accounts and a group management report:

1° When they are themselves under the control of a business which includes them in its consolidated and published accounts. In this case, however, the exemption shall be subject to the condition that one or more shareholders or members of the controlled business representing at least one-tenth of its share capital do not object to this;

2° Or when the whole formed by a company and the undertakings which it controls does not exceed, for two successive financial years, based on the last made-up annual accounts, a size determined by reference to two of the three criteria indicated in Article L. 123-16.

#### **Article L. 233-17-1**

Subject to this being justified in the annex specified in Article L. 123-12, the companies mentioned in I of Article L. 233-16 are exempted from the obligation of preparing and publishing consolidated accounts and a report on the group's management where all the companies controlled exclusively or jointly or in which they exert significant influence, within the meaning of Article L. 233-16, represent a negligible interest, both individually and collectively, in relation to the objective defined in Article L. 233-21.

#### **Article L. 233-18**

The accounts of businesses subject to the exclusive control of the consolidating company are fully consolidated.

The accounts of businesses controlled by the consolidating company jointly with other shareholders or members are consolidated on a proportional basis.

The accounts of businesses over which the consolidating company exercises significant influence are consolidated under the equity method.

#### **Article L. 233-19**

I. - Subject to this being justified in the annex prepared by the consolidating company, a subsidiary or holding shall be left out of the consolidation when severe and lasting restrictions significantly call into question the control or influence exercised by the consolidating company over the subsidiary or holding or the possibilities for funds transfers by the subsidiary or holding.

II. - Subject to the same condition, a subsidiary or holding may be left out of the consolidation where:

1° The shares of this subsidiary or holding are held only with a view to their subsequent assignment;

2° The subsidiary or holding represents, alone or with others, only a negligible interest in relation to the objective defined in Article L. 233-21;

3° The information needed to prepare the consolidated accounts cannot be obtained without excessive cost or within the periods compatible with those fixed pursuant to the provisions of Article L. 233-27.

#### **Article L. 233-20**

The consolidated accounts shall include the consolidated balance sheet and profit and loss account and an annex to the accounts: they shall form an inseparable whole.

To this end, undertakings included in the consolidation shall be required to provide the consolidating company with the information needed to prepare the consolidated accounts.

The consolidated accounts are prepared and published according to the

terms fixed by a regulation of the Accounting Standards Authority. This regulation shall determine in particular the classification of the items of the balance sheet and profit and loss account and the information to be included in the annex to the accounts.

#### **Article L. 233-21**

The consolidated financial statements must be true and fair and provide an accurate representation of the assets, financial position and earnings of the entity formed by the undertakings included in the consolidation.

If applicable, the provisions specified in the first and second paragraphs of Article L. 123-14 shall apply.

#### **Article L. 233-22**

Subject to the provisions of Article L. 233-23, consolidated accounts shall be prepared according to the accounting principles and valuation rules of this code, taking into account the essential adjustments resulting from the characteristics specific to consolidated accounts in relation to annual accounts.

The assets and liabilities items and the expenditure and income items included in the consolidated accounts shall be valued according to similar methods, except where the necessary restatements correspond to disproportionately high expenses and would have a negligible impact on the consolidated assets, financial position and earnings.

#### **Article L. 233-23**

Subject to this being justified in the annex, the consolidating company may use, in accordance with the conditions specified in Article L. 123-17, measurement rules fixed by a regulation of the Accounting Standards Authority, and intended:

- 1° To take account of price variations or replacement values;
- 2° To measure the fungible assets using the last in first out method;
- 3° To allow the recognition of rules not compliant with those fixed by Articles L. 123-18 to L. 123-21.

#### **Article L. 233-24**

When applying the international accounting standards adopted by a regulation of the European Commission, commercial companies which draw up and publish consolidated accounts within the meaning of Article L. 233-16 are exempted from complying with the accounting rules laid down in Articles L. 233-18 to L. 233-23 when drawing up and publishing their consolidated accounts.

#### **Article L. 233-25**

Subject to this being justified in the annex, consolidated accounts may be prepared at a different date from that of the consolidating company's annual accounts.

If the reporting date of the financial year for an undertaking included within the consolidation is more than three months before the reporting date of the consolidation financial year, the consolidated accounts shall be prepared on the basis of interim accounts checked by an auditor or, if there is no auditor, by a professional responsible for supervising the accounts.

#### **Article L. 233-26**

The group annual report presents the situation of the whole entity formed by the undertakings included within the consolidation, its foreseeable development, the highlights between the reporting date of the consolidation year and the date when the consolidated accounts were prepared and its research and development activities. This report may be included in the annual report indicated in Article L. 232-1.

#### **Article L. 233-27**

A Conseil d'Etat decree shall fix the conditions in accordance with which the consolidated financial statements and the group annual report shall be provided to the auditors.

#### **Article L. 233-28**

Legal persons having the capacity of a trader and which publish consolidated accounts, although their legal form or size of the whole group do not require such accounts, shall comply with the provisions of Articles L. 233-16 and L. 233-18 to L. 233-27.

In this case, when their annual accounts are certified in accordance with the conditions specified in Article L. 823-9, their consolidated accounts shall be certified in accordance with the conditions of the second paragraph of this article.

#### *Section 4: Reciprocal holdings*

#### **Article L. 233-29**

A joint-stock company may not own shares in another company if the latter holds a percentage of its capital exceeding 10%.

In the absence of an agreement between the companies involved in order to rectify the situation, the company holding the smallest percentage of the capital of the other company must dispose of its investment. If the

reciprocal investments are the same size, each company shall reduce its investment so that said investment does not exceed 10% of the capital of the other company.

Where a company is required to dispose of shares in another company, the disposal shall be carried out within the period set by a Conseil d'Etat decree. The company may not exercise the voting rights attached to such shares.

#### **Article L. 233-30**

If a company other than a joint-stock company has among its members a joint-stock company holding a percentage of its capital higher than 10%, it may not hold shares issued by the latter.

If it comes into possession of such shares, it must dispose of them within the time limit fixed by a Conseil d'Etat decree and it may not exercise the voting right attached to such shares by its title.

If a company other than a joint-stock company has among its members a joint-stock company holding a percentage of its capital equal to or less than 10%, it may hold only a percentage equal to or less than 10% of the shares issued by the latter.

If it comes into possession of a higher percentage, it must dispose of the surplus within the time limit fixed by a Conseil d'Etat decree and it may not, as a result of this excess, exercise the voting rights.

#### **Article L. 233-31**

Where shares or voting rights in a company are owned by one or more companies in which it directly or indirectly holds control, the voting rights attached to these shares or these voting rights may not be exercised at the company's general meeting. They shall not be taken into account when calculating the quorum.

#### *Section 5: Share purchase offers made to the public for company acquisitions*

#### **Article L. 233-32**

I. - During the period of the public offer aimed at a company whose shares are admitted to trading on a regulated market, the board of directors, the supervisory board, with the exception of their power to make appointments, the executive board, the managing director or one of the deputy managing directors of the targeted company must obtain the prior approval of the general meeting to take any measure the implementation of which may make the offer fail, barring the search for other offers.

II. - Notwithstanding the other measures allowed by the law, the extraordinary general meeting of the targeted company, acting within the

quorum and majority requirements set out in Article L. 225-98, may decide to issue warrants allowing the subscription, on preferential terms, of the shares of the said company, and their free award to all of the company's shareholders having this status before the expiry of the public offer period.

The general meeting may delegate this authority to the board of directors or to the executive board. It shall set the maximum amount of the capital increase that may result from the exercise of these warrants as well as the maximum number of warrants that may be issued.

The delegated authority may also provide for setting the conditions relating to the obligation or prohibition, for the board of directors or the executive board, to proceed to the issue and award of these free warrants, to postpone them or to waive them. The targeted company shall make a public announcement, prior to the closing of the offer, of its intention to issue these warrants.

The conditions for exercising these warrants, which must be related to the terms of the offering or any rival offering, as well as the other characteristics of these warrants, whose exercise price or price determination procedures, are determined by the general meeting or upon its authority, by the board of directors or the executive board. These warrants become automatically obsolete as soon as the offer and any rival offer fail, become obsolete or are withdrawn.

III. - Any delegation of a measure, the implementation of which may cause the failure of the offer, save for the search for other offers, granted by the general meeting prior to the offering period, is suspended during the period of a public offer.

Any decision by the board of directors, the supervisory board, the executive board, the managing director or one of the deputy managing directors, taken before the offer period, which is not fully or partially implemented, which is not part of the company's usual business activities and whose implementation may cause the failure of the offer must be subject to the approval or confirmation of the general meeting.

#### **Article L. 233-33**

The provisions of Article L. 233-32 shall not apply where the company is the object of one or several public offers launched by entities acting alone or in concert within the meaning of Article L. 233-10, one of which at least does not apply these provisions or equivalent measures or which are controlled, within the meaning of II or III of Article L. 233-16, respectively by entities of which at least one does not apply these provisions or equivalent measures. However, the provisions of Article L. 233-32 shall apply if the only entities which do not apply the provisions of this article or equivalent measures or which are controlled, within the meaning of II or III of Article L. 233-16 by the entities which do not apply these provisions or equivalent measures, act in concert, within the meaning of Article L. 233-10, with the

company that is the object of the offer. Any objection regarding the equivalence of measures shall be the subject of a decision by the Financial Markets Authority.

In the case where the first paragraph applies, any measure taken by the board of directors, the supervisory board, the executive board, the managing director or one of the deputy managing directors of the targeted company must have been expressly authorised for the approval of a public offer by the general meeting within eighteen months preceding the day the offer is submitted. The authorisation may specifically pertain to the issue by the board of directors or the executive board of the warrants specified in II of Article L. 233-32; in this case, the extraordinary general meeting of shareholders shall act in accordance with the quorum and majority requirements set out in Article L. 225-98.

#### **Article L. 233-34**

Except where they stem from a legislative obligation, the clauses of the constitution of a company whose shares are admitted to trading on a regulated market providing for statutory restrictions to the transfer of the company's shares shall not be enforceable against the author of a public offer to acquire securities that would be contributed by him, her or it in the context of an acquisition.

#### **Article L. 233-35**

The constitution of a company whose shares are admitted to trading on a regulated market may provide that the effects of any clause of an arrangement made after 21 April 2004 providing for restrictions to the transfer of the company's shares shall not be enforceable against the author of the offer, during a public offer period.

#### **Article L. 233-36**

The constitution of a company whose shares are admitted to trading on a regulated market may provide that the effects of any clause of an arrangement made after 21 April 2004 providing for restrictions to the exercise of the voting rights attached to the company's shares shall be suspended during the public offer period aimed at the company during meetings convened to adopt or authorise any measure likely to make the offer fail.

#### **Article L. 233-37**

The constitution of a company whose shares are admitted to trading on a regulated market may provide that the effects of any restrictions to the exercise of the voting rights attached to the company's shares shall be suspended during the period of the public offer for acquisition of the

company during meetings convened to adopt or authorise any measure likely to make the offer fail.

#### **Article L. 233-38**

The constitution of a company whose shares are admitted to trading on a regulated market may provide that the effects of restrictions to the exercise of the voting rights attached to the company's shares as well as the effects of any arrangement made after 21 April 2004, providing for restrictions to the exercise of the voting rights attached to the company's shares shall be suspended during the first general meeting following the termination of the offer where the author of the offer, acting alone or in concert comes to hold, at the end of the said offer, a fraction of the capital or voting rights exceeding a percentage set by the General Regulations of the Financial Markets Authority, without being able to reach the threshold specified by the last paragraph of Article L. 225-125.

#### **Article L. 233-39**

The constitution of a company whose shares are admitted to trading on a regulated market may provide that the extraordinary rights to appoint or dismiss directors, supervisory board members, executive board members, managing directors, deputy managing directors, held by certain shareholders shall be suspended during the first general meeting following the termination of the offer where the author of the offer, acting alone or in concert, holds at the end of the said offer, a fraction of the capital or voting rights exceeding a percentage set by the General Regulations of the Financial Markets Authority.

#### **Article L. 233-40**

Where a company decides to apply or terminate the application of the provisions set out in Articles L. 233-35 to L. 233-39, it shall inform the Financial Markets Authority thereof, which shall announce the decision to the public. The conditions for and the implementation of this article are set by the General Regulations of the Financial Markets Authority.



## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER IV: WARNING PROCEDURE**

###### **Article L. 234-1**

If, in the performance of his duties, the auditor of a société anonyme notes facts likely to compromise the continuity of the business continuity, he shall inform the president of the board of directors or the executive board president thereof as prescribed in a Conseil d'Etat decree.

If no reply is received within fifteen days or if the reply received does not provide complete assurance of such continuity, the auditor shall urge the president of the board of directors or of the executive board, in a letter copied to the presiding judge of the Tribunal de Commerce, to submit the facts noted to the board of directors or the supervisory board for discussion. The statutory auditor shall be called to attend this meeting. The minutes of the board of directors' meeting or supervisory board meeting shall be sent to the presiding judge of the Tribunal de Commerce and to the works council or, failing this, to the employee representatives.

Where the board of directors or the supervisory board has not met to deliberate on the facts identified or where the statutory auditor has not been called to this meeting or if the auditor notes that the continuity of the business remains in jeopardy despite the decisions taken, a general meeting shall be called under the conditions and within the time limit defined by a Conseil d'Etat decree. The statutory auditor shall draw up a special report, which shall be presented at this meeting. This report shall be sent to the works council or, in the absence of a works council, to the employee delegates.

If, after the general meeting, the auditor finds that the decisions taken do not ensure the continuity of the business, he shall inform the presiding judge of the Tribunal de Commerce of his actions and send him his results.

Within six months from the beginning of the warning procedure, the statutory auditor may resume the procedure from the stage where he had thought it possible to terminate it, when, despite the elements that justified this assessment, the continuity of the business is still in jeopardy and urgency requires the immediate adoption of measures.

#### **Article L. 234-2**

In companies other than sociétés anonymes, the auditor shall ask the manager, under the conditions prescribed in a Conseil d'Etat decree, to explain the facts referred to in the first paragraph of Article L. 234-1.

The manager is required to reply to him within fifteen days. The reply is sent to the works council or, failing this, to the employee representatives and, if there is one, to the supervisory board. On receipt of the answer or in the absence of an answer within fifteen days, the auditor shall inform the presiding judge of the Tribunal de Commerce.

In the absence of an answer from the manager, or if these provisions are not complied with or if the auditor finds that, despite the decisions taken, the business continuity is still in jeopardy, he shall draw up a special report and request the manager, in a letter copied to the presiding judge of the Tribunal de Commerce, to have a general meeting convened subject to the conditions and time limit determined in a Conseil d'Etat decree to discuss the relevant facts.

If, after the general meeting, the auditor finds that the decisions taken do not ensure the continuity of the business, he shall inform the presiding judge of the Tribunal de Commerce of his actions and send him his results.

The final paragraph of Article L. 234-1 shall apply.

#### **Article L. 234-3**

The works council or, failing this, the employee representatives, exercise their powers described in Articles L. 422-4 and L. 432-5 of the Labour Code in commercial companies.

The president of the board of directors, the executive board or the managers, as applicable, shall send the auditors the questions formulated by the works council or the employee representatives, the reports sent to the board of directors or the supervisory board, as applicable, and the replies from those bodies, pursuant to Articles L. 422-4 and L. 432-5 of the Labour Code.

#### **Article L. 234-4**

The provisions of the present chapter do not apply when a procedure for conciliation or safeguarding has been initiated by the managers pursuant to the provisions of Parts I and II of Book VI.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER V: INVALIDITY OR ANNULMENT**

###### **Article L. 235-1**

The invalidity of a company or the annulment of an instrument amending the constitution may result only from an express provision in this book or from the acts governing the rescission of contracts. With regard to sociétés à responsabilité limitée and joint-stock companies, the dissolution of the company may result neither from a defect in consent nor from incapacity or prohibition from acting, unless this affects all the founding members. The invalidity of the company may also not result from clauses prohibited by Article 1844-1 of the Civil Code.

The annulment of acts or deliberations other than those specified in the above paragraph may result only from the breach of a mandatory provision in this book or in the laws governing contracts.

###### **Article L. 235-2**

In sociétés en nom collectif and sociétés en commandite simple, the fulfilment of the publication formalities shall be required in order for the partnership, partnership deed or deliberations, as applicable, to be valid. However, the partners and the partnership may not for legal purposes rely on this reason for invalidity of the organization, so far as concerns third parties. Nevertheless, the court shall have the option of not giving a declaration of the invalidity applicable to the case if no fraud is identified.

###### **Article L. 235-2-1**

Decisions made in breach of the provisions that govern the voting rights attached to shares may be annulled.

###### **Article L. 235-3**

The action for a declaration of invalidity or for annulment shall lapse when the reason for this ceases to exist on the day when the court rules on the merits at first instance, except where this action for invalidity or annulment is based on the unlawfulness of the company's object.

#### **Article L. 235-4**

The Tribunal de Commerce hearing an action for a declaration of invalidity or annulment may, even automatically, fix a period for allowing the cause for invalidity to be cured. The court may not pronounce the invalidity less than two months after the date of the writ of summons.

If, in order to cure a reason for invalidity, a meeting must be convened or the members must be consulted, and if the normal convening of this meeting or the sending to the members of the text of the draft decisions accompanied by the documents which must be notified thereto is justified, the court shall grant, in a judgement, the time needed for the members to take a decision.

#### **Article L. 235-5**

If, on the expiration of the period specified in Article L. 235-4, no decision has been taken, the court shall rule at the request of the first party to act.

#### **Article L. 235-6**

In the event of the invalidity of a company (including partnerships) or of annulment of acts and deliberations subsequent to its formation, based on a defect in consent or the disqualification of a member, and where the situation may be rectified, any person with a vested interest may send formal notice to the appropriate person to either rectify the situation or bring an action for a declaration of invalidity or for annulment within six months, under pain of forfeiture. This formal notice shall be reported to the company.

The company or a member may submit to the court hearing the case, within the period specified in the foregoing paragraph, any measure likely to compromise the interest of the plaintiff in the company, particularly by repurchasing the latter's rights in the company. In this case, the court may either pronounce the nullity or make the proposed measures compulsory, if these have been previously adopted by the company in accordance with the conditions specified for amendments to the constitution. The vote of the member the purchase of whose rights is being requested shall have no effect on the company's decision.

In the event of a dispute, the value of the rights in the company to be reimbursed to the member shall be determined in accordance with the provisions of Article 1843-4 of the Civil Code.

Any clause to the contrary shall be deemed unwritten.

#### **Article L. 235-7**

When the annulment of acts and deliberations subsequent to the formation of the company is based on a breach of the publication rules, any person having an interest in duly rectifying the act may send the company

formal notice to do so, within the period fixed by a Conseil d'Etat decree. Failing rectification of the act within this period, any interested party may request the appointment, by a court decision, of a representative entrusted with fulfilling this formality.

#### **Article L. 235-8**

The annulment of a merger or demerger operation may result only from the nullity of the deliberations of one of the meetings which decided on the operation or from the failure to file the conformity declaration referred to in the third paragraph of Article L. 236-6.

When it is possible to remedy the irregularity likely to lead to annulment, the court hearing the action for annulment of a merger or demerger shall grant the interested companies a period to regularise the situation.

#### **Article L. 235-9**

Actions for a declaration of invalidity of a company or annulment of acts and deliberations subsequent to its formation shall lapse three years after the date on which the invalidity came to pass, without prejudice to the debarment referred to in Article L. 235-6.

However, action for the annulment of a merger or demerger of companies lapses six months after the date of the last entry in the commercial and companies register made necessary by the operation.

An action for annulment founded on Article L. 225-149-3 lapses three months after the date of the general meeting following the decision to increase the capital

#### **Article L. 235-10**

When the invalidity of the company is pronounced, it shall be wound up in accordance with the provisions of the constitution and Chapter VII of this title.

#### **Article L. 235-11**

When a court decision pronouncing the annulment of a merger or demerger becomes final, this decision shall be published in accordance with the terms fixed by a Conseil d'Etat decree.

This decision shall have no effect on the obligations arising to the benefit or detriment of the companies to which the assets are transferred between the date when the merger or demerger takes effect and that of the publication of the decision pronouncing the annulment.

In the event of a merger, the companies having participated in the operation shall have solidary responsibility for complying with the obligations indicated in the above paragraph which are incumbent on the acquiring company. The same shall apply, in the event of a demerger, to

the divided company in respect of the obligations of the companies to which the assets are transferred. Each of the companies to which the assets are transferred shall be responsible for the obligations incumbent thereon and arising between the date when the demerger takes effect and that of the publication of the decision pronouncing invalidity or annulment.

#### **Article L. 235-12**

Neither the company nor the members may rely on a nullity (company invalidity or ground for annulment) with regard to third parties acting in good faith. However, the nullity resulting from disqualification or a defect in consent shall be binding even on third parties in respect of the person disqualified and their legal agents or the member whose consent has not been obtained due to error, fraud or duress.

#### **Article L. 235-13**

The claim based on the invalidity of the company or of acts and deliberations subsequent to its formation shall be limited to three years after the date when the decision becomes final

The disappearance of the reason for invalidity shall not prevent a claim being brought which is intended to compensate for the loss caused by the defect with which the company, act or deliberation was vitiated. This action shall be limited to three years after the date when the invalidity was cured.

#### **Article L. 235-14**

The failure of the president of the management and administration bodies or the presiding chairman of those structures to record the deliberations of those bodies in minutes shall cause the deliberations of the said bodies to be declared null and void.

An action may be brought by any director, member of the executive board or member of the supervisory board.

This action for nullity (including declarations of invalidity of a company and annulment of other acts) may be issued until such time as the minutes of the second meeting of the board of directors, the executive board or the supervisory board following the meeting whose deliberations are likely to be annulled are approved.

It is subject to Articles L. 235-4 and L. 235-5.

## **LEGISLATIVE PART**

### **BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS**

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER VI: MERGER AND DEMERGER**

###### *Section 1: General provisions*

###### **Article L. 236-1**

One or more companies may, by means of a merger, transfer their assets to an existing company or to a new company which they shall form.

One company may also, by means of a demerger, transfer its assets to several existing companies or to several new companies.

These options shall be open to companies being wound up provided that the distribution of their assets among the members has not been started.

The members of companies transferring their assets in the context of the operations indicated in the above three paragraphs shall receive shares in the receiving company or companies and, possibly, a balancing money adjustment whose amount may not exceed 10% of the face value of the shares allotted.

###### **Article L. 236-2**

The operations referred to in Article L. 236-1 may be carried out between companies of different forms.

They shall be decided, by each of the companies involved, in accordance with the conditions required for amending their constitution.

If the operation involves the creation of new companies, each of these shall be formed according to the rules specific to the form of company adopted.

Where the operations include the participation of sociétés anonymes and sociétés à responsabilité limitée, the provisions of Articles L. 236-10, L. 236-11, L. 236-13, L. 236-14, L. 236-15, L. 236-18, L. 236-19, L. 236-20 and L. 236-21 shall apply.

###### **Article L. 236-3**

I. - The merger or demerger shall lead to the dissolution without winding-up of the companies that are disappearing and the universal transfer of

their assets to the receiving companies, in their current state at the date when the operation is finally carried out. It shall at the same time lead to the acquisition, by the members of the disappearing companies, of the capacity of members in the receiving companies, in accordance with the conditions determined by the merger or demerger agreement.

II. - However, shares in the receiving company shall not be exchanged for shares in the disappearing companies when these shares are held:

1° Either by the receiving company or by a person acting in their own name but on behalf of this company;

2° Or by the disappearing company or by a person acting in their own name but on behalf of this company.

#### **Article L. 236-4**

The merger or demerger shall take effect:

1° If one or more new companies are created, on the date of registration, in the commercial and companies register, of the new company or the last of these;

2° In other cases, on the date of the last general meeting having approved the operation except where the agreement specifies that the operation shall take effect on another date, which must not be after the end date of the current financial year of the receiving company or companies nor before the end date of the last closed financial year of the company or companies transferring their assets.

#### **Article L. 236-5**

Notwithstanding the provisions of the second paragraph of Article L. 236-2, if the planned operation has the effect of increasing the commitments of members or shareholders in one or more companies in question, it may be decided only unanimously by these members or shareholders.

#### **Article L. 236-6**

All the companies participating in one of the operations indicated in Article L. 236-1 shall prepare draft terms of merger or demerger.

These draft terms shall be filed with the registry of the Tribunal de commerce in whose jurisdiction the registered offices of these companies are situated and shall be published in accordance with the terms fixed by a Conseil d'Etat decree.

In order for the operation to be valid, the companies participating in one of the operations indicated in the first and second paragraphs of Article L. 236-1 shall be required to file with the registry a declaration in which they shall record all the acts carried out in order to proceed with this operation and by which they shall confirm that the operation has been carried out in accordance with the laws and regulations. The clerk, as his or her personal



responsibility, shall ensure the conformity of the declaration with the provisions of this article.

#### **Article L. 236-6-1**

The company contributing part of its assets to another company and the company receiving this contribution may decide, by mutual agreement, to submit the operation to the provisions of Articles L. 236-1 to L. 236-6.

#### **Article L. 236-7**

The provisions of this chapter on bondholders shall apply to holders of participating securities.

#### *Section 2: Provisions specific to sociétés anonymes*

#### **Article L. 236-8**

The operations referred to in Article L. 236-1 and carried out solely between sociétés anonymes shall be subject to the provisions of this section.

#### **Article L. 236-9**

Mergers shall be decided by an extraordinary general meeting of each of the companies participating in the operation.

Mergers shall be subject, if applicable, in each of the companies participating in the operation, to ratification by the special shareholders' meetings indicated in Articles L. 225-99 and L. 228-15.

The draft terms of merger shall be submitted to the special meetings of holders of investment certificates deciding according to the rules of the general meeting of shareholders, unless the acquiring company purchases these securities, at the request of these holders, in accordance with the publication conditions whose terms shall be fixed by a Conseil d'Etat decree and unless this purchase has been accepted by their special meeting. Any holders of investment certificates who have not assigned their securities within the period fixed by a Conseil d'Etat decree shall remain a holder in the acquiring company in accordance with the conditions fixed by the merger agreement, subject to the provisions of the last paragraph of Article L. 228-30.

Unless the shareholders of companies participating in the merger operation decide otherwise under the conditions set out in II of Article L. 236-10, the board of directors or the executive board of each company participating in the operation shall prepare a written report which is made available to shareholders.

The boards of directors or executive boards of companies participating in the operation shall inform their respective shareholders, prior to the date of

the general meeting specified in the first paragraph, of any significant change to their assets and their liabilities occurring between the date of the preparation of the draft proposal for the merger and the date on which the general meetings mentioned in the same paragraph are held.

They shall also notify the boards of directors or the executive boards of the other companies participating in the operation so that they can carry out their duty to inform their shareholders of these changes. The procedure for implementing this information is determined in a Conseil d'Etat decree.

#### **Article L. 236-10**

I. - Unless the shareholders of the companies participating in the merger decide otherwise under the conditions set out in II of this article, one or several auditors specializing in mergers appointed by a judicial decision and subject in respect of the participating companies to the incompatibilities set out in Article L. 822-11, shall draft a written report on the terms and conditions of the merger as their personal responsibility.

The auditors for the merger shall check that the relative values assigned to the shares of the companies participating in the operation are relevant and that the exchange ratio is fair. They may obtain for this purpose all relevant documents from each company and shall make all the necessary checks.

The report or reports of the auditors specializing in mergers shall be provided to the shareholders. The reports shall indicate:

1° The method or methods followed for determining the exchange ratio proposed;

2° The adequacy of this or these method(s) in the case in question and as well as the values to which each of these methods leads. An opinion shall be given on the relative importance given to these methods in determining the value used;

3° The particular valuation difficulties, if any.

II. - The decision not to appoint an auditor for the merger shall be taken unanimously by the shareholders of all the companies participating in the operation. To this end, the shareholders are consulted before the deadline fixed for the submission of this report begins and prior to the general meeting convened to review the draft terms of merger.

III. - Where the merger includes contributions in kind or special advantages, the auditor for the merger or, if one has not been appointed in application of II, a valuation expert appointed under the conditions set out in Article L. 225-8 shall draft the report specified in Article L. 225-147.

#### **Article L. 236-11**

Where, following the filing with the registry of the Tribunal de Commerce of the draft terms of merger and until the completion of the operation, the

acquiring company holds on a permanent basis all the shares representing the whole capital of the acquired companies, the merger shall not have to be approved by the extraordinary general meeting of the companies participating in the merger and the reports indicated in the fourth paragraph of Article L. 236-9 and in Article L. 236-10 shall not have to be prepared.

Nevertheless, one or more shareholders of the absorbing company holding at least a total of 5% of the share capital may request in court the appointment of a representative for the purpose of convening the extraordinary general meeting of the absorbing company for it to decide on the approval of the merger.

#### **Article L. 236-11-1**

Where, since the filing at the office of the clerk of the Tribunal de Commerce of the draft terms of merger and until the completion of the operation, the absorbing company shall hold on a permanent basis at least 90% of the voting rights of the absorbed company, without holding the entirety thereof:

1° The merger shall not have to be approved by the extraordinary general meeting of the absorbing company.

However, one or more shareholders of the absorbing company holding a total of at least 5% of the share capital may request in court the appointment of a representative for the purpose of convening the extraordinary general meeting of the absorbing company for it to decide on the approval of the merger.

2° The reports mentioned in Articles L. 236-9 and L. 236-10 shall not have to be drafted where the minority shareholders of the absorbed company are offered, prior to the merger, the purchase of their shares by the absorbing company at a price corresponding to the value of those shares, determined, as the case may be:

a) Under the conditions set out in Article 1843-4 of the Civil Code, if the shares of the absorbed company are not admitted to trading on a regulated market;

b) In the context of a public offer initiated under the conditions and according to the terms fixed by the General Regulations of the Financial Markets Authority, if the shares of the absorbed company are admitted to trading on a regulated market;

c) In the context of an offer that meets the conditions of a or b, if the shares of the absorbed company are admitted to trading on a regulated market or on a multilateral trading platform which is subject to legislative and regulation provisions aimed at protecting investors against insider trading, stock price manipulation and the publication of misleading information:

#### **Article L. 236-12**

When the merger is carried out by creating a new company, this may be formed without any contributions other than those from the companies which are merging.

In all cases, the draft constitution of the new company shall be approved by the extraordinary general meeting for each of the disappearing companies. The operation shall not have to be approved by the general meeting of the new company.

#### **Article L. 236-13**

The draft terms of merger are submitted to the bondholders' meetings of the companies taken over, unless the said bondholders are offered on-demand redemption of their securities.

The offer of redemption is subject to publication as determined in a Conseil d'Etat decree.

When on-demand redemption is offered, the acquiring company becomes the debtor in respect of the acquired company's bondholders.

Any bondholder who has requested redemption within the time limit set in a Conseil d'Etat decree shall retain his status in the acquiring company under the terms set out in the merger agreement.

#### **Article L. 236-14**

The acquiring company shall be indebted to the non-bondholder creditors of the acquired company in place of the latter, without this replacement leading to novation in their respect.

The non-bondholder creditors of the companies participating in the merger operation and whose claim is prior to the publication of the draft terms of merger may object to this within the period fixed by a Conseil d'Etat decree. A court decision shall reject the objection or order either the repayment of the claims or the formation of guarantees if the acquiring company offers this and if these are deemed sufficient.

Failing repayment of the claims or formation of the guarantees ordered, the merger shall not be binding on this creditor.

The objection made by a creditor shall not have the effect of preventing the merger operations from continuing.

The provisions of this article shall not prevent the application of the agreements authorising the creditor to demand the immediate repayment of their claim in the event of the merger of the debtor company with another company.

#### **Article L. 236-15**

The draft terms of merger are not submitted to the acquiring company's

bondholders' meetings.

However, the general meeting of bondholders may empower the body's representatives to raise an objection to the merger under the conditions and with the effects indicated in the second paragraph et seq. of Article L. 236-14.

#### **Article L. 236-16**

Articles L. 236-9, L. 236-10 et L. 236-11 shall apply to the demerger.

#### **Article L. 236-17**

When the demerger must be carried out by making contributions to new sociétés anonymes, each of the new companies may be formed without any contribution other than that from the divided company.

In this case, and if the shares of each of the new companies are allotted to the shareholders of the divided company in proportion to their rights to the capital of this company, the reports indicated in Articles L. 236-9 and L. 236-10 shall not have to be prepared.

In any case, the draft constitution of the new companies shall be approved by the extraordinary general meeting of the divided company. The operation shall not have to be approved by the general meeting of each of the new companies.

#### **Article L. 236-18**

The draft terms of demerger are submitted to the divided company's bondholders' meetings pursuant to the provisions of 3 of I of Article L. 228-65, unless the bondholders are offered on-demand redemption of their bonds. The offer of redemption is subject to publication as determined in a Conseil d'Etat decree.

When on-demand redemption is offered, the companies benefiting from the contributions become debtors with solidary responsibility of the bondholders who request redemption.

#### **Article L. 236-19**

The draft terms of demerger shall not be submitted to the meetings of bondholders of the companies to which the assets are transferred. However, the ordinary meeting of bondholders may authorise the representatives of the body to object to the demerger, in accordance with the conditions and with the effects specified in the second and subsequent paragraphs of Article L. 236-14.

#### **Article L. 236-20**

The companies receiving the contributions resulting from the demerger

shall become debtors with solidary responsibility towards the bondholders and the non-bondholder creditors of the divided company in place of the divided company, without this replacement constituting a novation in their respect.

#### **Article L. 236-21**

Notwithstanding the provisions of Article L. 236-20, it may be stipulated that the beneficiaries of the demerger shall be bound only with regard to the part of the liabilities of the divided company to which they are respectively subject and without any solidary liability between them.

In this case, the non-bondholder creditors of the participating companies may object to the demerger in accordance with the conditions and with the effects specified in the second and subsequent paragraphs of Article L. 236-14.

#### **Article L. 236-22**

The company contributing part of its assets to another company and the company receiving this contribution may decide, by mutual agreement, to submit the operation to the provisions of Articles L. 236-16 to L. 236-21.

#### *Section 3: Provisions specific to sociétés à responsabilité limitée*

#### **Article L. 236-23**

The provisions of Articles L. 236-10, L. 236-11, L. 236-13, L. 236-14, L. 236-15, L. 236-18, L. 236-19, L. 236-20 and L. 236-21 shall apply to mergers or demergers of sociétés à responsabilité limitée for the benefit of companies of the same form.

When mergers are carried out by making contributions to a new société à responsabilité limitée, this may be formed without any contributions other than those from the merging companies.

When demergers are carried out by making contributions to new sociétés à responsabilité limitée, these may be formed without any contribution other than that of the divided company. In this case, and if the shares of each of the new companies are allocated to the shareholders of the divided company in proportion to their rights to this company's capital, the report mentioned in Article L. 236-10 does not have to be drafted.

In the cases specified in the above two paragraphs, the members of the disappearing companies may act ipso jure in the capacity of founders of the new companies and in accordance with the provisions governing sociétés à responsabilité limitée.

#### **Article L. 236-24**

The company contributing part of its assets to another company and the

company receiving this contribution may decide, by mutual agreement, to submit the operation to the provisions applicable in the event of a demerger by making contributions to existing sociétés à responsabilité limitée.

#### *Section 4: Provisions specific to cross-border mergers*

##### **Article L. 236-25**

Sociétés anonymes, sociétés en commandite par actions, European companies registered in France, sociétés à responsabilité limitée and sociétés par actions simplifiées may participate, with one or more companies that fall outside the scope of application of paragraph 1 of Article 2 of Directive 2005/56/EC of the European Parliament and the Council, of 26 October 2005, on the cross-border mergers of limited liability companies and registered in one or more other Member States of the European Community, in a merger operation under the conditions set out by the provisions of this section as well as by the non-contrary provisions of sections 1 to 3 of this chapter.

##### **Article L. 236-26**

Notwithstanding Article L. 236-1 and where the legislation of at least one of the Member States of the European Community concerned by the merger so allows, the merger agreement may provide for the operations mentioned in Article L. 236-25, the money payment not exceeding 10% of the nominal value, or in the absence of a nominal value, the accounting par value of the allocated securities or shares.

The accounting value of a share is defined as the percentage of the share capital represented by a share or an equity stake.

##### **Article L. 236-27**

The management, administration or executive bodies of each of the companies participating in the operation shall prepare a written report which shall be made available to the members. To supplement the compliance with the obligations set out in Article L. 2323-19 of the Labour Code, the report mentioned in the first paragraph of this article shall be made available to employee delegates or, in the absence of such delegates, to the employees themselves, under the conditions set out by Conseil d'Etat decree.

Notwithstanding the last paragraph of Article L. 225-105, the opinion of the works council of the company consulted in application of Article L. 2323-19 of the Labour Code, or in the absence of a works council, the opinion of the employee delegates is, if transmitted within the time limits set out in the Conseil d'Etat decree, attached to the report mentioned in the first paragraph of this article.

#### **Article L. 236-28**

The shareholders who decide on the merger may make the completion of the merger contingent on their approval of the arrangements concluded for employee involvement, as defined in Article L. 2371-1 of the Labour Code, in the company resulting from the cross-border merger.

They shall decide, through a special resolution, on the possibility of implementing the procedures for scrutinising and amending the ratio applicable to the exchange of securities or shares, or for compensating minority shareholders, if the law of a Member State to which a merging company is subject provides for this possibility. The decision taken in application of these procedures is binding on the company derived from the merger.

#### **Article L. 236-29**

Within a time limit fixed by Conseil d'Etat decree, the clerk of the court in whose jurisdiction the company involved in the operation is registered, shall deliver, after carrying out the verification required by Article L. 236-6, a certificate of compliance for the acts and formalities prior to the merger.

This certificate specifies whether a procedure to scrutinise and amend the ratio applicable to the exchange of securities or the compensation of minority shareholders is in progress.

#### **Article L. 236-30**

A notary or clerk of the court in the jurisdiction of which the company resulting from the merger will be registered, shall verify, within a time frame fixed by Conseil d'Etat decree, the legality of the realisation of the merger and the formation of the new company resulting from the merger.

The notary or clerk of the court shall verify in particular that the merging companies have approved draft terms and conditions of merger under the same terms and that the terms and conditions relating to employee involvement were determined pursuant to Title VII of Book III of the second part of the Labour Code.

#### **Article L. 236-31**

The cross-border merger becomes effective:

- 1° In case of the creation of a new company, pursuant to Article L. 236-4;
- 2° In case of the transfer to an existing company, according to the stipulations of the agreement, without however being prior to the verification of its legality, nor subsequent to the date of the balance sheet for the ongoing year of the beneficiary company during which the verification was made.

A cross-border merger cannot be declared null and void after the effective date of the operation.



#### **Article L. 236-32**

Where one of the companies involved in the operation mentioned in Article L. 236-25 is subject to an employee participation scheme and the same situation applies to the company resulting from the merger, the latter shall adopt a legal form allowing the exercise of this participation.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER VII: LIQUIDATION**

##### ***Section 1: General provisions***

#### **Article L. 237-1**

Subject to the provisions of this chapter, the winding-up of companies shall be governed by the provisions contained in their constitution.

#### **Article L. 237-2**

The company shall start being wound up from the moment of its dissolution for any reason whatsoever, except in the case specified in the third paragraph of Article 1844-5 of the Civil Code.

Its business name shall be followed by the words “société en liquidation” (company being wound up).

The legal personality of the company shall continue, for the purposes of the winding-up, until the company is deregistered.

The dissolution of a company shall produce its effects with regard to third parties only from the date when this is published in the commercial and companies register.

#### **Article L. 237-3**

The liquidator shall publish the instrument appointing him, in accordance with the conditions and within the time limits fixed by a Conseil d'Etat decree which shall also determine the documents to be filed in the appendix to the commercial and companies register.

The Public Prosecutor's Office or any other interested person may ask the presiding judge, ruling by way of summary proceedings, to order the liquidator, if any, subject to a penalty, to carry out this publication.

#### **Article L. 237-4**

Persons who have been disqualified from acting as a managing director, director, general manager, member of the executive board or member of the supervisory board of a company, or who have been deprived of the right to perform such functions cannot be appointed as liquidators.

#### **Article L. 237-5**

The dissolution of the company shall not lead ipso jure to the termination of the leases for the buildings used for its company activity, including the dwelling houses attached to these buildings.

If, when the lease is assigned, the obligation to guarantee this can no longer be ensured under the terms of this lease, there may be substituted, by court order, any guarantee offered by the assignee or a third party, which is deemed sufficient.

#### **Article L. 237-6**

Without the unanimous consent of the members, the assignment of all or part of the assets of the company being wound up to a person, who had the capacity of general or limited partner, manager, director, managing director, member of the supervisory board, member of the management, auditor or controller in this company, may not occur without the authorisation of the Tribunal de Commerce, after duly hearing the liquidator and, if any, the auditor or controller.

#### **Article L. 237-7**

The assignment of all or part of the assets of the company being wound up to the liquidator or its employees or their spouses, ascendants or descendants shall be prohibited.

#### **Article L. 237-8**

A transfer of the company's total assets or the contribution of the assets to another company, by way of a merger, is authorised:

1° In sociétés en nom collectif, with the unanimous approval of the partners;

2° In sociétés en commandite simple, with the unanimous approval of the active partners and with the majority approval of the limited partners in terms of both number and capital;

3° In sociétés à responsabilité limitée, with the majority required to amend the constitution;

4. In joint-stock companies, on the basis of the quorum and majority conditions laid down for extraordinary general meetings, and, likewise, in sociétés en commandite par actions, with the unanimous approval of the

active partners.

#### **Article L. 237-9**

The members, including the holders of priority-dividend shares without voting rights, shall be called to a general meeting convened at the end of the winding-up in order to decide on the final accounts, the discharge of the liquidator's management and the release of the latter from his mandate and to record the end of the winding-up.

Failing this, any member may bring legal proceedings to appoint a representative entrusted with convening this meeting.

#### **Article L. 237-10**

If the meeting specified in Article L. 237-9 cannot deliberate or refuses to approve the liquidator's accounts, these shall be ruled on, by a court decision, at the request of the liquidator or any interested party.

#### **Article L. 237-11**

Notice of the end of the winding up shall be published according to the terms fixed by a Conseil d'Etat decree.

#### **Article L. 237-12**

The liquidator shall be responsible, with regard to both the company and third parties, for the harmful consequences of negligence committed by him or her in fulfilling his or her duties.

The claim against the liquidators shall be prescribed in accordance with the conditions specified in Article L. 225-254.

#### **Article L. 237-13**

All actions against the members who were not in favour of the winding-up or their surviving spouses, heirs or successors shall be limited to five years from the publication of the company's dissolution in the commercial and companies register.

#### *Section 2: Provisions applicable following a court decision*

#### **Article L. 237-14**

I. - Unless otherwise specified in the constitution or expressly agreed between the parties, the dissolved company shall be wound up in accordance with the provisions of this section, without prejudice to the application of the first section of this chapter.

II. - In addition, it may be ordered by a court decision that this winding-up shall be carried out in accordance with the same conditions at the request

of:

- 1° The majority of the partners, in general partnerships;
- 2° Partners or members representing at least 5% of the capital in sociétés en commandite simple, sociétés à responsabilité limitée and joint-stock companies;
- 3° Creditors of the company.

III. - In this case, the provisions of the constitution which are contrary to those of this chapter shall be deemed unwritten.

#### **Article L. 237-15**

The powers of the board of directors, executive board or managers shall end on the date of the court decision adopted pursuant to Article L. 237-14 or the dissolution of the company if this is later.

#### **Article L. 237-16**

The dissolution of the company shall not end the duties of the supervisory board and auditors.

#### **Article L. 237-17**

In the absence of auditors, and even in companies which are not required to appoint these, one or more controllers may be appointed by the members in accordance with the conditions specified in I of Article L. 237-27.

Failing this, they may be appointed, by a court decision, at the request of the liquidator or any interested party.

The instrument appointing the controllers shall fix their powers, obligations and remuneration and also the term of their duties. They shall be subject to the same liability as the auditors.

#### **Article L. 237-18**

I. - One or more liquidators shall be appointed by the members if the dissolution results from the term of the company's duration being reached according to the constitution or if this is decided by the members.

II. - The liquidator shall be appointed:

- 1° In sociétés en nom collectif, with the unanimous approval of the partners;
- 2° In sociétés en commandite simple, unanimously by the active partners and by the majority in capital of the limited partners;
- 3° In sociétés à responsabilité limitée, by the majority in capital of the members;
- 4° In sociétés anonymes, in accordance with the quorum and majority conditions specified for ordinary general meetings;
- 5° In sociétés en commandite par actions, in accordance with the quorum

and majority conditions specified for ordinary general meetings, with this majority having to include all the active partners;

6° In sociétés par actions simplifiées, unanimously by the members, unless otherwise specified.

#### **Article L. 237-19**

If the members could not appoint a liquidator, the latter shall be appointed by a court decision at the request of any interested party, in accordance with the conditions determined by a Conseil d'Etat decree.

#### **Article L. 237-20**

If the dissolution of the company is ordered by a court decision, this decision shall appoint one or more liquidators.

#### **Article L. 237-21**

The duration of the liquidator's mandate may not exceed three years. However, this mandate may be renewed by the members or partners or the president of the Tribunal de Commerce, according to whether the liquidator was appointed by the members, partners or by a court decision.

If the meeting of members or partners cannot be validly held, the mandate shall be renewed by a court decision, at the request of the liquidator.

When requesting the renewal of his mandate, the liquidator shall indicate the reasons why the winding-up could not be ended, the measures he plans to take and the time limits required to complete the winding-up.

#### **Article L. 237-22**

Liquidators shall be dismissed and replaced according to the forms specified for their appointment.

#### **Article L. 237-23**

Within six months of their appointment, liquidators shall convene the meeting of members to which they shall report on the situation of the company's assets and liabilities, the progress of the winding-up operations and the time limit needed to complete these. The period within which the liquidators shall make their reports may be increased to twelve months, at their request, by a court decision.

Failing this, the meeting shall be convened either by the controlling body, if any, or by a representative appointed, by a court decision, at the request of any interested party. The judge shall deprive a liquidator who fails to carry out these tasks of all or part of the said liquidator's entitlement to remuneration for the entirety of his or her assignment. The judge may also

dismiss the liquidator.

If the meeting cannot be held or if no decision can be taken, the liquidator shall bring legal proceedings in order to obtain the authorisations needed to end the winding-up.

#### **Article L. 237-24**

Liquidators shall represent the company. They shall be invested with the widest powers in order to sell the assets, even by private agreement. The restrictions on these powers, resulting from the constitution or the appointment instrument, shall not be binding on third parties.

Liquidators shall be authorised to pay the creditors and distribute the available balance.

They may continue current business or take on new business for the purposes of the winding-up only if this has been authorised either by the members or by a court decision if they were appointed by the same means.

#### **Article L. 237-25**

Within three months of the end of each financial year, liquidators shall prepare the annual accounts, with regard to the inventory which they have made of the various elements of the assets and liabilities existing on this date, and a written report in which they shall record the winding-up operations during the last financial year.

Unless an exemption is granted by a court decision, liquidators shall convene, according to the terms specified by the constitution, at least once a year and within six months of the end of the financial year, a meeting of members which shall decide on the annual accounts, give the necessary authorisations and possibly renew the mandate of the controllers, auditors or members of the supervisory board.

If the meeting has not been held, the report specified in the first paragraph above shall be filed with the registry of the Tribunal de Commerce and notified to any interested party.

In the event of failure to carry out these tasks, the liquidator may be deprived of all or part of his entitlement to remuneration for the entirety of his assignment by the presiding judge of the court to whom the case is referred pursuant to Article L. 238-2.

The liquidator may also be dismissed according to the same procedures.

#### **Article L. 237-26**

During the winding-up period, the members may obtain company documents in accordance with the same conditions as before.

#### **Article L. 237-27**

I. - The decisions specified in the second paragraph of Article L. 237-25

shall be taken:

1° By the majority of partners or members in sociétés en nom collectif, sociétés en commandite simple and sociétés à responsabilité limitée;

2° In accordance with the quorum and majority conditions of ordinary general meetings in joint-stock companies;

3° Unless otherwise specified, unanimously by the members in sociétés par actions simplifiées.

II. - If the required majority cannot be achieved, these decisions shall be ruled on, by a court decision, at the request of the liquidator or any interested party.

III. - When the deliberations lead to amendments to the constitution, these shall occur in accordance with the conditions specified for this purpose for each form of company.

IV. - The members in favour of the winding-up may take part in the vote.

#### **Article L. 237-28**

If the company continues to be operated, the liquidator shall be required to convene general meetings of members, in accordance with the conditions specified in Article L. 237-25.

Failing this, any interested party may request the convening of the general meeting either by the auditors, supervisory board or controlling body or by a representative appointed by a court decision.

#### **Article L. 237-29**

Unless otherwise specified in the constitution, equity capital remaining after the redemption of the face value of the company's shares shall be shared between the members in the same proportions to their participation in the share capital.

#### **Article L. 237-30**

Priority-dividend shares without voting rights shall be redeemed before ordinary shares.

The same shall apply for preference dividends which have not been fully paid.

The full or partial redemption of ordinary shares before the full redemption of priority-dividend shares without voting rights may be annulled.

Priority-dividend shares without voting rights shall, in proportion to their face value, have the same rights as the other shares to the excess remaining after winding-up.

Any clause contrary to the provisions of the present article is deemed unwritten.

#### **Article L. 237-31**

Subject to the rights of creditors, the liquidator shall decide whether the funds which have become available during the winding-up should be distributed.

After sending formal notice to the liquidator without receiving any response, any interested party may bring legal proceedings to obtain a ruling on the appropriateness of a distribution during the winding-up.

The decision to distribute the funds shall be published according to the terms fixed by a Conseil d'Etat decree.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER VIII: ORDERS TO PERFORM**

#### **Article L. 238-1**

Where the interested parties cannot obtain the production, disclosure or transmission of the documents specified in Articles L. 221-7, L. 223-26, L. 225-115, L. 225-116, L. 225-117, L. 225-118, L. 225-129, L. 225-129-5, L. 225-129-6, L. 225-135, L. 225-136, L. 225-138, L. 225-177, L. 225-184, L. 228-69, L. 237-3 and L. 237-26, they may submit a claim to the presiding judge of the court ruling by way of summary proceedings to compel the liquidator or the directors, managers or executives to disclose them, or appoint a representative in charge of making this disclosure, or suffer a progressive coercive fine.

The same action is available to any interested party unable to obtain from the liquidator, the directors, the management or the executives a form of proxy compliant with the directives of a Conseil d'Etat decree or the information pertaining to the holding of meetings stipulated in the said decree.

If the request is upheld, the coercive fine and the procedural costs are borne by the directors, managers, executives or liquidator in question.

#### **Article L. 238-2**

Any interested party may ask the presiding judge, ruling by way of summary proceedings, to direct the liquidator, under pain of a progressive coercive fine, to meet the obligations referred to in Articles L. 237-21, L.



### **Article L. 238-3**

The Public Prosecutor's Office as well as any interested party may request the presiding judge of the court ruling by way of summary proceedings to compel, subject to a fine if necessary, the legal representative of a société à responsabilité limitée, a société anonyme, a société anonyme with worker participation, a société par actions simplifiée, a European company or a société en commandite par actions to place on all the deeds and documents arising from the Company:

1° The corporate or partnership name, immediately and legibly preceded or followed by the French phrases or initials below, as the case may be: " société à responsabilité limitée " or " SARL ", " société anonyme " or " SA ", " société anonyme à participation ouvrière " or " SAPO ", " société par actions simplifiée " or " SAS ", "societas europaea" or " SE " or " société en commandite par actions";

2° The indication of the share capital, unless it is a company with variable capital as defined in Article L. 231-1. In the last case, the Public Prosecutor's Office or any interested party may request the presiding judge of the court ruling by way of summary proceedings to compel, subject to a fine if necessary, the legal representative of a company with variable capital to place on all the deeds and documents issued by the company, the corporate name, immediately and legibly preceded or followed by the words in French below: "à capital variable".

The Public Prosecutor's Office or any interested party may request the presiding judge of the court ruling by way of summary proceedings to compel, subject to a fine if necessary, the legal representative of an economic interest group to place on all the deeds and documents issued by the company, the corporate name, immediately and legibly preceded or followed by the words in French below: "groupement d'intérêt économique" or "GIE".

### **Article L. 238-3-1**

Any interested party may submit a claim to the presiding judge of the court ruling by way of summary proceedings compelling, subject to a fine, the companies using the "SE" initials in their corporate name in violation of the provisions of Article 11 of (EC) Council regulation 2157/2001 of 8 October 2001, regarding the European Company statute (SE) to amend this corporate name

### **Article L. 238-4**

Any interested party may ask the presiding judge, ruling by way of summary proceedings, to order the president of the management and

administration structures, under pain of a coercive fine, to transcribe the minutes of the said meetings in a special register kept at the registered office.

#### **Article L. 238-5**

Any interested party may ask the presiding judge, ruling by way of summary proceedings, to compel the president of the general meeting of shareholders or bondholders, under pain of a coercive fine, to transcribe the minutes of the said meetings in a special register kept at the registered office.

#### **Article L. 238-6**

At the request of any shareholder, if the special meeting of priority-dividend shareholders is not consulted as provided for in Articles L. 228-35-6, L. 228-35-7 and L. 228-35-10, the presiding judge, ruling by way of summary proceedings, may enjoin the board of directors or the executive board, under pain of a coercive fine, to convene this general meeting, may order the managers or the executive board to designate a representative responsible for convening such a meeting.

The same action is available to any shareholder or any holder of transferable securities giving access to capital when the general meeting or special meeting to which he belongs is not consulted as provided for in Article L. 225-99, the second paragraph of Article L. 225-129-6 and Articles L. 228-16 or L. 228-103.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE III: PROVISIONS COMMON TO VARIOUS COMMERCIAL COMPANIES**

##### **CHAPTER IX: THE LEASE OF COMPANY SHARES AND SHARES IN A PARTNERSHIP**

#### **Article L. 239-1**

The constitution or partnership deed may specify that the shares of a joint-stock company, or partnership shares of the société à responsabilité limitée<sup>32</sup>, subject, whether ipso jure or voluntarily, to corporate income tax may be leased, as defined in the provisions of Article 1709 of the Civil

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<sup>32</sup> A hybrid limited company with partnership-type shares.

Code, to a natural person.

The shares leased shall only concern non-negotiable registered securities on a regulated market that are not registered with a central depository and not subject to the compulsory holding period specified in Article L. 225-197-1 of this code or to the vesting period specified in chapters II and III of Title IV of Book IV of the Labour Code.

The leasing of company shares or partnership shares shall not apply to securities:

1° Held by natural persons as part of the management of their private assets where their income and capital gains are exempt from income tax;

2° Which are part of the assets of a venture capital company mentioned in Article 1-1 of Act No 85-695 of 11 July 1985 containing miscellaneous provisions of an economic and financial nature or a single member company for venture capital investment company as mentioned in Article 208 D of the General Tax Code;

3° Held by a collective venture capital fund, a collective fund for investment in innovation or a fund for local investment mentioned in Articles L. 214-28, L. 214-30 and L. 214-31 respectively of the Monetary and Financial Code.

In order to be valid, the leased shares or partnership shares may not be sub-let or lent as securities as defined in Articles L. 211-22 to L. 211-26 of said code.

The shares of joint-stock companies or partnership shares of sociétés à responsabilité limitée, where one or other of these companies are created for the practice of professions mentioned in Article 1 of Act No. 90-1258 of 31 December 1990 relating to professional practices having a specific legislative or regulatory status or a protected designation or for holding companies of the professions cannot be leased as specified in this article, unless they are leased to salaried or self-employed professionals working in the company.

Where the company is undergoing safeguarding proceedings or judicial restructuring pursuant to Title III of Book VI of this code, shares or partnership shares may be leased only under the conditions laid down by the court that initiated the procedure.

#### **Article L. 239-2**

The lease agreement must be recorded in a notarised or signed document registered with the tax authorities. In order to be valid, it must contain special provisions, a list of which is laid down by a Conseil d'Etat decree.

It shall be rendered effective against the company under the terms specified in Article 1690 of the Civil Code.

The shares or partnership shares shall be delivered on the date on which the names of the rental agreement and the lessee are placed beside the

name of the shareholder or partner in the share register of the joint-stock company or in the list of members in the constitution of the société à responsabilité limitée. As from this date, the company must send the lessee the information to which members are entitled and provide for the lessee's participation and vote at general meetings in accordance with the provisions of the second paragraph of Article L. 239-3.

The leased shares or units shall be valued at the beginning and at the end of the agreement, as well as at the end of each accounting period where the lessor is a legal entity. This valuation shall be based on criteria drawn from the corporate financial statements and shall be certified by an auditor.

#### **Article L. 239-3**

The provisions in the law or in the constitution providing for the consent of the assignee of the units or shares shall apply to the lessee under the same conditions.

The right to vote attached to the leased company or partnership share shall belong to the lessor for general meetings called to decide on changes to the constitution or a change in the company's nationality, and to the lessee for the other general meetings. For the exercise of the other rights attached to the leased company and partnership shares, the lessor shall be considered to be the naked owner<sup>33</sup> and the lessee the usufructuary.

For the purpose of the provisions of Book IV of this code, the lessor and the lessee shall be considered as holders of company or partnership shares.

#### **Article L. 239-4**

The lease shall be renewed in the same way as the initial agreement.

If the lease agreement is not renewed or if it is terminated, the first party to take action shall ask for the removal of the entries from the joint-stock company's register of members or from the list of members in the constitution of the sociétés à responsabilité limitée.

#### **Article L. 239-5**

On service of a notice or on the expiry of a lease agreement relating to the company's shares or partnership shares, any interested party may ask the presiding judge of the court, ruling by way of summary proceedings, to order the legal representative of the joint-stock company or société à responsabilité limitée, subject to a coercive fine, to modify the register of members or the list of members in the constitution and to convene a shareholders' meeting to this end.

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<sup>33</sup> The person to whom a time-limited interest reverts.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE IV: PENAL PROVISIONS**

##### **CHAPTER I: OFFENCES RELATING TO SOCIÉTÉS À RESPONSABILITÉ LIMITÉE**

###### **Article L. 241-2**

The issue by managers of transferable securities of any kind, directly or through an intermediary, on behalf of the company, with the exception of bonds issued as determined by Article L. 223-11, shall be punishable by a fine of 9,000 Euros.

###### **Article L. 241-3**

The following offences shall be punishable by a prison sentence of five years and a fine of 375,000 Euros:

1° The fraudulent assignment, by any person, of a valuation higher than its real value to a contribution in kind;

2° The distribution, by managers, of sham dividends between the members, in the absence of an inventory or by using fraudulent inventories;

3° The presentation, by managers to members, even in the absence of any distribution of dividends, of annual accounts not providing, for each financial year, a fair representation of the results of the operations for the financial year, financial situation and assets on the expiration of this period, in order to conceal the company's true situation;

4° The use by managers of the company's property or credit, in bad faith, in a way that they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved;

5° The use by managers of the powers that they possess or the votes that they have in this capacity, in bad faith, in a way that they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved.

###### **Article L. 241-4**

The following offences shall be punishable by a fine of 9,000 Euros:

1° Failure by the managers to prepare the inventory, annual accounts and a management report for each financial year;

2° and 3° (repealed).

#### **Article L. 241-5**

Failure by the managers to submit the inventory, annual accounts and management report prepared for each financial year for the approval of the members or single member shall be punishable by a fine of 9,000 Euros.

#### **Article L. 241-9**

The provisions of Articles L. 241-2 to L. 241-6 shall apply to any person who, either directly or indirectly, has actually managed a société à responsabilité limitée on behalf of, or in the place of, its legal manager.

### **LEGISLATIVE PART**

#### **BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS**

#### **TITLE IV: PENAL PROVISIONS**

##### **CHAPTER II: OFFENCES RELATING TO SOCIÉTÉS ANONYMES**

##### *Section 1: Offences relating to formation*

#### **Article L. 242-1**

A fine of 150,000 Euros shall be incurred if the founders, president, directors or managing directors of a société anonyme issue or trade shares or subdivided shares without shares issued for cash having been paid up, upon their subscription, by at least half or without the initial shares having been fully paid up prior to the registration of the company in the commercial and companies register.

The penalty specified in this article may be doubled when the shares or subdivided shares have been offered to the public.

#### **Article L. 242-2**

The following shall be punished by a prison sentence of five years and a fine of 9,000 Euros:

1°, 2° and 3° (repealed);

4° The fraudulent assignment by any person of a valuation higher than its actual value to a contribution in kind.

#### **Article L. 242-3**

Trading of shares issued for money for which half the payment has not been paid by the holders or bearers of the shares shall be punishable by a

fine of 150,000 Euros.

#### **Article L. 242-5**

The acceptance or continuation of the duties of the statutory valuation expert, notwithstanding his legal prohibition and incompatibility, shall be punishable by a prison sentence of six months and a fine of 9,000 Euros.

#### *Section 2: Offences relating to management and administration*

#### **Article L. 242-6**

The following shall be punished by a prison sentence of five years and a fine of 375,000 Euros:

1° The distribution by the president, directors or managing directors of a société anonyme of sham dividends between the shareholders in the absence of an inventory or using fraudulent inventories;

2° The publication or presentation by the president, directors or managing directors of a société anonyme to shareholders, even in the absence of any distribution of dividends, annual accounts not providing, for each financial year, a fair representation of the results of the operations for the financial year, financial situation and assets on the expiration of this period, in order to hide the company's true situation;

3° The use by the president, directors or managing directors of a société anonyme of the company's property or credit, in bad faith, in a way that they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved;

4° The use by the president, directors or managing directors of a société anonyme of the powers that they possess or the votes that they have in this capacity, in bad faith, in a way that they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved.

#### **Article L. 242-8**

The failure by the president, directors or managing directors of a société anonyme to prepare the inventory, annual accounts and an annual report, for each financial year, shall be punishable by a fine of 9,000 Euros.

#### *Section 3: Offences relating to shareholders' meetings*

#### **Article L. 242-9**

The following shall be punished by a prison sentence of two years and a fine of 9,000 Euros:

1° Preventing a shareholder from participating in a general meeting of

shareholders;

2° Paragraph repealed.

3° Securing an agreement, a guarantee or promise of benefits for voting in a certain way or for not voting, and also agreeing, guaranteeing or promising such benefits.

#### **Article L. 242-10**

The failure by the president or directors of a société anonyme to submit the annual accounts and the management report to the approval of the general meeting as specified in Article L. 232-1 is punishable by a six-month prison sentence and a fine of 9,000 Euros.

#### *Section 4: Offences relating to modifications to company share capital*

##### Subsection 1: Capital increases

#### **Article L. 242-17**

A fine of 150,000 Euros shall be incurred by the president, directors or managing directors of a société anonyme who issue shares or subdivided shares without the previously subscribed capital of the company having been fully paid up or without the new initial shares having been fully paid up prior to the amending entry in the commercial and companies register or also without the new shares paid in cash having been paid up, on their subscription, by at least one-quarter of their face value and, if applicable, the whole of the share premium.

The penalty specified in this article may be doubled when the shares or subdivided shares issued have been offered to the public.

This article shall not apply to shares that have been duly issued by converting convertible bonds at any time or by using subscription warrants or to shares issued in accordance with the conditions specified in Articles L. 232-18 to L. 232-20.

#### **Article L. 242-20**

If the president, directors or auditors of a société anonyme give or confirm incorrect information in the reports presented to the general meeting called to decide on the withdrawal of the preferential subscription right of shareholders, this shall be punished by a prison sentence of two years and a fine of 18,000 Euros.

#### **Article L. 242-21**

The provisions of Articles L. 242-2 to L. 242-5 on the formation of public limited companies shall apply in the event of a capital increase.



### Subsection 3: Capital reductions

#### **Article L. 242-23**

The reduction of share capital by the president or directors of a société anonyme without ensuring equal treatment of shareholders, shall be punishable by a fine of 30,000 Euros.

#### **Article L. 242-24**

The allotment, by the president, directors or managing directors of a société anonyme, of shares bought by the company pursuant to Article L. 225-208 to employees as part of a profit-sharing scheme or to grant stock options entitling the holder to purchase shares for a purpose other than the ones specified in Article L. 225-208 shall be punishable by a fine of 150,000 Euros.

If the president, directors or managing directors of a société anonyme carry out, in the name of the company, the operations prohibited by the first paragraph of Article L. 225-216, this shall be punished by the same penalty.

### *Section 6: Offences relating to dissolution*

### *Section 7: Offences relating to sociétés anonymes with an executive and a supervisory board*

#### **Article L. 242-30**

The penalties provided for in Articles L. 242-1 to L. 242-24 for the presidents, general managers and directors of sociétés anonymes are applicable, in keeping with their respective remits, to members of the executive board and members of the supervisory board of the sociétés anonymes governed by the provisions of Articles L. 255-57 to L. 225-93.

The provisions of Article L. 246-2 are also applicable to sociétés anonymes governed by Articles L. 255-57 to L. 225-93.

**BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS  
AND ECONOMIC INTEREST GROUPINGS**

**TITLE IV: PÉNAL PROVISIONS**

**CHAPTER III: OFFENCES INVOLVING SOCIÉTÉS EN COMMANDITE PAR ACTIONS<sup>34</sup>**

**Article L. 243-1**

Articles L. 242-1 to L. 242-29 shall apply to sociétés en commandite par actions.

The penalties specified with regard to the presidents, directors or managing directors of sociétés anonymes shall apply, in respect of their powers, to the managers of sociétés en commandite par actions.

**LEGISLATIVE PART**

**BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS  
AND ECONOMIC INTEREST GROUPINGS**

**TITLE IV: PÉNAL PROVISIONS**

**CHAPTER IV: OFFENCES INVOLVING SOCIÉTÉS PAR ACTIONS SIMPLIFIÉES<sup>35</sup>**

**Article L. 244-1**

Articles L. 242-1 to L. 242-6, L. 242-8 and L. 242-17 to L. 242-24 shall apply to sociétés par actions simplifiées.

The penalties specified with regard to the presidents, directors or managing directors of public limited companies shall apply to the presidents and directors of sociétés par actions simplifiées.

Articles L. 242-20, L. 820-6 and L. 820-7 shall apply to the auditors of sociétés par actions simplifiées

**Article L. 244-2**

Failure, on the part of an executive of a sociétés par actions simplifiées, to consult the members in the manner prescribed in the constitution in the event of an increase, write-off or reduction of capital, a merger, a

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<sup>34</sup> A limited partnership where limited partners have company-type shares.

<sup>35</sup> Simplified joint-stock companies.

demerger, a dissolution or a conversion to a different corporate status carries a penalty of six months' imprisonment and a fine of 7,500 Euros.

#### **Article L. 244-3**

If the directors of a société par actions simplifiée make a public offering of financial securities or admit shares for trading on a regulated market, this shall be punished by a fine of 18,000 Euros.

#### **Article L. 244-4**

The provisions of Articles L. 244-1, L. 244-2 and L. 244-3 shall apply to any person who, either directly or indirectly, has actually managed a société par actions simplifiée on behalf of, or in place of the president and directors of this company.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

##### **TITLE IV: PÉNAL PROVISIONS**

###### **CHAPTER IV BIS: OFFENCES RELATING TO EUROPEAN COMPANIES**

#### **Article L. 244-5**

Articles L. 242-1 to L. 242-30 apply to European companies.

The penalties imposed on the president, the directors, the general managers, the executive board members or the supervisory board members of sociétés anonymes are applicable to the president, directors, general managers, executive board members or supervisory board members of European companies.

Article L. 242-20 applies to the auditors of European companies.

### **LEGISLATIVE PART**

#### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

##### **TITLE IV: PÉNAL PROVISIONS**

###### **CHAPTER V: OFFENCES RELATING TO TRANSFERABLE SECURITIES ISSUED BY JOINT-STOCK COMPANIES**

### *Section 1: Offences relating to shares*

#### **Article L. 245-4**

The holding, directly or indirectly in accordance with the conditions specified in Article L. 228-35-8, of priority-dividend shares without voting rights by the president and directors, managing directors and members of the executive and supervisory board of a société anonyme or the managers of a société en commandite par actions, of the company or partnership that they manage, shall be punishable by a fine of 150,000 Euros.

### *Section 3: Offences relating to bonds*

#### **Article L. 245-9**

The issue by the president, the directors, the general managers or the executives of a joint-stock company of negotiable bonds on behalf of that company which, within a single issue, do not confer the same creditor's rights for the same nominal value, shall incur a fine of 9,000 Euros.

#### **Article L. 245-11**

The following offences shall be punishable by two years' imprisonment and a fine of 9,000 Euros:

1° Preventing a bondholder from participating in a general meeting of bondholders;

2° Being given, guaranteed or promised special privileges for voting in a certain way or for not participating in the vote, and likewise the fact of granting, guaranteeing or promising such special privileges.

#### **Article L. 245-12**

The following offences shall be punishable by a fine of 6,000 Euros:

1° On the part of the president, directors, general managers, executives, auditors, members of the supervisory board or employees of the debtor company or of the company guaranteeing some or all of the debtor company's commitments, or of their ascendants, descendants or spouses: representing bondholders at their general meeting or agreeing to act as the representatives of the body of bondholders;

2° On the part of the president, directors, general managers or executives of companies holding at least 10% of the capital of the debtor companies: taking part in the general meeting of bondholders by reason of the bonds held by those companies.

#### **Article L. 245-13**

The fact, on the part of the president of the general meeting of

bondholders, of failing to record the decisions of any general meeting of bondholders in minutes that indicate the date and venue of the meeting, the means used to convene it, the agenda, the composition of the committee, the number of bondholders participating in the voting and the quorum achieved, the documents and reports submitted to the meeting, a summary of the proceedings, the text of the resolutions put to the vote and the results of the voting shall incur a fine of 4,500 Euros..

#### **Article L. 245-15**

The offences specified in Articles L. 245-9, Articles L. 245-12 and L. 245-13 are punishable by a five-year prison sentence and a fine of 18,000 Euros where they are committed fraudulently with the aim of depriving some or all of the bondholders of part of the rights attached to their debt security.

#### *Section 4: Common provisions*

#### **Article L. 245-16**

The provisions of this chapter referring to the presidents, directors, managing directors and managers of joint-stock companies shall apply to anyone who, directly or through an intermediary, has run, administered or managed these companies on behalf of, or in the place of their legal agents.

#### *Section 5: Offences relating to sociétés anonymes with an executive and a supervisory board*

#### **Article L. 245-17**

The penalties provided for in Articles L. 245-1 to L. 245-15 for the presidents, general managers and directors of sociétés anonymes are applicable, in keeping with their respective remits, to members of the executive board and members of the supervisory board of the sociétés anonymes governed by the provisions of Articles L. 255-57 to L. 225-93.

The provisions of Article L. 245-16 are also applicable to sociétés anonymes governed by Articles L. 255-57 to L. 225-93.

## **LEGISLATIVE PART**

### **BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS**

#### **TITLE IV: PÉNAL PROVISIONS**

##### **CHAPTER VI: OFFENCES COMMON TO VARIOUS FORMS OF JOINT-STOCK COMPANY**

###### **Article L. 246-2**

The provisions of Articles L. 242-1 to L. 242-29, L. 243-1 and L. 244-5 applicable to the president, the directors or the general managers of sociétés anonymes or European companies and the managers of sociétés en commandite par actions are also applicable to any person who, directly or through an intermediary, has effectively managed, administered or run such a company through or on behalf of its legal representatives.

## **LEGISLATIVE PART**

### **BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS**

#### **TITLE IV: PÉNAL PROVISIONS**

##### **CHAPTER VII: OFFENCES COMMON TO VARIOUS FORMS OF THE COMMERCIAL COMPANY INCLUDING PARTNERSHIPS**

###### *Section 1: Offences relating to subsidiaries, shares and controlled companies*

###### **Article L. 247-1**

I. - The following shall be punishable by a prison sentence of two years and a fine of 9,000 Euros if committed by the president, directors, managing directors or managers of any company:

1° Failure to indicate in the annual report presented to the members on the operations for the financial year, the acquisition of a holding in a company whose registered office is in the territory of the French Republic, representing over one-twentieth, one-tenth, one-fifth, one-third, half or two-thirds of the capital or voting rights at the general meetings of this

company, or the acquisition of control of such a company;

2° Failure, in the same report, to record the activity and results of the whole company, the subsidiaries of the company and the companies which it controls by sector of activity;

3° Failure to append to the company's balance sheet, the table specified in Article L. 233-15, including the information intended to reveal the situation of said subsidiaries and equity interests.

II. - The failure by the members of the management, board of directors or managers of the companies referred to in Article L. 233-16, subject to the exemptions specified in Article L. 233-17, to prepare and present the consolidated financial statements to the shareholders or members, within the periods specified by law, shall be punishable by a fine of 9,000 Euros. The court may also order the publication of the judgement, at the expense of the offender, in one or more newspapers.

III. - The failure of the auditor to indicate in his report the information referred to in 1° of I of this article shall be punished by the penalties indicated in I.

#### **Article L. 247-2**

I.- A president, director, executive board member, executive or general manager of a legal entity, or any natural person, who fails to comply with the reporting obligations for which the company is responsible pursuant to Article L. 233-7 on account of the equity interests it holds, shall incur a fine of 18,000 Euros.

II.- The same penalty shall apply to a president, director, executive board member, executive or general manager of a company who fails to give the notifications which that company is required to give pursuant to Article L. 233-12 on account of the equity interests it holds in the joint-stock company which controls it.

III.- The same penalty shall apply to a president, director, executive board member, executive or general manager of a company who, in the report presented to the shareholders on the business during the accounting period, fails to indicate the identity of persons who hold significant equity interests in the company or any changes during the accounting period, as well as the names of the controlled companies and the portion of the company's capital held by them, as determined in Article L. 233-13.

IV.- The failure of the auditor to include in his report the references referred to in III shall incur the same penalty.

V. - For companies the shares of which are admitted for trading on a financial instrument market mentioned in II of Article L. 233-7, the proceedings shall be instituted after the opinion of the Financial Markets Authority has been sought.

### **Article L. 247-3**

The contravention by the presidents, directors, members of the executive board, managing directors or managers of companies of the provisions of Articles L. 233-29 to L. 233-31, shall be punishable by a fine of 18,000 Euros.

For companies the shares of which are admitted for trading on a regulated market, proceedings for contravening the provisions of Article L. 233-31 shall be instituted after the opinion of the Financial Markets Authority has been sought.

#### *Section 2: Offences relating to publication*

#### *Section 3: Offences relating to winding-up*

### **Article L. 247-5**

Contravention of the prohibition on carrying out the duties of liquidator shall be punishable by a prison sentence of two years and a fine of 9,000 Euros.

Anyone sentenced pursuant to the above paragraph may no longer be employed, in any respect, by the company in which they carried out the prohibited duties. In the event of a breach of this prohibition, the sentenced person and their employer, if the employer knew of this, shall be punished by the penalties specified in said paragraph.

### **Article L. 247-7**

In the event of the liquidation of a company, failure by the liquidator to accomplish the following actions shall be punishable by a fine of 150,000 Euros:

1° Deposit the sums divided between the members or partners and creditors in an account opened with a lending institution in the name of the company in process of liquidation, within fifteen days of the decision to effect a distribution;

2° Deposit the unclaimed sums allotted to creditors or former members of the company or partnership with Caisse des Dépôts et Consignations within one year after the closing of the liquidation proceedings.

### **Article L. 247-8**

A liquidator who commits the following in bad faith shall be punished by a prison sentence of five years and a fine of 9,000 Euros:

1° Use the property or credit of the company being wound up in a way which he knows is contrary to the interests of this company, for personal purposes or to favour another company or undertaking in which he is



directly or indirectly involved;

2° Assign all or part of the assets of the company being wound up contrary to the provisions of Articles L. 237-6 and L. 237-7.

*Section 4: Offences relating to sociétés anonymes with an executive and a supervisory board*

**Article L. 247-9**

The penalties provided for in Articles L. 247-1 to L. 247-4 for the presidents, general managers and directors of sociétés anonymes are applicable, in keeping with their respective remits, to members of the executive board and members of the supervisory board of the sociétés anonymes governed by the provisions of Articles L. 255-57 to L. 225-93.

**LEGISLATIVE PART**

***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS  
AND ECONOMIC INTEREST GROUPINGS***

**TITLE IV: PÉNAL PROVISIONS**

**CHAPTER VIII: PROVISIONS RELATING TO THE DEPUTY MANAGING DIRECTORS OF  
SOCIÉTÉS ANONYMES OR EUROPEAN COMPANIES**

**Article L. 248-1**

The provisions of this title referring to the managers of sociétés anonymes or European companies are applicable, commensurate with their functions, to deputy managing directors.

**LEGISLATIVE PART**

***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS  
AND ECONOMIC INTEREST GROUPINGS***

**TITLE IV: PÉNAL PROVISIONS**

**CHAPTER IX: ADDITIONAL PENALTIES APPLICABLE TO NATURAL PERSONS**

**Article L. 249-1**

Natural persons guilty of the offences specified in chapters I to VIII of this title shall also incur the following additional penalties: the prohibition,

according to the terms set out in Article 131-27 of the Criminal Code, from occupying a public office or exercising the professional or social activity in the exercise or on the occasion of the exercise of which the offence was committed, or exercising a commercial or industrial profession, directing, administering, managing or controlling a commercial or industrial undertaking or commercial company, in any capacity whatsoever, directly or indirectly on their own account or on the account of a third party. These prohibitions may be pronounced cumulatively.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE V: ECONOMIC INTEREST GROUPINGS**

##### **CHAPTER I: ECONOMIC INTEREST GROUPING GOVERNED BY FRENCH LAW**

###### **Article L. 251-1**

Two or more natural persons or legal entities may between them form an economic interest grouping for a fixed term.

The aim of the grouping shall be to facilitate or develop the economic activity of its members and to improve or increase the results of this activity. The aim of the group is not to make profits for itself.

The activity of the grouping must be linked to the economic activity of its members and may not be additional to this.

###### **Article L. 251-2**

Persons practising a profession subject to rules established by acts or regulations or whose title is protected may form an economic interest grouping or participate in such grouping.

###### **Article L. 251-3**

The economic interest grouping may be formed without any capital

The rights of its members may not be represented by negotiable securities. Any clause to the contrary shall be deemed unwritten.

###### **Article L. 251-4**

The economic interest grouping shall enjoy legal personality and full capacity from the date of its registration in the commercial and companies register, without this registration leading to a presumption of commerciality of the grouping. The economic interest grouping whose aim is commercial

may usually and principally carry out all commercial acts on its own behalf. It may hold a commercial lease.

Persons who have acted in the name of an economic interest grouping being formed, before it has begun to enjoy legal personality, shall be bound, jointly, severally and indefinitely, by the acts thus carried out, unless the grouping, after having been duly formed and registered, assumes the commitments made. These commitments shall then be deemed to have been made from the start by the grouping.

#### **Article L. 251-5**

The invalidity of the economic interest grouping and of its actions and deliberations can only result from a violation of the mandatory provisions of this chapter, or from one of the causes of rescission of contracts in general.

A declaration of invalidity of the group agreement lapses if the cause of invalidity has ceased to exist on the day on which the court rules on the merits in the first instance, unless that invalidity is founded on the unlawfulness of the group's object.

Articles 1844-12 to 1844-17 of the Civil Code are applicable to economic interest groupings.

#### **Article L. 251-6**

Members of the grouping shall be liable for the debts of the latter from their own assets. However, a new member may, if the agreement so allows, be exonerated from the debts arising prior to their entry into the grouping. The exoneration decision must be published. Members shall have solidary liability, unless otherwise agreed with the third party to the agreement.

Creditors of the grouping may bring proceedings against a member for the payment of debts only after having sent formal notice to the grouping by extra-judicial means without this producing any effect.

#### **Article L. 251-7**

The economic interest grouping may issue bonds, in accordance with the general conditions of issue of these securities by companies, if it is itself composed exclusively of companies meeting the conditions specified by this book for the issue of bonds.

The economic interest grouping may also issue bonds, in accordance with the general conditions of issue of these securities specified by Act No 85-698 of 11 July 1985 authorising the issue of securities by certain associations, if it is itself composed exclusively of associations meeting the conditions specified by this Act for the issue of bonds.

#### **Article L. 251-8**

I. - The contract forming the economic interest grouping shall determine the organisation of the grouping, subject to the provisions of this chapter. It shall be prepared in writing and published according to the terms fixed by a Conseil d'Etat decree.

II. - The agreement shall contain the following information in particular:

1° The name of the grouping;

2° The names, company names or business names, legal form, address for service or registered office and, if applicable, identification number of each of the members of the grouping, and, where applicable, the town where it is registered or where the chamber of trade is situated with which it is registered;

3° The duration of the grouping;

4° The objects of the grouping;

5° The address of the grouping's registered office.

III. - All amendments to the agreement shall be prepared and published in accordance with the same conditions as the agreement itself. These shall be binding on third parties only from the date of this publication.

#### **Article L. 251-9**

The grouping, during its existence, may accept new members in accordance with the conditions fixed by the agreement for its formation.

Any member of the grouping may withdraw in accordance with the conditions specified by the agreement, provided that they have fulfilled their obligations.

#### **Article L. 251-10**

The meeting of members of the grouping shall be authorised to take all decisions, including on early dissolution or extension of the duration of the grouping, in accordance with the conditions determined by the agreement. This agreement may specify that all decisions, or some of these, shall be taken in accordance with the quorum and majority conditions that it establishes. If the agreement is silent on this, decisions shall be taken unanimously.

The agreement may also assign to each member a number of votes different from that assigned to the other members. Failing this, each member shall have one vote.

The meeting must meet at the request of at least one-quarter of the members of the grouping.

#### **Article L. 251-11**

The grouping shall be administered by one or more persons. A legal entity may be appointed as administrator of the grouping provided that this person appoints a permanent representative who shall be subject to the

same civil and criminal liabilities as if they were administrator in their own name. The administrator or administrators of the grouping, and the permanent representative of the legal entity appointed as administrator, shall be subject to individual or solidary liability, as applicable, towards the grouping or third parties, for breaches of the acts and regulations applying to groupings, for the violation of the grouping rules and for their management errors. If more than one administrator have participated in the same acts, the court shall determine the share to be contributed by each of them to the compensation awarded. Subject to this reservation, the grouping agreement or, failing this, the meeting of members, shall freely organise the administration of the grouping and shall appoint the administrators whose competence, powers and conditions of dismissal it shall determine.

In relations with third parties, an administrator shall commit the grouping by any act falling within its objects. Any limitation of powers shall not be binding on third parties.

#### **Article L. 251-12**

Control of the grouping's management, which must be entrusted to natural persons, and auditing of the accounts shall be carried out in accordance with the conditions specified by the grouping's formation agreement.

However, when a grouping issues bonds in accordance with the conditions specified by Article L. 251-7, management control shall be carried out by one or more natural persons appointed by the meeting. The term of their duties and their powers shall be determined in the agreement.

Auditing of accounts in the groupings referred to in the above paragraph and in groupings which have one hundred employees or more at the end of a financial year must be carried out by one or more auditors chosen from the list referred to in Article L. 822-1 and appointed by the meeting for a term of six financial years. The provisions of this code on incompatibilities for office, powers, duties, obligations, liability, withdrawal, dismissal and remuneration of the auditor of sociétés anonymes and the penalties specified by Article L. 242-27 shall apply to the auditors of economic interest groupings, subject to the rules specific thereto.

In the cases specified by the above two paragraphs, the provisions of Articles L. 242-25, L. 242-26, L. 242-28 and L. 245-8 to L. 245-17 shall apply to the managers of the grouping and to the natural persons managing member companies or who are permanent representatives of the legal entities managing these companies.

#### **Article L. 251-13**

In groupings meeting one of the criteria defined in Article L. 232-2, the

administrators shall be required to prepare a statement of the liquid and current assets, excluding operating assets, and of the current liabilities, a projected profit and loss account and a financing table at the same time as the annual balance sheet and a projected financing plan.

A Conseil d'Etat decree shall specify the frequency, deadlines and terms for preparing these documents.

#### **Article L. 251-14**

The documents referred to in Article L. 251-13 shall be analysed in written reports on the development of the grouping prepared by the administrators. The documents and reports shall be notified to the auditor and to the works council

If the provisions of Article L. 251-13 and the above paragraph are not observed, or if the information given in the reports referred to in the above paragraph require observations from the auditor, he shall indicate this in a report to the administrators or in the annual report. The auditor may request that this report be sent to the members of the grouping or that it is brought to the attention of the general meeting of members. This report shall be notified to the works council.

#### **Article L. 251-15**

Where the auditors identify while carrying out their work, facts likely to compromise the continued operation of the grouping, they shall inform the administrators thereof, in accordance with the conditions fixed by a Conseil d'Etat decree. The administrators shall be required to reply to the auditors within fifteen days. The reply shall be notified to the works council. The auditors shall inform the presiding judge of the court accordingly.

If these provisions are not observed, or if it is noted that, despite the decisions taken, the continued operation of the grouping remains compromised, the auditors shall prepare a special report and shall ask the administrators, in writing, to ensure that the next general meeting deliberates on the identified facts. This report shall be notified to the works council.

If, at the end of the general meeting, the auditor notes that the decisions taken do not guarantee the continued operation of the undertaking, he shall inform the presiding judge of the court of the steps taken and submit the results of these steps.

#### **Article L. 251-16**

The works council or, failing this, the employees' representatives shall exercise, in economic interest groupings, the powers specified by Articles L. 422-4 and L. 432-5 of the Labour Code.

The administrators shall inform the auditor of requests for explanations

made by the works council or the employees' representatives, the reports sent thereto and the replies made pursuant to Articles L. 422-4 and L. 432-5 of the Labour Code.

#### **Article L. 251-17**

The instruments and documents originating from the grouping and intended for third parties, particularly letters, invoices, notices and various publications, must legibly indicate the name of the grouping followed by the words, "economic interest grouping" or the initials: "gie"<sup>36</sup>.

#### **Article L. 251-18**

Any company or association whose object corresponds to the definition of the economic interest grouping may be converted into such a grouping without giving rise to the dissolution or creation of a new legal entity.

An economic interest grouping may be converted into a société en nom collectif without giving rise to the dissolution or creation of a new legal entity.

#### **Article L. 251-19**

The economic interest grouping shall be dissolved:

1° When the end of its term of existence is reached;

2° When its objects are achieved or terminated;

3° When its members decide to do so in accordance with the conditions specified by Article L. 251-10;

4° By a court decision, for just reasons;

5° By the death of a natural person or by the dissolution of a company's legal personality, where these are members of the grouping, unless otherwise stipulated in the agreement.

#### **Article L. 251-20**

If one of the members is disqualified by law, declared bankrupt or prohibited from running, managing, administering or controlling a commercial business, regardless of its type, or a non-commercial private-law corporation, the grouping shall be dissolved, unless its continuation is provided for in the contract or the other members so decide unanimously.

#### **Article L. 251-21**

The dissolution of the economic interest grouping shall lead to its

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<sup>36</sup> GIE is "groupement d'intérêt économique", thus the abbreviation found in French correspondence, although the English abbreviation EIG will be found in English-language European literature.

winding-up. The personality of the grouping shall continue for the purposes of the winding-up.

#### **Article L. 251-22**

The winding-up shall occur in accordance with the provisions of the agreement. Failing this, a liquidator shall be appointed by the meeting of members of the grouping or, if the meeting could not make this appointment, by a court decision.

After payment of debts, the net assets shall be distributed between the members in accordance with the conditions specified by the agreement. Failing this, the distribution shall be made in equal parts.

#### **Article L. 251-23**

The designation "economic interest grouping" and the acronym "GIE"<sup>37</sup> can only be used by groupings that are subject to the provisions of this Chapter. The Public Prosecutor's Office or any other interested person may ask the presiding judge of the competent court, ruling by way of summary proceedings, to prohibit the illegal use of this designation, if necessary subject to a coercive fine.

The presiding judge may also order that the judgment be published, displayed in the places that he indicates, inserted in full or in extracts in newspapers and broadcast by one or more online public communication services that he may indicate, all at the expense of the managers of the group who illegally used this designation or abbreviation.

## **LEGISLATIVE PART**

### ***BOOK II: COMMERCIAL COMPANIES, INCLUDING PARTNERSHIPS AND ECONOMIC INTEREST GROUPINGS***

#### **TITLE V: ECONOMIC INTEREST GROUPINGS**

##### **CHAPTER II: EUROPEAN ECONOMIC INTEREST GROUPING**

#### **Article L. 252-1**

European economic interest groupings registered in France in the commercial and companies register shall enjoy legal personality from their registration.

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<sup>37</sup> Or EIG in English language texts.



#### **Article L. 252-2**

European economic interest groupings shall be civil or commercial in nature, depending on their objects. Registration shall not lead to a presumption that a grouping is commercial.

#### **Article L. 252-3**

The rights of members of the grouping may not be vested in negotiable securities.

#### **Article L. 252-4**

The collegial decisions of the European economic interest grouping shall be made by the general meeting of members of the grouping. However, the rules may stipulate that these decisions, or some of them, may be taken in the form of a consultation by exchange of letters.

#### **Article L. 252-5**

The manager or managers of a European economic interest grouping shall have individual or solidary liability, as applicable, towards the group or third parties for breaches of the acts or regulations applying to the group, for the violation of group rules and for their management errors. If more than one manager have participated in the same acts, the court shall determine the share to be contributed by each of them to the compensation awarded.

#### **Article L. 252-6**

A legal entity may be appointed as manager of a European economic interest grouping. On its appointment, it shall be required to appoint a permanent representative who shall be subject to the same civil and criminal liabilities as if they were manager in their own name, without prejudice to the solidary liability of the legal entity which they represent.

#### **Article L. 252-7**

The provisions of the previous chapter applying to economic interest groupings governed by French law on financial liabilities, supervision of the accounts and winding-up shall apply to European economic interest groupings.

#### **Article L. 252-8**

Any company or association and any economic interest grouping may be converted into a European economic interest grouping without giving rise to the dissolution or creation of a new legal entity.

A European economic interest grouping may be converted into an economic interest grouping governed by French law or a société en nom collectif without giving rise to the dissolution or creation of a new legal entity.

#### **Article L. 252-9**

The invalidity of the European economic interest grouping and of the acts or deliberations of this may result only from the breach of the essential provisions of Council Regulation (EEC) No 2137/85 of 25 July 1985 or the provisions of this chapter or from one of the reasons for rescission of agreements in general

A declaration of invalidity of the group agreement lapses if the cause of invalidity has ceased to exist on the day on which the court rules on the merits in the first instance, unless that invalidity is founded on the unlawfulness of the group's object.

Articles 1844-12 and 1844-17 of the Civil Code shall apply.

#### **Article L. 252-10**

European economic interest groupings may not make a public offering of financial securities. If this occurs, the agreements made or securities issued shall be declared invalid.

If the manager or managers of a European economic interest grouping or the permanent representative of a legal entity managing a European economic interest grouping make a public offering of financial securities, this shall be punished by a prison sentence of two years and a fine of 300,000 Euros.

#### **Article L. 252-11**

The use in relations with third parties of all deeds, letters, memos and similar documents not containing the information about the European economic interest grouping specified in Article 25 of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping may be subject to an order, if necessary, subject to a coercive fine in accordance with the conditions specified in Article L. 238-3.

#### **Article L. 252-12**

The name "European economic interest grouping" and the abbreviation "GEIE"<sup>38</sup> may be used only by groupings subject to the provisions of Council Regulation (EEC) No 2137/85 of 25 July 1985 mentioned above. The Public Prosecutor's Office or any other interested person may ask the presiding judge of the competent court, ruling by way of summary

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<sup>38</sup> Or EEIG in the European English and English national texts.

proceedings, to prohibit the illegal use of this designation, if necessary subject to a coercive fine.

The presiding judge may also order that the judgment be published, displayed in the places that he indicates, inserted in full or in extracts in newspapers and broadcast by one or more online public communication services that he may indicate, all at the expense of the managers of the group who illegally used this designation or abbreviation.

## **LEGISLATIVE PART**

### ***BOOK III: CERTAIN TYPES OF SALE AND EXCLUSIVITY CLAUSES***

#### **TITLE I: CLOSING-DOWN SALES, WAREHOUSE SALES OR SALES ON TEMPORARY PREMISES, CLEARANCE SALES AND SALES IN FACTORY OUTLETS**

##### **Article L. 310-1**

Closing-down sales are defined as sales accompanied or preceded by publicity and advertised as being aimed at, through price reductions, the accelerated disposal of all or part of the goods in a commercial establishment following a decision, whatever the reason for this, of cessation, seasonal suspension or change of activity, or substantial alteration of the operating conditions.

Closing-down sales are subject to prior declaration to the administrative authority in whose jurisdiction the closing-down sales take place. This declaration shall include the cause and duration of the closing-down sale, which may not exceed two months. It shall be accompanied by an inventory of the goods to be sold. Where the event giving rise to the closing-down sale has not occurred within six months at the latest following the declaration, the declarant shall be bound to notify the relevant administrative authority.

For the period of the closing-down sale, it shall be prohibited to offer for sale goods other than those appearing in the inventory on the basis of which the prior declaration was filed.

##### **Article L. 310-2**

I. - Warehouse sales or sales on temporary premises are sales of goods conducted on premises or in locations not intended for sale to the public of these goods, and from vehicles converted specifically for this purpose.

Warehouse sales or sales on temporary premises may not exceed two months per calendar year on the same premises or in the same location. Warehouse sales or sales on temporary premises of fruit and vegetables

conducted at times of economic crisis shall not be taken into account when calculating this limit. Warehouse sales or sales on temporary premises shall be notified in advance to the Mayor of the municipality where the sales are taking place.

Individuals not registered with the Commercial and Companies Register shall be authorised to take part in warehouse sales or sales on temporary premises in order to sell exclusively personal and used items no more than twice a year.

II. - The provisions under I shall not apply to professionals who:

1° Make sales rounds as defined in 1° of Article L. 121-22 of the Consumer Code in one or more municipalities;

2° Conduct sales defined in Article L. 320-2;

3° Provide evidence of a permit to use the public highway for private work or a parking permit for sales conducted on the public highway.

III. - The provisions under I shall not apply to organisers of:

1° Commercial events comprising sales of goods to the public in an exhibition park;

2° Commercial events classified as professional fairs not held in an exhibition park;

3° Fairgrounds and agricultural shows where only producers or breeders are exhibitors.

### **Article L. 310-3**

I. - Clearance sales are sales which are both accompanied or preceded by advertising and presented as being intended, through price reductions, to achieve rapid disposal of goods held in stock and which take place during periods in the calendar year defined as follows:

1° Two periods of a duration of five weeks each, the dates of which are determined by decree. This decree may specify different dates for these two periods and for sales other than those listed in Article L. 121-16 of the Consumer Code in departments it shall determine to take account of the highly seasonal nature of the sales or commercial transactions conducted in cross-border regions;

2° One period of a maximum duration of two weeks or two periods with a maximum duration of one week, the dates to be chosen freely by the trader<sup>39</sup>. These additional periods shall, however, end no later than one month before the start of the periods specified in 1°. They are subject to prior declaration to the competent administrative authority of the department where the sales are taking place or of the department where the company has its registered office for distance selling companies.

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<sup>39</sup> Translates "commerçant", a registered businessman carrying out commercial acts including manufacturing and services but often excluding skilled trades and the professions. See the definitions in Book I, Title I and Title II, Chapter I.

The products presented as being on sale must have been offered for sale and paid for at least one month prior to the start date of the sale period under consideration.

II. - In any advertising, corporate name, registered company name or trade name, use of the word sale(s) or derivatives thereof is prohibited to designate any activity, registered company name, trade name, corporate name or feature which does not relate to a clearance sale as defined in I above.

#### **Article L. 310-4**

The term factory warehouse or outlet may be used only by producers selling directly to the public that portion of their products not disposed of through mass channels or that have been returned. These direct sales shall involve solely products from the previous marketing season, thus justifying their sale at a reduced price.

#### **Article L. 310-5**

Those who commit the following offences shall incur a fine of 15,000 Euros:

1° The fact of holding a closing-down sale without the prior declaration referred to in Article L. 310-1 or in violation of the conditions laid down in that article;

2° The fact of holding a warehouse sale or sale on temporary premises without the declaration stipulated in Article L. 310-2 or in violation of that declaration;

3° The fact of holding sales involving goods held for less than one month on the start date of the sale period in question;

4° The fact of using the word sale(s) or derivatives thereof if such use does not relate to a sale as defined in I of Article L. 310-3;

5° The fact of using the designation factory outlet or outlet store in violation of the provisions of Article L. 310-4;

5°bis The fact, for an exhibition park, of failing to register or to declare the programme of commercial events pursuant to paragraph 2 of Article L. 762-1, or of failing to declare changes to the programme that is the subject of the initial annual declaration;

6° The fact of organising a commercial event without making the declaration referred to in paragraph 2 of Article L. 762-2 or of failing to comply with the conditions applicable to the event declared.

Natural persons shall also incur the additional penalty of posting on the court notice-board, or publication, of the decision pronounced, as provided for in Article 131-35 of the Penal Code.

#### **Article L. 310-6**

Legal persons declared criminally liable, as provided for by Article 121-2 of the Penal Code, for offences defined in Article L. 310-5 of this Code shall, in addition to the fine set out under Article 131-38 of the Penal Code, incur the penalty provided under 9° of Article 131-39 of that same Code.

#### **Article L. 310-6-1**

For offences covered by this Title or by the texts adopted in application thereof, the administrative authority in charge of competition and consumption shall be entitled, insofar as criminal prosecutions have not been initiated, to reach a settlement, after approval by the State Prosecutor, under the conditions set out in Article L. 470-4-1.

#### **Article L. 310-7**

The terms for applying the provisions of this Title shall be fixed by a Conseil d'Etat decree, particularly the sectors in which price reduction advertisements intended for consumers, whatever the medium of these, cannot be expressed as a percentage or by indicating the price previously applied, and the duration or conditions of this ban.

### **LEGISLATIVE PART**

#### ***BOOK III: CERTAIN TYPES OF SALE AND EXCLUSIVITY CLAUSES***

##### **TITLE II: SALES BY PUBLIC AUCTION**

#### **Article L. 320-1**

Sales of movables by public auction shall be governed by this Title.

Sales by public auction of edible goods and low-value items may be held freely.

#### **Article L. 320-2**

Sales by public auction are those involving a third party, acting as the agent of the owner or of the latter's representative, offering an item for sale and accepting the highest bid following a bidding process that is open to the public and transparent. The highest bidder acquires the item for sale and is bound to pay the price.

Unless otherwise stipulated and in the case of private sales, these sales are open to all and any person may make a bid without restriction.

# **LEGISLATIVE PART**

## **BOOK III: CERTAIN TYPES OF SALE AND EXCLUSIVITY CLAUSES**

### **TITLE II: SALES BY PUBLIC AUCTION**

#### **CHAPTER I: VOLUNTARY SALES OF MOVABLES BY PUBLIC AUCTION**

##### *Section 1: General provisions*

###### **Article L. 321-1**

Subject to the provisions of Article L. 322-8, voluntary sales of movables by public auction may relate to new or second-hand goods. These goods are sold separately, in lots or wholesale, i.e. in lots sufficiently large to preclude them being considered as within the reach of individual consumers. Wholesale trade may only relate to new goods originating from a company's stock. Where new goods are sold by the trader or craftsperson who produced them, this shall be indicated on the documents and notices advertising the sale.

This Chapter defines movables as property which is movable by nature.

Goods which, at any stage of their production or distribution, have come into the possession of a person for their own use, against any act subject to payment or free of charge, or which have undergone significant alterations such that they cannot be sold as new, shall be regarded as second-hand.

Where the sale relates to a new item, this is indicated in the advertising specified in Article L. 321-11.

###### **Article L. 321-2**

Voluntary sales of movables by public auction are, except in the case provided for under Article L. 321-36, organised and conducted under the conditions provided for under this Chapter by operators working in an individual capacity or in the legal form of their choosing.

Where they meet the training conditions fixed by regulation, notaries and court huissiers may also organise such sales, with the exception of voluntary sales by public auction of wholesale merchandise, in municipalities where there is no auctioneer's office. They shall carry out this activity on an ancillary basis in the context of their office and according to the rules applying thereto. The ancillary nature of this activity shall be assessed in the light of the results of this activity compared to all office income, the frequency of such sales, the time devoted thereto and, where applicable, the total volume of voluntary sales of movables by public

auction conducted within the jurisdiction of the Tribunal de Grande Instance. They may be appointed as agent only by the owner of the goods.

### **Article L. 321-3**

The act of offering an item of property, by acting as the owner's agent, in public electronic auctions in order to sell this to the highest bidder shall constitute a sale by electronic auction subject to the provisions of this Chapter.

Brokerage operations in electronic auctions, characterised by the absence of a sale by auction to the highest bidder and intervention by a third party in the conclusion of the sale of an item of property between the parties, shall not constitute a sale by public auction within the meaning of this Chapter.

The service provider providing the infrastructure to the vendor to organise and conduct a brokerage operation in electronic auctions shall inform the public clearly and unequivocally on the nature of the service offered, under the conditions set out in Article L. 111-2 of the Consumer Code and in III of Article L. 441-6 of this Code.

A joint order by the Minister for Justice and the Minister for Culture shall specify the conditions in which the service provider shall also inform the vendor and the purchaser of the regulations on the circulation of cultural goods, and those on the prevention of fraud in transactions of artworks and collector's items, where the brokerage operation in electronic auctions relates to such items.

Breaches of the provisions of the third paragraph shall incur a financial penalty amounting to double the price of the goods offered for sale in disregard of this requirement, up to a limit of €15,000 for a natural person and €75,000 for a legal person.

Breaches of the provisions of the third paragraph shall be identified and recorded in a report under the conditions set out in II and III of Article L. 450-1 and Articles L. 450-2, L. 450-3, L. 450-7 and L. 450-8 of this Code.

A copy of the report, accompanied by all relevant documents and indicating the amount of the penalty incurred shall be notified to the natural or legal person concerned. The report shall indicate the option for the person concerned to submit his written or oral observations, within a deadline of one month.

At the end of this one-month period, the report, accompanied where applicable by the observations of the person concerned, shall be transmitted to the relevant administrative authority, which may, by reasoned decision and after a procedure in which all parties are heard, order the payment of the financial penalty specified in the fourth paragraph. The person concerned shall be informed of the option of taking amicable proceedings or legal action against this decision within a period of two months from the date on which the penalty was notified.



The financial penalties and coercive progressive fines stipulated in this Article shall be paid to the Public Treasury and are recovered as State debts separate from taxes and state property.

V and VI of Article L. 141-1 of the Consumer Code may be implemented from the findings made.

Subject to a coercive progressive fine, any interested party may apply to the Presiding Judge ruling by way of summary proceedings to enjoin the service provider providing information likely to cause confusion in the public perception between their activity and electronic auctions, to modify this information in order to remove this confusion or to comply with the provisions of this Chapter.

Subsection 1: Operators involved in voluntary sales of movables by public auction

#### **Article L. 321-4**

Only operators meeting the conditions set out in this Article may organise and conduct voluntary sales of movables by public auction and electronic auction.

I. - In the case of a natural person, the operator of voluntary sales of movables by public auction must:

1° Be a French national or a citizen of a European Community member state or a European Economic Area member state;

2° Not have been the perpetrator of acts having given rise to a definitive criminal conviction for dishonourable conduct, lack of integrity, an offence against public decency or other acts of the same kind having given rise to a disciplinary penalty or administrative sanction, striking off, dismissal, removal from office, withdrawal of approval or authorisation in the profession previously exercised;

3° Be qualified to conduct a sale or hold a certificate, diploma or authorisation recognised as equivalent in this respect;

5° Have previously declared their activity to the Authority for Voluntary Sales of Movables by Public Auction established by Article L. 321-18.

II. - In the case of a legal person, the operator of voluntary sales of movables by public auction must:

1° Be formed in compliance with the legislation of a European Union member state or a European Economic Area member state and have its registered office, administrative establishment or main establishment on the territory of one of these member states;

2° Have at least one establishment in France, including in the form of an agency, a branch or a subsidiary;

3° Have among its directors, shareholders or employees at least one person meeting the conditions set out in 1° to 3° of I;

4° Provide evidence that its directors have not been the subject of a

definitive criminal conviction for dishonourable conduct, lack of integrity, an offence against public decency or have been the perpetrators of acts of the same kind having given rise to a disciplinary penalty or administrative sanction, striking off, dismissal, removal from office, withdrawal of approval or authorisation in the profession previously exercised;

5° Have previously declared their activity to the Authority for Voluntary Sales of Movables by Public Auction established by Article L. 321-18.

III. - Natural persons meeting the conditions set out in 1° to 3° of I shall take the title of auctioneer of voluntary sales, to the exclusion of any other title, when conducting such sales.

IV. - Operators involved in voluntary sales of movables by public auction shall inform the public, on all documents and advertising material, of the date on which their activity was declared to the Authority for Voluntary Sales of Movables by Public Auction.

#### **Article L. 321-5**

I. - Where they organise or conduct voluntary sales of movables by public auction, the operators mentioned in Article L. 321-4 shall act as the agents of the owner of the property or the latter's representative. The agency contract shall be drawn up in writing.

The operators involved in voluntary sales of movables by public auction mentioned in the same Article L. 321-4 shall take all measures conducive to ensuring, with regard to their clients, the security of voluntary sales by public auction entrusted to them, particularly where they avail of other service providers to organise and conduct such sales. Such service providers may not buy the goods offered for sale at these auctions on their own behalf nor sell goods belonging to them through the operators to whom they provide their services.

II. - The operators involved in voluntary sales of movables by public auction mentioned in the same Article L. 321-4 are not authorised to buy or sell, directly or indirectly and on their own behalf, the movables offered for sale in the context of their activity, except in the case provided for under Article L. 321-12 and where they have acquired, after the sale by public auction, an item sold by them in order to end a dispute arising between the vendor and the successful bidder. In this latter case, they shall be authorised to resell the item, including at public auction, provided that the advertising indicates clearly and unequivocally that they are the owner thereof.

This prohibition shall also apply to their employees and to their directors and shareholders in the case of a legal person. However, by way of exception, such employees, directors and shareholders, along with the operators mentioned in I of Article L. 321-4 working in an individual capacity may sell goods belonging to them in a public auction organised by the operator, provided that this is mentioned clearly and unequivocally in

the advertising material.

III. - Where an operator of voluntary sales of movables by public auction mentioned in the same Article L. 321-4 proceeds with the private sale of an item as the agent for the owner thereof outside the case provided for in Article L. 321-9 and after having duly informed the vendor in advance in writing of the option of a voluntary sale by public auction, the agency contract must be drawn up in writing and shall include an estimation of the value of the item. Private sales shall be recorded in a report.

#### **Article L. 321-6**

The operators mentioned in Article L. 321-4 must provide proof of:

1° The existence, at a credit institution, of an account the sole purpose of which is to receive the funds held on behalf of others;

2° An insurance policy covering their professional liability;

3° An insurance policy or surety guaranteeing the representation of the funds mentioned in 1°.

All items relating to the nature of financial guarantees provided for under 1° to 3° shall be notified to recipients of their services in an appropriate form.

#### **Article L. 321-7**

The operators mentioned in Article L. 321-4 shall give the Authority for Voluntary Sales of Movables by Public Auction any necessary clarification on the premises where the movables offered for sale will normally be exhibited and where the operations for sales by public auction will usually take place and on the infrastructures used in the case of electronic auction. When the exhibition or sale takes place in another location, or electronically, the company shall inform the Authority of this in advance.

They shall also disclose to the Authority for Voluntary Sales of Movables by Public Auction, at the latter's request, all necessary clarifications relating to their organisation and to their technical and financial resources.

#### **Article L. 321-9**

Only those persons referred to in 1° to 3° of I of Article L. 321-4 shall be authorised to conduct the sale, designate the highest bidder as the successful bidder or declare the item not sold and to prepare the official record of this sale.

The official record shall be completed at the latest one clear day after the end of the sale. It shall indicate the name and address of the new owner declared by the successful bidder, the identity of the vendor, the description of the item and its publicly recorded price.

Goods declared unsold following the public auction may be sold by private sale at the request of their owner or their representative, by the

operator of voluntary sales who organised the public auction. Unless otherwise stipulated as agreed in an amendment added to the agency contract, this transaction may not occur at a price lower than the last bid made before the item was withdrawn from sale or, in the absence of bids, at a price lower than the reserve price. The highest bidder, if known, shall be previously informed of this. This transaction shall be recorded in an instrument annexed to the official record of the sale.

#### **Article L. 321-10**

The operators mentioned in Article L. 321-4 shall keep a register on a day-to-day basis, pursuant to Articles 321-7 and 321-8 of the Penal Code, and also an index in which they shall enter their official records. They must keep this register and this index in electronic format under conditions defined by decree.

#### **Article L. 321-11**

Each voluntary sale of movables by public auction shall give rise to advertising in any appropriate form.

The reserve price is the minimum price agreed with the vendor below which the item may not be sold. If the item has been valued, this price may not be fixed at an amount higher than the lowest valuation appearing in the advertising material or announced publicly by the person conducting the sale and indicated in the official record.

Subject to the provisions of Article L. 442-4, Article L. 442-2 shall apply to any vendor generally engaged in the resale of new goods as is at a price lower than their effective purchase price, through the public auction process, under the conditions set out in this Article.

#### **Article L. 321-12**

An operator involved in voluntary sales of movables by public auction as mentioned in Article L. 321-4 may guarantee to the vendor a minimum auction price for the item offered for sale. If the item has been valued, this price may not be fixed at an amount higher than the valuation indicated in Article L. 321-11.

If the guaranteed minimum auction price is not achieved, operators shall be authorised to declare themselves the successful bidder of the item at this price. Failing this, they shall pay the vendor the difference between the guaranteed minimum sale price and the effective auction price.

They may then resell the item thus acquired, including at public auction. The advertising material must in this case indicate clearly and unequivocally that the operator is the owner of the item.

#### **Article L. 321-13**

An operator involved in voluntary sales of movables by public auction as mentioned in Article L. 321-4 may grant the vendor an advance on the auction price for the item offered for sale.

#### **Article L. 321-14**

Operators involved in voluntary sales of movables by public auction shall be liable, with regard to the vendor and purchaser, for the representation of the price and the delivery of the items which they have sold. Any clause which aims to avoid or limit their liability shall be deemed unwritten.

The item sold may be delivered to the purchaser only when the operator having organised the sale has received the price for this or when any guarantee has been given thereto with regard to the payment of the price by the purchaser.

If the successful bidder fails to pay, after being sent formal notice without this producing any response, the item shall be resold at the vendor's request due to the sham bid of the defaulting bidder. If the seller does not request this within three months of the sale by auction, the sale shall be cancelled by operation of law, without prejudice to the damages due by the defaulting bidder.

The funds held on behalf of the vendor shall be paid thereto at the latest two months after the sale.

#### **Article L. 321-15**

I. - Where one or more voluntary sales of movables by public auction are conducted:

1° If the operator organising the sale has not made the prior declaration referred to in Article L. 321-4 or is subject to a temporary or permanent ban on conducting voluntary sales of movables at public auction;

2° Or if the national of a European Community member state or of a European Economic Area member state organising the sale has not made the declaration specified by Article L. 321-34;

3° Or if the person conducting the sale does not meet the conditions specified by Article L. 321-4 or is subject to a temporary or permanent ban on conducting these sales, this shall be punishable by a prison sentence of two years and a fine of 375,000 Euros.

II. - Natural persons guilty of one of the offences against the provisions specified by this Article shall also incur the following additional penalties:

1° A ban, for a maximum period of five years, on carrying out a public office or the professional or company activity in the exercise or on the occasion of the exercise of which the offence was committed;

2° The display or publication of the sentence ordered in accordance with

the conditions specified by Article 131-35 of the Penal Code;

3° The confiscation of the sums or items unduly received by the offender, with the exception of items which may be returned.

III. (paragraph repealed)

IV. -The Authority for Voluntary Sales of Movables by Public Auction may join as a civil party any legal proceedings initiated on the basis of this Article.

#### **Article L. 321-17**

The operators conducting voluntary sales of movables by public auction mentioned in Article L. 321-4, and public or ministerial officials authorised to conduct judicial and voluntary sales, and likewise experts who assist in the description, presentation and valuation of assets, assume liability when movables are sold by public auction, pursuant to the rules applicable to such valuations and sales.

Clauses which seek to avoid or limit their liability are prohibited and deemed unwritten.

Vicarious liability actions initiated in relation to valuations and voluntary and judicial sales of movables by public auction lapse five years after the date of the adjudication or valuation. This prescription period<sup>40</sup> must be detailed in the advertising material specified in Article L. 321-11.

Subsection 2: The Authority for Voluntary Sales of Movables by Public Auction

#### **Article L. 321-18**

A regulatory authority called the Authority for Voluntary Sales of Movables by Public Auction [Conseil des ventes volontaires de meubles aux enchères publiques] is hereby established.

The Authority for Voluntary Sales of Movables by Public Auction, a public-interest institution with legal personality, shall be responsible for:

1° Registering the declarations of operators involved in voluntary sales of movables by public auction as referred to in Article L. 321-4;

2° Registering the declarations of nationals of the States referred to in Section 2;

3° Penalising, in accordance with the conditions specified by Article L. 321-22, breaches of the legislation, regulations and professional obligations applying to operators involved in voluntary sales of movables by public auction, to approved experts and to nationals of a European Union member state or European Economic Area member state occasionally carrying out the activity of voluntary sales of movables by public auction in France;

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<sup>40</sup> "Prescription extinctive" here is functionally equivalent to the English limitation of time within which legal actions can be issued, the limitation period.

4° Collaborating with the relevant authorities in other European Union member states or European Economic Area member states in order to facilitate the application of Directive 2005/36/EC of the European Parliament and of the Council of 07 September 2005 on the recognition of professional qualifications;

5° Verifying that operators of voluntary sales of movables at public auction comply with their obligations as set out in the Monetary and Financial Code, Book V, Title VI, Chapter I as regards the prevention of money laundering and financing of terrorism, by requiring, under the conditions laid down by Conseil d'Etat decree, the submission of documentation relating to compliance with these obligations.

6° Identifying best practice and promoting service quality, in collaboration with the professional organisations representing operators of voluntary sales of movables at public auction referred to in Article L. 321-4 and with the professional organisations representing experts;

7° Observing the auctions market;

8° Drafting, after consulting with professional organisations representing operators of voluntary sales of movables by public auction referred to in Article L. 321-4, a code of practice for these operators, subject to the approval of the Minister for Justice, and made public.

Failure to comply with the code of practice referred to in 8°, where committed generally by operators of voluntary sales, shall form the subject of an opinion issued by the Conseil des ventes volontaires reminding them of these obligations.

The Authority for Voluntary Sales of Movables by Public Auction may also propose legislative and regulatory changes in respect of the activity of voluntary sales at public auction.

#### **Article L. 321-19**

The Authority for Voluntary Sales of Movables by Public Auction, the National Board of Court Valuers and Auctioneers and the National Council for sworn commodities brokers shall jointly organise professional training with a view to obtaining the qualification required to conduct sales.

#### **Article L. 321-20**

The Authority for Voluntary Sales of Movables by Public Auction shall inform the National Board and regional boards of court valuers and auctioneers and the departmental boards of court huissiers and notaries of the acts committed in their jurisdiction which have been brought to its attention and which may infringe the regulations on voluntary sales of movables by public auction.

The departmental boards of court huissiers and notaries, the National Board and the regional boards of court valuers and auctioneers shall

provide the same information to the Authority for Voluntary Sales of Movables by Public Auction.

For the sole purposes of observing the market of voluntary sales of movables at public auction, the Authority for Voluntary Sales of Movables by Public Auction may require the National Board of court huissiers and the Conseil supérieur du notariat to submit the annual turnover figures net of tax of notaries and court huissiers in their ancillary activity in voluntary sales of movables at public auction. This figure shall be drawn up using data gathered from regional boards of court huissiers and boards of notaries during annual inspections of offices.

#### **Article L. 321-21**

The Authority for Voluntary Sales of Movables by Public Auction shall consist of eleven members appointed for four years as follows:

1° A member of the Conseil d'Etat, acting in a professional or honorary capacity, appointed by the Minister for Justice, on the proposal of the vice-president of the Conseil d'Etat;

2° Two judges from the Cour de Cassation<sup>41</sup>, acting in a professional or honorary capacity, appointed by the Minister for Justice, on the proposal of the Presiding Judge of the Cour de Cassation;

3° One judge from the Cour des Comptes, acting in a professional or honorary capacity, appointed by the Minister for Justice, on the proposal of the Presiding Judge of the Cour des Comptes;

4° Three persons conducting or having ceased conducting for less than five years voluntary sales of movables at public auction, appointed by the Minister for Justice, the Minister for Culture and the Minister for Trade respectively;

5° Three persons qualified to conduct voluntary sales of movables at public auction, appointed by the Minister for Justice, the Minister for Culture and the Minister for Trade respectively;

6° One expert with experience in valuing goods placed for public auction, appointed by the Minister for Culture.

Deputies shall be appointed in equal number and in the same forms.

The duties of members and of the president may only be terminated prior to the expiry of their term of office in the event of resignation or incapacity, in conditions defined by a Conseil d'Etat decree.

The terms of office of members of the Authority may be renewed once.

The president shall be appointed by the Minister for Justice from among those persons designated in 1°, 2° or 3°.

Members of the Authority conducting voluntary sales by public auction during their term of office shall not take part in deliberations relating to the

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<sup>41</sup> France's highest court for civil and commercial law, unless this concerns constitutional matters.



individual situation of operators referred to in Articles L. 321-4 and L. 321-24.

A judge from the Public Prosecutor's Office shall be appointed to carry out the duties of government representative in dealings with the Authority for Voluntary Sales of Movables by Public Auction.

He may propose amicable settlements to disputes involving operators of voluntary sales of movables at public auction brought to his attention.

The Authority shall be financed through the payment of professional contributions by operators involved in voluntary sales of movables at public auction referred to in Article L. 321-4 and based on the amount of gross fees received the previous year at auctions organised on the national territory. The amount of these contributions shall be determined every three years by order of the Minister for Justice, after consultation with the Authority for Voluntary Sales of Movables by Public Auction and the professional organisations representing operators referred to in the same Article L. 321-4.

The Authority shall appoint a company auditor and a deputy auditor. It shall be subject to the supervision of the Cour des Comptes<sup>42</sup>.

#### **Article L. 321-22**

Any breach of the provisions of the acts, regulations or of professional obligations applying to operators involved in voluntary sales of movables by public auction referred to in Article L. 321-4 and to persons authorised to conduct sales pursuant to the first paragraph of Article L. 321-9 may give rise to a disciplinary penalty. The period of prescription shall be three years from the breach. However, if the operator is the perpetrator of acts having given rise to a criminal conviction, the right of action shall be barred after two years from the date when that conviction became final.

The Authority shall rule by reasoned decision. No penalty may be ordered without the complaints having been notified to the operator's legal agent or to the person authorised to conduct sales, without the latter having been able to inspect the file and without the latter having been duly heard or called.

No member of the Authority for Voluntary Sales of Movables by Public Auction may take part in deliberations relating to:

1° A matter in which he has a direct or indirect interest, in which he has already taken part or if he represents or represented the interested party;

2° An undertaking in which he has, over the three years preceding the deliberations, held a direct or indirect interest, performed duties or held office.

All members of the Authority must notify the President of any direct or indirect interests he holds or comes to hold, any duties he performs or

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<sup>42</sup> The national Auditing Court, supported by regional auditing courts.

comes to perform and any office he holds or comes to hold within a legal person. This information, as well as information on the President, shall be kept at the disposal of Authority members.

The penalties applicable to operators of voluntary sales of movables at public auction, taking into account the gravity of the alleged acts, shall be: a warning, a reprimand, a temporary ban on carrying out all or part of the activity of voluntary sales of movables at public auction for a period which may not exceed three years, a permanent ban on carrying out voluntary sales of movables at public auction or a permanent ban on conducting sales.

In an emergency and as a precautionary measure, the President of the Authority may order the temporary suspension of the exercise of all or part of the activity of an operator involved in voluntary sales of movables by public auction or of a person authorised to conduct sales.

This measure may be ordered for a period which may not exceed one month, unless an extension is granted by the Authority for a period which may not exceed three months. The President shall immediately inform the Authority of this.

No suspension may be ordered without the complaints having been notified to the interested party, without the latter having been able to inspect the file and without the latter having been duly heard or called by the President of the Authority.

The Authority may publish its decisions in newspapers which it determines, unless such publication is likely to cause disproportionate damage to the relevant parties. The publication costs shall be payable by the persons penalised.

#### Article L. 321-23

The decisions of the Authority for Voluntary Sales of Movables by Public Auction and its President shall be open to appeal before the Paris Cour d'Appel<sup>43</sup>. The appeal may be brought before the Presiding Judge of the said Court, ruling by way of summary proceedings.

*Section 2: Free provision of services in the activity of voluntary sales of movables by public auction by nationals of European Union member states and of European Economic Area member states.*

#### **Article L. 321-24**

Nationals of European Union member state or of a European Economic Area member state Area who permanently carry out the activity of voluntary sales of movables by public auction in one of these states other than France may occasionally carry out this professional activity in France. This activity may be carried out only after a declaration has been made to the

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<sup>43</sup> Court of Appeal.

Authority for Voluntary Sales of Movables by Public Auction. The declaration shall be made at least one month before the date of the first sale held in France. This declaration shall be renewable once a year if the service provider intends to occasionally carry out their professional activity during the relevant year or where there is a material change in their professional situation.

#### **Article L. 321-25**

Persons permanently carrying out the activity of voluntary sales of movables at public auction in their country of origin may use, in France, their qualification expressed in the language or one of the languages of the State in which they are established, accompanied by a translation into French and, if appropriate, the name of the professional organisation to which they belong.

#### **Article L. 321-26**

In order to be able to carry out the activity of voluntary sales of movables at public auction on a temporary and occasional basis, nationals of a European Union member state or a European Economic Area member state must prove in the declaration referred to in Article L. 321-24 that they are legally established in one of these States, that they have incurred no ban, temporary or otherwise, on carrying out this activity, and that, where appropriate, they hold the professional qualifications required in their member state of origin.

However, where this activity or the training leading to a qualification to carry out this activity is not regulated in their State of establishment, service providers must prove that they have carried out this activity for at least two years over the ten years preceding the service provision. In the case of a legal person, it must prove in its declaration that it has, among its directors, shareholders or employees, a person meeting this condition.

#### **Article L. 321-27**

Nationals of a European Community member state or of a European Economic Area member state shall be required to comply with the rules governing the activity of voluntary sales of movables at public auction specified by Articles L. 321-1 to L. 321-3 and L. 321-5 to L. 321-17 without prejudice to the obligations not contrary thereto which are incumbent on them in the State in which they are established.

#### **Article L. 321-28**

In the event of a breach of the provisions of this Chapter, nationals of European Community member states and European Economic Area member states shall be subject to the provisions of Article L. 321-22.

However, the penalties of a temporary or permanent ban on carrying out the activity shall be replaced by penalties of a temporary or permanent ban on carrying out the activity of voluntary sales of movables at public auction in France.

In the event of penalties, the Authority for Voluntary Sales of Movables by Public Auction shall inform the competent authority in the State of establishment.

*Section 3: Experts involved in voluntary sales of movables by public auction*

**Article L. 321-29**

Operators of voluntary sales of movables at public auction referred to in Article L. 321-4, court huissiers and notaries may, as their sole responsibility, avail themselves of experts to assist them in the description, presentation and valuation of the goods offered for sale.

The public shall be informed of the involvement of experts in organising the sale.

**Article L. 321-30**

Any expert involved against payment in a sale of movables by public auction shall be bound to take out an insurance policy to cover his professional liability.

He shall have solidary liability<sup>44</sup> with the organiser of the sale in respect of his own activities.

All items relating to the nature of guarantees provided for under the first paragraph shall be notified to the public.

**Article L. 321-31**

The organiser of the sale shall ensure that the expert whose assistance he avails of complies with the obligations and bans provided respectively under the first paragraph of Article L. 321-30 and Article L. 321-32.

He shall inform the public of this.

**Article L. 321-32**

The expert referred to in Article L. 321-29 shall not describe, present, value or offer for sale an item belonging to him, nor directly or indirectly acquire an item on his own behalf, in sales by public auction in which he is involved.

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<sup>44</sup> See the Civil Code, from Article 1197. This English term is now in use in European texts, see Christian von Bar and Eric Clive (eds.), *Principles, Definitions and Model Rules of European Private Law* (Oxford, University Press 2010) III. – 4:103.

By way of exception, however, an expert may sell an item belonging to him through a person referred to in Article L. 321-4, provided that this is clearly and unequivocally mentioned in the advertising material.

#### **Article L. 321-33**

If any person not appearing in the list specified by Article L. 321-29 uses the term indicated in this Article, or a term which is similar in nature and likely to cause an error in the public's mind, this shall be punishable by the penalties specified by Article 433-17 of the Penal Code.

#### *Section 4: Sundry provisions*

#### **Article L. 321-36**

Sales by public auction of movables belonging to the State and all sales of movable property belonging to the State in form shall be carried out in accordance with the conditions specified by Article L. 3211-17 of the General Code Regulating Ownership by Public Bodies. However, as an exception to the provisions of the same Article L. 3211-17, these sales may also be carried out with publicity and competition, on behalf of the State, by operators involved in voluntary sales of movables at public auction referred to in Articles L. 321-4 and L. 321-24 of this Code, in accordance with the conditions specified by this Chapter.

Sales of movables at public auction coming under the Customs Code shall be carried out according to the terms specified by the same code. However, as an exception to the provisions of the Customs Code, these sales may also be carried out with publicity and competition, on behalf of the State, by operators involved in voluntary sales of movables at public auction referred to in Articles L. 321-4 and L. 321-24, in accordance with the conditions specified by this Chapter.

#### **Article L. 321-37**

With the exception of disputes relating to voluntary sales at public auction of wholesale goods, which shall be handled by the Tribunaux de Commerce, the private courts alone shall be competent to hear legal proceedings relating to sales activities in which an operator involved in voluntary sales of movables at public auction referred to in Article L. 321-4 is a party.

Any clause to the contrary shall be deemed unwritten. However, if the operator is a legal person, the shareholders may agree, in the constitution, to submit to arbitrators disputes which may occur between them or between operators involved in voluntary sales due to their activity.

## **Article L. 321-38**

A Conseil d'Etat decree shall fix the conditions for applying this Chapter. It shall define:

- 1° The professional qualifications required to conduct a sale;
- 2° The conditions for recognising equivalent diplomas, certificates and authorisations, the procedure for the prior declaration provided for in Article L. 321-4 and the list of documents to be attached thereto;
- 3° The guarantee scheme provided for in Article L. 321-6 and the arrangements for notifying the nature of the financial guarantees to recipients of the services;
- 4° The conditions for informing the Authority for Voluntary Sales of Movables by Public Auction where the exhibition or sale does not take place in the premises referred to in the first sentence of the first paragraph of Article L. 321-7;
- 5° The indications that must appear in the advertising material provided for in Article L. 321-11;
- 6° The arrangements for communicating documents relating to compliance with the obligations mentioned in 5° of Article L. 321-18 as regards the prevention of money laundering and financing of terrorism;
- 7° The organisational and operational procedures of the Authority for Voluntary Sales of Movables by Public Auction.

## **LEGISLATIVE PART**

### ***BOOK III: CERTAIN TYPES OF SALE AND EXCLUSIVITY CLAUSES***

#### **TITLE II: SALES BY PUBLIC AUCTION**

##### **CHAPTER II: OTHER SALES BY AUCTION**

### **Article L. 322-1**

Public and retail sales of goods which take place following a death or by court order shall be conducted according to the specified forms and by the ministerial officials employed for the forced sale of movables in accordance with Article L. 221-4 of the civil execution procedures code and with Article 945 of the Code of Civil Procedure.

### **Article L. 322-2**

Sales of goods following judicial liquidation shall be conducted in accordance with Article L. 642-19 et seq.

Where merchandise is sold separately or in lots, sales may be conducted

by court valuers and auctioneers of movables, notaries or court huissiers, or, where the merchandise is sold wholesale, by sworn commodities brokers. The debtor's movable property other than merchandise may be sold at auction only by court valuers and auctioneers of movables, notaries or court huissiers, in accordance with the legislation and regulations determining the powers of these various officers.

#### **Article L. 322-3**

Public sales and sales by auction following a cessation of trading, or in other cases of necessity as determined by the Tribunal de Commerce<sup>45</sup>, may take place only where they have been previously authorised by the Tribunal de Commerce, at the request of the trading owner and to which a detailed list of the goods shall be attached.

The court shall record, in its judgement, the act giving rise to the sale. It shall indicate the location in the district where the sale shall be conducted. It may even order that the sale shall occur only in lots whose size it shall determine.

It shall decide who, from among the sworn commodities brokers, court valuers and auctioneers of movables or other public officials, shall be responsible for receiving the bids.

Authorisation due to necessity may be granted only to sedentary traders who have had their actual domicile in the district where the sale must be conducted for at least one year.

Notices affixed to the door of the place where the sale is to be conducted shall set out the judgement authorising this sale.

#### **Article L. 322-4**

Sales by public auction of wholesale goods conducted pursuant to the law or ordered by a court decision shall be entrusted to a sworn commodities broker.

#### **Article L. 322-5**

Any breach of the provisions of Articles L. 322-1 to L. 322-7 shall be punishable by the confiscation of the goods placed on sale and also by a fine of 3,750 Euros which shall be ordered with solidary liability against both the sworn commodities broker and the public official assisting the latter, without prejudice to damages, if any.

#### **Article L. 322-6**

If sworn commodities brokers or public officials include in sales held by court order, following attachment, death, judicial liquidation, cessation of

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<sup>45</sup> The first instance specialist Commercial Court. See Book VII, Title II of this Code.

trading or in the other cases of necessity as determined by the Tribunal de Commerce, new merchandise not forming part of the business or movables placed on sale, this shall be punishable by the penalties specified by Article L. 322-5.

#### **Article L. 322-7**

In places where there are no sworn commodities brokers, the court valuers and auctioneers of movables, notaries and court huissiers shall conduct the sales specified in Article L. 322-4, in accordance with the legal and regulatory provisions determining their powers.

They shall, for these sales, be subject to the forms, conditions and tariffs imposed on brokers.

#### **Article L. 322-8**

Voluntary wholesale sales at public auction of arms, munitions and their essential components may only take place where they have been authorised in advance by the Tribunal de Commerce.

#### **Article L. 322-9**

Sworn commodities brokers shall be subject to the provisions specified by Articles 871 and 873 of the General Tax Code.

#### **Article L. 322-10**

The brokerage fee for sales covered by Articles L. 322-8 to L. 322-13 shall be determined, for each locality, by the minister responsible for trade, following consultation with the chamber of trade and industry and the Tribunal de Commerce. Under no circumstances may this exceed the fee established for sales by private treaty for the same sorts of merchandise.

#### **Article L. 322-11**

Disputes relating to sales conducted pursuant to Article L. 322-8 shall be brought before the Tribunal de Commerce.

#### **Article L. 322-14**

The Tribunaux de Commerce may, following a death or cessation of trading, and in all other cases of necessity referred thereto, authorise the wholesale sale by auction of goods of any kind and any origin.

The authorisation shall be given on request. A detailed list of the goods to be sold shall be attached to the request.

The court shall record, in its judgement, the act giving rise to the sale.



#### **Article L. 322-15**

Judicial sales of wholesale goods authorised pursuant to Article L. 322-14, and all those authorised or ordered by the consular court in the various cases specified in this Code, shall be carried out by sworn commodities brokers.

However, the court, or the judge authorising or ordering the sale, shall remain responsible for appointing, in order to proceed with this, an auctioneer, a court huissier or a notary.

In this case, the public official, whoever this is, shall be subject to the provisions governing sworn commodities brokers with regard to forms, tariffs and responsibility.

#### **Article L. 322-16**

The provisions of Articles L. 322-11 to L. 322-13 shall apply to the sales referred to in Articles L. 322-14 and L. 322-15.

### **LEGISLATIVE PART**

#### ***BOOK III: CERTAIN TYPES OF SALE AND EXCLUSIVITY CLAUSES***

##### **TITLE III: EXCLUSIVITY CLAUSES**

#### **Article L. 330-1**

The period of validity of any exclusivity clause by which the purchaser, transferee or lessee of movables undertakes with regard to the vendor, assignor or lessor not to use similar or additional items originating from another supplier shall be limited to a maximum of ten years.

#### **Article L. 330-2**

When the contract containing the exclusivity clause indicated in Article L. 330-1 is followed subsequently, between the same parties, by other similar undertakings involving the same type of goods, the exclusivity clauses contained in these new agreements shall end on the same date as that appearing in the initial contract.

#### **Article L. 330-3**

Any person who provides to another person a trade name, brand or corporate name, by requiring therefrom an exclusivity or quasi-exclusivity undertaking in order to carry out their activity, shall be bound, prior to the signing of any contract concluded in the common interest of both parties, to

provide the other party with a document giving truthful information allowing the latter to commit to this contract in full knowledge of the facts.

This document, whose content shall be determined by decree, shall specify in particular the age and experience of the business, the state and development prospects of the relevant market, the size of the network of operators, the term and the conditions of renewal, termination and assignment of the contract and the scope of the exclusive rights.

Where the payment of a sum is required prior to the signing of the contract indicated above, particularly to obtain the reservation of an area, the benefits provided in return for this sum shall be specified in writing together with the reciprocal obligations of the parties in the event of renunciation.

The document specified in the first paragraph and the draft contract shall be notified at least twenty days before the signing of the contract or, where applicable, before the payment of the sum indicated in the above paragraph.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE I: GENERAL PROVISIONS**

##### **Article L. 410-1**

The rules defined in this book shall apply to all production, distribution and service activities, including those which are carried out by public persons, in particular in the context of public service delegation agreements.

##### **Article L. 410-2**

Except in cases where the law specifies otherwise, the prices of goods, products and services falling, prior to 1 January 1987, under Order No 45-1483 of 30 June 1945 shall be determined by the free play of competition.

However, in sectors or areas where price competition is limited by either monopoly situations or long-lasting supply problems, or by legislative or regulatory provisions, a Conseil d'Etat decree may regulate the prices after the Competition Authority has been consulted.

The provisions of the first two paragraphs shall not prevent the government from issuing an order against excessive price increases or reductions, through a Conseil d'Etat decree, temporary measures motivated by a crisis situation, exceptional circumstances, a public disaster or a clearly abnormal situation in the market in a given sector. The decree

shall be adopted following consultation of the National Consumer Council. It shall specify its period of validity which may not exceed six months.

#### **Article L. 410-3**

In local communities that fall under Article 73 of the Constitution and in the overseas local communities of Saint-Barthélemy, Saint-Martin, Saint-Pierre and Miquelon and Wallis-et-Futuna, and in the sectors for which supply conditions or market structures restrict free competition, the Government may, after the advisory opinion by the Competition Authority has been made public and by a Conseil d'Etat decree, adopt the measures necessary to eliminate distortions of the wholesale markets for the goods and services concerned, in particular markets for the export sales to these local communities, for shipping, storage and distribution. The measures taken concern access to these markets, the absence of price discrimination, the loyalty of transactions, the profit margin of operators and the management of essential facilities, taking into consideration the protection of consumers' interests.

#### **Article L. 410-4**

In local communities that fall under Article 73 of the Constitution and in the overseas local communities of Saint-Barthélemy, Saint-Martin, Saint-Pierre and Miquelon and Wallis and Futuna, and pursuant to Article 349 of the Treaty on the Functioning of the European Union, the Government may regulate the selling price of staple products or groups of staple products, after a public notice by the Competition Authority and by Conseil d'Etat decree.

#### **Article L. 410-5**

I. - In Guadeloupe, Guyana, Martinique, La Réunion, Mayotte, Saint-Pierre and Miquelon and Wallis and Futuna, after a public notice of the observatory of prices, margins and revenue competent for the territory, each year, the State representative will negotiate an overall price moderation agreement for a limited list of staple goods with professional organisations of the retail sector and their suppliers, whether producers, wholesalers or importers.

If the negotiations are successful, the agreement is published by way of prefectorial order.

II. - Failing an agreement one month after negotiations begin, the State representative will determine the overall price of the list mentioned in the first paragraph of same, based on the negotiations mentioned in I and the lowest prices prevailing in the economic sector concerned as well as the conditions of oversight.

III. - The overall price of the list mentioned in I, as it is charged, will be

displayed in accordance with Article L. 113-3 of the Consumer Code.

IV. - The agents mentioned in II in Article L. 450-1 of this code will search for and record breaches to III of this article, under the conditions set out by Articles L. 450-2, L. 450-3, L. 450-7, L. 450-8 and L. 470-5.

V. - The conditions for the application of I to IV of this article shall be specified by decree.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE II: ANTI-COMPETITIVE PRACTICES**

##### **Article L. 420-1**

Concerted actions, agreements, express or tacit undertakings or coalitions shall be prohibited, even through the direct or indirect intermediation of a company in the group established outside France, where they have the aim or may have the effect of preventing, restricting or distorting the free competition in a market, particularly where they are intended to:

1° Limit access to the market or the free exercise of competition by other undertakings;

2° Prevent price setting by the free play of market forces, by artificially encouraging the increase or reduction of prices;

3° Limit or control production, opportunities, investments or technical progress;

4° Share out markets or sources of supply,

##### **Article L. 420-2**

The abuse of a dominant position by an undertaking or group of undertakings on the domestic market or a substantial part of the market is prohibited, pursuant to Article L. 420-1. This abuse may include a refusal to sell, a tie-in of sales or discriminatory terms of sale as well as the termination of established commercial relationships, for the sole reason that the partner is refusing to accept unjustified commercial terms.

The abuse of the state of economic dependence of a client or supplier by an undertaking or group of undertakings is also prohibited, if it is likely to affect the functioning or structure of competition. This abuse may include a refusal to sell, tie-in sales or discriminatory practices mentioned in I of Article L. 442-6 or in product range agreements.

#### **Article L. 420-2-1**

Agreements or concerted practices aimed at granting exclusive import rights to an undertaking or group of undertakings are prohibited in local communities covered by Article 73 of the Constitution and in the overseas local communities of Saint-Barthélemy, Saint-Martin, Saint-Pierre and Miquelon and Wallis and Futuna.

#### **Article L. 420-3**

Any undertaking, agreement or contractual clause referring to a practice prohibited by Articles L. 420-1, L. 420-2 and L. 420-2-1 shall be invalid.

#### **Article L. 420-4**

I. - The following practices are not subject to the provisions of Articles L. 420-1 and L. 420-2:

1° Those that result from the implementation of a statute or regulation adopted in application thereof;

2° Those for which the authors can prove that they have the effect of ensuring economic progress, including by creating or maintaining jobs, and that they reserve for users a fair share in the resulting profit, without giving the undertakings involved the opportunity to eliminate competition for a substantial part of the products in question. Those practices that may consist of organising, for agricultural products or products of agricultural origin, under the same brand or trade name, the production volumes and quality and the commercial policy, including by agreeing to a common transfer price, may impose restrictions on competition only insofar as these are essential to achieve this aim of progress.

II. - Certain categories of agreement or certain agreements, in particular when they are intended to improve the management of small or medium-sized undertakings, may be recognised as meeting these conditions by a decree adopted following a favourable opinion from the Competition Authority.

III. - Agreements or concerted practices for which the perpetrators can prove that they are based on objective reasons based on economic efficiency and which reserve a fair share of the resulting profit for users are not subject to the provisions of Article L. 420-2-1.

#### **Article L. 420-5**

Price offers or consumer sales price practices that are excessively low compared with production, processing and marketing costs are prohibited if these offers or practices are aimed at driving out an undertaking or one of its products from the market or preventing it from accessing a market.

Marketing costs shall also imperatively include all expenses resulting

from statutory and regulatory obligations linked to product safety.

These provisions do not apply in the event of resale in the same condition as received, except for audio recordings reproduced on physical media and videograms intended for the private use of the public.

#### **Article L. 420-6**

If any natural person fraudulently takes a personal and decisive part in the design, organisation or implementation of the practices referred to in Articles L. 420-1 and L. 420-2, such person shall be punished by a prison sentence of four years and a fine of 75,000 Euros.

The court may order that its decision be published in full or in summary in the newspapers which it designates, at the offender's expense.

Acts interrupting the period of prescription<sup>46</sup> for actions before the Competition Authority pursuant to Article L. 462-7 shall also interrupt the period of prescription for criminal prosecution.

#### **Article L. 420-7**

Without prejudice to Articles L. 420-6, L. 462-8, L. 463-1 to L. 463-4, L. 463-6, L. 463-7 and L. 464-1 to L. 464-8, disputes relating to application of the rules laid down in Articles L. 420-1 to L. 420-5 and Articles 81 and 82 of the Founding Treaty of the European Community, and those in which the said provisions are invoked, are referred, as applicable, and without prejudice to the rules relating to division of jurisdiction between the different types of court, to civil or commercial jurisdictions, the territorial competencies and scope of jurisdiction will be determined in a Conseil d'Etat decree. This decree will also determine the territorial extent and scope of jurisdiction of the court(s) of appeal which are competent to take cognisance of decisions pronounced by those jurisdictions.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE III: ECONOMIC CONCENTRATION**

##### **Article L. 430-1**

I. - A concentration shall be deemed to have occurred where:

1° two or more previously independent undertakings merge;

2° one or more persons already having control of at least one undertaking or when one or more undertakings acquire control of all or part of one or

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<sup>46</sup> "Prescription extinctive" here is functionally equivalent to the limitation period.

more other undertakings, directly or indirectly, whether by the acquisition of a holding in the capital or by purchasing assets, a contract or any other means.

II. - The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration as defined in this article.

III. - For the purposes of applying this title, supervision will arise from rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising a decisive influence on an undertaking, in particular by:

- ownership or the right to use all or part of the assets of an undertaking;
- rights or contracts that confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

#### **Article L. 430-2**

I. - Any merger operation as defined in Article L. 430-1 is subject to the provisions of Articles L. 430-3 et seq. of the present Title when the following three conditions are met:

- the combined worldwide turnover exclusive of tax of all of the companies or of all of the natural persons or legal entities involved in the merger is greater than 150 million Euros;
- the combined aggregate turnover exclusive of tax earned in France by at least two of the companies or groups of natural persons or legal entities concerned is greater than 50 million Euros;
- the operation does not come within the scope of Council Regulation No. 139/2004 (EC) of 20 January 2004 relating to control of concentrations between undertakings.

II. - When at least two of the parties to the concentration operate one or more retail outlets, any concentration operation as defined in Article L. 430-1 shall be subject to the provisions of Articles L. 430-3 et seq. of this Title when the three conditions below are met:

- the combined aggregate turnover exclusive of tax earned worldwide by all of the companies or of all of the natural persons or legal entities involved in the merger is greater than 75 million Euros;
- the total turnover exclusive of tax generated in France, in the retail business sector, by at least two of the companies or groups of natural persons or legal entities concerned is greater than 15 million Euros;
- the operation does not fall under the scope of the aforementioned Council Regulation No. 139/2004 (EC) of 20 January 2004.

III. - When at least one of the parties to the concentration exercises all or part of its business in one or more overseas departments, in the Department of Mayotte or in the overseas local communities of Saint-Pierre and Miquelon, Saint-Martin and Saint-Barthélemy, any concentration

operation, as defined in Article L. 430-1, shall be subject to the provisions of Articles L. 430-3 et seq. of this Title, when the following three conditions are met:

- the combined aggregate turnover exclusive of tax earned worldwide by all of the companies or of all of the natural persons or legal entities involved in the merger is greater than 75 million Euros;
- the total worldwide turnover exclusive of tax generated separately in at least one of the departments or local authorities concerned by at least two of the undertakings or groups of natural persons or legal entities concerned is greater than 15 million Euros, or 5 million Euros in the retail sector;
- the operation does not fall under the scope of the above-mentioned Council Regulation No. 139/2004 (EC) of 20 January 2004.

IV. - A concentration referred to in I, II or III, covered by the above-mentioned Council Regulation No. 139/2004 (EC) of 20 January 2004 that has been fully or partially referred to the Competition Authority is subject, within the limit of this referral, to the provisions of this title.

V. - The turnover referred to in I, II and III is calculated according to the method defined in Article 5 of aforementioned Council Regulation No. 139/2004 (EC) of 20 January 2004.

#### **Article L. 430-3**

The concentration must be notified to the Competition Authority prior to its completion. This notification shall be made when the party or parties concerned are able to present a project that is sufficiently advanced to enable the processing of the file, and particularly when they have signed an agreement in principle, a letter of intent or, after the announcement of a public bid. Referral to the Competition Authority of all or part of a concentration notified to the Commission of the European Communities shall be valid as notification as defined in this article.

The notification shall be submitted by the natural persons or legal entities acquiring control of all or part of an undertaking or, in the event of a merger or creation of a common undertaking, by all the parties concerned which must therefore make the notification jointly. The contents of the notification file shall be determined by decree.

Upon receipt of the notification of an operation or upon a global or partial referral of a Community-wide concentration, the Competition Authority shall publish a communiqué in accordance with the procedures determined by decree.

Upon receipt of the notification file, the Competition Authority shall send a copy to the Minister for Economic Affairs.

#### **Article L. 430-4**

The concentration can be effectively completed only after the Competition



Authority has given its consent or with the consent of the Minister for Economic Affairs mentions, when he has mentioned the operation pursuant to Article L. 430-7-1.

In the event of a duly justified special need, the notifying parties may ask the Competition Authority for an exemption allowing them to carry through all or part of the concentration without waiting for the decision referred to in the first paragraph and without prejudice to that decision.

#### **Article L. 430-5**

I. - The Competition Authority shall decide on the concentration within twenty-five business days as from the date it receives the complete notification.

II. - The parties to the concentration may undertake to adopt measures aimed in particular at remedying, if applicable, the anti-competitive effects of the concentration either on the occasion of the notification or at any time before the expiration of the twenty-five business day period from the date of receipt of the complete notification, as long as the decision specified by I has not been delivered.

If the Competition Authority agrees to the commitments, the period referred to in I shall be extended by fifteen business days.

In case of special need, such as the finalisation of the commitments mentioned in the previous paragraph, the parties may ask the Competition Authority to suspend the time limit for examining the operation for up to fifteen business days.

III. - The Competition Authority may:

- either find, in a reasoned decision, that the concentration notified thereto does not fall within the scope defined by Articles L. 430-1 and L. 430-2;

- or authorise the concentration, possibly by subordinating this authorisation, in a reasoned decision, to the actual implementation of the commitments made by the parties.

- or, if it deems that there remains a serious doubt of an adverse impact on competition, conduct a detailed examination as specified in L. 430-6.

IV. - If the Competition Authority does not take any of the three decisions specified in III within the time limit given in I, extended if necessary pursuant to II, it shall inform the Minister for Economic Affairs thereof. The concentration shall be deemed to have been authorised at the end of the time limit opened to the Minister for Economic Affairs by II of Article L. 430-7-1.

#### **Article L. 430-6**

When a concentration is examined in detail pursuant to the last paragraph of III of Article L. 430-5, the Competition Authority shall examine

whether it is likely to have an adverse effect on competition, in particular by creating or reinforcing a dominant position or by creating or reinforcing buying power that places suppliers in a situation of economic dependence. It shall assess whether the concentration makes a sufficient contribution to economic progress to offset the adverse impacts on competition.

The procedure applicable to this detailed examination of the operation by the Competition Authority is the one specified in the second paragraph of Article L. 463-2 and Articles L. 463-4, L. 463-6 and L. 463-7.

However, both the parties that carry out the notification and the government representative must produce their observations in response to the report within fifteen business days.

Before it issues a ruling, the Competition Authority may hear third parties in the absence of the parties that carried out the notification. Works councils of the companies concerned by the concentration shall be heard at their request by the Competition Authority under the same conditions.

#### **Article L. 430-7**

I. - When a concentration is examined in detail, the Competition Authority shall take a decision within sixty-five business days as from the beginning of the examination.

II. - After they have learnt about the opening of a detailed examination pursuant to the last paragraph of III of Article L. 430-5, the parties may propose commitments that will remedy the anticompetitive effects of the concentration. If these commitments are submitted to the Competition Authority less than twenty business days before the end of the period mentioned in I, the period shall expire twenty business days after the date the commitments are received.

In case of special need, such as the finalisation of the commitments mentioned in the previous paragraph, the parties may ask the Competition Authority to suspend the time limit for examining the operation for up to twenty business days. The Competition Authority may also take the initiative of suspending this time limit when the parties that carried out the notification have failed to notify it of new developments as soon as they occur or to send it all or part of the information requested within the deadline, or when third parties have failed to send it the information requested, for reasons that can be attributed to the parties that made the notification. In this case, the time limit shall be resumed as soon as the reason for its suspension is eliminated.

III. – The Competition Authority may, through a reasoned decision:

- either prohibit the concentration and order the parties, if applicable, to adopt any measures likely to re-establish sufficient competition;
- or authorise the concentration by ordering the parties to adopt any measures likely to ensure sufficient competition or obliging them to observe requirements likely to ensure a sufficient contribution to economic progress

to compensate for the adverse effects on competition.

The orders and requirements specified by the above two paragraphs shall be imposed regardless of the contractual clauses that may have been agreed upon by the parties.

The draft decision shall be sent to the interested parties, which shall have a reasonable period for presenting their observations.

IV. - If the Competition Authority does not intend to take either of the decisions specified in III, it shall authorise the concentration with a reasoned decision. The authorisation may be subordinated to the actual implementation of the commitments made by the notifying parties.

V. - If none of the decisions specified by III and IV have been taken within the period indicated in I, possibly extended pursuant to II, the Competition Authority shall inform the Minister for Economic Affairs. The concentration shall be deemed to have been authorised at the end of the time limit opened to the Minister for Economic Affairs by II of Article L. 430-7-1.

#### **Article L. 430-7-1**

I. - Within five business days as from the date on which it received the Competition Authority's decision or was notified thereof pursuant to Article L. 430-5, the Minister for Economic Affairs may ask the Competition Authority to conduct a detailed examination of the concentration as provided in Articles L. 430-6 and L. 430-7.

II. - Within twenty-five business days as from the date on which it received the Competition Authority's decision or was notified thereof pursuant to Article L. 430-7, the Minister for Economic Affairs may raise the case and rule on the concentration in question for reasons of general interest other than the maintenance of competition and, if necessary, offset the harm to competition caused by the concentration.

The reasons of general interest other than the maintenance of competition that can lead the Minister for Economic Affairs to raise the case are, in particular, industrial development, the competitiveness of the companies concerned as regards international competition or the creation or safeguarding of jobs.

When, in virtue of II, the Minister for Economic Affairs refers to a decision by the Competition Authority, he takes a reasoned decision ruling on the concentration in question after having heard the observations of the parties to the concentration. This decision may be conditional upon the effective implementation of commitments.

The decision shall be sent immediately to the Competition Authority.

#### **Article L. 430-8**

I. - If a concentration has been carried out without being notified, the Competition Authority directs the parties, subject to a progressive coercive

fine, as provided in II of Article L. 464-2, to notify the concentration, or return to the state prior to the concentration. The procedure specified in Articles L. 430-5 to L. 430-7 then becomes applicable.

Furthermore, the Competition Authority may impose on the persons responsible for the notification, a financial penalty that shall not exceed, for legal entities, 5% of their pre-tax turnover made in France during the last closed financial year, plus, if applicable, the turnover that the acquired party made in France during the same period, and, for natural persons, 1.5 million Euros.

II. - If a notified concentration not benefiting from the exemption specified by the second paragraph of Article L. 430-4 has been carried out before the decision specified by the first paragraph of the same article has been given, the Competition Authority may impose on the notifying persons a financial penalty that may not exceed the amount defined in I.

III. - In the event of an omission or incorrect declaration in a notification, the Competition Authority may impose on the notifying persons a financial penalty that may not exceed the amount defined in I.

This penalty may be accompanied by the withdrawal of the decision authorising the concentration. Unless the situation is returned to the state prevailing prior to the concentration, the parties shall then be required to notify the concentration again, within one month from the withdrawal of the decision, otherwise they will incur the penalties specified by I.

IV. - If it considers that the parties have not fulfilled an order, requirement or commitment in its decision or the decision of the Minister who ruled on the concentration pursuant to Article L. 430-7-1, the Competition Authority shall establish a breach of these obligations. It may:

1° Withdraw the decision authorising the concentration. Unless the situation is returned to the state prevailing prior to the concentration, the parties shall be required to notify the concentration again, within one month from the withdrawal of the decision, otherwise they will incur the penalties specified by I;

2° Enjoin the parties, who were subject to the unfulfilled obligation, subject to a progressive coercive fine, to fulfil, within the limits of the provisions in II of Article L. 464-2.

In addition, the Competition Authority may impose on the persons, who were subject to the unfulfilled obligation, a financial penalty that may not exceed the amount defined in I.

The applicable procedure is the one specified in the second paragraph of Article L. 463-2 and Articles L. 463-4, L. 463-6 and L. 463-7.

However, the parties that carry out the notification and the government representative must produce their observations in response to the report within fifteen business days.

The Competition Authority shall rule on the case within seventy-five business days.

V. - If a concentration has been carried out in breach of the decisions taken pursuant to Articles L. 430-7 and L. 430-7-1, the Competition Authority shall enjoin the parties to return to the state prevailing prior to the concentration, subject to a progressive coercive fine, within the limits of the provisions of Article L. 464-2.

The Competition Authority may also impose the financial penalty specified in I on persons upon who the foregoing decisions were imposed.

#### **Article L. 430-9**

The Competition Authority may, in the event of the abuse of a dominant position or a state of economic dependence, enjoin, by a reasoned decision, the undertaking or group of undertakings involved to amend, supplement or cancel, within a specified period, all agreements and all acts by which the concentration of economic power allowing the abuse has been carried out, even if these acts have been subject to the procedure specified by this title.

#### **Article L. 430-10**

When the Competition Authority and the Minister for Economic Affairs question third parties on the subject of the concentration, its effects and the commitments proposed by the parties and make public their decision under the conditions set by decree, they shall take account of the legitimate interest of the notifying parties or of the persons cited that their business secrets be not disclosed.

### **LEGISLATIVE PART**

#### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITRE IV. TITLE IV: TRANSPARENCY, RESTRICTIVE COMPETITIVE PRACTICES AND OTHER PROHIBITED PRACTICES**

##### **PRELIMINARY CHAPTER: GENERAL PROVISIONS**

#### **Article L. 440-1**

A Commission for the Examination of Commercial practices shall be established. It shall be composed of the following: a member of the national assembly and a senator appointed by the standing committees of their chamber that are competent in respect of commercial relations between suppliers and retailers; members, possibly honorary, of the administrative and private courts; representatives of the production, agricultural and fishery processing, and industrial and craft sectors, processors,

wholesalers, retailers and the administration, and also qualified persons. The president of the Commission is appointed from among its members by decree. Where the president of the Commission is not a judge, a vice-president who is a member of an administrative or ordinary jurisdiction shall also be appointed under the same conditions. The Commission shall contain an equal number of representatives of producers and retailers.

The members of the Commission shall be bound by a duty of confidentiality with regard to the facts, instruments and information of which they have gained knowledge due to their duties.

The Commission shall have the task of giving opinions or making recommendations on the issues, commercial or advertising documents, including invoices and contracts covered by industrial and commercial confidentiality, and practices involving commercial relations between producers, suppliers and retailers that are submitted thereto. It shall ensure, and as the personal responsibility of its president, the anonymity of the referrals and documents that are submitted to it, including with regard to its members.

The minister responsible for economic affairs, the minister responsible for the economic sector concerned, the president of the Competition Authority, any legal entity, in particular professional associations or trade unions, approved consumer associations, boards of commerce or chambers of agriculture, and any producer, supplier or retailer who feel that they have been prejudiced by a commercial practice shall refer cases to the Commission.

The Commission may also initiate an action of its own motion. The president of the Commission may decide to set up several examination chambers within the Commission.

The opinion issued by the Commission shall, in particular, concern the compliance with the law of the practice or document referred thereto.

The Commission shall hear, at its request, the persons and officials it deems relevant for carrying out its task. The president of the Commission may ask for an inquiry to be conducted by the agents authorised for this purpose by Article L. 450-1 of this code or by Article L. 215-1 of the Consumer Code, according to the specified procedures. The report on the inquiry shall be submitted to the president of the Commission who shall ensure that this protects the anonymity of the persons concerned.

The Commission may also decide to adopt a recommendation on the issues referred thereto and all those falling within its competence, particularly those relating to the development of good practices. When this follows a referral pursuant to the third paragraph, the recommendation shall not contain any indication likely to identify the persons concerned.

The recommendation will be notified to the Minister for Economic Affairs and shall be published following a Commission decision.

The Commission will also play the role of a regular monitoring centre of

commercial practices, invoices and contracts concluded between producers, suppliers and retailers which are submitted thereto. Each year it will prepare a report that it shall submit to the government and the parliamentary assemblies. This report shall be made public. It will comprise a detailed analysis of the number and nature of violations of the provisions of this title that have been punished by administrative or criminal sanctions. It will also comprise civil decisions on transactions that engage the liability of their perpetrators.

A decree determines the organisation, means and operating procedures of the Commission as well as the conditions necessary to ensure the anonymity of the economic players mentioned in the opinions and recommendations of the Commission.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE IV: TRANSPARENCY, RESTRICTIVE COMPETITIVE PRACTICES AND OTHER PROHIBITED PRACTICES**

##### **CHAPTER I: TRANSPARENCY**

###### **Article L. 441-1**

The rules relating to the conditions of sale to the consumer are determined in Article L. 113-3 of the Consumer Code:

###### **Article L. 441-2**

I. - Any advertising aimed at the consumer, broadcast on any medium or visible from outside the place of sale, mentioning a price reduction or a promotional price for perishable foodstuffs must indicate the nature and origin of the product or products offered and the period during which the advertiser's offer shall remain valid. The reference to the origin shall be written in characters of the same size as that used to indicate the price.

When such promotional campaigns are likely, on account of their scale or their frequency, to disrupt the markets, an interdepartmental order or, failing this, a prefectorial order, shall determine their frequency and duration for the products concerned.

Any violation of the provisions of the first or second paragraphs shall be punished by a fine of 15,000 Euros.

The cessation of advertising made in breach of this article may be ordered as provided for in Article L. 121-3 of the Consumer Code.

II.- The price of a particular fresh fruit or vegetable covered by a transfer

price agreement between the supplier and its buyer may be advertised away from the place of sale for a maximum period of three days preceding the day on which the advertised price is first applied and for a period not exceeding five days thereafter.

The price transfer agreement is formalised in a written contract signed by the parties, a copy of which is given to each party before the price is advertised outside the place of sale. This paragraph does not apply to prices advertised on the premises of warehouse sales mentioned in Article L. 310-2 of this code.

III. - In cases where the conditions mentioned in the first paragraph of II are not met, all prices of a particular fresh fruit or vegetable advertised away from the point of sale, regardless of its origin, must be covered by an interprofessional agreement for a renewable term of one year entered into under the provisions of Article L. 632-1 of the Rural and Maritime Fisheries Code. The said agreement shall specify the periods during which such advertising is possible and the conditions applicable thereto.

The said agreement may be extended under Articles L. 632-3 and L. 632-4 of that same code.

IV. - II and III shall not apply to fresh fruits and vegetables of varieties not produced in mainland France.

#### **Article L. 441-2-1**

For perishable agricultural produce or produce derived from short production cycles, live animals, carcasses and fishing and fish farming products indicated on a list compiled by decree, a distributor or service provider may receive discounts, reductions and rebates or be remunerated for services provided during their resale, intended to promote their sale and not considered as an obligation to buy and sell, or services with a distinct purpose, only if these are provided for in a written contract relating to the sale of such products by the supplier.

This contract shall contain clauses relating to commitments regarding volumes, the method of price calculation based on volumes and the quality of the products and services concerned, and price setting. The contract shall give the price advantages granted by the supplier to the distributor with respect to the distributor's commitments.

When a standard contract for the activities referred to in the first paragraph is included in an interdepartmental agreement adopted by the inter-branch organisation recognised for the product concerned and extended pursuant to the provisions of Articles L. 632-3 and L. 632-4 of the Rural and Maritime Fisheries Code, the contract referred to in the first paragraph must conform to that standard contract. Any violation of the provisions of the present article incurs a fine of 15,000 Euros.

Paragraphs two and three do not apply to products for which the conclusion of written contracts has been made mandatory pursuant to



Article L. 631-24 of the Rural and Maritime Fisheries Code.

#### **Article L. 441-2-2**

Notwithstanding the provisions of Article L. 441-2-1, a buyer, distributor or service provider may not benefit from discounts, reductions and rebates for the purchase of fresh fruits and vegetables.

#### **Article L. 441-3**

All purchases of products or all provisions of services for a professional activity must be covered by an invoice.

The seller shall be required to deliver the invoice when the sale is made or when the service is provided. The purchaser must ask for the invoice. The invoice must be prepared in duplicate. The seller and purchaser shall each keep one original.

The invoice must indicate the names of the parties and their addresses, the date of the sale or service provision, the quantity, precise description and the unit price excluding VAT of the products sold and services provided and also any price reduction applying on the date of the sale or provision of services and directly linked to this sale or service provision, excluding discounts not specified on the invoice.

The invoice shall also indicate the date when payment must be made. It shall specify the discount conditions applying in the event of payment on a date prior to that resulting from the application of the general terms of sale and the rate of the penalties due from the day after the payment date entered on the invoice as well as the amount of the lump sum compensation for debt collection expenses due to the creditor in the event of a late payment. Payment shall be deemed to be made on the date when the funds are made available, by the client, to the beneficiary or the latter's subrogate.

#### **Article L. 441-3-1**

Except for products intended for farm sale on a physical wholesale market by the producer or organisation of producers, fresh fruits and vegetables intended for sale or resale by a professional established in France must, during their transportation in France, including within national wholesale markets, have a purchase order issued by the buyer or a contract concluded with the agent or representative. The purchase order must mention the name and address of the parties, the date of the order, the quantity, price determination method and the exact name of the products. The contract must mention the name of the parties, their address, the date of the contract, its purpose and the terms for fixing the price paid to the supplier and the remuneration of the agent or representative.

#### **Article L. 441-4**

Any breach of the provisions of Article L. 441-3 shall be punished by a fine of 75,000 Euros.

The fine may be increased to 50% of the amount invoiced or the amount that should have been invoiced.

#### **Article L. 441-5**

Legal entities declared criminally liable for the offence specified in Article 441-4 shall be suspended from the public markets for a maximum period of five years pursuant to 5° of Article 131-39 of the Penal Code.

#### **Article L. 441-6**

I. - All producers, service providers, wholesalers and importers are required to send their general terms of sale to all buyers of products or all requesters of services who ask for this for a professional activity. These terms will form the basis of the sales negotiation. They shall include the following:

- terms of sale;
- unit price schedule;
- price reductions;
- terms of payment.

The general terms of sale may be differentiated by category of product buyer or service requester. In this case, the obligation to provide information specified in the first paragraph covers the general terms of sale applicable to buyers of products or requesters of services of the same category.

All producers, service providers, wholesalers or importers may agree with a buyer of products or requester of services on special terms of sale that are not subject to the disclosure obligation specified in the first paragraph.

Except otherwise provided in the terms of sale or otherwise agreed between the parties, the payment time for the sums due, shall be set at the thirtieth day following the date of receipt of the goods or performance of the service requested.

The time agreed upon between the parties to pay the sums due may not exceed forty-five days end of month or sixty days as from the date of issue of the invoice.

The professionals of a sector, clients and suppliers, can decide together to reduce the maximum payment time fixed in the previous paragraph. They can also propose to choose the date of receipt of the goods or the performance of the service requested as the starting point of this payment time. Agreements shall be concluded to this end by their professional organisations. A decree may extend the new maximum payment time to all industry operators or, where applicable, validate the new calculation

method and extend it to the same operators.

Notwithstanding the foregoing provisions, for the transport of goods by road, for the rental of vehicles with or without a driver, for freight forwarding as well as for the activities of forwarding agent, shipping agent and cargo agent, freight broker and customs clearing agent, the agreed payment terms may under no circumstances exceed thirty days as from the date of issue of the invoice.

The payment terms must specify the terms of application and the interest rate of the penalties for late payment due on the day after the date of payment shown on the invoice as well as the amount of the fixed charge to cover debt collection costs due to the creditor where the sums due are paid after this date. Unless otherwise provided, but at a rate that cannot be lower than three times the legal interest rate, this rate is equal to the interest rate applied by the European Central Bank to its most recent refinancing operation plus 10 percentage points. In this case, the applicable rate during the first half of the year concerned will be the rate in force as at 1 January of the year in question. For the second half of the year concerned, the rate applied shall be the rate in force on 1 July of the year in question. Penalties for late payments shall be due without the need for a reminder. All professionals who have outstanding payments shall automatically owe the creditor a fixed charge to cover recovery costs, the amount of which is fixed by decree. When the recovery costs exposed are higher than the amount of this fixed charge, the creditor may ask for additional compensation, on production of evidence. Nevertheless, the creditor may not benefit from this compensation when safeguarding, judicial restructuring<sup>47</sup> or liquidation proceedings prohibit the payment of the claim due to it on the due date.

The information specified in the first paragraph shall be provided by all means complying with common professional practice.

The following breaches are punishable by a fine of 15,000 Euros: failure to comply with the payment times mentioned in the eighth and eleventh paragraphs, failure to state in the terms of payment, the wording specified in the first sentence of the twelfth paragraph; fixing late payment penalty rates and the rate of penalties due according to methods that are not compliant with the provisions of the same paragraph.

II. - When the price of a service or type of service cannot be determined in advance or accurately given, the service provider is required to send to the recipient who so requests the price calculation method that can be used to verify the price, or a detailed quotation.

III. - All service providers are also bound by the disclosure obligation in respect of all recipients of the service provided as defined in Article L. 111-2 of the Consumer Code.

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<sup>47</sup> "Prescription extinctive" here is functionally equivalent to the limitation period.

This obligation does not apply to the services mentioned in books I to III and to Title V of book V of the Monetary and Financial Code, and neither to transactions performed by companies governed by the Insurance Code, by mutual insurance companies and unions governed by Book II of the Code de la Mutualité and by provident institutions and unions governed by Title III of book IX of the Social Security Code.

IV. - Except when stated in specific provisions that are more advantageous to the creditor, when an acceptance or verification procedure to certify that the goods or services are compliant with the contract is planned, the duration of this procedure shall be defined in accordance with commercial good practice and custom and, in any event, shall not be more than thirty days as from the date of receipt of the goods or performance of the services, unless it is expressly stated otherwise by contract and on condition that this does not constitute an abusive clause or practice as defined in Article L. 442-6.

V. - For deliveries of goods that are imported into the tax territory of the departments of Guadeloupe, Martinique, Guyana, La Réunion and Mayotte as well as the overseas communities of Saint-Barthélemy, Saint-Martin and Saint-Pierre and Miquelon, the payment times specified in the eighth and ninth paragraphs of I of this Article shall run from the date of the customs clearance of the goods in the final port of destination. Where the goods are made available to the buyer or its representative, in mainland France, the payment time runs as from the twenty-first day following the date of delivery or as from the date of customs clearance if this comes first.

#### **Article L. 441-6-1**

Companies, the annual accounts of which are certified by an auditor, shall publish information about the payment terms of their suppliers or their clients in accordance with the terms defined by decree.

This information is included in an auditor's report written in accordance with the terms defined by the same decree. With the exception of information concerning micro-undertakings as well as the small and medium-sized enterprises mentioned in Article 51 of the Economic Modernisation Act No. 2008-776 of 4 August 2008, the auditor shall send this report to the Minister for Economic Affairs, if he proves repeatedly that there are significant breaches of the requirements of the ninth and tenth paragraphs of Article L. 441-6.

#### **Article L. 441-7**

I. - A written agreement concluded between the supplier and the distributor or service provider shall set out the obligations assumed by the parties in order to set the price at the end of the sales negotiation.

Drawn up either in a single document, or in a set of documents made up

of an annual framework agreement and implementation agreements, it shall establish:

1° The terms of the product or service sales transaction as they result from the sales negotiation in accordance with Article L. 441-6;

2° The conditions under which the distributor or service provider is required to provide to the supplier, when it resells its products or services to consumers or in order to resell them to professionals, all services intended to facilitate their sale and not considered as an obligation to buy or sell, specifying the purpose, scheduled date, the conditions of performance, the remuneration of obligations as well as related products or services;

3° The other obligations intended to promote the sales relationship between the supplier and the distributor or the service provider, specifying for each obligation, the purpose, scheduled date and conditions of performance.

Obligations covered by 1° and 3° are used to set the agreed price.

The single agreement or annual framework agreement is concluded before 1 March or within two months following the beginning of the marketing period of products or services subject to a specific sales cycle.

I does not apply to the products mentioned in the first paragraph of Article L. 441-2-1.

II. - Failure to prove that an agreement complying with the requirements of I has been concluded within the given deadline shall be punishable by a fine of 75,000 Euros.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE IV: TRANSPARENCY, RESTRICTIVE COMPETITIVE PRACTICES AND OTHER PROHIBITED PRACTICES**

##### **CHAPTER II: ANTI-COMPETITIVE PRACTICES**

###### **Article L. 442-1**

The rules relating to sales or services with premiums, refusals to sell a product or to provide a service, and supplies effected in batches or imposed quantities are set out in Articles L. 121-35 and L. 122-1 of the Consumer Code reproduced below:

Article L. 121-35 - Any sale or proposed sale of products or goods and any provision or proposed provision of a service made to consumers which gives entitlement, free of charge, immediately or deferred, to a premium consisting of products, goods or services, is prohibited unless they are identical to the items being sold or the service provided, insofar as the

practice in question is deemed to be unfair as defined by Article L. 120-1.

This provision does not apply to petty items or services of low value or to samples. When these petty items are distributed in order to comply with environmental requirements, they must be fully recyclable whether it is fireproof recyclable cardboard or food-grade ink and must have a value of less than 7% of the net sales price, inclusive of tax of the product being sold.

If the product belongs to the category of products and ingredients defined in Article L. 3511-1 of the Code of Public Health, the petty items must not contain any reference, graphics, presentation or any other distinctive sign that recalls a product or ingredient as defined in the same Article L. 3511-1.

In this case, the health warnings relating to the dangers of tobacco must be mentioned. The references of the person involved in the publicity exercise, the name of the trademark, abbreviation or logo, may be affixed on petty items insofar as they comply with the provisions restricting or regulating advertising concerning alcohol, tobacco and online games and betting, as specifically set out in Articles L. 3511-3, L. 3511-4 and L. 3323-2 to L. 3323-5 of the Code of Public Health. The procedure for affixing references is defined by decree.

This provision applies to all the activities referred to in the last paragraph of Article L. 113-2.

The rules relating to sales with premiums applicable to products and services proposed for the management of a deposit account are defined by 2 of I of Article L. 312-1-2 of the Monetary and Financial Code.

Article L. 122-1 - Refusing to sell a product or to provide a service to a consumer without a valid reason, or making the sale of a product conditional upon the purchase of an imposed quantity or the concomitant purchase of another product or a service, or making the provision of a service conditional upon the provision of another service or the purchase of a product is prohibited.

This provision applies to all the activities referred to in the last paragraph of Article L. 113-2.

For the lending institutions and other institutions referred to in Article L. 518-1 of the Monetary and Financial Code, the rules relating to conditional sales are set out in paragraph 1 (I) of Article L. 312-1-2 of that same code.

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#### **Article L. 442-2**

Any trader who resells or announces the resale of a product as it stands at a price lower than its effective purchase price shall be punished by a fine of 75,000 Euros. This fine may be applied to half the advertising expenses should an advertisement, regardless of medium, mention a price lower than the effective purchase price. The cessation of advertising may be ordered in accordance with the conditions specified by Article L. 121-3 of the

Consumer Code.

The effective purchase price is the net unit price listed on the purchase invoice, less the amount of all other financial benefits granted by the seller, expressed as a percentage of the net unit price of the product, plus taxes on revenue, specific taxes pertaining to the resale and the cost of carriage.

The effective purchase price as defined in the second paragraph is assigned a coefficient of 0.9 for the wholesaler who distributes products and/or services exclusively to professionals, independent from him and who exercise an activity of retail reseller, processor or end service provider. An independent undertaking as defined by the foregoing sentence is any undertaking that is free to determine its sales policy and has no shareholding link or affiliation with the wholesaler.

#### **Article L. 442-3**

Legal entities declared criminally liable for the offence set out in Article L. 442-2 shall be punished by the penalty mentioned in 9° of Article 131-39 of the Penal Code.

The cessation of advertising may be ordered in accordance with the conditions specified by Article L. 121-3 of the Consumer Code.

#### **Article L. 442-4**

I. - The provisions of Article L. 442-2 shall not apply:

1° To voluntary or forced sales caused by the cessation or change of commercial activity;

2° To products the sale of which has a marked seasonal nature, during the final period of the sale season and in the interval between two sale seasons;

3° To products that no longer meet general demand due to fashion trends or the emergence of technical improvements;

4° To products with identical characteristics, whose restocking has occurred at a lower price, with the actual purchase price being replaced by the price resulting from the new purchase invoice;

5° To food products marketed in a shop with a sale area of less than 300 square metres and to non-food products marketed in a shop with a sale area of less than 1,000 square metres, the resale price of which is aligned with the price legally applied to the same products by another trader in the same area of activity;

6° Provided that the reduced price offer is not advertised in any way outside the place of sale, to perishable products from the moment when they are threatened by rapid deterioration.

7° To the products on sale, mentioned in Article L. 310-3.

II. - The exceptions specified by I shall not prevent the application of 2° of Article L. 653-5 and 1° of Article L. 654-2.

#### **Article L. 442-5**

If any person imposes, directly or indirectly, a minimum on the resale price of a product or good, on the price of a service provision or on a trading margin, such person shall be punished by a fine of 15,000 Euros.

#### **Article L. 442-6**

I. - Any producer, trader, manufacturer or person recorded in the trade register<sup>48</sup> who commits the following offences shall be held liable and obliged to make good the damage caused:

1° Obtaining, or seeking to obtain, from a trading partner any advantage unrelated to a commercial service effectively rendered or which is clearly disproportionate to the value of the service rendered. Such an advantage might consist, inter alia, of participation in the financing of promotional activities, an acquisition or an investment that is not justified by a common interest and does not offer proportionate compensation, particularly in the context of shop renovation or access to outlets or central listing or purchasing facilities. Such an advantage may also consist in the artificial consolidation of turnover figures or a demand to match the sales terms obtained by other clients;

2° Subjecting or seeking to subject a trading partner to obligations that create a significant imbalance in the rights and obligations of the parties;

3° Obtaining, or seeking to obtain an advantage, as a prerequisite to the placing of orders, without providing a written undertaking concerning a proportionate volume of purchases and, if appropriate, a service requested by the supplier which is the subject of a written agreement;

4° Obtaining, or seeking to obtain clearly abusive terms concerning prices, payment times, terms of sale or services that do not come under the purchase or sale obligations, under the threat of an abrupt total or partial termination of business relations;

5° Abruptly breaking off an established business relationship, even partially, without prior written notice commensurate with the duration of the business relationship and consistent with the minimum notice period determined by the multi-sector agreements in line with standard commercial practices. Where the business relationship involves the supply of products bearing the distributor's brand, the minimum notice period shall be double that which would apply if the products were not supplied under the distributor's brand. In the absence of such agreements, the orders issued by the Minister for Economic Affairs may determine a minimum notice period for each product category, taking due account of commercial practices, and may lay down conditions for the severing of business

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<sup>48</sup> The "trades register" here is used in a natural English sense for a register of those conducting a skilled trade or working as artisans. However, "trader" throughout the Code is used differently to translate "commerçant" which has no exact English equivalent.



relations, in particular based on their duration. The foregoing provisions do not affect the right to terminate without notice in the event of the failure by the other party to perform its obligations or in the event of force majeure. Where the business relationship is terminated as a result of competitive bidding via distance auction, the minimum notice period is double that of the period resulting from the application of the provisions of this paragraph if the duration of the initial notice period is less than six months, and at least one year in the other cases;

6° Be directly or indirectly involved in breaching the prohibition on reselling outside the network imposed on the distributor by a selective or exclusive distribution agreement, exempted by virtue of the relevant rules of competition law;

7° Subject a trading partner to terms of payment that do not comply with the ceiling set in the ninth paragraph of Article L. 441-6 or that are clearly abusive in the light of good commercial practice and that deviate, with no objective reason and to the creditor's detriment, from the time limit indicated in the eighth paragraph of Article L. 441-6.

In particular, it is abusive for the debtor to ask the creditor to defer the date of issue of the invoice without any objective reason;

8° Refuse or return goods or unilaterally deduct from the amount of the invoice raised by the supplier, penalties or discounts corresponding to non-compliance with a delivery date or non-compliance of the goods, when the debt is not certain, liquid and due, without the supplier being able to check the validity of the corresponding claim;

9° Fail to provide its general terms of sale, as specified in Article L. 441-6, to all buyers of products or all persons who request such services for a professional activity;

10° Refuse to mention the name and address of the manufacturer on the labelling of a product sold under a manufacturer brand, if the manufacturer has so requested, pursuant to Article L. 112-6 of the Consumer Code;

11° Advertise the prices for fresh fruits or vegetables outside the points of sale without complying with the rules defined in II and III of Article L. 441-2 of this code;

12° Fail to include with fresh fruits and vegetables intended for sale or resale to a professional established in France, the document specified in Article L. 441-3-1 during their transportation in France;

13° Benefit from discounts, reductions and rebates during the purchase of fresh fruits and vegetables in violation of Article L. 441-2-2.

II. - Clauses or contracts that allow a producer, trader, manufacturer or a person listed in the trade register to commit the following acts are null and void:

Benefit retroactively from discounts, rebates or commercial cooperation agreements;

Obtain the payment of a fee to obtain accreditation prior to the placing of

all orders;

Prohibit the co-contracting party from transferring the debts held against it to a third party;

Benefit automatically from more advantageous terms granted to competing undertakings by the co-contracting party;

Obtain from a reseller operating a retail space of less than 300 square metres that it supplies, but which is not linked, directly or indirectly, to it by a trademark or know-how licence, a preferential right on the assignment or transfer of its business or a post-contractual non-competition obligation, or to condition supplies to this reseller upon an exclusivity or quasi-exclusivity commitment undertaking to buy its products or services for a period of more than two years.

The cancellation of the clauses on payment shall entail the application of the time limit stated in the second paragraph of Article L. 441-6, unless the court to which the case is referred can establish an agreement on different terms and conditions that are equitable.

III. - Proceedings are brought before the competent civil or commercial court by any person who provides proof of legitimate interest, the Public Prosecutor's Office<sup>49</sup>, the minister responsible for economic affairs or the president of the Competition Authority, when he detects a practice mentioned in this article in the course of cases under his jurisdiction.

During these proceedings, the minister responsible for economic affairs and the Public Prosecutor's Office may ask the court to which the case is referred to order that the practices mentioned in this article be ceased. They may also, for all these practices, request a declaration of nullity of the illegal clauses or contracts and the recovery of the mistaken payments. They may also request the pronouncement of a civil fine of up to 2 million Euros. Nevertheless, this fine may be increased to three times the amount of the total sums unduly paid. Compensation may also be sought for the loss suffered. In any event, it is up to the service provider, producer, trader, manufacturer or the person listed on the trade register who claims to be discharged, to provide evidence of the circumstances that resulted in the extinguishment of its obligation.

The court to which the case is referred may order that its decision, or an abstract thereof, be posted on the court notice-board or website in the manner which it stipulates. It may also order that the decision, or the abstract thereof, be inserted in the report on the activities for the financial year drawn up by the company's executives, board of directors or executive board. The costs shall be borne by the person sentenced.

The court to which the case is referred may order the enforcement of its decision under pain of a progressive coercive fine.

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<sup>49</sup> Approximately translates "ministère public", a collective body of investigating judges not solely concerned with prosecution but rather defending the public interest.

Disputes relating to the implementation of this article shall be assigned to courts the territorial jurisdiction and the limits of the latter are determined by decree.

These courts may consult the Commission for the Examination of Commercial Practices specified in Article L. 440-1 concerning the practices defined in this article when they are raised in the cases referred to them. The decision to refer to the Commission shall not be subject to appeal. The Commission shall make its opinion known within a maximum period of four months as from the referral. All decisions on the merits of the case shall be suspended until the Commission has given its opinion, or failing which, until the four-month period mentioned above has expired. Nevertheless, urgent or protective measures may be taken if necessary. The opinion given is not binding on the court.

IV. - The judge ruling by way of summary proceedings may order the cessation of the abusive practices or any other temporary measure, if necessary, under pain of a progressive coercive fine.

#### **Article L. 442-7**

No associations or cooperatives of undertakings or of management may normally offer products for sale, sell these or provide services if these activities are not specified by their articles of association.

#### **Article L. 442-8**

It is prohibited for any person to offer products for sale or to propose services by using, under irregular conditions, the public property of the State, local authorities and their public establishments.

Breaches of the ban specified by the above paragraph shall be investigated and recorded in accordance with the conditions defined by Articles L. 450-1 to L. 450-3 and L. 450-8.

Agents may deposit, in the places which they determine and for a period which may not exceed one month, the products offered for sale and the goods having allowed the sale of the products or the offer of services.

The deposit shall give rise to the immediate establishment of an official record. This shall include an inventory of the goods and commodities deposited and an indication of their value. It shall be notified within five days of its completion to the State Prosecutor and to the interested party.

The court may order the confiscation of the products offered for sale and the goods having allowed the sale of the products or the offer of services. The court may order the perpetrator to pay to the Treasury a sum corresponding to the value of the products deposited, in cases where an attachment has not been carried out.

#### **Article L. 442-9**

The fact of any producer, trader, manufacturer or person recorded in the trade register applying or causing application of excessively low initial prices for products included in a list referred to in Article L. 441-2-1 of the present code during an economic crisis as defined in Article L. 611-4 of the Rural and Maritime Fisheries Code shall render the person responsible liable and compel him to make good the damage thus caused.

The fact that any reseller has imposed on its supplier, in periods of sharp rises in the price of certain agricultural raw materials, abusively low transfer prices for perishable agricultural raw materials or agricultural products derived from short production cycles, live animals, carcasses, aquaculture products as well as staple convenience food products derived from the first processing of the aforementioned products, shall make the reseller liable and oblige it to make good the damage caused. The conditions defining the situation of sharp increases in the price of certain agricultural raw materials as well as the list of products concerned are determined by decree.

III and IV of Article L. 442-6 are applicable to the action covered by this article.

#### **Article L. 442-10**

I. - A contract by which a supplier makes a price commitment to a producer, trader, manufacturer or person recorded in the trade register via an on-line reverse auction is void if any of the following rules have not been respected:

1° Prior to the auction, the buyer or the person organising the auction on behalf of the buyer shall, in a transparent and non-discriminatory fashion, inform all the approved prospective bidders of the determining factors of the products or services it wishes to acquire, its terms and conditions of purchase, its detailed selection criteria and the rules under which the auction shall take place;

2° Upon expiry of the auction period, the identity of the successful bidder shall be revealed to any other bidder who so requests. In the event of the successful bidder failing to perform, no party shall be required to take over the contract at the lowest price or the lowest bid.

II. - The buyer or the person organising the auction on behalf of the buyer shall create a record of the tendering process and retain it for one year. This shall be produced if any inquiry is conducted pursuant to Title V of this Book.

III. - On-line reverse auctions organised by the buyer or its representative are prohibited for the agricultural products on a list established by decree and for current consumption food products derived from the primary processing of such products.

IV. - Failure to respect the provisions of I to III shall render the person responsible liable and compel him to make good the damage thus caused. The provisions of III and IV of Article L. 442-6 are applicable to the transactions referred to in I to III of this article.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE IV: TRANSPARENCY, RESTRICTIVE COMPETITIVE PRACTICES AND OTHER PROHIBITED PRACTICES**

##### **CHAPTER III: OTHER PROHIBITED PRACTICES**

###### **Article L. 443-1**

On pain of a fine of 75,000 Euros, the payment time fixed by any producer, retailer or service provider may not exceed:

1° Thirty days after the end of the ten-day period from delivery for purchases of perishable food products and frozen or deep-frozen meat, deep-frozen fish, convenience foods and preserves made from perishable food products, with the exception of purchases of seasonal products made in the context of the "cultivation contracts" referred to in Articles L. 326-1 to L. 326-3 of the Rural and Maritime Fisheries Code;

2° Twenty days after the day of delivery for purchases of live cattle intended for consumption and fresh meat by-products;

3° Thirty days after the end of the month of delivery for purchases of alcoholic drinks subject to the consumer tax specified by Article 403 of the General Tax Code;

4° In the absence of multi-industry agreements concluded pursuant to Book VI of the Rural and Maritime Fisheries Code and made compulsory by regulation for all operators throughout mainland France or failing multi-industry decisions taken pursuant to the Act of 12 April 1941 on the creation of an interprofessional committee for Champagne wines (comité interprofessionnel du vin de Champagne) with regard to payment times, forty-five days at the end of month or sixty days as from the date of issue of the invoice for purchasing grapes and must for developing wines and alcoholic beverages subject to the consumption duty specified in Article 438 of the same code.

For deliveries of goods that are imported into the tax territory of the departments of Guadeloupe, Martinique, Guyana, La Réunion and Mayotte as well as the overseas communities of Saint-Barthélemy, Saint-Martin and Saint-Pierre and Miquelon, the payment times specified in 1° to 4° run as from the date of the customs clearance of the goods in the final port of

destination. Where the goods are made available to the buyer or its representative, in mainland France, the payment time runs as from the twenty-first day following the date of delivery or as from the date of customs clearance if this comes first.

#### **Article L. 443-2**

I. - A two-year prison term and a fine of 30,000 Euros shall be incurred for artificially raising or dropping either the price of goods or services whether public or private, in particular during distance auctions,:

1° By broadcasting false or slanderous information, by any means whatsoever;

2° By introducing on the market or by soliciting either offers intended to disrupt prices, or over-supply and under-supply made at the prices requested by sellers or service providers;

3° Or by using any other fraudulent means.

An attempt to commit the foregoing shall be punished by the same penalties.

II. - When the artificial increase or reduction in prices involves food products, the penalty shall be increased to a prison sentence of three years and a fine of 45,000 Euros.

III. - Natural persons guilty of the offences specified by this article shall also incur the following additional penalties:

1° prohibition from exercising civic, civil and family rights, according to the terms and conditions set by Article 131-26 of the Penal Code;

2° display or publication of the court order under the conditions provided for in Article 131-35 of the Penal Code.

#### **Article L. 443-3**

Legal entities may be declared criminally liable for the offences defined in I and II of Article L. 443-2 and shall incur the penalties mentioned in 2° to 6° and 9° of Article 131-39 of the Criminal Code.

The prohibition provided for in Article 131-39 (2°) of the same code shall relate to the activity in the exercise of which or while being exercised the offence was committed.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE V: INVESTIGATIVE POWERS**

##### **Article L. 450-1**

I. - Officials of the examining services of the Competition Authority authorised for this purpose by the rapporteur général may carry out all inquiries necessary for the application of the provisions of titles II and III of this book.

When investigations are carried out for or on behalf of a competition authority of another member state pursuant to 1 of Article 22 of Council Regulation No. 1/2003 relating to the implementation of the competition rules laid down in Articles 81 and 82 of the Founding Treaty of the European Community, the rapporteur général of the Competition Authority may authorise agents of the competition authority of the other Member State to assist the authorised officials referred to in the previous paragraph or the agents referred to in the second paragraph with their investigations.

The particulars of such assistance are determined in a Conseil d'Etat decree.

II. - Officials duly authorised by the Minister for Economic Affairs may carry out the necessary inquiries pursuant to the provisions of the present Book.

Category A officials of the Minister for Economic Affairs who are specially authorised for such purposes by the Minister of Justice on a recommendation from the Minister for Economic Affairs may receive letters rogatory from investigating judges.

III. - The authorised officials referred to in I and II may exercise the powers conferred on them by this article and the following articles throughout France.

##### **Article L. 450-2**

The inquiries shall give rise to the establishment of official records and, if applicable, reports.

The official records shall be sent to the competent authority. A duplicate of these official records shall be left with the interested parties. These shall be good evidence unless otherwise proven.

##### **Article L. 450-3**

The officials mentioned in Article L. 450-1 may access all premises, land

or means of transport for professional use, request delivery of books, invoices and all other professional documents and obtain or take copies of these by any means and on all media and collect information and proof by means of summons or in situ.

They may ask the authority to which they are answerable to appoint an expert to conduct any necessary expert assessment involving all the parties.

#### **Article L. 450-4**

The officials mentioned in Article L. 450-1 may conduct inspections at any premises and seize documents and any information medium only in the context of investigations requested by the European Commission, the Minister for Economic Affairs or the Competition Authority's general rapporteur on the basis of a proposal from the rapporteur or judicial authorisation given by the judge for freedom and for custody of the Tribunal de Grande Instance<sup>50</sup> in whose jurisdiction the premises to be inspected are situated. They may also, in the same circumstances, place any commercial premises, documents and information media under seal for the duration of the inspection of those premises. Where such premises come within the jurisdiction of several courts and simultaneous action must be taken in each of them, a single order may be issued by one of the competent judges for freedom and for custody.

The judge shall verify that the application for authorisation submitted to him is well-founded; this application must contain all the elements of information held by the applicant which would justify an inspection. When the inspection is intended to enable the recognition of ongoing violations of the provisions of Book IV of this code, the application for authorisation may contain only the elements of evidence which give grounds for suspecting the existence of the practices in respect of which proof is sought in that specific instance.

The inspection and seizure shall take place under the authority and control of the judge who authorised them. He shall designate the head of department who should appoint the law enforcement officers required to be present to provide assistance when such measures are enforced by effecting any necessary requisitions and to keep him informed of their progress. If they take place outside the jurisdiction of his own Tribunal de Grande Instance, he will issue letters rogatory delegating such control to the judge for freedom and for custody in whose jurisdiction the inspection is carried out.

The judge may visit the premises during the inspection, and may decide to suspend or terminate it at any time.

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<sup>50</sup> The first instance general court, also administering specialist, small claims and some criminal cases.



The order is served verbally and in situ at the time of the inspection on the occupant of the premises or his representative, who is handed a true copy of it against acknowledgement of receipt or a signature in the margin of the official record. The order shall specify that the occupant of the premises or his representative is entitled to consult a legal adviser of his choice. The exercise of this right shall not lead to the suspension of the inspection and seizure procedure. In the absence of the occupant of the premises, the order shall be served after the procedure by registered mail with recorded delivery. The same shall apply when the inspection is not conducted in one of the premises specified in the order. Service is deemed to have been effected on the date shown on the confirmation of receipt.

The order referred to in the first paragraph may be open to appeal before the first presiding judge of the Cour d'Appel<sup>51</sup> in whose jurisdiction the judge authorised the measure, under the rules laid down by the Code of Criminal Procedure. The Public Prosecutor's Office and the person against whom this measure has been ordered may appeal against the order. This appeal is filed by a declaration to the registry of the Tribunal de Grande Instance within ten days as from the service of the order. The appeal shall not have suspensive effect. The order by the first presiding judge of the Cour d'Appel shall be open to appeal on points of law under the rules laid down by the Code of Criminal Procedure. The documents seized shall be kept until a decision becomes final.

The inspection, which shall not commence before 6.00 a.m. or after 9.00 p.m., is carried out in the presence of the occupant of the premises or his representative. The occupant of the premises may designate one or more representatives to be present at the inspection and to sign the official record. If this proves impossible, the law enforcement officer shall enlist the services of two witnesses who are not under his authority, or that of the administration of the Directorate General for Competition, of Consumer Affairs and the Prevention of Fraud, or that of the Competition Authority.

Only the officials mentioned in Article L. 450-1, the occupant of the premises or his representative, as well as the law enforcement officer and, where applicable, the agents and other persons appointed by the European Commission, may take judicial notice of the documents and other items before their seizure. During the inspection, the officials mentioned in Article L. 450-1 may hear the occupant of the premises or his representative in order to gather information or explanations relevant to the inquiry.

The taking of inventories and placing of seals shall be carried out pursuant to Article 56 of the Code of Criminal Procedure.

The originals of the official record and the inventory shall be sent to the judge who ordered the inspection. A copy of the official record and the inventory shall be given to the occupant of the premises or his

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<sup>51</sup> Court of Appeal.

representative. A copy shall also be sent by registered letter with recorded delivery to the persons implicated subsequently on account of documents seized during those procedures.

The documents and other items seized are returned to the occupant of the premises within six months of the date on which the Competition Authority's decision becomes final. The occupant of the premises is given formal notice, by registered mail with recorded delivery, to come and collect them within two months. Upon expiry of that period, and failing any steps on his part, the documents and other items are returned to him at his own expense.

The inspection or seizure procedures may be open to appeal before the first presiding judge of the Cour d'Appel in whose jurisdiction the judge authorised the procedure, under the rules laid down by the Code of Criminal Procedure. The Public Prosecutor's Office and the person against whom the order mentioned in the first paragraph was made and persons implicated on account of documents seized during those procedures may lodge this appeal. This appeal shall be formalised by a declaration to the registry of the Tribunal de Grande Instance within ten days as from the submission or receipt of the official record and inventory, or for persons who were not concerned by the inspection and seizure, but are implicated, as from the date on which they received notification of the official record and the inventory, and at the latest, from the notification of claims specified by Article L. 463-2.

The appeal shall not be suspensive.

The order by the first presiding judge of the Cour d'Appel shall be open to appeal on points of law under the rules laid down by the Code of Criminal Procedure. The documents seized shall be kept until a decision becomes final.

#### **Article L. 450-5**

The rapporteur général of the Competition Authority shall be informed before the start of the investigations that the Minister for Economic Affairs wishes to launch the investigations based on acts likely to come under Articles L. 420-1, L. 420-2, L. 420-2-1 and L. 420-5 or likely to contravene the measures adopted pursuant to Article L. 410-3 and may take over the investigations within a period determined by decree.

The rapporteur général shall be immediately informed of the results of the investigation conducted by the Ministry of Economic Affairs.

It may, within a period determined by decree, propose to the Competition Authority to initiate an action of its own motion.

#### **Article L. 450-6**

The rapporteur général shall appoint, for the examination of each matter,

one or more officials from the investigation services to take on the duties of rapporteur. At the general rapporteur's written request, the authority to which the officials mentioned in II of Article L. 450-1 report, shall make available, in the number requested and for the period specified, the officials required to conduct the operations mentioned in Article L. 450-4.

#### **Article L. 450-7**

The officials mentioned in Article L. 450-1 may, without a breach of professional confidentiality being raised against them, access any document or information held by the services and establishments of the State and other public authorities.

#### **Article L. 450-8**

If anyone challenges, in any way whatsoever, the exercise of the functions with which the agents mentioned in Article L. 450-1 are entrusted pursuant to this book, this shall be punished by a prison sentence of six months and fine of 7,500 Euros.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE VI: COMPETITION AUTHORITY**

##### **CHAPTER I: ORGANISATION**

#### **Article L. 461-1**

I. -The Competition Authority is an independent administrative authority.

It is responsible for ensuring free competition. It assists in the competitive operation of markets at the European and international levels.

II. - The duties entrusted to the Competition Authority are performed by a board of seventeen members, of which one president is appointed for a five-year term by decree adopted following the report of the Minister for Economic Affairs.

The president is appointed due to his competence and expertise in the legal and economic fields.

The board also comprises:

1° Six members or former members of the Conseil d'Etat, Cour de

Cassation<sup>52</sup>, Cour des Comptes<sup>53</sup> or other administrative or private courts;

2° Five persons chosen due to their competence in economic affairs or in competition and consumer affairs;

3° Five persons carrying out or having carried out their activities in the sectors of production, distribution, crafts, services or independent professions.

Four vice-presidents shall be appointed from among the members of the board, and shall include at least two of the persons mentioned in 2° and 3°.

III. - The term of office of board members may be renewed, except for that of the president, which may be renewed only once.

#### **Article L. 461-2**

The president and vice-presidents shall fulfil their duties on a full-time basis. They shall be subject to the incompatibility rules specified for public positions.

Any member of the Competition Authority who has not participated, without a valid reason, in three consecutive sessions or who has not fulfilled the obligations specified by the third and fourth paragraphs shall be declared by the Minister for Economic Affairs to have automatically resigned. The board of the Competition Authority may remove a member who is unable to perform his duties from office if this is confirmed by the board under the conditions specified by the internal regulations of the Authority.

All members of the Competition Authority must inform the president of the interests which they hold or have just acquired and of the duties which they fulfil in an economic activity.

No Competition Authority member may participate in a matter in which they have an interest or in which they represent or have represented one of the interested parties.

The government representative within the Competition Authority shall be appointed by the Minister for Economic Affairs.

#### **Article L. 461-3**

The Competition Authority may sit in a plenary session, in sections, or in a standing committee. The standing committee is made up of the president and four vice-presidents.

The panels of the Competition Authority will deliberate and vote by the majority of members present. The Authority's internal regulations shall

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<sup>52</sup> France's highest court for civil and commercial law, unless this concerns constitutional matters. They play a role in selecting cases that may be referred to the Conseil Constitutionnel in a special QPC procedure.

<sup>53</sup> The national Auditing Court.

determine the quorum criteria that apply to each of these panels.

In the event of a tied vote, the president of the meeting shall have a casting vote.

The president, or a vice-president appointed by him, may adopt alone the decisions specified in Article L. 462-8, and those specified in Articles L. 464-2 to L. 464-6 when they relate to facts referred to the Competition Authority by the Minister pursuant to the fourth paragraph of Article L. 464-9. He may do the same for the decisions specified in Article L. 430-5.

#### **Article L. 461-4**

The Competition Authority shall have investigating services, with at its head a general rapporteur appointed by an order of the Minister for Economic Affairs after the board has given its opinion.

These services conduct the investigations necessary for the enforcement of titles II and III of this book.

Deputy general rapporteurs, permanent or non-permanent rapporteurs and investigators from the investigation services shall be appointed by the general rapporteur, by a decision published in the Journal Officiel.

A counsellor with the capacity of magistrate or offering the same guarantees of independence and expertise shall be appointed by an order of the Minister for Economic Affairs after the board has given its opinion. The counsellor shall seek the observations, if any, of the defending and petitioning parties, on the course of the proceedings concerning them as soon as the notification of the content of the petition is sent. The counsellor shall submit to the president a report assessing these observations and proposing, if necessary, all acts that will enable the parties to improve the exercise of their rights.

The conditions of the counsellor's action shall be determined by a Conseil d'Etat decree.

Credits assigned for the operation of the Competition Authority shall fall under a programme managed by the Ministry of Economic Affairs. The Statute of 10 August 1922 relating to the organisation of expenditure control shall not apply to the management of the above credits.

The president shall be the certifying officer for the Competition Authority's income and expenditure. The president shall delegate the authorisation of payment for the investigation service's expenditure to the general rapporteur.

A Conseil d'Etat decree shall determine the conditions under which the president of the Competition Authority represents it in all civil matters and is empowered to take legal action on its behalf.

#### **Article L. 461-5**

The Parliamentary committees competent in competition matters may

hear the president of the Competition Authority and consult the Authority on all issues that fall within the scope of its competences.

The president of the Competition Authority reports on the Authority's activities to the Parliamentary committees competent in competition matters, at their request. Each year, the Competition Authority will prepare a public report on its activity before 30 June and send it to the Government and Parliament.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE VI: COMPETITION AUTHORITY**

##### **CHAPTER II: POWERS**

###### **Article L. 462-1**

The Competition Authority may be consulted by the parliamentary committees with regard to bills and any issues relating to competition.

It shall give its opinion on any competition issue at the request of the government. It may also give its opinion on the same issues at the request of local authorities, professional associations and trade unions, approved consumer organisations, chambers of agriculture, local chambers of trade or chambers of trade and industry, the high authority for the broadcasting of works and the protection of rights on the Internet (HADOPI) and the presidents of the price and income observatories of Guadeloupe, Guyana, Martinique, Réunion, Mayotte and Saint-Pierre and Miquelon, with regard to the interests for which they are responsible.

###### **Article L. 462-2**

The Authority must be consulted by the government on any draft regulation establishing a new system having the direct effect of:

- 1° Subjecting the practice of a profession or the access to a market to quantitative restrictions;
- 2° Establishing exclusive rights in certain areas;
- 3° Imposing uniform practices in terms of prices or conditions of sale.

###### **Article L. 462-3**

The courts may consult the Competition Authority regarding the anti-competitive practices defined in Articles L. 420-1, L. 420-2, L. 420-2-1 and L. 420-5 of this Code and Articles 101 and 102 of the Treaty on the Functioning of the European Union, when they are raised in the cases

referred to them. The Competition Authority may issue an opinion only after a procedure in which all parties were heard is concluded. However, if it already has information gathered during a previous procedure, it may give its opinion without having to implement the procedure specified by this text.

The Competition Authority may send all information that it has concerning the anti-competition practices concerned, except for documents prepared or gathered under IV of Article L. 464-2, to any court that consults it or asks it to submit documents that are not already at the disposal of a party to the proceedings. It may do this within the same limits when it makes observations on its own initiative before a court.

The prescription period is suspended, where applicable, when the Authority is consulted.

The Authority's opinion may be published after the dismissal or judgement.

#### **Article L. 462-4**

The Competition Authority may take the initiative to give an opinion on all questions concerning competition. This opinion shall be made public. It may also recommend to the Minister for Economic Affairs or the minister responsible for the sector concerned to take the steps necessary to improve the competitive operation of markets.

#### **Article L. 462-5**

I. - The Competition Authority may be consulted by the Minister for Economic Affairs on all practices mentioned in Articles L. 420-1, L. 420-2, L. 420-2-1 and L. 420-5 or practices contrary to the measures adopted in application of Article L. 410-3, or facts likely to constitute such a practice, as well as breaches to commitments made pursuant to Article L. 430-7-1 or taken pursuant to concentration decisions that were taken prior to the entry into force of Order No. 2008-1161 of 13 November 2008 on the modernisation of competition regulations.

II. - Companies may refer cases to the Competition Authority for all the practices mentioned in Articles L. 420-1, L. 420-2, L. 420-2-1 and, 420-5 or contravene measures adopted pursuant to Article L. 410-3, or for any matter relating to the interests for which they are responsible, by the bodies indicated in the second paragraph of Article L. 462-1.

III. - The rapporteur général may propose to the Competition Authority that it should initiate an action of its own motion for the practices mentioned in I and II and in Article L. 430-8 as well as for breaches to commitments made pursuant to decisions authorising concentrations that are taken before the entry into force of Order No. 2008-1161 of 13 November 2008 on the modernisation of competition regulations.

IV.- Cases may be referred to the Competition Authority by the overseas

regions, the Department of Mayotte, the overseas communities of Saint-Barthélemy and Saint-Martin and the territorial authority of Saint-Pierre and Miquelon for all practices mentioned in Articles L. 420-1, L. 420-2, L. 420-2-1 and L. 420-5 or contravene measures adopted pursuant to Article L. 410-3, or for facts liable to constitute such a practice, concerning their respective territories.

#### **Article L. 462-6**

The Competition Authority shall examine whether the practices referred thereto fall within the scope of Articles L. 420-1, L. 420-2, L. 420-2-1 or L. 420-5, contravene measures adopted pursuant to Article L. 410-3 or may be justified by virtue of Article L. 420-4. It imposes sanctions and orders where appropriate.

Where it considers that the facts require application of Article L. 420-6, it refers the case to the State Prosecutor. Such referrals suspend the prescription period for public action

The prescription is also suspended when the facts raised in the referral are the subject of an action seeking their investigation, establishment or punishment instituted by the European Commission or by a competition authority of another European Community member state.

#### **Article L. 462-7**

Facts dating back more than five years may not be referred to the Competition Authority if no attempt has been made to investigate, establish or punish them.

Acts interrupting the prescription period for public action pursuant to Article L. 420-6 shall also interrupt the period of prescription before the Competition Authority.

Nevertheless, the period of prescription shall expire in any case when a period of ten years from the cessation of the anti-competitive practice has lapsed without the Competition Authority having ruled on the said practice.

The period mentioned in the third paragraph is suspended until the Competition Authority is notified of an irrevocable court decision where:

1° The order issued pursuant to Article L. 450-4 has been appealed or where there is an appeal pending for the procedure of the operations mentioned in the same article, as from the filing of this appeal;

2° The Competition Authority's decision is being appealed pursuant to Article L. 464-8, as from the filing of this appeal.

#### **Article L. 462-8**

In a reasoned decision, the Competition Authority may declare the referral inadmissible for want of a legal interest or capacity to act on the part of the referrer, if the facts are time-barred as defined by Article L. 462-



7, or if it considers that the facts invoked are beyond its remit.

It may also reject the referral via a reasoned decision when it considers that the facts invoked are not supported by sufficiently probative elements.

It may also reject the referral by the same means if it is informed that the national competition authority of another European Community member state or the European Commission has dealt with the same facts under the provisions laid down in Articles 81 and 82 of the Founding Treaty of the European Community.

It may also reject the referral by the same means or suspend the procedure if it is informed that another national competition authority of a European Community member state is dealing with the same facts under the provisions laid down in Articles 81 and 82 of the Founding Treaty of the European Community. Where such information is received by the rapporteur at the preparatory stage, the rapporteur général may suspend the proceedings. In the same circumstances, the Competition Authority may also decide to close a case it had taken up on its own motion.

The withdrawal of cases by the parties or their removal from the courts at the behest of the European Commission are duly recorded in a decision of the president of the Competition Authority or a vice-president designated by the president. In the event of withdrawal, the Competition Authority may continue with the case, which is then treated as a case taken on the Authority's own motion.

#### **Article L. 462-9**

I. - The Competition Authority may, with regard to matters within its jurisdiction, and after giving the minister responsible for economic affairs prior notice thereof, send information or documents it holds, or which it gathers at their request, to the Commission of the European Communities or to the authorities of other States which exercise similar powers, subject to reciprocity, and provided that the competent foreign authority is subject to duties of professional confidentiality as rigorous as that required in France.

The Competition Authority may, applying the conditions, procedures and sanctions specified for the performance of its duties, conduct, or ask the minister responsible for economic affairs to conduct, investigations at the request of foreign authorities which exercise similar powers, subject to reciprocity.

The professional secrecy obligation shall not impede communication by the competition authorities of the information or documents they hold, or which they gather at their request, to the Commission of the European Communities and the authorities of other States which exercise similar powers and are bound by the same professional duties of confidence.

Assistance requested by a foreign authority exercising similar powers that involves investigations or the transmission of information held or gathered

by the Competition Authority shall be refused if acceding to the request would be likely to jeopardise French sovereignty, security or public order, or if criminal proceedings have already been instituted in France on the basis of the same facts and against the same persons, or if those persons have already been penalised by a final decision for the same facts.

The competition authorities, with regard to matters within their respective jurisdictions, may use information or documents sent to them under the same conditions by the Commission of the European Communities or the authorities of other member states which exercise similar powers.

To implement this article, the Competition Authority may enter into agreements which organise its relations with foreign authorities exercising similar powers. These agreements are approved by the Competition Authority as laid down in Article L. 463-7. They are published in the Journal Officiel.

II. - In implementing the competition rules laid down in Articles 81 and 82 [101 and 102 of the TFEU] of the Founding Treaty of the European Community, the competition authorities apply the provisions of Council Regulation No. 1/2003 relating to the implementation of the competition rules laid down in Articles 81 and 82 [101 and 102 of the TFEU] of the Founding Treaty of the European Community, with the exception of the provisions of the first five paragraphs of I of this article.

To implement the provisions of 4 of Article 11 of this regulation, the Competition Authority shall send the European Commission a summary of the case and a document setting out the solution envisaged, which may be a notification of the content of claims or the report referred to in Article L. 463-2.

It may make those same documents available to the competition authorities of the European Community member states.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE VI: COMPETITION AUTHORITY**

##### **CHAPTER III: PROCEDURE**

##### **Article L. 463-1**

All the parties are heard at the preparatory stage and in the proceedings before the Competition Authority, subject to the provisions of Article L. 463-4.

#### **Article L. 463-2**

Without prejudice to the measures referred to in Article L. 464-1, the general rapporteur or a deputy general rapporteur that he has appointed shall send the claims to the parties concerned and to the government representative, who may consult the file, subject to the provisions of Article L. 463-4, and present their observations within two months. The undertakings that receive the claims shall immediately inform the rapporteur in charge of the case, at any time during the investigation procedure, of all changes in their legal situation that are liable to change the conditions under which they are represented or under which the claims may be attributed to them. They shall not be able to avail themselves of these changes if they have not informed the rapporteur thereof.

The report shall then be sent to the parties, to the government representative and to the ministers concerned. It shall be accompanied by the documents which the rapporteur is relying on and the observations, if any, made by the parties concerned.

The parties have a period of two months in which to submit their observations in reply, which may be consulted by the persons referred to in the previous paragraph during the fifteen days preceding the sitting.

Where exceptional circumstances so warrant, the general rapporteur of the Competition Authority may, by a decision against which there is no appeal, grant the parties a further period of one month to prepare their case and submit their observations.

#### **Article L. 463-3**

The general rapporteur of the Competition Authority may, after notification of the complaints to the interested parties, decide that the matter shall be decided by the Authority without the prior preparation of a report. This decision shall be notified to the parties.

#### **Article L. 463-4**

Save for cases in which the discovery or consultation of such documents is necessary for the exercise of the rights of defence of a party involved, the general rapporteur of the Competition Authority may refuse a party disclosure or consultation of documents or certain elements contained in these documents which affect the business confidentiality of other persons. In this case, a non-confidential version and a summary of the documents or elements in question shall be made available to the party involved.

A Conseil d'Etat decree shall specify the terms for applying this article.

#### **Article L. 463-5**

The courts investigating and hearing the case may notify the Competition

Authority, at its request, of the inquiry reports or official records or other documents of the criminal investigation having a direct link with the facts referred to the Competition Authority.

#### **Article L. 463-6**

The disclosure by one of the parties of information regarding another party or a third party, which it could only have known as a result of the notifications or consultations which have occurred, shall be punished by the penalties specified by Article 226-13 of the Penal Code.

#### **Article L. 463-7**

The meetings of the Competition Authority are not public. Only the parties and the government representative can attend them. The parties may ask to be heard by the Competition Authority and can arrange to be represented or assisted.

The Competition Authority may hear any person whose evidence it considers to be material to its enquiry.

The general rapporteur, or the deputy general rapporteur that he has appointed and the government representative may present their observations.

The general rapporteur, or the deputy general rapporteur that he has appointed and the rapporteur shall attend the private sitting, but are entitled to speak and vote only when the council is ruling on practices referred to it pursuant to Article L. 462-5.

#### **Article L. 463-8**

The rapporteur général may decide to call experts in the event of a request made at any time in the preparatory stages by the rapporteur or a party. This decision shall not be open to any appeal.

The tasks and time given to the expert shall be specified by the decision appointing the latter. The expert assessment operations shall involve all the parties.

The expert assessment shall be financed by the party requesting it or the Council where the assessment is ordered at the request of the rapporteur. However, the Council may, in its decision on the merits, allocate the final charge to the party or parties penalised, in the proportions which it determines.

# **LEGISLATIVE PART**

## ***BOOK IV: PRICING FREEDOM AND COMPETITION***

### **TITLE VI: COMPETITION AUTHORITY**

#### **CHAPTER IV: DECISIONS AND APPEALS**

##### **Article L. 464-1**

The Competition Authority may, at the request of the minister responsible for economic affairs, the persons indicated in the last paragraph of Article L. 462-1 or the undertakings, and after having heard the parties in question and the government representative, adopt the precautionary measures which are requested thereof or which seem necessary thereto.

These measures may be applied only if the reported practice seriously and immediately undermines the general economy, the economy of the sector concerned, the interest of consumers or the plaintiff undertaking.

They may include the suspension of the practice concerned and an order to the parties to return the situation to the prior state. They must be strictly linked to what is necessary to tackle the emergency.

##### **Article L. 464-2**

I. - The Competition Authority may order the companies or bodies concerned to cease their non-competitive practices within a specified period or may impose special conditions. It may also accept commitments made by companies or bodies likely to end its competition concerns that may constitute the prohibited practices mentioned in Articles L. 420-1, L. 420-2, L. 420-2-1 and L. 420-5 or contravene measures adopted pursuant to Article L. 410-3.

It may impose a financial penalty applicable either immediately or in the event of non-compliance with the conditions imposed or the commitments accepted.

The financial penalties shall be proportionate to the seriousness of the alleged breaches, to the scale of the damage caused to the economy, to the financial situation of the body or company penalised or to the group to which the latter belongs, and to the likelihood of any repetition of practices prohibited by this Title. They shall be individually determined for each company or body penalised, with reasons given for each penalty.

If the offender is not a company, the maximum amount of the penalty is 3 million Euros. The maximum amount of the penalty for a company is 10% of the highest worldwide turnover, net of tax, achieved in one of the

financial years ended after the financial year preceding that in which the practices were implemented. If the accounts of the company concerned have been consolidated or combined by virtue of the texts applicable to its legal form, the turnover taken into account is that shown in the consolidated or combined accounts of the consolidating or combining company.

The Competition Authority may order that its decision, or an abstract thereof, be published, diffused or posted on its notice-board or website in the manner which it stipulates. It may also order that the decision, or the abstract thereof, be inserted in the report on the activities for the financial year drawn up by the company's executives, board of directors or executive board. The costs are borne by the party concerned.

Undertakings or groups of undertakings that have received an order from the Competition Authority as a result of practices contravening measures adopted pursuant to Article L. 410-3 must make this order public by publishing it, at their expense, in the local daily press, according to the procedure defined by the Competition Authority. This publication shall mention, if necessary, whether an appeal has been lodged against the order.

II. - The Competition Authority may impose daily coercive fines on the parties concerned of not more than 5% of the average daily turnover, per day of delay, with effect from the date it determines, to compel them to:

Comply with a decision which enjoined them to cease the non-competitive practices or imposed special conditions, or to implement a decision making a commitment compulsory by virtue of I;

Implement the measures imposed pursuant to Article L. 464-1.

The turnover taken into account is calculated on the basis of the company's accounts for the last financial year ended as of the date of the decision. The definitive amount of the coercive fine is set by the Competition Authority.

III. - Where a body or an undertaking does not contest the truth of the allegations made against it, the general rapporteur may recommend that the Competition Authority, which hears the parties and the government representative without a report being drawn up in advance, impose the financial penalty referred to in I and take into account the fact that no challenge was raised. In such cases, the maximum amount of the penalty incurred is reduced by half. Where the undertaking or body agrees to alter its conduct in the future, the general rapporteur may propose to the Competition Authority to take this also into account in setting the amount of the penalty.

IV. - A total or partial exemption from financial penalties may be granted to an undertaking or a body which, along with others, has implemented a practice prohibited by the provisions of Article L. 420-1, if it has helped to establish the existence of the prohibited practice and to identify its perpetrators by providing information to which the Competition Authority or

public authorities did not have prior access. To that end, subsequent to the initiative taken by the said undertaking or body, the Competition Authority, at the request of the general rapporteur or the Minister for Economic Affairs, will adopt a plea for leniency which stipulates the conditions to which the envisaged exemption is subject after the government representative and the company or body concerned have submitted their observations; the decision is conveyed to the company or the body and the minister, and is not published. Where a decision is taken pursuant to I of the present article, the Competition Authority may, if the conditions stipulated in the plea for leniency have been complied with, grant an exemption from the financial penalties proportionate to the contribution made to proving the existence of the offence.

V. - Where an undertaking or body does not obey a summons or does not answer within the specified deadline to a request for information or a request to provide documents made by one of the officials referred to in I of Article L. 450-1 in the exercise of the powers vested in him by Titles V and VI of Book IV, the Competition Authority may, at the request of the general rapporteur, pronounce an order against the undertaking or body, together with a coercive fine, within the limits set out in II.

Where an undertaking obstructs the investigation or the instruction, in particular, by providing incomplete or inaccurate information or by sending incomplete or altered documents, the Competition Authority may, at the request of the general rapporteur, and after having heard the undertaking in question and the government representative, decide to impose a financial penalty on the undertaking. The maximum amount of the penalty for the said undertaking may not exceed 1% of the highest worldwide turnover, net of tax, achieved in one of the financial years ended after the financial year preceding that in which the practices were perpetrated.

#### **Article L. 464-3**

If the measures, orders or commitments referred to in Articles L. 464-1 and L. 464-2 are not complied with, the Competition Authority may impose a financial penalty within the limits set in Article L. 464-2.

#### **Article L. 464-4**

The financial penalties and coercive fines are recovered as State claims separate from taxes and state property.

#### **Article L. 464-5**

The Competition Authority, when it rules according to the simplified procedure specified by Article L. 463-3, may order the measures specified by I of Article L. 464-2.

However, the financial penalty may not exceed 750,000 Euros for each of

the perpetrators of the prohibited practices.

#### **Article L. 464-6**

Where no practice likely to jeopardise competition on the market is established, the Competition Authority may, after the initiator of the referral and the government representative have been given access to the file and have made their observations, decide that there are no grounds for continuing the proceedings. Such decisions are explained.

#### **Article L. 464-6-1**

The Competition Authority may also decide, as provided for in Article L. 464-6, that there are no grounds for continuing the proceedings when the practices referred to in Article L. 420-1 do not relate to contracts entered into pursuant to the Public Procurement Code and the cumulative market share of the companies or bodies which are parties to the challenged agreement or practice does not exceed:

either 10% of one of the markets affected by the agreement or practice when it relates to an agreement or practice between companies or bodies which are existing or potential competitors on one of the markets concerned;

or 15% of one of the markets affected by the agreement or practice when it relates to an agreement or practice between companies or bodies which are not existing or potential competitors on one of the markets concerned.

#### **Article L. 464-6-2**

However, the provisions of Article L. 464-6-1 do not apply to agreements and practices which contain any of the following anti-competitive practices:

Practices which, directly or indirectly, individually or together with other factors over which the parties may have influence, are intended to fix selling prices, limit production or sales, or divide up markets or customers;

Restrictions on unsolicited sales to end users made by a distributor outside its contractual territory;

Restrictions on sales by the members of a selective distribution network operating as retailers on the market, regardless of the possibility of forbidding a member of the distribution network from working from an unauthorised place of business;

Restrictions applied to cross-deliveries between distributors within a selective distribution network, including those between distributors operating at different commercial phases.

#### **Article L. 464-7**

The Competition Authority's decision adopted pursuant to Article L. 464-1 may be open to an application to overturn or alter the decision by the



parties in question and the government representative before the Paris Cour d'Appel at most ten days after its notification. The Court shall rule within one month of the appeal.

The appeal shall not be suspensive. However, the first presiding judge of the Paris Cour d'Appel may order that the enforcement of the protective measures should be deferred if these are likely to lead to manifestly excessive consequences or if new facts of exceptional gravity have emerged subsequent to their notification.

#### **Article L. 464-8**

The decisions of the Competition Authority referred to in Articles L. 462-8, L. 464-2, L. 464-3, L. 464-5, L. 464-6 and L. 464-6-1 and L. 752-27 are notified to the parties involved and to the minister responsible for economic affairs, who then have a period of one month in which to make an application for cancellation or reversal to the Paris Cour d'Appel.

The appeal shall not be suspensive. However, the presiding judge of the Paris Cour d'Appel may order that enforcement of the decision be deferred if it is likely to have manifestly excessive consequences or if exceptionally serious new facts have emerged since its notification.

Any appeal on points of law lodged against the court order must be brought within one month of the said notification.

The president of the Competition Authority may lodge an appeal on points of law against the ruling of the Paris Cour d'Appel that cancelled or reformed a decision by the Authority.

The Minister for Economic Affairs may, in all cases, enter an appeal on points of law against an order of the Paris Cour d'Appel.

The Competition Authority shall ensure enforcement of its decisions.

#### **Article L. 464-9**

The Minister for Economic Affairs may enjoin undertakings to cease the practices referred to in Articles L. 420-1, L. 420-2, L. 420-2-1 and L. 420-5 or practices contravening measures adopted pursuant to Article L. 410-3 that they have perpetrated when these practices affect a market of local dimension, do not concern facts covered by Articles 81 and 82 of the Founding Treaty of the European Community and on condition that the turnover generated by each undertaking in France during the last financial year does not exceed 50 million Euros and their aggregate turnover does not exceed 100 million Euros.

The minister responsible for economic affairs may also, under the same conditions, propose a settlement to the undertakings. The amount of the settlement may not exceed 75,000 Euros or 5% of the last known turnover in France if this value is lower. The terms of this settlement are determined in a Conseil d'Etat decree. The performance within the specified deadline of

the obligations resulting from the injunction and the acceptance of the settlement shall extinguish all proceedings before the Competition Authority for the same facts. The Minister for Economic Affairs shall inform the Competition Authority of the settlements concluded.

The Minister for Economic Affairs cannot propose a settlement or impose an injunction when the same facts have first been referred to the Competition Authority by an undertaking or a body referred to in the second paragraph of Article L. 462-1.

In the event of a refusal to settle, the Minister for the Economy shall refer the case to the Competition Authority. The Minister shall also refer the case to the Competition Authority if the injunctions specified in the first paragraph or the obligations resulting from the acceptance of the settlement are not complied with.

The proceeds of the settlement are paid to the Public Treasury and recovered as State claims separate from taxes and State property.

## **LEGISLATIVE PART**

### ***BOOK IV: PRICING FREEDOM AND COMPETITION***

#### **TITLE VII: SUNDRY PROVISIONS**

##### **Article L. 470-1**

The court may order legal entities to pay the fines ordered against their directors with solidary<sup>54</sup> liability pursuant to the provisions of this book and the texts adopted in application thereof.

##### **Article L. 470-2**

In the event of a conviction for an offence under Title IV of this book, the court may order that its ruling be displayed or circulated under the conditions laid down in Article 131-10 of the Criminal Code.

##### **Article L. 470-3**

When a person having been sentenced to less than two years previously for one of the offences defined by Articles L. 441-2, L. 441-3, L. 441-4, L. 441-5, L. 441-6, L. 442-2, L. 442-3, L. 442-4, L. 442-5 and L. 443-1 commits the same offence, the maximum fine incurred shall be doubled.

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<sup>54</sup> See the Civil Code, from Article 1197. This English term is now in use in European texts, see Christian von Bar and Eric Clive (eds.), *Principles, Definitions and Model Rules of European Private Law* (Oxford, University Press 2010) III. – 4:103.

#### **Article L. 470-4**

When a legal entity having been sentenced to less than two years previously for one of the offences defined by Articles L. 441-3, L. 441-4, L. 441-5, L. 441-6, L. 442-2, L. 442-3 and L. 442-4 commits the same offence, the maximum rate of the fine incurred shall be equal to ten times that applicable to natural persons for this offence.

#### **Article L. 470-4-1**

For the offences specified in Title IV of this Book that are not punishable by a prison sentence and for the breaches specified in this book, the administrative authority in charge of competition and consumer affairs has the right to settle, for as long as the public prosecution has not been initiated, after obtaining the consent of the State Prosecutor, according to the terms fixed by a Conseil d'Etat decree.

The act by which the State Prosecutor agrees to the transaction proposal interrupts the limitation period of the public prosecution.

The public prosecution is extinguished when the perpetrator of the offence has fulfilled the obligations resulting from the acceptance of the settlement, within the given time limits.

#### **Article L. 470-4-2**

I. - The reduced or alternative penalties specified in Article 41-2 of the Code of Criminal Procedure shall apply to legal entities which acknowledge that they have committed one or more of the offences specified in Title IV of this Book not punishable by a prison sentence, as well as, if applicable, one or more related breaches. Only the measure specified in 1° of Article 41-2 of the same code applies to these persons.

II. - For the offences mentioned in I, the State Prosecutor may propose a criminal settlement to the perpetrator through a public official mentioned in the fourth paragraph of Article L. 450-1 of this code.

#### **Article L. 470-4-3**

For the offences specified in Title IV of this Book that are not punishable by a prison sentence, the summons to appear in court served on the defendant on the instructions of the State Prosecutor, by a public official mentioned in the fourth paragraph of Article L. 450-1 is deemed to be a personal citation.

The provisions of Article 390-1 of the Code of Criminal Procedure shall apply to the summons thus served.

#### **Article L. 470-5**

In order to apply the provisions of this book, the Minister for Economic

Affairs or his representative may, before the civil or criminal jurisdictions, file pleadings and develop these orally in the hearing. The minister may also produce the inquiry reports and official records.

#### **Article L. 470-6**

For application of Articles 81 to 83 of the Founding Treaty of the European Community, the minister responsible for economic affairs and officials he has designated or empowered pursuant to the provisions of the present Book, on the one hand, and the Competition Authority, on the other, have the powers conferred on them respectively by the articles of the present Book and by EC Council Regulation No. 139/2004, of 20 January 2004, relating to the control of mergers between companies, and EC Council Regulation No. 1/2003, of 16 December 2002, relating to implementation of the competition rules laid down in Articles 81 and 82 of the Founding Treaty of the European Community. The rules of procedure referred to in those texts are applicable thereto.

For application of Articles 87 and 88 of the Founding Treaty of the European Community, the minister responsible for economic affairs and the officials he has designated or empowered pursuant to the provisions of Article L. 450-1 have the powers conferred on them by Title V of Book IV.

#### **Article L. 470-7**

Professional associations may bring actions before the private or commercial court with regard to facts that are directly or indirectly damaging to the collective interest of the profession or sector which they represent or to fair competition.

#### **Article L. 470-7-1**

A decree defines the publication of decisions taken pursuant to Articles L. 462-8, L. 464-1, L. 464-2, L. 464-3, L. 464-5, L. 464-6 and L. 464-6-1.

#### **Article L. 470-8**

A Conseil d'Etat decree shall determine the terms for applying this book.

# LEGISLATIVE PART

## BOOK V: COMMERCIAL PAPER AND GUARANTEES<sup>55</sup>

### TITLE I: COMMERCIAL PAPER

#### CHAPTER I: BILLS OF EXCHANGE

##### *Section 1: Issue and Form of a Bill of Exchange*

#### **Article L. 511-1**

- I. - A bill of exchange contains:
1. The term 'bill of exchange' inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;
  2. An unconditional order to pay a determinate sum of money;
  3. The name of the person who is to pay, referred to as the drawee;
  4. A statement of the time of payment;
  5. A statement of the place where payment is to be made;
  6. The name of the person to whom or to whose order payment is to be made;
  7. A statement of the date and of the place where the bill is issued;
  8. The signature of the person who issues the bill, referred to as the drawer. This signature shall be added either by hand or using any non-written method.
- II. - An instrument in which any of the requirements mentioned in I is wanting is invalid as a bill of exchange, except in the cases specified by III to V of this Article.
- III. - A bill of exchange in which the time of payment is not specified is deemed to be payable at sight.
- IV. - In default of special mention, the place specified beside the name of the drawee is deemed to be the place of payment, and at the same time the place of the domicile of the drawee.
- V. - A bill of exchange which does not mention the place of its issue is

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<sup>55</sup> Unlike the previous version of the French Code de commerce in English, this version of Book V is mostly based on the official version of the Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes (Geneva, 1930). Most of the provisions on Bills of Exchange and Commercial Paper are verbatim of this Convention. Occasionally, some of the terminology was updated: "bearer" was preferred to "holder", and the "maker" becomes a "subscriber"; "stoppage of payment" was replaced by "cessation of payment", "reorganization" becomes "restructuring", "vis major" is substituted by "force majeure", "limitations of actions" are set aside while "prescription" is preferred, and more importantly, "joint and several" is no longer used: it is replaced by "solidarity".

deemed to have been drawn in the place mentioned beside the name of the drawer.

#### **Article L. 511-2**

A bill of exchange may be drawn payable to drawer's order.

It may be drawn on the drawer himself.

It may be drawn for account of a third person.

A bill of exchange may be payable at the domicile of a third person either in the locality where the drawee has his domicile or in another locality.

#### **Article L. 511-3**

When a bill of exchange is payable at sight, or at a fixed period after sight, the drawer may stipulate that the sum payable shall bear interest. In the case of any other bill of exchange, this stipulation is deemed unwritten.

The rate of interest must be specified in the bill; in default of such specification, the stipulation shall be deemed unwritten.

Interest runs from the date of the bill of exchange, unless some other date is specified.

#### **Article L. 511-4**

When the sum payable by a bill of exchange is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

Where the sum payable by a bill of exchange is expressed more than once in words or more than once in figures, and there is a discrepancy, the smaller sum is the sum payable.

#### **Article L. 511-5**

Bills of exchange signed by minors shall be invalid in their respect, except for the respective rights of the parties, in accordance with Article 1312 of the Civil Code.

If a bill of exchange bears signatures of persons incapable of binding themselves by a bill of exchange, or forged signatures, or signatures of fictitious persons, or signatures which for any other reason cannot bind the persons who signed the bill of exchange or on whose behalf it was signed, the obligations of the other persons who signed it are none the less valid.

Whosoever puts his signature on a bill of exchange as representing a person for whom he had no power to act is bound himself as a party to the bill and, if he pays, has the same rights as the person for whom he purported to act. The same rule applies to a representative who has exceeded his powers.

#### **Article L. 511-6**

The drawer guarantees both acceptance and payment.

He may release himself from guaranteeing acceptance - every stipulation by which he releases himself from the guarantee of payment is deemed unwritten.

#### *Section 2: Cover*

#### **Article L. 511-7**

Cover must be provided by the drawer or by the person on whose behalf the bill of exchange shall be drawn, without the drawer acting on behalf of another person ceasing to be personally bound towards the endorsers and the bearer only.

Cover exists if, on the maturity of the bill of exchange, the person on whom it is drawn is liable to pay to the drawer, or to the person on whose behalf the bill is drawn, a sum at least equal to the amount of the bill of exchange.

Ownership of the cover shall be automatically transferred to successive bearers of the bill of exchange.

Acceptance shall presume cover.

It shall constitute proof of this with regard to endorsers.

Whether or not there is acceptance, the drawer alone is required to prove, in the event of refusal, that those on whom the bill was drawn had cover on the maturity; otherwise, the drawer shall be required to guarantee this, even if the protest has been notified after the fixed periods.

#### *Section 3: Endorsement*

#### **Article L. 511-8**

Every bill of exchange, even if not expressly drawn to order, may be transferred by means of endorsement.

When the drawer has inserted in a bill of exchange the words 'not to order' or an equivalent expression, the instrument can only be transferred according to the form, and with the effects of an ordinary assignment.

The bill may be endorsed even in favour of the drawee, whether he has accepted or not, or of the drawer, or of any other party to the bill. These persons may re-endorse the bill.

An endorsement must be unconditional. Any condition to which it is made subject is deemed unwritten.

A partial endorsement is null.

An endorsement 'to bearer' is equivalent to an endorsement in blank.

An endorsement must be written on the bill of exchange or on a slip

affixed thereto. It must be signed by the endorser. The signature of the latter is added either by hand or using any other non-written method.

The endorsement does not have to name the beneficiary and may consist of a blank endorsement formed of the simple signature of the endorser. In the latter case, the endorsement, in order to be valid, shall be entered on the back of the bill of exchange or on the addendum.

#### **Article L. 511-9**

I. - An endorsement transfers all the rights arising out of a bill of exchange.

II. - If the endorsement is in blank, the bearer may:

1. Fill up the blank either with his own name or with the name of some other person;
2. Re-endorse the bill in blank, or to some other person;
3. Transfer the bill to a third person without filling up the blank, and without endorsing it.

#### **Article L. 511-10**

In the absence of any contrary stipulation, the endorser guarantees acceptance and payment.

He may prohibit any further endorsement;

in this case, he gives no guarantee to the persons to whom the bill is subsequently endorsed.

#### **Article L. 511-11**

The possessor of a bill of exchange is deemed to be the lawful bearer if he establishes his title to the bill through an uninterrupted series of endorsements, even if the last endorsement is in blank. In this connection, cancelled endorsements are deemed not written. When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to have acquired the bill by the endorsement in blank.

Where a person has been dispossessed of a bill of exchange, in any manner whatsoever, the bearer who establishes his right thereto in the manner mentioned in the preceding paragraph is not bound to give up the bill unless he has acquired it in bad faith, or unless in acquiring it he has been guilty of gross negligence.

#### **Article L. 511-12**

Persons sued on a bill of exchange cannot set up against the bearer defences founded on their personal relations with the drawer or with previous bearers, unless the bearer, in acquiring the bill, has knowingly acted to the detriment of the debtor.



#### **Article L. 511-13**

When an endorsement contains the statements 'value in collection', 'for collection', 'by procuration' or any other phrase implying a simple mandate, the bearer may exercise all rights arising out of the bill of exchange, but he can only endorse it in his capacity as agent.

In this case, the parties liable can only set up against the bearer defences which could be set up against the endorser.

The mandate contained in an endorsement by procuration does not terminate by reason of the death of the party giving the mandate or by reason of his becoming legally incapable.

When an endorsement contains the statements 'value in security', 'value in pledge', or any other statement implying a pledge, the bearer may exercise all the rights arising out of the bill of exchange, but an endorsement by him has the effects only of an endorsement by an agent.

The parties liable cannot set up against the bearer defences founded on their personal relations with the endorser, unless the bearer, in receiving the bill, has knowingly acted to the detriment of the debtor.

#### **Article L. 511-14**

An endorsement after maturity has the same effects as an endorsement before maturity. Nevertheless an endorsement after protest for non-payment, or after the expiration of the limit of time fixed for drawing up the protest, operates only as an ordinary assignment.

Failing proof to the contrary, an endorsement without date is deemed to have been placed on the bill before the expiration of the limit of time fixed for drawing up the protest.

It is forbidden to backdate orders; if this occurs, these will be regarded as forgeries

#### *Section 4: Acceptance*

#### **Article L. 511-15**

Until maturity, a bill of exchange may be presented to the drawee for acceptance at his domicile, either by the bearer or by a person who is merely in possession of the bill.

In any bill of exchange, the drawer may stipulate that it shall be presented for acceptance with or without fixing a limit of time for presentment.

Except in the case of a bill payable at the address of a third party or in a locality other than that of the domicile of the drawee, or, except in the case of a bill drawn payable at a fixed period after sight, the drawer may prohibit presentment for acceptance.

He may also stipulate that presentment for acceptance shall not take place before a named date.

Unless the drawer has prohibited acceptance, every endorser may stipulate that the bill shall be presented for acceptance, with or without fixing a limit of time for presentment.

Bills of exchange payable at a fixed period after sight must be presented for acceptance within one year of their date.

The drawer may abridge or extend this period.

These periods may be abridged by the endorsers.

When the bill of exchange is created pursuant to an agreement for supplies of goods concluded between traders and when the drawer has fulfilled its obligations resulting from the contract, the drawee may not refuse to give his acceptance on the expiration of a period complying with normal commercial practice in terms of recognition of goods.

The refusal of acceptance shall lead by operation of law to the expiration of the term at the expense of the drawee.

#### **Article L. 511-16**

The drawee may demand that a bill shall be presented to him a second time on the day after the first presentment. Parties interested are not allowed to set up that this demand has not been complied with unless this request is mentioned in the protest.

The bearer is not obliged to surrender to the drawee a bill presented for acceptance.

#### **Article L. 511-17**

An acceptance is written on the bill of exchange. It is expressed by the word 'accepted' or any other equivalent term. It is signed by the drawee. The simple signature of the drawee on the face of the bill constitutes an acceptance.

When the bill is payable at a certain time after sight, or when it must be presented for acceptance within a certain limit of time in accordance with a special stipulation the acceptance must be dated as of the day when the acceptance is given unless the bearer requires it shall be dated as of the day of presentment. If it is undated, the bearer, in order to preserve his right of recourse against the endorsers and the drawer, must authenticate the omission by a protest drawn up within the proper time.

An acceptance is unconditional, but the drawee may restrict it to part of the sum payable.

Every other modification introduced by an acceptance into the tenor of the bill of exchange operates as a refusal to accept. Nevertheless, the acceptor is bound according to the terms of his acceptance.

#### **Article L. 511-18**

When the drawer of a bill has indicated a place of payment other than the

domicile of the drawee without specifying a third party at whose address payment must be made, the drawee may name such third party at the time of acceptance. In default of this indication, the acceptor is deemed to have undertaken to pay the bill himself at the place of payment.

If a bill is payable at the domicile of the drawee, the latter may in his acceptance indicate an address in the same place where payment is to be made.

#### **Article L. 511-19**

By accepting, the drawee undertakes to pay the bill of exchange at its maturity.

In default of payment, the bearer, even if he is the drawer, has a direct action on the bill of exchange against the acceptor for all that can be demanded in accordance with Articles L. 511-45 and L. 511-46.

#### **Article L. 511-20**

Where the drawee who has put his acceptance on a bill has cancelled it before restoring the bill, acceptance is deemed to be refused. Failing proof to the contrary, the cancellation is deemed to have taken place before the bill was restored.

Nevertheless, if the drawee has notified his acceptance in writing to the bearer or to any party who has signed the bill, he is liable to such parties according to the terms of his acceptance.

#### *Section 5: Avals*

#### **Article L. 511-21**

Payment of a bill of exchange may be guaranteed by an 'aval' as to the whole or part of its amount.

This guarantee may be given by a third person or even by a person who has signed as a party to the bill.

The 'aval' is given either on the bill itself or on an 'allonge', or by a separate act indicating the place at which the 'aval' is given.

It is expressed by the words 'good as aval' or by any other equivalent formula. It is signed by the giver of the 'aval'. It is deemed to be constituted by the mere signature of the giver of the 'aval' placed on the face of the bill, except in the case of the signature of the drawee or of the drawer.

An 'aval' must specify for whose account it is given. In default of this it is deemed to be given for the drawer.

The giver of an 'aval' is bound in the same manner as the person for whom he has become guarantor.

His undertaking is valid even when the liability which he has guaranteed is inoperative for any reason other than defect of form.

He has, when he pays a bill of exchange, the rights arising out of the bill of exchange against the person guaranteed and against those who are liable to the latter on the bill of exchange.

#### *Section 6: Maturity*

##### **Article L. 511-22**

- I. - A bill of exchange may be drawn payable:
1. at sight;
  2. at a fixed period after sight;
  3. at a fixed period after date;
  4. at a fixed date.
- II. - Bills of exchange at other maturities or payable by instalments are null.

##### **Article L. 511-23**

A bill of exchange at sight is payable on presentment. It must be presented for payment within a year of its date. The drawer may abridge or extend this period. These periods may be abridged by the endorsers.

The drawer may prescribe that a bill of exchange payable at sight must not be presented for payment before a named date. In this case, the period for presentment begins from the said date.

##### **Article L. 511-24**

The maturity of a bill of exchange payable at a fixed period after sight is determined either by the date of the acceptance or by the date of the protest.

In the absence of the protest, an undated acceptance is deemed, so far as regards the acceptor, to have been given on the last day of the limit of time for presentment for acceptance.

Where a bill of exchange is drawn at one or more months after date or after sight, the bill matures on the corresponding date of the month when payment must be made. If there be no corresponding date, the bill matures on the last day of this month.

When a bill of exchange is drawn at one or more months and a-half after date or sight, entire months must first be calculated.

If the maturity is fixed at the commencement, in the middle or at the end of the month, the first, fifteenth or last day of the month is to be understood.

The expressions 'eight days' or 'fifteen days' indicate not one or two weeks, but a period of eight or fifteen actual days.

The expression 'half-month' means a period of fifteen days.

#### **Article L. 511-25**

When a bill of exchange is payable on a fixed day in a place where the calendar is different from the calendar in the place of issue, the day of maturity is deemed to be fixed according to the calendar of the place of payment.

When a bill of exchange drawn between two places having different calendars is payable at a fixed period after date, the day of issue is referred to the corresponding day of the calendar in the place of payment, and the maturity is fixed accordingly.

The time for presenting bills of exchange is calculated in accordance with the rules of the preceding paragraph.

These rules do not apply if a stipulation in the bill or even the simple terms of the instrument indicate an intention to adopt some different rule.

#### *Section 7: Payment*

#### **Article L. 511-26**

The bearer of a bill of exchange payable on a fixed day or at a fixed period after date or after sight must present the bill for payment either on the day on which it is payable or on one of the two business days which follow.

The presentment of a bill of exchange at a clearing-house is equivalent to a presentment for payment.

#### **Article L. 511-27**

The drawee who pays a bill of exchange may require that it shall be given up to him receipted by the bearer.

The bearer may not refuse partial payment.

In case of partial payment the drawee may require that mention of this payment shall be made on the bill, and that a receipt therefor shall be given to him.

Acknowledgements of receipt of payments on account of a bill of exchange shall be given by the drawer and the endorser.

The bearer must protest the bill of exchange for the balance outstanding.

#### **Article L. 511-28**

The bearer of a bill of exchange cannot be compelled to receive a payment thereof before maturity.

The drawee who pays before maturity does so at his own risk and peril.

He who pays at maturity is validly discharged, unless he has been guilty of fraud or gross negligence. He is bound to verify the regularity of the series of endorsements, but not the signature of the endorsers.

#### **Article L. 511-29**

When a bill of exchange is drawn payable in a currency which is not that of the place of payment, the sum payable may be paid in the currency of the country, according to its value on the date of maturity. If the debtor is in default, the bearer may at his option demand that the amount of the bill be paid in the currency of the country according to the rate on the day of maturity or the day of payment.

The usages of the place of payment determine the value of foreign currency. Nevertheless, the drawer may stipulate that the sum payable shall be calculated according to a rate expressed in the bill.

The foregoing rules shall not apply to the case in which the drawer has stipulated that payment must be made in a certain specified currency in a stipulation for effective payment in foreign currency.

If the amount of the bill of exchange is specified in a currency having the same denomination, but a different value in the country of issue and the country of payment, reference is deemed to be made to the currency of the place of payment.

#### **Article L. 511-30**

When a bill of exchange is not presented for payment on its maturity date, or on one of the next two working days thereafter, any debtor is entitled to deposit the amount of the bill with the Caisse des dépôts et consignations, at the charge, risk and peril of the bearer.

#### **Article L. 511-31**

No objection to payment shall be admissible save in the event of loss of the bill of exchange, or of safeguard, restructuring or liquidation proceedings against the bearer.

#### **Article L. 511-32**

In case of loss of an unaccepted bill of exchange, the owner may pursue payment on any subsequent bill.

#### **Article L. 511-33**

If the lost bill of exchange has an acceptance endorsed on it, payment may be pursued on any subsequent bill only by virtue of a court order and subject to the provision of surety.

#### **Article L. 511-34**

If a person who loses a bill of exchange, whether or not accepted, is unable to re-present any subsequent bill, payment of the lost bill may be requested and obtained by court order, subject to the production of

accounting evidence of ownership and the provision of surety.

#### **Article L. 511-35**

In the event of refusal to pay subsequent to a request submitted in accordance with the two preceding articles, the owner of the lost bill of exchange shall retain all the relevant rights by means of a notice of protest. The said act must be executed on the day after the maturity date of the lost bill of exchange. The notices required under Article L. 511-42 must be given to the drawer and endorsers within the time limits fixed by the said article.

#### **Article L. 511-36**

In order to obtain the subsequent bill, the owner of the lost bill of exchange must apply to the immediate endorser, who must act as the owner's agent vis-à-vis the next endorser back, and so on from each endorser to the one before, back to the drawer of the bill. The owner of the lost bill of exchange must bear the expenses.

#### **Article L. 511-37**

The suretyship referred to in Articles L. 511-33 and L. 511-34 shall be extinguished after three years unless any claims have been made or legal proceedings commenced within that period.

#### *Section 8: Recourse for Non-Acceptance or Non-Payment.*

#### **Article L. 511-38**

I. - The bearer may exercise his right of recourse against the endorsers, the drawer and the other parties liable:

1. At maturity, if payment has not been made;
2. Even before maturity;

If there has been total or partial refusal to accept;

Where the drawee is subject to judicial restructuring or liquidation, whether or not he has accepted the bill, or in case of cessation of his payments even where not recognised by a court decision, or where there has been an unsuccessful attempt to attach the drawee's assets;

Where the drawee of a non-acceptable bill is subject to judicial restructuring or liquidation.

II. - Nevertheless, sureties against which a recourse is taken in the circumstances described in Section I b) and c) may within three days of the date of commencing the said action apply to the Presiding Judge of the Commercial Court of the district in which they are resident for time to pay. If the said claim is held to be justified, the order determines the time when the sureties shall be required to pay the commercial paper in question, but any

periods so granted shall not extend beyond the date fixed for maturity. No objection or appeal may be made against such an order.

#### **Article L. 511-39**

Default of acceptance or on payment must be evidenced by an authentic act referred to as protest for non-acceptance or non-payment.

Protest for non-acceptance must be made within the limit of time fixed for presentment for acceptance. If in the case contemplated by Article L. 511-16, the first presentment takes place on the last day of that time, the protest may nevertheless be drawn up on the next day.

Protest for non-payment of a bill of exchange payable on a fixed day or at a fixed period after date or sight must be made on one of the two business days following the day on which the bill is payable. In the case of a bill payable at sight, the protest must be drawn up under the conditions specified in the foregoing paragraph for the drawing up of a protest for non-acceptance.

Protest for non-acceptance dispenses with presentment for payment and protest for non-payment.

If there is a cessation of payment on the part of the drawee, whether he has accepted or not, or if execution has been levied against his assets without result, the holder cannot exercise his right of recourse until after presentment of the bill to the drawee for payment and after the protest has been drawn up.

Where the drawee is subject to judicial restructuring or liquidation, whether or not he accepts the bill, and likewise where the drawer of a non-acceptable bill is subject to judicial restructuring or liquidation, the production of a declaratory judgement shall suffice to enable the bearer to exercise the appropriate remedies.

#### **Article L. 511-40**

Where a bearer agrees to accept payment by ordinary cheque, by a payment order drawn on Banque de France or by postal order, the cheque or order must indicate the number and the maturity dates of the instruments so paid. The said indication shall not, however, be required for cheques or payment orders created for inter-bank payments of balances of transactions between bankers, effected through a clearing house.

Where settlement is effected by ordinary cheque and the cheque is not paid, the notice of protest for non-payment relating to the said cheque must be served at the domicile of the paying agent specified in the bill, within the period provided for in Article 41 of the Decree of 30 October 1935 unifying the law relating to cheques and payment cards. The protest for non-payment of the cheque and the notice must be served under cover of the same claim, save where, for reasons of territorial jurisdiction, two separate



ministerial officials are required.

Where settlement is effected by payment order and the order is rejected by the Banque de France, or by postal order and the order is rejected by the post office where the account to be debited is held, the non-payment thereof shall be recorded in a form of notice served at the domicile of the issuer of the said order within eight days of the date of issue. The said notice must be drawn up by a huissier or a notary.

#### **Article L. 511-41**

Where the final day of the period allowed for service of notice of non-payment of a payment order or postal order is a legal public holiday, the said period shall be extended until the first working day following the expiration thereof. Intervening public holidays shall be included when calculating the said period. Those days on which the laws in force state that no payment may be demanded and no protest may be notified shall be treated as equivalent to public holidays.

Unless they pay the bill of exchange and the expenses of the notice and, if appropriate, of the notice of protest of the cheque, drawees of bills of exchange who receive such a notice must return the bill of exchange to the ministerial official who drew up and served the notice. This ministerial official shall immediately draw up a non-payment protest in relation to the bill of exchange.

If the drawee does not return the bill of exchange, a notice of protest must immediately be registered. The failure to return the bill is recorded in this notice. Third party bearers shall in these circumstances be exempted from compliance with the provisions of Articles L. 511-33 and L. 511-34.

Failure to return a bill of exchange shall constitute a criminal offence rendering the perpetrator liable to the penalties laid down in Articles 314-1 and 314-10 of the Penal Code.

#### **Article L. 511-42**

The bearer must give notice of non-acceptance or non-payment to his endorser within the four business days which follow the day for protest or, in case of a stipulation 'retour sans frais', the day for presentment.

Where the instrument indicates the name and address of the drawer of a bill of exchange, notaries and huissiers shall be required to notify the latter of the reasons for the non-payment thereof within forty-eight hours of registration thereof by post and registered letter, failing which they may be liable for damages. The said letter shall entitle the notary or huissier to a fee the amount of which shall be fixed by statute, in addition to the expenses of postage and registration of the letter.

Every endorser must, within the two business days following the day on which he receives notice, notify his endorser of the notice he has received,

mentioning the names and addresses of those who have given the previous notices, and so on through the series until the drawer is reached.

The periods mentioned above run from the receipt of the preceding notice.

When, in conformity with the preceding paragraph, notice is given to a person who has signed a bill of exchange, the same notice must be given within the same limit of time to his 'avaliseur'.

Where an endorser either has not specified his address or has specified it in an illegible manner, it is sufficient that notice should be given to the preceding endorser.

A person who must give notice may give it in any form whatever, even by simply returning the bill of exchange.

He must prove that he has given notice within the time allowed.

This time-limit shall be regarded as having been observed if a letter giving the notice has been posted within the prescribed time.

A person who does not give notice within the limit of time mentioned above does not forfeit his rights; he is responsible for the injury, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange.

#### **Article L. 511-43**

The drawer, an endorser, or a person guaranteeing payment by aval (avaliseur) may, by the stipulation 'retour sans frais', 'sans protêt', or any other equivalent expression written on the instrument and signed, release the bearer from having a protest of non-acceptance or non-payment drawn up in order to exercise his right of recourse.

This stipulation does not release the bearer from presenting the bill within the prescribed time, or from the notices he has to give.

The burden of proving the non-observance of the limits of time lies on the person who seeks to set it up against the bearer.

If the stipulation is written by the drawer, it is operative in respect of all persons who have signed the bill; if it is written by an endorser or an avaliseur, it is operative only in respect of such endorser or avaliseur. If, in spite of the stipulation written by the drawer, the bearer has the protest drawn up, he must bear the expenses thereof. When the stipulation emanates from an endorser or avaliseur, the costs of the protest, if one is drawn up, may be recovered from all the persons who have signed the bill.

#### **Article L. 511-44**

All drawers, acceptors, endorsers or guarantors by aval of a bill of exchange have solidary liability to the bearer.

The bearer has the right of proceeding against all these persons individually or collectively without being required to observe the order in

which they have become bound.

The same right is possessed by any person signing the bill who has taken it up and paid it.

Proceedings against one of the parties liable do not prevent proceedings against the others, even though they may be subsequent to the party first proceeded against.

#### **Article L. 511-45**

I. - The bearer may recover from the person against whom he exercises his right of recourse:

1. The amount of the unaccepted or unpaid bill of exchange with interest, if interest has been stipulated for;
2. Interest at the legal rate from the date of maturity;
3. The expenses of protest and of the notices given as well as other expenses.

II. - If the right of recourse is exercised before maturity, the amount of the bill shall be subject to a discount. This discount shall be calculated according to the official rate of discount fixed by Banque de France on the date when recourse is exercised at the place of domicile of the bearer.

#### **Article L. 511-46**

A party who takes up and pays a bill of exchange can recover from the parties liable to him:

1. The entire sum which he has paid;
2. Interest on the said sum calculated at the legal rate, starting from the day when he made payment
3. Any expenses which he has incurred.

#### **Article L. 511-47**

Every party liable against whom a right of recourse is or may be exercised, can require against payment, that the bill shall be given up to him with the protest and a receipted account.

Every endorser who has taken up and paid a bill of exchange may cancel his own endorsement and those of subsequent endorsers.

#### **Article L. 511-48**

In the case of the exercise of the right of recourse after a partial acceptance, the party who pays the sum in respect of which the bill has not been accepted can require that this payment shall be specified on the bill and that he shall be given a receipt therefor. The bearer must also give him a certified copy of the bill, together with the protest, in order to enable subsequent recourse to be exercised.

#### **Article L. 511-49**

I. - After the expiration of the limits of time fixed:

1. for the presentment of a bill of exchange drawn at sight or at a fixed period after sight;
2. for drawing up the protest for non-acceptance or non-payment;
3. for presentment for payment in the case of a stipulation retour sans frais, the bearer loses his rights of recourse against the endorsers, against the drawer and against the other parties liable, with the exception of the acceptor.

II. - Nevertheless, the drawer shall lose his right of recourse unless he proves that he provided cover at maturity. In any such case, the bearer shall retain a right of action only against the person against whom the bill of exchange was drawn.

III. - In default of presentment for acceptance within the limit of time stipulated by the drawer, the bearer loses his right of recourse for non-payment, as well as for non-acceptance, unless it appears from the terms of the stipulation that the drawer only meant to release himself from the guarantee of acceptance.

IV. - If the stipulation for a limit of time for presentment is contained in an endorsement, the endorser alone can avail himself of it.

#### **Article L. 511-50**

Should the presentment of the bill of exchange or the drawing up of the protest within the prescribed limits of time be prevented by an insurmountable obstacle such as legal prohibition by any State or other case of force majeure, these limits of time shall be extended.

The bearer is bound to give notice without delay of the case of force majeure to his endorser and to specify this notice, which he must date and sign, on the bill or on an allonge; in other respects the provisions of Article 511-42 shall apply.

When force majeure has terminated the bearer must without delay present the bill of exchange for acceptance or payment and, if need be, draw up the protest.

If force majeure continues to operate beyond thirty days after maturity, recourse may be exercised, and neither presentment nor the drawing up of a protest shall be necessary, unless the said remedies are suspended for a longer period, pursuant to Article L. 511-61.

In the case of bills of exchange drawn at sight or at a fixed period after sight, the time-limit of thirty days shall run from the date on which the bearer, even before the expiration of the time for presentment, has given notice of force majeure to his endorser. In the case of bills of exchange drawn at a certain time after sight, the above time-limit of thirty days shall be added to the period after sight specified in the bill of exchange.

Facts which are purely personal to the bearer or to the person whom he has entrusted with the presentment of the bill or drawing up of the bill or drawing up of the protest are not deemed to constitute cases of force majeure.

#### **Article L. 511-51**

Irrespective of the formalities required for an action to enforce a guarantee, a bearer of a bill of exchange who has issued a non-payment protest may apply for a Court order for the preventive attachment of movable assets belonging to the drawers, acceptors and endorsers.

#### *Section 9: Notices of protests*

##### Subsection 1: Forms

#### **Article L. 511-52**

Non-acceptance or non-payment protests must be drawn up by a notary or a huissier.

The protest must consist of a single deed served:

1. At the domicile or last known domicile of the person on whom the bill of exchange was payable;
2. At the domicile of the persons indicated by the bill of exchange for payment in case of necessity;
3. At the domicile of the third party who intervened to accept the bill.

Where a false domicile is given, the notice of protest must be preceded by a search.

#### **Article L. 511-53**

The deed of protest must contain a literal transcription of the bill of exchange, the acceptance, the endorsements and the recommendations indicated therein, and the summons to pay the bill of exchange. It must state whether the person required to pay was present or absent, the reasons for the refusal to pay and the inability or refusal to sign.

#### **Article L. 511-54**

No deed executed by the bearer of the bill of exchange may replace a deed of protest, save as provided for by Articles L. 511-32 to L. 511-37 and Articles L. 511-40 and L. 511-41.

#### **Article L. 511-55**

Notaries and huissiers must deposit exact copies of protests, failing which they shall be liable to dismissal and payment of expenses and damages to the parties. Subject to the same sanctions, they must also

deliver against receipt or send by registered letter with recorded delivery true copies of protests of non-payment of accepted bills of exchange and promissory notes to the Registrar of the Commercial Court or Tribunal de Grande Instance having jurisdiction in commercial matters for the area in which the debtor's address for service is located. This formality must be completed within two weeks of the date of the deed.

#### Subsection 2: Publication

##### **Article L. 511-56**

The Registrar of the Commercial Court shall keep a duly updated register, by name and debtor, of protests for non-payment of accepted bills of exchange, promissory notes and cheques, according to the formal complaints lodged with him by notaries and huissiers, and also certificates of non-payment of postal orders issued by post offices. The said register shall consist of statements a list of which shall be fixed by decree.

##### **Article L. 511-57**

On the expiration of a month from the date of the notice of protest or certificate of non-payment of a postal order and for a period of one year from the same date, any applicant may obtain from the Registrars of the aforementioned Courts an extract from the list of names referred to in Article L. 511-56, at his own expense.

##### **Article L. 511-58**

On the deposit by the debtor of the instrument and the notice of protest for non-payment of a postal order, or a receipt for payment of the order, against an acknowledgement for receipt, the Registrar of the Commercial Court shall at the debtor's expense delete the notice of protest or certificate of non-payment from the list drawn up pursuant to Article L. 511-56.

Documents lodged may be withdrawn during the year that follows the end of the period of one year referred to in Article L. 511-57, after which the Registrar of the Court shall be discharged from responsibility for the same.

##### **Article L. 511-59**

Any publication, in whatever form, of the lists drawn up pursuant to the provisions of this Subsection is prohibited, subject to liability for damages.

##### **Article L. 511-60**

A Conseil d'Etat decree shall determine the methods of application of the provisions of this subsection. It shall in particular fix the amount of the remuneration payable to the huissiers drawing up the deeds of protest and

to Commercial Court Registrars for the various formalities for which they are responsible.

### Subsection 3: Extension of deadlines

#### **Article L. 511-61**

In the event of mobilisation of the armed forces, national calamity or public disaster, or interruption of public services managed by the State or territorial authorities or under the supervision thereof, the deadlines by which notices of protest and other deeds intended to protect legal remedies in respect of all negotiable instruments must be issued may be extended for all or part of the territory by decrees of the Council of Ministers.

The maturity dates of negotiable instruments may be extended in similar circumstances and subject to the same conditions.

### *Section 10: Replacement*

#### **Article L. 511-62**

Every person having the right of recourse may, in the absence of agreement to the contrary, reimburse himself by means of a fresh bill, referred to as redraft, to be drawn at sight on one of the parties liable to him and payable at the domicile of that party.

The redraft includes, in addition to the sums mentioned in Articles L. 511-45 and L. 511-46, brokerage and the cost of stamping the redraft.

If the redraft is drawn by the bearer, the sum payable is fixed according to the rate for a sight bill drawn at the place where the original bill was payable upon the party liable at the place of his domicile. If the redraft is drawn by an endorser, the sum payable is fixed according to the rate for a sight bill drawn at the place where the drawer of the redraft is domiciled upon the place of domicile of the party liable.

#### **Article L. 511-63**

The following fees shall be charged for replacement bills issued in mainland France: 0.25% on seats of local government of departments, 0.50% on seats of local government of districts and 0.75% anywhere else.

No replacement bill shall on any account be issued in the same department.

#### **Article L. 511-64**

Replacement bills may not be accumulated.

No endorser or drawer shall be required to bear more than one replacement bill.

## *Section 11: Honour*

### **Article L. 511-65**

The drawer, an endorser, or a person giving an aval may specify a person who is to accept or pay in case of need.

A bill of exchange may, subject as hereinafter mentioned, be accepted or paid by a person who intervenes for the honour of any debtor against whom a right of recourse exists.

The person intervening may be a third party, even the drawee, or, save the acceptor, a party already liable on the bill of exchange.

The person intervening is bound to give, within two business days, notice of his intervention to the party for whose honour he has intervened. In default, he is responsible for the injury, if any, due to his negligence, but the damages shall not exceed the amount of the bill of exchange.

#### Subsection 1: Acceptance by intervention (for honour)

### **Article L. 511-66**

There may be acceptance by intervention in all cases where the bearer has a right of recourse before maturity on a bill which is capable of acceptance.

When the bill of exchange indicates a person who is designated to accept or pay it in case of need at the place of payment, the bearer may not exercise his rights of recourse before maturity against the person naming such referee in case of need and against subsequent signatories, unless he has presented the bill of exchange to the referee in case of need and until, if acceptance is refused by the latter, this refusal has been authenticated by a protest.

In other cases of intervention the bearer may refuse an acceptance by intervention.

Nevertheless, if he allows it, he loses his right of recourse before maturity against the person on whose behalf such acceptance was given and against subsequent signatories.

Acceptance by intervention is specified on the bill of exchange; it is signed by the person intervening. It mentions the person for whose honour it has been given and, in default of such mention, the acceptance is deemed to have been given for the honour of the drawer.

The acceptor by intervention is liable to the bearer and to the endorsers subsequent to the party for whose honour he intervened, in the same manner as such party.

Notwithstanding an acceptance by intervention, the party for whose honour it has been given and the parties liable to him may require the bearer, in exchange for payment of the sum mentioned in Article L. 511-45,



to deliver the bill, the protest, and a receipted account, if any.

## Subsection 2: Payment by intervention

### **Article L. 511-67**

Payment by intervention may take place in all cases where, either at maturity or before maturity, the bearer has a right of recourse on the bill.

Payment must include the whole amount payable by the party for whose honour it is made.

It must be made at the latest on the day following the last day allowed for drawing up the protest for non-payment.

### **Article L. 511-68**

If a bill of exchange has been accepted by persons intervening who are domiciled in the place of payment, or if persons domiciled therein have been named as referees in case of need, the bearer must present the bill to all these persons and, if necessary, have a protest for non-payment drawn up at latest on the day following the last day allowed for drawing up the protest.

In default of protest within this limit of time, the party who has named the referee in case of need, or for whose account the bill has been accepted, and the subsequent endorsers are discharged.

### **Article L. 511-69**

The bearer who refuses payment by intervention loses his right of recourse against any persons who would have been discharged thereby.

### **Article L. 511-70**

Payment by intervention must be authenticated by a receipt given on the bill of exchange mentioning the person for whose honour payment has been made. In default of such mention, payment is deemed to have been made for the honour of the drawer.

The bill of exchange and the protest, if any, must be given up to the person paying by intervention.

### **Article L. 511-71**

The person paying by intervention acquires the rights arising out of the bill of exchange against the party for whose honour he has paid and against persons who are liable to the latter on the bill of exchange. Nevertheless, he cannot re-endorse the bill of exchange.

Endorsers subsequent to the party for whose honour payment has been made are discharged.

In case of competition for payment by intervention, the payment which effects the greater number of releases has the preference. Any person who, with a knowledge of the facts, intervenes in a manner contrary to this rule, loses his right of recourse against those who would have been discharged.

## *Section 12: Multiple originals and copies*

### Subsection 1: Multiple originals

#### **Article L. 511-72**

A bill of exchange can be drawn in a set of two or more identical parts.

These parts must be numbered in the body of the instrument itself; in default, each part is considered as a separate bill of exchange.

Every holder of a bill which does not specify that it has been drawn as a sole bill may, at his own expense, require the delivery of two or more parts. For this purpose he must apply to his immediate endorser, who is bound to assist him in proceeding against his own endorser, and so on in the series until the drawer is reached. The endorsers are bound to reproduce their endorsements on the new parts of the set.

#### **Article L. 511-73**

Payment made on one part of a set operates as a discharge, even though there is no stipulation that this payment annuls the effect on the other parts. Nevertheless, the drawee is liable on each accepted part which he has not recovered.

An endorser who has transferred parts of a set to different persons, as well as subsequent endorsers, is liable on all the parts bearing their signature which have not been restored.

#### **Article L. 511-74**

A party who has sent one part for acceptance must indicate on the other parts the name of the person in whose hands this part is to be found. That person is bound to give it up to the lawful bearer of another part. If he refuses, the bearer cannot exercise his right of recourse until he has had a protest drawn up specifying:

1. That the part sent for acceptance has not been given up to him on demand;
2. that acceptance or payment could not be obtained on another of parts.

### Subsection 2: Copies

#### **Article L. 511-75**

Every bearer of a bill of exchange has the right to make copies of it.

A copy must reproduce the original exactly, with the endorsements and all other statements to be found therein. It must specify where the copy ends.

It may be endorsed and guaranteed by aval in the same manner and with the same effects as the original.

#### **Article L. 511-76**

A copy must specify the person in possession of the original instrument. The latter is bound to hand over the said instrument to the lawful holder of the copy.

If he refuses, the holder may not exercise his right of recourse against the persons who have endorsed the copy or guaranteed it by aval until he has had a protest drawn up specifying that the original has not been given up to him on his demand.

Where the original instrument, after the last endorsement before the making of the copy contains a clause 'commencing from here an endorsement is only valid if made on the copy' or some equivalent formula, a subsequent endorsement on the original is null.

### *Section 13: Alterations*

#### **Article L. 511-77**

In case of alteration of the text of a bill of exchange, parties who have signed subsequent to the alteration are bound according to the terms of the altered text; parties who have signed before the alteration are bound according to the terms of the original text.

### *Section 14: Prescription*

#### **Article L. 511-78**

All actions arising out of a bill of exchange against the acceptor prescribe in three years, reckoned from the date of maturity.

Actions by the bearer against the endorsers and against the drawer prescribe in one year from the date of a protest drawn up within proper time, or from the date of maturity where there is a stipulation *retour sans frais*.

Actions by endorsers against each other and against the drawer prescribe in six months, reckoned from the day when the endorser took up and paid the bill or from the day when he himself was sued.

The time within which a legal action must be brought shall begin to run

only on the date of the last legal action. The limits shall not apply where sentence has been passed, or where the debt has been acknowledged by a separate deed.

Interruption of the period of limitation is only effective against the person in respect of whom the period has been interrupted.

Nevertheless, all alleged debtors must, if required to do so, swear an affidavit that they owe no further monies under the bill, and their surviving spouses, heirs or successors must swear that they sincerely believe that no sums remain outstanding.

#### *Section 15: General provisions*

##### **Article L. 511-79**

Payment of a bill of exchange which falls due on a legal holiday cannot be demanded until the next business day. So, too, all other proceedings relating to a bill of exchange, in particular presentment for acceptance and protest, can only be taken on a business day.

Where any of these proceedings must be taken within a certain limit of time the last day of which is a legal holiday, the limit of time is extended until the first business day which follows the expiration of that time. Intermediate holidays are included in computing limits of time.

##### **Article L. 511-80**

Those days on which the laws in force state that no payment may be demanded and no protest may be notified shall be treated as equivalent to public holidays.

##### **Article L. 511-81**

Legal or contractual limits of time do not include the day on which the period commences.

No days of grace, whether legal or judicial, are permitted, save in the cases referred to in Articles L. 511-38 and L. 511-50.

# **LEGISLATIVE PART**

## ***BOOK V: COMMERCIAL PAPER AND GUARANTEES***

### **TITLE I: COMMERCIAL PAPER**

#### **CHAPTER II: PROMISSORY NOTES**

##### **Article L. 512-1**

- I. - A promissory note contains:
1. The term 'promissory note' inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;
  2. An unconditional promise to pay a determinate sum of money;
  3. A statement of the time of payment;
  4. A statement of the place where payment is to be made;
  5. The name of the person to whom or to whose order payment is to be made;
  6. A statement of the date and of the place where the promissory note is issued;
  7. The signature of the person who issues the instrument, known as subscriber.
- II. - A promissory note in which the time of payment is not specified is deemed to be payable at sight.
- III. - In default of special mention, the place where the instrument is made is deemed to be the place of payment and at the same time the place of the domicile of the subscriber.
- IV. - A promissory note which does not mention the place of its issue is deemed to have been made in the place mentioned beside the name of the subscriber.

##### **Article L. 512-2**

An instrument in which any of the requirements mentioned in the Article 512-1-I are wanting is invalid as a promissory note except in the cases specified in Article 512-1-II to IV.

##### **Article L. 512-3**

The provisions of Articles L. 511-2 to L. 511-5, L. 511-8 to L. 511-14, L. 511-18, L. 511-22 to L. 511-47, L. 511-49 to L. 511-55, L. 511-62 to L. 511-65, L. 511-67 to L. 511-71 and L. 511-75 to L. 511-81, relating to bills of exchange, shall apply to promissory notes in so far as they are not incompatible with the nature of the said type of instrument.

#### **Article L. 512-4**

The provisions of Article L. 511-21 relating to avals shall also apply to promissory notes. In the circumstances referred to in the sixth paragraph of the said Article, where the guarantee does not indicate on whose behalf it has been given, it shall be deemed to have been given on behalf of the subscriber of the promissory note.

#### **Article L. 512-5**

The provisions of Articles L. 511-56 to L. 511-61 relating to publication and the extension of the periods within which protests may be issued shall apply to complaints for non-payment of a promissory note.

#### **Article L. 512-6**

The subscriber of a promissory note is bound in the same manner as an acceptor of a bill of exchange.

#### **Article L. 512-7**

Promissory notes payable at a certain time after sight must be presented for the visa of the subscriber within the limits of time fixed by Article L. 511-15. The limit of time runs from the date of the approval which marks the commencement of the period of time after sight. If the subscriber refuses to endorse it with such approval and date, a notice of protest must be registered, the date which shall serve as that on which the period from presentation shall begin to run.

#### **Article L. 512-8**

A debtor shall not be permitted to settle a bill by means of a promissory note unless an express provision to that effect has been made by the parties and endorsed on the invoice. Even then, if the promissory note has not reached the creditor within thirty days after the delivery of the invoice, the creditor may issue a bill of exchange which the debtor shall be required to accept according to the conditions stipulated in the penultimate and final paragraphs of Article L. 511-15. Any stipulation to the contrary shall be deemed unwritten.

## **LEGISLATIVE PART**

### ***BOOK V: COMMERCIAL PAPER AND GUARANTEES***

#### **TITLE II: GUARANTEES**

##### **CHAPTER I: GENERAL PROVISIONS ON COMMERCIAL PLEDGES<sup>56</sup>**

###### **Article L. 521-1**

A pledge constituted either by a trader or by a non-trading individual for a commercial act must be recorded in accordance with the provisions of Article L. 110-3, for the purposes of the contracting parties and those of third parties.

Negotiable instruments may also be charged by way of pledge by means of an endorsement in the appropriate form, indicating that the instruments have been delivered as a pledge.

With regard to company and partnership shares and registered bonds issued by financial, industrial or commercial companies or civil partnerships, transferable by transfer registered in the company or partnership's records, and also to nominative entries in the Public Debt Register, a pledge may also be constituted by a transfer by way of guarantee registered in the said records.

There shall be no exemption from the provisions of Article 2355 to 2366 of the Civil Code regarding rights to receive claims.

Commercial paper delivered as a pledge shall be recoverable by the pledgee creditor.

###### **Article L. 521-3**

If payment is not made at maturity, the creditor may sell the pledged articles at public auction eight days after simple notice served on the debtor and any third party holding the pledged articles under escrow and in accordance with the terms set out in this Article. This may not be waived in the agreement.

Sales other than those conducted by financial service providers must be effected by sworn commodities brokers. Nevertheless, the Presiding Judge of the Commercial Court may at the parties' request appoint another auctioneer, huissier or notary to conduct the sale.

The provisions of Articles L. 322-9 to L. 322-13 on public auctions shall apply to sales such as are referred to in the preceding paragraph.

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<sup>56</sup> "Gage". See the Civil Code from Article 2333, sometimes to be translated as "pledge of corporeal movables".

The creditor may also request that the pledge be assigned to him by court order or agree to its appropriation in accordance with Articles 2347 and 2348 of the Civil Code.

## **LEGISLATIVE PART**

### ***BOOK V: COMMERCIAL PAPER AND GUARANTEES***

#### **TITLE II: GUARANTEES**

##### **CHAPTER II: DEPOSITS IN BONDED WAREHOUSES**

##### **Section 1: Approval, assignment and cessation of operation**

###### **Article L. 522-1**

Operators of warehouses in which manufacturers, traders, farmers or craftsmen store raw materials, merchandise, foodstuffs or manufactured products must not issue negotiable security instruments or describe their establishments as general warehouses without having first obtained the appropriate authorisation from a prefect.

###### **Article L. 522-2**

A prefectorial order ruling on the application for approval shall be reasoned.

###### **Article L. 522-3**

The assignment of a general warehouse shall be subject to authorisation by the prefect, granted in the same way.

###### **Article L. 522-4**

Any cessation of operation not followed by an assignment shall be subject to six months' prior notice, to be given to the prefect by the operator. On the expiration of the said period, if the general interests of commerce so require, an interim administrator may be appointed by the Presiding Judge of the Tribunal de Grande Instance, ruling as by way of summary proceedings, at the request of the Office of the Public Prosecutor.

###### **Article L. 522-5**

It shall be prohibited for operators of general warehouses to carry on, either directly or indirectly, and either on their own behalf or on that of another person, as agents on commission or in any other capacity, any business or speculation relating to merchandise for which they are



authorised to issue warehouse warrants.

#### **Article L. 522-6**

Companies operating general warehouses shall be deemed to be subject to the rule contained in Article 522-5 where one of their shareholders, owning more than 10% of the share capital, carries on a form of business incompatible with the provisions of the said Article.

#### **Article L. 522-7**

Any operating company which, as a result of a change in the distribution of its share capital between shareholders, no longer fulfils the conditions laid down in Article 522-6 must, within a month of the said change, apply for the renewal of its authorisation.

The said authorisation shall remain valid until the prefect has ruled on the application.

The prefect may either order that the authorisation remain in force according to the conditions laid down in Article L. 522-11, or order the withdrawal thereof in accordance with the provisions of Article L. 522-39.

#### **Article L. 522-8**

Where the opening of an establishment is subject to a ministerial order or decree, the authorisation of the said establishment as a general warehouse shall be granted by the said decree or order.

#### **Article L. 522-9**

Operators of authorised establishments need not apply for the licence referred to in the rules governing the creation, extension or transfer of establishments.

#### **Article L. 522-10**

Decrees or orders authorising establishments as general warehouses may include a licence for the operator to open a public wholesale auction room.

#### **Article L. 522-11**

I. - Companies not meeting the conditions laid down in Articles L. 522-5 and L. 522-6 may nevertheless apply for authorisation for the warehouses they operate or propose to operate as general warehouses and obtain the said authorisation where it is recognised that the interests of commerce so require.

II. – In any such case:

1. Notice of the application for authorisation must be publicly displayed at

the prefecture and in the municipality of the locality in question, in accordance with the regulations;

2. The authorisation order shall fix, in addition to the security specified in Article L. 522-12, a special suretyship<sup>57</sup> at least equal to the latter. The special suretyship shall be provided either in cash or by means of a bank guarantee.

#### **Article L. 522-12**

The prefectorial order authorising the opening of a general warehouse shall require the operator to provide suretyship.

The establishments referred to in Article L. 522-8 shall be subject to the same obligation.

The amount of the said suretyship, which shall be proportionate to the surface area used for storage, shall be between two limits to be fixed by Conseil d'Etat decree.

#### **Article L. 522-13**

Operating conditions for the said establishments shall be fixed by one or more standard regulations in the context of this Chapter and the Conseil d'Etat decree made to implement the said Chapter.

#### *Section 2: Obligations, responsibilities and guarantees*

#### **Article L. 522-14**

Any person depositing merchandise in a general warehouse must declare its nature and value to the operator.

#### **Article L. 522-15**

Operators of general warehouses shall be responsible, within the limits of the value declared, for the custody and safe keeping of merchandise deposited with them.

They shall not be liable for any natural damage or deterioration resulting from the nature and packaging of the merchandise or from cases of force majeure.

The standard and specific regulations laid down in Articles L. 522-13 and L. 522-17 must specify the obligations of operators as regards the safe keeping of articles deposited.

#### **Article L. 522-16**

Merchandise likely to be delivered as warrant must be insured against fire

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<sup>57</sup> See the English translation of the "cautionnement" in the English version of the French Civil code (art 2288).

under the warehouse's general insurance policy.

Nevertheless, for operators of general warehouses situated at seaports, the said obligation shall be suspended as regards deposits of merchandise covered by marine insurance for as long as the said insurance covers the relevant risks.

If a claim arises during the said period, the operator of the warehouse shall not be liable to depositors, insurance companies or warrant-holders..

On the expiration of the said period, the aforementioned merchandise shall must be insured under the warehouse's general policies.

#### **Article L. 522-17**

Every establishment must have its own specific regulations in addition to the general provisions of the standard regulations, specifying conditions of operation that take into account the nature and situation of the warehouse.

#### **Article L. 522-18**

The regulations referred to in Article L. 522-17 shall be accompanied by a general scale and, if appropriate, special scales of charges for storage, in accordance with the terms of this Chapter, and for services rendered to depositors. The appropriate fees shall be paid without distinction or favour.

#### **Article L. 522-19**

Scales of charges must be notified to the prefect at least one month before the opening of a general warehouse.

Any change in the existing charges must be notified to the prefect and shall not be enforceable until a month after the said notification. This period shall not, however, apply to operators whose charges are subject to administrative authorisation.

### *Section 3: Operation and supervision*

#### **Article L. 522-20**

Operators of general warehouses may lend on the security of a charge on merchandise deposited with them, or trade in warrants representing the said merchandise.

#### **Article L. 522-21**

Chairmen, managers, directors and personnel of general warehouse undertakings shall be required to observe the rules of professional secrecy in all matters relating to merchandise deposited with them, subject to the penalties laid down in Article 226-13 of the Penal Code.

#### **Article L. 522-22**

General warehouses shall be placed under administrative supervision, according to conditions fixed by Conseil d'Etat decree.

#### **Article L. 522-23**

The provisions of this Chapter, the decree implementing the said provisions, the scales of charges and the regulations must be displayed in an area of the warehouse offices to which the public has access.

#### *Section 4: Receipts and warrants*

#### **Article L. 522-24**

One or more receipts shall be issued to each depositor. The said receipts shall state the name, occupation and address of the depositor, the nature of the merchandise deposited and the appropriate indications identifying it and determining its value.

Fungible merchandise deposited in general warehouses against a receipt and a warrant may be replaced by merchandise of the same nature, type and quality. The possibility of such replacement must be mentioned on both the receipt and the warrant.

The rights and privileges<sup>58</sup> of the bearer of the receipt shall be transferred to the merchandise replaced.

A receipt and a warrant may be issued on a consignment of fungible merchandise to be taken in a larger consignment.

#### **Article L. 522-25**

Each receipt must have attached to it a security instrument, known as a warrant, containing the same wording as the receipt.

Receipts for merchandise and warrants annexed thereto shall be taken from a counterfoil register.

#### **Article L. 522-26**

Receipts and warrants may be transferred by endorsement, together or separately.

#### **Article L. 522-27**

Assignees of a receipt or warrant may demand that the endorsement in their favour be transcribed on the counterfoil registers from which they are

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<sup>58</sup> See the English translation of the "privilège" in the English version of the French Civil Code (from Article 2323).

extracted, with a note of their address.

#### **Article L. 522-28**

The endorsement of a warrant that has been separated from its receipt amounts to a pledge of the merchandise in favour of the assignee of the warrant.

The endorsement of the receipt shall transfer the right to dispose of the merchandise to the assignee, who shall thereby be rendered liable, where the warrant is not transferred with the receipt, for payment of the debt secured by the warrant or to allow the amount thereof to be paid out of the proceeds of sale of the merchandise.

#### **Article L. 522-29**

The endorsement of a warrant and receipt, whether transferred together or separately, must be dated.

The endorsement of a warrant that has been separated from its receipt must also state the full amount in capital and interest of the debt secured, the payment date and the name, occupation and address of the creditor.

The first assignee of the warrant must immediately have the endorsement transcribed in the warehouse's record books, with its accompanying statements. A note of the said transcription must be endorsed on the warrant.

#### **Article L. 522-30**

The bearer of a receipt that has been separated from its warrant may, even before the maturity date, pay the debt secured by the warrant.

Where the bearer of the warrant is unknown or, if known, is not in agreement with the debtor as to the conditions of early payment, the sum due, including interest up to the maturity date, shall be placed on deposit with the administration of the general warehouse, which shall be responsible for it. The said deposit shall discharge the merchandise.

#### **Article L. 522-31**

If the debt is not paid on the due date, the bearer of a warrant that has been separated from its receipt may, eight days after the issue of a protest, and without any legal formalities, have the merchandise secured sold wholesale at auction by public officials, in accordance with the provisions of Book III relating to the public wholesale auction of merchandise.

Where the original subscriber of the warrant has repaid the bearer, the latter may, as mentioned in the preceding paragraph, sell the merchandise as against the bearer of the receipt eight days after the payment date and without formal notice.

#### **Article L. 522-32**

I. - Creditors shall have their debts repaid out of the price, directly and without any legal formality, as a privilege and in preference over all creditors, without any deduction other than:

1. Indirect taxes and customs duty payable on the merchandise;
2. Expenses of sale and storage and other expenses for the safekeeping of the goods.

II. - If the bearer of the receipt is not present at the time of the sale of the merchandise, any sum exceeding that due to the bearer of the warrant shall be placed on deposit with the management of the general warehouse, as indicated in Article L. 522-30.

#### **Article L. 522-33**

Bearers of warrants shall have no right of action against the borrower and the endorsers until they have exercised their rights over the merchandise, and then only if the sum so realised is insufficient.

The period fixed by Article L. 511-42 for the exercise of the right of action against endorsers shall not begin to run until the date on which the sale of the merchandise takes place.

Bearers of warrants shall in any event forfeit their right of action against the endorsers if they fail to sell the merchandise within a month of the date of the notice of protest.

#### **Article L. 522-34**

The bearer of a receipt and a warrant shall have the same rights over any insurance monies payable in the event of a claim as over the insured merchandise.

#### **Article L. 522-35**

Public credit institutions may receive warrants as commercial paper, one of the signatures required by their constitution being dispensed with.

#### **Article L. 522-36**

Any person losing a receipt or a warrant may apply for and obtain a court order for the issue of a duplicate, in the case of a receipt, or for payment of the debt secured, in the case of a warrant, on production of documentary evidence of ownership and provision of surety.

If in any such case the subscriber of the warrant has not made payment on the due date, the third party bearer whose endorsement has been transcribed in the record books of the general warehouse may be authorised by a court order to have the secured merchandise sold in accordance with the conditions laid down in Article L. 522-31, subject to the

provision of a surety.

The protest referred to in the said Article must provide copies of the relevant entries in the register of the general warehouse.

#### **Article L. 522-37**

In the event of a lost receipt, the security referred to in the preceding Article shall be discharged on the expiration of a period of five years, where the merchandise charged has not been claimed by a third party against the general warehouse.

In the event of a warrant being lost, the surety shall be discharged on the expiration of a period of three years from the date of transcription of the endorsement.

#### *Section 5: Sanctions*

#### **Article L. 522-38**

It shall be prohibited to open or operate an establishment receiving merchandise on deposit for which negotiable security instruments are issued to depositors, under the description of warrants or any other name, without the licence specified in Article L. 522-1.

Any breach of this prohibition shall render the perpetrator liable to a fine of 6000 Euros and a year's imprisonment.

The Court may order that the sentence be published in full or as to extracts thereof in such newspapers as it shall designate and displayed in such places as it shall indicate, particularly on the doors of the registered office and warehouses of the convicted party, at the latter's expense, but so that the expenses of such publication shall not exceed the amount of the fine incurred.

#### **Article L. 522-39**

In the event of a breach by the operator of a general warehouse of the provisions of this Chapter, or of Conseil d'Etat decrees, the prefect may, having interviewed the operator, make a temporary or permanent order for the withdrawal of that operator's authorisation.

In any such case, the Presiding Judge of the Court, ruling as by way of summary proceedings, shall, on an application by the Office of the Public Prosecutor, appoint an interim administrator and determine the said administrator's powers to operate the establishment.

In the event of permanent withdrawal of the said authorisation, where the interests of local commerce require that the general warehouse be kept open, the powers of the interim manager may include that of selling the business and goodwill thereof and the materials and equipment required to operate the warehouse at public auction.

An order may also be made for the permanent withdrawal of authorisation from establishments that have ceased to operate as general warehouses or depositories for at least two years.

#### **Article L. 522-40**

A Conseil d'Etat decree shall determine the methods of application of the provisions of this Chapter.

### **LEGISLATIVE PART**

#### ***BOOK V: COMMERCIAL PAPER AND GUARANTEES<sup>1</sup>***

#### **TITLE II: GUARANTEES**

##### **CHAPTER III: WARRANTS FOR HOTEL EQUIPMENT AND FURNITURE**

#### **Article L. 523-1**

Any hotel operator may borrow on the commercial furniture, tools and equipment used for the purposes of its operation, even if they have turned into fixtures and fittings, while retaining custody of the same on the hotel premises.

Objects charged as security for the debt shall remain as a pledge for the lender and the lender's legal successors until the sums advanced have been repaid.

Borrowers shall be responsible for the said objects, which shall remain in their custody, and shall not be entitled to plead any right of indemnity against the lender and the lender's legal successors.

#### **Article L. 523-2**

Hotel operators who are not owners or usufructuaries of the building in which they carry on their business must, before taking any loan, give extra-judicial notice to the owner or usufructuary of the business and goodwill they rent, or their legal agent, of the nature and value of the objects charged, and the amount to be borrowed. The said notice must be repeated by letter, through the Registrar of the Tribunal d'Instance within whose jurisdiction the place of operation of the furnished hotel is located. The letter of notice must be delivered to the Registrar of the Court, who must approve and register it and send it on by registered business letter with recorded delivery.

The owner or usufructuary or their legal agent, may, within fifteen clear days of the date of notice of the said act, object to the loan by extra-judicial notice to the Registrar of the Court, where the borrower has not paid any



outstanding rent in arrears, six months' current rent and six months' rent to fall due.

The borrower may have the objection removed by paying the said rent.

If no reply is received from the owner or usufructuary or their legal agent within the period fixed above they shall be deemed to have no objection to the loan.

The landlord's privilege is reduced, up to the amount of the sum advanced, over the objects charged as security. It shall subsist by operation of law if the loan is granted notwithstanding the landlord's objection.

The landlord may at any time waive either the objection or the payment of the aforementioned rent, by signing the register referred to in Article L. 523-3.

In the event of any conflict between the privilege of the bearer of a warrant for hotel equipment and furniture and that of a hypothecary creditor, their rank shall be determined by the respective dates of transcription of the first endorsement of the warrant and the registration of the hypothecs<sup>59</sup>.

#### **Article L. 523-3**

A counterfoil register, which must be duly compared and initialled, shall be kept in every Commercial Court Registry. Each detachable sheet and counterfoil must contain wording, a list of which shall be fixed by decree, based on the borrower's statements.

The detachable sheet containing the said wording shall constitute a warrant for hotel equipment and furniture.

#### **Article L. 523-4**

Warrants for hotel equipment and furniture shall be issued by the Registrar of the Commercial Court within whose jurisdiction the hotel is operated. A borrower who receives a warrant for hotel equipment and furniture shall give an acknowledgement of receipt for delivery of the certificate. Only one warrant may be issued for the same items. The warrant shall be transferred by the borrower to the lender by dated and signed endorsement.

The lender may, within five days, have the first endorsement transcribed in the register. A note of the said transcription shall also be endorsed on the warrant.

#### **Article L. 523-5**

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<sup>59</sup> See the English translation of the "hypothèque" in the English version of the French Civil Code (from Article 2323 and from Article 2393).

The warrant shall be transferable by endorsement drawn up in accordance with the provisions of Article L. 523-4, but shall not be subject to the transcription formality in the same way as the initial endorsement.

All those who shall have signed or endorsed a warrant shall have solidary liability to the bearer.

A discounter or re-discounter of a warrant must give notice to the Registrar of the Commercial court within eight days, by registered letter with recorded delivery, or verbally against an acknowledgement of receipt of the notice.

The borrower may, by a special note endorsed on the warrant, exempt the discounter or re-discounter from giving the said notice, in which case the provisions of the last two paragraphs of Article L. 523-8 shall not be applicable.

#### **Article L. 523-6**

The Registrar shall be bound to issue to any lender, on request, a list of warrants or a certificate confirming that there are no entries in the register. He shall be bound to issue the same to any hotel operator coming under the jurisdiction of his Registry on request but solely as regards the business operated by the latter.

This list may not date back over more than five years.

#### **Article L. 523-7**

Registrations of warrants shall be struck off on production of evidence either of repayment of the debt secured by the warrant, or of a legal release.

Borrowers who have repaid their warrants must have the said repayment recorded by the Registrar of the Commercial court and a note of the repayment or release shall be entered in the register held by the Registrar who shall issue a certificate of deletion of the entry.

Entries shall be automatically struck off after five years, unless renewed before the end of this period. If an entry is re-registered after automatic deletion, it shall be valid as against third parties only from the date thereof.

#### **Article L. 523-8**

The borrower shall retain the right to sell the products to which the warrant relates by amicable agreement before payment of the debt, even without the lender's participation in the sale. However, the products may not be handed over to the purchaser until after the creditor has been paid off.

Even before the payment date, the borrower may repay the debt secured by the warrant. If the bearer of the warrant refuses the debtor's offers, the debtor may obtain discharge by placing the sum offered on deposit in

accordance with the conditions laid down in Articles 1426 to 1429 of the Code of Civil Procedure. Offers shall be made to the last known legal successor by notice to the Registrar, in accordance with Article L. 523-5. On production of a sufficient legal receipt for the said deposit, the Presiding Judge of the competent Commercial Court for the district where the warrant is registered shall make an order under the terms of which the security shall be transferred to the sum placed on deposit.

In the event of early repayment of a warrant, the borrower shall have the benefit of the interest still to accrue up to the maturity date of the warrant, less ten days.

#### **Article L. 523-9**

Public credit institutions may receive warrants for hotel equipment and furniture as commercial paper, one of the signatures required by their constitution being dispensed with.

#### **Article L. 523-10**

In the event of a claim, bearers of warrants shall have the same rights over the insurance monies payable as over the insured property.

#### **Article L. 523-11**

Bearers of warrants must claim payment of their debts from the borrower when the same become due, and, in the event of default on payment, may reiterate their claims against the debtor by registered letter with recorded delivery.

If the warrant is not paid when due the said bearers have the rights to enforce their security as though they were preferential or secured creditors under the terms of Articles L. 143-5 to L. 143-15.

Nevertheless, the landlord's prior right may be exercised at any time in respect of up to six months' rent in arrears, six months' current rent and six months' rent to fall due.

Bearers who sell the property shall no longer be entitled to exercise their remedies against the endorsers or even against the borrower until they have claimed their rights against the proceeds of sale of the articles covered by the warrant. Should the price be insufficient to repay the debt due to them, they shall have a period of three months from the date of sale to exercise their remedies against the endorsers.

#### **Article L. 523-12**

A debt owed to the bearer of a warrant shall be repaid directly out of the proceeds of sale, as a preferential right over all other creditors, with no deductions other than direct taxes and sale expenses and with no formality other than an Order made by the Presiding Judge of the Commercial Court.

#### **Article L. 523-13**

A false declaration or any attempt by a borrower to create a warrant over objects not owned by the said borrower, or already charged as security or as a pledge, or any act of embezzlement, dissipation or deliberate damage to security charged to a creditor, to the detriment of the latter, shall be punishable by the penalties prescribed for fraud or breach of trust, in Articles 313-1, 313-7, 313-8 or 314-1 and 314-10 of the Penal Code.

#### **Article L. 523-14**

The fees payable to the Registrar of the Court shall be fixed by Conseil d'Etat decree.

The notices stipulated by the provisions of this Chapter must be sent in the form of a registered business letter, at the appropriate rate.

#### **Article L. 523-15**

Any agreements that run contrary to the provisions of this Chapter, and particularly any stipulations that would adversely affect the right of tenants to create warrants for hotel equipment and furniture, shall be considered null and void.

### **LEGISLATIVE PART**

#### ***BOOK V: COMMERCIAL PAPER AND GUARANTEES<sup>1</sup>***

#### **TITLE II: GUARANTEES**

##### **CHAPTER IV: OIL WARRANTS**

#### **Article L. 524-1**

Operators and holders of stocks of crude oil or petroleum products may issue stock warrants as security for their borrowings, while retaining custody thereof at their plants or depots.

Products subject to warrants shall remain security for the holder of the warrant until repayment of the sums advanced.

Warrants must be expressed to cover a certain quantity of merchandise of a specific quality, but products subject to warrants need not be physically separated from other similar products held by the borrower.

Borrowers shall be liable for the merchandise in their care and custody and shall not be entitled to plead any right of indemnity against the benefit of the warrant.

#### **Article L. 524-2**

To create the document known as an "oil warrant", the Registrar of the Commercial Court of the district where the products to be comprised in the warrant are located shall register, according to the borrower's declarations, the nature, quality, value and location of the products to be charged as security for the loan, the total sums borrowed, and the particular clauses and conditions relating to the oil warrant, as agreed between the parties.

The warrant must be signed by the borrower.

It shall be valid for a maximum of three years, but may be renewed.

#### **Article L. 524-3**

The warrant must indicate whether or not the product to which it relates is insured, and, if so, the name and address of the insurer.

Lenders shall be empowered to maintain the said insurance until the warrant is paid.

Bearers of warrants shall have the same rights and privileges over the insurance monies payable in the event of a claim as they have over the insured products.

#### **Article L. 524-4**

The Registrar of the Commercial Court shall issue to any applicant a list of warrants registered for less than five years in the name of the borrower or a certificate confirming that there are no entries in the register.

#### **Article L. 524-5**

Registrations of warrants shall be struck off on production of evidence either of repayment of the debt secured by the warrant, or of a legal release.

Borrowers who have repaid their warrants must have the said repayment recorded by the Registrar of the Commercial Court. A note of the repayment or release shall be entered in the register referred to in Article 524-2. A certificate of deletion of the entry shall be issued to them.

Entries shall be automatically struck off after five years, unless renewed before the end of the said period. If an entry is re-registered after automatic cancellation, it shall be valid as against third parties only from the new date.

#### **Article L. 524-6**

The borrower shall retain the right to sell the products to which the warrant relates by amicable agreement before payment of the debt, even without the lender's participation in the sale. Nevertheless, the products may not be delivered to the purchaser until the creditor has been paid.

Even before the payment date, the borrower may repay the debt secured by the oil warrant. If the bearer of the warrant refuses the debtor's offers, the debtor may obtain discharge by placing the sum offered on deposit in accordance with the conditions laid down in Articles 1426 to 1429 of the Code of Civil Procedure. Offers shall be made to the last known legal successor by notice to the Registrar of the Commercial Court, in accordance with Article L. 524-8. On production of a sufficient legal receipt for the said deposit the Presiding Judge of the competent Commercial Court for the district where the warrant is registered shall make an order under the terms of which the security shall be transferred to the sum placed on deposit.

In the event of early repayment of an oil warrant, the borrower shall have the benefit of the interest still to accrue up to the expiration date of the warrant, less ten days.

#### **Article L. 524-7**

Public credit institutions may receive warrants as commercial paper, one of the signatures required by their constitution being dispensed with.

#### **Article L. 524-8**

Oil warrants shall be transferable by endorsement. Endorsements must be dated and signed and must state the names, occupations and addresses of the parties.

All those who shall have signed or endorsed a warrant shall have solidary liability to the bearer.

A discounter or re-discounter of an oil warrant must give notice to the Registry of the Commercial Court within eight days, by registered letter with recorded delivery, or verbally against an acknowledgement of receipt of the notice.

The borrower may, by a special note endorsed on the warrant, exempt the discounter or re-discounter from giving the said notice, in which case, however, the provisions of the final paragraph of Article L. 524-6 shall not be applicable.

#### **Article L. 524-9**

Bearers of oil warrants must claim payment of their debts by the borrower on the due date, and, in the event of default, must record and restate their claims against the debtor by registered letter with recorded delivery.

If they do not receive payment within five days of the dispatch of the said letter, bearers of oil warrants must lodge a formal complaint of default on payment, fifteen clear days after the payment date, by notice to each of the endorsers, sent to the Registry of the Commercial Court, which shall give the bearer an acknowledgement of receipt for the said notice; failure to do

shall result in forfeiture of the bearer's rights against the endorsers. The Registry of the Commercial Court shall notify the endorsers of the said notice within a week thereafter, by registered letter with recorded delivery.

#### **Article L. 524-10**

In the event of a refusal to pay, the bearer of the oil warrant may, fifteen days after the date of the registered letter to the borrower, as mentioned above, have the merchandise to which the warrant relates sold by a public or ministerial official or a sworn commodities broker at public auction. Power to do so shall be conferred on the bearer by an order made by the Presiding Judge of the Commercial Court of the district where the said merchandise is located, on an ex parte application, fixing the date, place and time of the sale.

The said details shall be announced at least eight days in advance by notices displayed in the places indicated by the Presiding Judge of the Commercial Court, who may in all cases authorise the publication thereof in the newspapers.

Publication shall be recorded by means of a note inserted in the minutes of the sale.

#### **Article L. 524-11**

The public official or sworn commodities broker responsible for the sale shall notify the debtor and the endorsers of the date, place and time of the sale eight days in advance thereof.

The borrower may nevertheless agree, by means of a special note endorsed on the oil warrant, that there need not be a sale by public auction, and that the sale may be arranged by amicable agreement. In such a situation, the sale must always be authorised by an Order of the Presiding Judge of the Commercial Court of the district where the merchandise to which the warrant relates is located, made on an ex parte application.

#### **Article L. 524-12**

The provisions of Article 53 of Law No. 91-650 of 9 July 1991 amending the civil-law enforcement procedures shall apply to sales effected pursuant to the provisions of this Chapter.

#### **Article L. 524-13**

Debts due to bearers of warrants shall be paid directly out of the sale proceeds, by preferential right and in preference over all creditors, after deduction of the sale expenses, and with no formalities other than an Order of the Presiding Judge of the Commercial Court.

#### **Article L. 524-14**

Bearers of oil warrants who sell the merchandise to which the warrant relates in accordance with Articles L. 524-9 to L. 524-11 shall no longer be entitled to exercise their remedies against the endorser or even against the borrower, until they have claimed their rights against the sale proceeds of the said products. Should the said proceeds be insufficient to repay the debt due to them, they shall have a period of one month from the date of sale of the merchandise to exercise their right of action against the endorsers.

#### **Article L. 524-15**

Should there be any discrepancy between the existing merchandise and the quantity or quality of that to which the warrant relates, the lenders may immediately give the holder of the oil warrant notice, by registered letter with recorded delivery, either to reconstitute the security within forty-eight hours of receipt of the registered letter, or to repay some or all of the sums secured by the oil warrant within the same period of time. If not satisfied, the lenders shall be entitled to demand full repayment of the debt, which they shall consider as having become due and payable.

In any such case, the borrower shall forfeit the benefit of the provisions of the final paragraph of Article L. 524-6, relating to the repayment of interest.

#### **Article L. 524-16**

In the event of a fall of 10% or more in the value of the stock to which the warrant relates, the lenders may give the borrowers notice, by registered letter with recorded delivery, either to increase the security or to repay a proportion of the sums advanced. In the latter case, the provisions of the final paragraph of Article 524-6 shall apply.

If the said demand is not satisfied within eight clear days, the lenders shall be entitled to demand full repayment of the debt, which they shall consider as having become due and payable.

#### **Article L. 524-17**

Any borrower who has made a false declaration, or who has constituted an oil warrant on products already charged under a warrant, without first notifying the new lender, or any borrower or depository who has embezzled, dissipated or deliberately damaged the creditor's security to the latter's detriment, shall be subject to the penalties laid down in Articles 313-1, 313-7 and 313-8 or 314-1 and 314-10 of the Penal Code.



#### **Article L. 524-18**

Where it is necessary to make an application to a Judge ruling by way of summary proceedings in order to enforce the provisions of this Chapter, the said proceedings shall be held before the Presiding Judge of the Commercial Court of the district where the merchandise to which the warrant relates is located.

#### **Article L. 524-19**

The total fees payable to the Registrar of the Commercial Court in respect of oil warrants shall be as fixed by the Decree governing agricultural warrants. The said sum may nevertheless be revised by a specific Decree relating to oil warrants.

The notices stipulated by the provisions of this Chapter must be sent in the form of a registered business letter, at the appropriate rate.

#### **Article L. 524-20**

The provisions of this Chapter shall be applicable subject to the obligations imposed by Law No 92-1443 of 31 December 1992, amending the petroleum regulations, particularly as regards the constitution and apportionment of stock and without prejudice to the possible liability of operators in case of infringement.

#### **Article L. 524-21**

This Chapter shall be applicable in the departments of Haut-Rhin, Bas-Rhin and Moselle, subject to the special provisions of the Law of 1 June 1924 introducing French commercial law in the said three departments.

The Registries with competence to constitute oil warrants shall be those indicated in Article 35 of the said Law for the constitution of oil warrants.

### **LEGISLATIVE PART**

#### ***BOOK V: COMMERCIAL PAPER AND GUARANTEES<sup>1</sup>***

#### **TITLE II: GUARANTEES**

##### **CHAPTER V: PLEDGE OF TOOLING AND EQUIPMENT**

#### **Article L. 525-1**

Payment of the purchase price of professional tooling and equipment may be secured either by the vendor, or by a lender who advances the necessary funds to pay the vendor, by a pledge restricted to the tooling or

equipment so purchased.

Where the purchaser is a trader, the said pledge shall be governed, subject to the provisions hereinafter contained, by the rules laid down by Chapters II and III of Title IV of Book I; it shall not be necessary to include the essential elements of the business and goodwill in the pledge.

Where the purchaser is not a trader, the pledge shall be governed by the provisions of Article L. 525-16.

#### **Article L. 525-2**

The pledge shall be created by an authentic act or by an act under private signature, registered at the fixed fee.

Where it is granted to the vendor, it shall be recorded in the bill of sale.

Where it is granted to a lender who advances the necessary funds to pay the vendor, the pledge shall be recorded in the loan document.

The said document must state that the monies advanced by the lender must be used to pay the price of the assets purchased, failing which it shall be null and void.

The assets purchased must be listed in the body of the act and each asset must be precisely described in order to identify it in relation to other assets of the same type belonging to the business. The act must also indicate the place where the assets are permanently installed or, if they are not so installed, must indicate that they may be moved from place to place.

Guarantors acting as sureties, givers of an 'aval' or endorsers in the granting of loans for equipment shall be regarded as equivalent to lenders of funds. Such persons shall by operation of law be subrogated to the creditors' rights. The same rule shall apply to persons who endorse, discount, guarantee by an 'aval' or accept bills created in representation of the said loans.

#### **Article L. 525-3**

Pledges must be completed by no later than two months after the date of delivery of the equipment at the premises where it is to be installed, failing which they shall be null and void.

Similarly, pledges shall be null and void if not registered within fifteen days of the date of the constitutive instrument of pledge in accordance with the conditions laid down in Articles L. 142-3 and L. 142-4.

Where the equipment is delivered after the contractual date, if delivery does not take place at the site originally agreed, registered debts shall become enforceable by operation of law unless the debtor has notified the secured creditor of the date or place of delivery within fifteen days thereafter.

A pledge shall not be binding on third parties if, within fifteen days of receiving notice or of becoming aware of the date or place of delivery, the

pledgee creditor has not requested the Registrar of the Court where the pledge is registered to note the said date or place in the margin against the relevant entry in the register.

#### **Article L. 525-4**

Assets pledged pursuant to this Chapter may, furthermore, at the pledgee's request, be clearly marked on an essential part with a permanently fixed plate indicating the place, date and registration number of the privilege to which they are subject.

The debtor must not impede the apposition of the said mark, subject to the penalties laid down in Article L. 525-19, nor may marks so affixed be destroyed, removed or covered before the preferential charge in favour of the secured creditor has been extinguished or cancelled.

#### **Article L. 525-5**

Any conventional subrogation into the benefit of the pledge must be noted in the margin against the relevant entry in the register within fifteen days of the date of the authentic act or of the act under private signature recording the same, on delivery to the Registrar of the Court of an original or notarial copy of the said act.

Any conflicts that may arise between owners of successively registered pledges shall be settled in accordance with Article 1252 of the Civil Code.

#### **Article L. 525-6**

The benefit of the pledge shall be transferred by operation of law to the successive bearers of the bills thereby guaranteed, in accordance with Article 1692 of the Civil Code, whether the said bills have been subscribed or accepted to the order of the vendor or a lender who has provided all or part of the price, or whether they more generally represent the mobilisation of a validly pledged claim pursuant to the provisions of this Chapter.

Where more than one bill is created to represent the debt, the privilege attached thereto shall be exercised by the first party to sue, on behalf of all and for the full amount.

#### **Article L. 525-7**

Subject to the penalties laid down in Article L. 525-19, a debtor who, before payment or repayment of the sums secured in accordance with this Chapter, seeks to sell by amicable agreement all or part of the assets charged must obtain the prior consent of the pledgee creditor, or, failing that, an Order made by a Judge of the Commercial Court, ruling by way of summary proceedings, and ruling at final instance.

Where the requirements as to publication laid down by this Chapter have been satisfied and the assets charged have been marked with a notice in

accordance with Article L. 525-4, the pledgee creditor or those subrogated to his rights shall have the right to follow the assets in order to exercise the privilege conferred by the pledge, as provided for by Article L. 143-12.

#### **Article L. 525-8**

The privilege of the pledgee creditor pursuant to the provisions of this Chapter shall subsist if the asset charged becomes a fixed asset.

Article 2133 of the Civil Code shall not apply to assets so charged.

#### **Article L. 525-9**

I. - The privilege of the pledgee creditor under the provisions of the present Chapter applies to charged assets in preference to all other privileges, with the exception of:

1. The privilege in respect of court fees;
2. The privilege in respect of the fees for safe custody of the property;
3. The privilege granted to employees by Article L. 143-10 of the Labour Code.

II. - It is exercised, specifically, against any hypothecary creditor and in preference to the privilege of the Public Treasury, to the privilege referred to in Article L. 243-4 of the Social Security Code, to the privilege of the vendor of a business which makes use of the charged asset, and also to the privilege of the pledgee creditor over the entirety of the said business.

III. - However, in order for his privilege to be effective against the hypothecary creditor, the vendor of the business, and the pledgee creditor over the entirety of the said business, relative to their prior registrations, the beneficiary of the pledge entered into pursuant to the present Chapter must deliver to the said creditors by extra-judicial means a copy of the instrument which formally recorded the pledge. In order to be valid, such delivery must take place within two months of the conclusion of the pledge.

#### **Article L. 525-10**

Subject to the exceptions specified in this Chapter, the privilege of the pledgee creditor shall be governed by the provisions of Book I, Title IV, Chapter III as regards registration formalities, creditors' rights in the event of relocation of the business, the rights of the landlord of the building, the cancellation of the said preferential rights and the release formalities.

#### **Article L. 525-11**

Registration shall maintain the privilege for five years from the date of its definitive regularization.

It shall simultaneously secure two years' interest in addition to the principal sum. It shall cease to have effect unless it is renewed before the aforementioned period expires; it may be renewed twice.

#### **Article L. 525-12**

A certificate of existing entries in the register, issued pursuant to Article 32 of the Law of 17 March 1909 relating to sales and pledges of a business and goodwill, must include entries registered pursuant to the provisions of this Chapter. Applicants may also receive on request a certificate attesting to the existence or non-existence of entries relating to the relevant assets registered pursuant either to the provisions of Chapters I and II of Title IV of Book I, or to those of this Chapter.

#### **Article L. 525-13**

Notice of legal proceedings to obtain the enforced sale of certain assets of the business and goodwill to which assets subject to the privilege of a vendor or to the privilege of the pledgee creditor pursuant to the provisions of this Chapter belong, given in accordance with Article L. 143-10, shall render the debts secured by the said privileges enforceable.

#### **Article L. 525-14**

In the event of non-payment on the due date, a creditor having the benefit of privileges established by this Chapter may proceed with the forced sale of the asset charged therewith, in accordance with the conditions laid down in Article L. 521-3. The public official or sworn commodities broker responsible for the sale shall be appointed, at the said creditor's request, by the Presiding Judge of the Commercial Court. The creditor must comply with the provisions of Article L. 143-10 before the sale takes place.

Such a pledgee creditor shall be entitled to exercise the rights relating to the ten per cent overbid referred to in Article L. 143-13.

#### **Article L. 525-15**

Assets charged pursuant to this Chapter, where an action is brought for the sale thereof together with other items comprised in the business and goodwill, shall be subject to a separate reserve or sale price where the schedule of conditions requires the successful bidder to submit them to expert opinion.

In all such cases, sums realised on the sale of the said assets shall, before any distribution takes place, be allocated to holders of the registered charges, up to the amount of the principal, interest and expenses thereby secured.

Acknowledgements of receipt by privileged creditors shall be subject to the fixed fee only.

#### **Article L. 525-16**

If the purchaser is not a registered trader, the pledge is subject to the

provisions of Articles L. 525-1 to Article L. 525-9, L. 525-11 and L. 525-12 and of the present Article. The registration provided for in Article L. 525-3 is then effected at the Registrar's office of the Commercial Court having jurisdiction at the place where the purchaser of the asset charged is domiciled or, in the case of a person registered with the trades register, that of the Commercial Court having jurisdiction at the place where his craft establishment is located.

If payment is not effected when due, the creditor benefiting from the privilege established by the present Chapter may arrange for the asset charged to be sold at public auction pursuant to the provisions of Article L. 521-3.

Registrations are struck off either with the consent of the interested parties, or by virtue of a judgement with force of *res judicata*.

In the absence of a judgement, the Registrar cannot effect a total or partial striking off unless an authentic act containing the creditor's consent thereto is duly filed.

When a striking off to which the creditor has not consented is sought via a main action, that action is brought before the Commercial Court having jurisdiction at the place where the registration was effected.

Striking off is effected by means of a note entered in the margin of the registration by the Registrar. Certification thereof shall be issued to the parties who so request.

#### **Article L. 525-17**

For the purposes of the provisions of this Chapter, Registrars shall be subject to the formalities and responsibilities fixed by regulation for the keeping of the register of charges and the issuing of statements and certificates on request.

Their fees shall be fixed as provided for by the current regulations.

#### **Article L. 525-18**

The provisions of this Chapter shall not apply:

1. To motor vehicles as mentioned in Decree No 53-968 of 30 September 1953;
2. To sea-going vessels and river boats as mentioned in Articles 78 et seq. of the Code of Public Waterways and Inland Navigation;
3. To aircraft as mentioned in Articles L. 110-1 et seq. of the Code of Civil Aviation.

#### **Article L. 525-19**

Any purchaser or holder of assets charged pursuant to this Chapter who destroys or attempts to destroy, embezzles or attempts to embezzle, or damages or attempts to interfere in any way with the said assets with the

object of frustrating the creditor's rights, shall be liable to the penalties laid down for breach of trust in Articles 314-1 and 314-10 of the Penal Code.

Any fraudulent manoeuvres designed to frustrate a creditor's privileges over the assets pledged, or to reduce the extent of the said rights, shall be subject to the same penalties.

#### **Article L. 525-20**

The conditions of implementation of the provisions of this Chapter shall be determined by Conseil d'Etat decree.

## **LEGISLATIVE PART**

### ***BOOK V: COMMERCIAL PAPER AND GUARANTEES<sup>1</sup>***

#### **TITLE II: GUARANTEES**

##### **CHAPTER VI: PROTECTION OF INDIVIDUAL ENTREPRENEURS AND THEIR SPOUSES**

###### ***Section 1: Declaration of unseizability***

#### **Article L. 526-1**

By way of derogation from Articles 2284 and 2285 of the Civil Code, a natural person whose name appears in an occupational legal publications register or who is engaged in an agricultural or independent professional activity may declare his rights over the real property which constitutes his principal place of residence and his rights over any developed or undeveloped immovable property to be exempt from seizure. The said declaration, which is published in the land registry or, in the departments of Bas-Rhin, Haut-Rhin and Moselle, in the livre foncier, is effective only against creditors whose rights issue from the declarant's business activities subsequent to publication.

If the immovable property does not entirely serve a professional use, the portion thereof not dedicated to a professional use cannot be declared unless it is designated as such in a description of the division of the property. The fact that the declarant is domiciled in his place of residence pursuant to Article L. 123-10 shall not constitute an obstacle to the premises being declared, and no description of the division of the property shall be required.

#### **Article L. 526-2**

The declaration, executed in the presence of a notary on pain of nullity, shall contain a detailed description of the property and an indication as to

whether ownership thereof is separate, joint or undivided. The document shall be published in the local land registry or, in the departments of Bas-Rhin, Haut-Rhin and Moselle, in the livre foncier.

If the person's name appears in an occupational legal publications register, the declaration must be referenced therein.

If the person is not required to be registered in a legal publications register, an extract of the declaration must be published in a journal of legal announcements in the department in which the business activity is conducted if that person is to avail of the benefit of the first paragraph of Article L. 526-1.

The drafting of the declaration referred to in the first paragraph and completion of the formalities shall give rise to the payment to notaries of fixed fees for which the ceiling is determined by decree.

#### **Article L. 526-3**

Where the immovable property rights indicated in the initial declaration are sold, the sum received therefor shall remain exempt from seizure with regard to creditors whose debts arose from the declarant's professional activities subsequent to publication of that declaration, on condition that the declarant reuses this sum within one year to acquire immovable property in which his principal place of residence is located.

If the act of acquisition contains a declaration of reuse of funds, the rights to the newly acquired principal place of residence shall remain exempt from seizure by the creditors referred to in the first paragraph in proportion to the sum reused.

The declaration of reuse of funds is subject to the conditions of validity and opposability provided for in Articles L. 526-1 and L. 526-2.

The declaration may, at any time, be the subject of a waiver subject to the same conditions of validity and opposability. The waiver may relate to all or some of the assets and may be in favour of one or more creditors mentioned in Article L. 526-1 designated by the authentic act of waiver. Where the beneficiary of this waiver assigns his claim, the assignee may avail of this.

The declaration shall remain effective after dissolution of the matrimonial regime if the declarant is awarded the property. The death of the declarant shall entail dismissal of the declaration.

#### **Article L. 526-4**

Where a natural person married under a legal or conventional community regime applies for registration in an occupational legal publications register, he must prove that his spouse has been duly informed of the consequences that the debts contracted through his business activities could have on the marital property.



A Conseil d'Etat decree shall stipulate the present Article's implementing provisions, where necessary.

#### **Article L. 526-5**

The provisions of Articles L. 313-14 to L. 313-14-2 of the Consumer Code shall apply to loan transactions granted to any person registered in a register of occupational legal publications, to any natural person engaged in a professional or independent agricultural activity and to the sole member and manager of a private limited company, and guaranteed by a rechargeable hypothec registered on the immovable property where the interested party has his principal place of residence.

#### *Section 2: Individual entrepreneurs with limited liability*

#### **Article L. 526-6**

Any individual entrepreneur may allocate a separate patrimony for his professional activity as distinct from his personal patrimony, without creating a legal person.

This patrimony shall comprise all assets, rights, obligations or securities held by the individual entrepreneur and that are necessary to carry out his professional activity. It may also include assets, rights, obligations or securities held by the individual entrepreneur, used for carrying out his professional activity and which he decides to allocate to his professional activity. The same asset, right, obligation or security may only be part of a single allocated patrimony.

As an exception to the preceding paragraph, individual entrepreneurs carrying out an agricultural activity as set out in Article L. 311-1 of the Rural and Maritime Fisheries Code, have the option of not allocating the land used for their farm to their professional activity. This option applies to all land owned by the farmers.

In order to carry out the professional activity to which the patrimony is allocated, individual entrepreneurs shall use a name incorporating their name, immediately preceded or followed by the words "Individual Entrepreneur with Limited Liability" or the initials "EIRL".

#### **Article L. 526-7**

The allocated patrimony shall be formed pursuant to a declaration filed:

1. Either with the occupational legal publications register with which the individual entrepreneur is bound to register;
2. Or with the occupational legal publications register chosen by the individual entrepreneur in the case of dual registration, in which case a note will be inserted on the other register;
3. Or, for natural persons not bound to register with an occupational legal

publications register, with a register held at the Registry of the Court ruling on commercial matters with jurisdiction over their principal place of business;

4. Or, for farmers, with the relevant chamber of agriculture.

#### **Article L. 526-8**

Bodies charged with keeping the registers mentioned in Article L. 526-7 shall only accept the filing of a declaration referred to in that same article after verifying that it includes:

1. A description of the assets, rights, obligations or securities allocated to the professional activity, in terms of nature, quality, quantity and value;

2. Reference to the object of the professional activity to which the patrimony is allocated. A change to the object shall give rise to a note entered in the register where the declaration provided for under Article L. 527-7 was filed;

3. Where necessary, the documents certifying the completion of formalities referred to in Articles L. 526-9 to L. 526-11.

#### **Article L. 526-9**

The allocation of an immovable property or part thereof shall be received by notarial deed and published in the Hypothec Registry or, in the departments of Bas-Rhin, Haut-Rhin and Moselle, in the livre foncier where the property is located. Where the individual entrepreneur allocates only a portion of one or more immovable properties, it shall identify this in a description of the division of property.

The drafting of the notarial deed and the completion of the land registration formalities shall give rise to the payment to notaries of fees for which the ceiling is determined by decree.

Where the allocation of an immovable property or portion thereof occurs after the creation of the allocated patrimony, a supplementary declaration shall be filed in the register where the declaration stipulated under Article L. 526-7 was filed. Article L. 526-8 shall apply, with the exception of 1 and 2.

Non-compliance with the rules set out in this Article shall result in the allocation being ineffective against third parties.

#### **Article L. 526-10**

Any part of the allocated patrimony other than liquid assets with a declared value higher than a total sum fixed by decree shall be valued based on a report appended to the declaration and drawn up, under their responsibility by a company auditor, a chartered accountant, a association for accounting and management or a notary appointed by the individual entrepreneur. Valuation by a notary may only relate to immovable property.

Where an asset referred to in the first paragraph is allocated after the

formation of allocated patrimony, it shall be valued in the same way and shall give rise to the filing of a supplementary declaration in the register where the declaration set out under Article L. 526-7 was filed.

Article L. 526-8 shall apply, with the exception of 1 and 2.

Where the declared value is higher than that proposed by the auditor, chartered accountant, association for accounting and management or notary, the individual entrepreneur shall be responsible, for a period of five years in respect of third parties for all of its allocated and unallocated assets up to the difference between the value proposed by the auditor, chartered accountant, association for accounting and management or notary and the declared value.

Where a company auditor, chartered accountant, association for accounting and management or notary has not been used, the individual entrepreneur shall be responsible for a period of five years in respect of third parties for all its allocated and unallocated assets, up to the difference between the actual value of the asset at the time of allocation and the declared value.

#### **Article L. 526-11**

Where all or some of the assets allocated are jointly owned or undivided, the individual entrepreneur shall provide proof that the spouse or undivided co-owners have consented to the allocation and that they have been informed of the rights of creditors as set out in 1 of Article L. 526-12 on the allocated patrimony. The same jointly-owned asset or undivided property or the same part of a jointly-owned or undivided immovable property may only be allocated to a single allocated patrimony.

Where the allocation of a jointly-owned or undivided property or part thereof occurs after the creation of the allocated patrimony, a supplementary declaration shall be filed in the register where the declaration stipulated under Article L. 526-7 was filed.

Article L. 526-8 shall apply, with the exception of 1 and 2.

Non-compliance with the rules set out in this Article shall result in the allocation being ineffective against third parties.

#### **Article L. 526-12**

The allocation declaration referred to in Article L. 526-7 shall be enforceable by operation of law against creditors whose rights arose after it was filed.

It is enforceable against creditors whose rights arose prior to its filing provided that the individual entrepreneur with limited liability mentions this in the allocation declaration and notifies the creditors as set out in conditions fixed by regulation.

In this case, the creditors concerned may lodge an objection to the

declaration being effective against them within a period fixed by regulation. A court order shall reject the objection or order either the repayment of the debts or the formation of guarantees if the company offers them and if they are judged adequate.

Failing repayment of the claims or formation of the guarantees ordered, the merger shall not be binding on this creditor whose objection has been accepted.

Objections made by a creditor shall not have the effect of preventing the formation of the allocated patrimony.

As an exception to Articles 2284 and 2285 of the Civil Code:

1. Creditors against whom the allocation declaration is effective and whose rights arose during the exercising of professional activity to which the patrimony is allocated shall have as sole general right of pledge the allocated patrimony;

2. The other creditors against whom the declaration is effective shall have as sole right of general pledge the unallocated patrimony.

However, the individual entrepreneur with limited liability shall be responsible on all of his assets and rights in the case of fraud or in the event of a serious breach of the rules set out in the second paragraph of Article L. 526-6 or of the obligations set out in Article L. 526-13.

Where the unallocated patrimony is insufficient, the general right of pledge of creditors mentioned in 2 of this paragraph may be exercised on the profits made by the individual entrepreneur with limited liability over the last reporting period.

#### **Article L. 526-13**

The professional activity to which the patrimony is allocated shall be determined by self-balancing accounting, performed in conditions defined in Articles L. 123-12 to L. 123-23 and L. 123-25 to L. 123-27.

As an exception to Article L. 123-28 and to the first paragraph of this Article, simplified accounting obligations shall apply to the professional activity of persons coming under the taxation systems defined in Articles 50-0, 64 and 102 ter of the General Tax Code.

The individual entrepreneur with limited liability shall be bound to open one or more bank accounts in a credit institution, exclusively dedicated to the activity to which the patrimony has been allocated.

#### **Article L. 526-14**

The annual accounts of the individual entrepreneur with limited liability or, where applicable, the document or documents arising from simplified accounting obligations as set out under the second paragraph of Article L. 526-13 shall be filed each year in the register where the declaration set out under Article L. 526-7 was filed and appended thereto. They shall be

transmitted, for appending thereto, to the register set out under Article L. 526-7 where the declaration is filed with the trades register and, where applicable, with the Commercial and companies register in the case provided for under 2 of the same article. From the date of filing, they shall constitute an update to the formation and value of the allocated patrimony.

In the case of non-compliance with the obligation referred to in the first paragraph, the Presiding Judge of the Court, ruling by way of summary proceedings may, at the request of any interested party or the Office of the Public Prosecutor and subject to a coercive progressive fine, enjoin the individual entrepreneur with limited liability to file its annual accounts or, where applicable, the document or documents arising from the simplified accounting obligations set out under the second paragraph of Article L. 526-13.

#### **Article L. 526-15**

In the event of a waiver by the individual entrepreneur with limited liability or the death of the individual entrepreneur, the allocation declaration shall cease to be effective. However, in the event of cessation of the professional activity to which the assets are allocated and concurrent with the waiver or in the event of death, the creditors referred to in 1 and 2 of Article L. 526-12 shall retain as sole general right of pledge that right which was theirs at the time of cessation or death.

In the case of a waiver, the individual entrepreneur shall have a note entered in the register where the declaration provided for under Article L. 526-7 was filed; In the event of death, an heir, legal successor or any other person authorised for this purpose shall have the note entered in the register.

#### **Article L. 526-16**

As an exception to Article L. 526-15, the allocation shall not cease where one of the owner's heirs or legal successors expresses his intention to continue the professional activity to which the assets were allocated, subject to compliance with the inheritance provisions. The person having expressed his intention to continue the professional activity shall have a note entered in the register where the declaration referred to in Article L. 526-7 is filed within three months from the date of death.

The taking over of the allocated assets, where applicable after the partition and sale of some allocated assets for inheritance purposes, is subject to the filing of a takeover declaration in the register where the declaration referred to in Article L. 526-7 was filed.

#### **Article L. 526-17**

I. - The individual entrepreneur with limited liability may assign against

payment, transfer inter vivos free of charge or contribute to the company all of his allocated patrimony and transfer title thereof under the terms set out in II and III of this Article without liquidating the patrimony.

II. - Assignments against payment or transfers inter vivos free of charge of the allocated patrimony to a natural person shall entail its takeover with allocation retained to the patrimony of the assignee or donee. Such assignment or transfer shall lead to the assignor or donor filing a declaration of transfer in the register where the declaration referred to in Article L. 526-7 was filed and shall be published. The takeover shall not be enforceable against third parties until these formalities have been completed.

The assignment or contribution of allocated patrimony to a legal person shall entail the transfer of title to the assignee's or the company's patrimony but the allocation thereof shall not be retained. It shall give rise to the publication of a notice. Transfer of title shall not be effective against third parties until this formality has been completed.

III. - The declaration or notice mentioned in II shall be accompanied by a description of the assets, rights, obligations or securities comprising the allocated patrimony.

Articles L. 141-1 to L. 141-22 shall not apply to the assignment or contribution to a company of a business occurring subsequent to the assignment or contribution to a company of the allocated patrimony.

The assignee, donee or beneficiary of the contribution shall be indebted to the creditors of the individual entrepreneur with limited liability referred to in 1 of Article L. 526-12 in place of the latter, without this replacement leading to novation in their respect.

The creditors of the individual entrepreneur with limited liability referred to in 1 of Article L. 526-12 whose claim predates the publication date mentioned in II of this Article, as well as the creditors against whom the declaration is not effective and whose rights arose prior to the filing of the declaration referred to in Article L. 526-7, may where the allocated patrimony is the subject of a donation inter vivos, lodge an objection to the transfer of the allocated patrimony within a fixed period set by regulation. A court decision shall reject the objection or shall order either the repayment of the debts or the provision of guarantees if the assignee or donee offers any and if they are judged to be sufficient.

Failing repayment of the claims or provision of the guarantees ordered, the transfer of the allocated patrimony shall not be binding on this creditor whose objection has been accepted. Objections made by a creditor shall not have the effect of preventing the transfer of the allocated patrimony.

#### **Article L. 526-18**

The individual entrepreneur with limited liability shall determine the income it shall pay into the unallocated patrimony.

#### **Article L. 526-19**

The scales of charges for the formalities for filing and registering the notes referred to in this Section, as well as the filing of annual accounts or the document or documents arising from simplified accounting obligations provided for under the second paragraph of Article L. 526-13 shall be fixed by decree. The formality of filing the declaration referred to in Article L. 526-7 shall be free of charge where the declaration is filed simultaneously with the application for registration in the legal publications register.

#### **Article L. 526-20**

The Office of the Public Prosecutor and any interested party may apply to the Presiding Judge of the Court ruling by way of summary proceedings to enjoin the individual entrepreneur with limited liability, subject to a progressive fine, to display the company name on all deeds and documents, immediately preceded or followed by the words: "Individual Entrepreneur with Limited Liability" or the initials: "EIRL".

#### **Article L. 526-21**

The implementing provisions of the present section shall be determined in a Conseil d'Etat decree.

### **LEGISLATIVE PART**

#### ***BOOK V: COMMERCIAL PAPER AND GUARANTEES<sup>1</sup>***

#### **TITLE II: GUARANTEES**

##### **CHAPTER VII: PLEDGE OF INVENTORIES**

#### **Article L. 527-1**

Any credit granted by a credit institution to a private law entity or a natural person in the exercise of their professional activity may be guaranteed by a pledge without dispossession of inventories held by that entity or person.

Pledges of inventories shall be ascertained by an act under private signature.

On pain of nullity, the deed constituting the pledge must contain the following information:

1. Company name: "deed of pledge of inventories";
2. Designation of the parties;
3. The information that the deed is subject to the provisions of Articles L. 527-1 to L. 527-11;
4. The name of the insurance provider providing cover against fire and

destruction;

5. The designation of the debt guaranteed;

6. A description sufficient to identify the present or future goods committed in nature, quality, quantity and value and where they are stored;

7. The duration of the commitment.

The provisions of Article L. 2335 of the Civil Code shall apply.

A custodian may be designated in the deed of pledge.

#### **Article L. 527-2**

Any clause providing that the creditor shall become the owner of the inventories in the event of non-payment of the debt owed by the debtor shall be deemed unwritten.

#### **Article L. 527-3**

Excluding goods subject to a retention of ownership clause, inventories of commodities and supplies, intermediate, residual and finished products and merchandise belonging to the debtor and estimated in nature and value on the date of the last inventory may be pledged as security.

#### **Article L. 527-4**

Pledges of inventories shall not take effect unless they are registered on a public register held at the Registry of the Court within whose jurisdiction the debtor has their registered office or domicile. Registration must take place, under pain of the pledge becoming null and void, within fifteen days of the formation of the constitution.

The ranking of pledgee creditors among themselves shall be determined by the date of their registrations. Creditors registered on the same date shall rank equally.

#### **Article L. 527-5**

Inventories shall constitute the guarantee of the credit institution until total repayment of the sums advanced.

The creditor's privilege shall, by operation of law, pass from inventories disposed of to those replacing them.

At any time and at their own expense, creditors may have the state of the inventories pledged recorded.

#### **Article L. 527-6**

Debtors shall be responsible for keeping the inventories in sufficient quantity and quality as set out in Article 1137 of the Civil Code.

They must provide proof that the inventories are insured against fire and destruction risks.



#### **Article L. 527-7**

Debtors shall make available to creditors on request a record of the inventories pledged and the accounting documents for all transactions relating to these.

They shall undertake not to reduce the value of the inventories on their part.

Where the record of inventories reveals a 20% reduction in their value as indicated in the deed of pledge, the creditor may give formal notice to the debtor either to re-establish the guarantee or to repay a portion of the amounts lent in proportion to the reduction noted. If not satisfied, the creditors shall be entitled to demand full repayment of the debt, which they shall consider as having become due and payable.

#### **Article L. 527-8**

The parties may agree that the portion of inventories pledged shall reduce in proportion to the repayment of the creditor.

#### **Article L. 527-9**

In the event of early repayment of the debt, the debtor shall not be bound to pay the remaining interest due to term.

Where the creditor refuses the debtor's offers, the debtor may obtain discharge by placing the sum on deposit.

#### **Article L. 527-10**

In the event of non-payment of the debt due, the creditor may pursue the realisation of its pledge as set out in Articles 2346 and 2347 of the Civil Code.

#### **Article L. 527-11**

The terms of application of the provisions of this Chapter shall be determined in a Conseil d'Etat decree.

### **LEGISLATIVE PART**

#### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **Article L. 610-1**

A Conseil d'Etat decree shall determine in each département<sup>60</sup> the court or courts that have jurisdiction to rule upon the proceedings provided for in

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<sup>60</sup> A subdivision of France.

this Book and the territorial jurisdiction in which these courts will exercise the powers attributed to them.

## **TITLE I: PREVENTION OF DIFFICULTIES FACED BY BUSINESSES**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

## **TITLE I: PREVENTION OF DIFFICULTIES FACED BY BUSINESSES**

### **CHAPTER I: PREVENTION OF DIFFICULTIES FACED BY BUSINESSES, THE SPECIAL COMMISSION<sup>61</sup> AND THE COMPOSITION PROCEDURE**

#### **Article L. 611-1**

Any person registered in the commercial and companies register or the trades register as well any single-member société à responsabilité limitée<sup>62</sup> company and private-law companies may join a prevention group accredited by an order of the State representative in the region.

This group is tasked with providing its members with a confidential analysis of the economic, accounting and financial data which the said members undertake to send to the group on a regular basis.

Where the prevention group identifies signs of difficulty, it will inform the head of the business and may suggest that an expert provide assistance.

On motion of the State representative, the competent public authorities shall give assistance to the accredited prevention groups. The Banque de France may also, as stipulated in an agreement, be invited to give its opinion on the financial situation of member businesses. Accredited prevention groups may also receive grants from local authorities.

Accredited prevention groups may enter into agreements with credit institutions and insurance companies in favour of their members.

#### **Article L. 611-2**

I. - Where any deed, document or procedure shows that a commercial company, an economic interest grouping or a sole ownership, running a retail or small business, is encountering difficulties that may undermine the continuation of its business operations, its managers may be summoned by the presiding judge of the Tribunal de Commerce<sup>63</sup> to determine the appropriate steps necessary to remedy the situation.

At the end of this meeting or if the managers have not come to the

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<sup>61</sup> Mandat ad hoc.

<sup>62</sup> A hybrid limited company with partnership-type shares. See from Article L223-1 of this Code.

<sup>63</sup> The first instance specialist commercial court.

meeting, the presiding judge of the court may, notwithstanding any statutory or regulatory provision to the contrary, obtain information enabling him to obtain disclosure of the debtor's accurate economic and financial situation from statutory auditors, members and representatives of the personnel, public authorities, social security bodies and provident institutions and the bodies responsible for the centralisation of information on banking risks and payment incidents.

II. - Where the managers of a commercial company do not file annual accounts within the time limits provided for by the applicable legal provisions, the presiding judge of the court may summon them to do so promptly, by means of an injunction accompanied by a periodic pecuniary penalty.

If this injunction is not complied with within the time limit provided for by a Conseil d'Etat decree, the presiding judge of the court may also enforce the provisions of the second paragraph of (I) above against the managers.

This shall apply, under the same conditions, to any single-member société à responsabilité limitée that does not file annual accounts or the documents mentioned in the first paragraph of Article L. 526-14, when the professional activity to which the assets are assigned is a commercial or trade activity.

#### **Article L. 611-3**

The presiding judge of the court may, at a debtor's request, appoint a special commissioner<sup>64</sup> and define his duties. The debtor may propose the name of a special commissioner.

The competent court is the Tribunal de Commerce if the debtor exercises a retail activity or artisanal trade. In the other cases, it shall be the Tribunal de Grande Instance.

#### **Article L. 611-4**

Conciliation proceedings shall be established before the Tribunal de Commerce<sup>65</sup> for debtors exercising a retail commercial or trade activity, who are faced with actual or foreseeable legal, economic or financial difficulty and who have not been in a state of cessation of payments for more than forty-five days.

#### **Article L. 611-5**

The conciliation proceedings shall be applicable, under the same conditions, to private-law companies and to natural persons running an

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<sup>64</sup> Mandataire ad hoc.

<sup>65</sup> The first instance general court, also administering specialist, small claims and some criminal cases.

independent professional activity, including independent professional persons with a statutory or regulated status or whose designation is protected. For the implementation of this article, the Tribunal de Grande Instance shall have jurisdiction and its presiding judge shall have the same powers as those attributed to the presiding judge of the Tribunal de Commerce.

The conciliation proceedings shall not apply to farmers as they are subject to the procedure provided for in Articles L. 351-1 to L. 351-7 of the Rural and Maritime Fisheries Code.

#### **Article L. 611-6**

The debtor shall file its case with the presiding judge of the court, stating therein its economic, employment and financial situation, financing needs and, if necessary, the means to tackle them. The debtor may propose the name of a mediator.

The conciliation proceedings shall be commenced by the presiding judge of the court who shall appoint a mediator for a period not exceeding four months but that he may, through a reasoned ruling, extend by one month at the most when so requested by the conciliator. If a request for court approval is made pursuant to II of Article L. 611-8 before this period expires, the mediator's duties and the proceedings are extended until the court's ruling. Failing this, the mediator's duties and the proceedings shall automatically be terminated and new conciliation proceedings may not commence within the three months following the termination.

The decision that commences the conciliation proceedings is sent to the Public Prosecutor's Office and to the statutory auditor if the debtor is subject to the auditing supervision of its accounts. Where the debtor runs an independent professional activity with a statutory or regulated status or whose designation is protected, the order will also be notified to the relevant supervisory body or authority, if any.

This judgement shall be subject to appeal by the Public Prosecutor's Office. The debtor may object to the mediator under the conditions and in the time limits to be fixed by a Conseil d'Etat decree.

After the commencement of the conciliation proceedings, the presiding judge of the court shall have the powers vested in him by the second paragraph of I of Article L. 611-2.

The presiding judge of the court may also appoint an expert of his choice to draw up a report on the debtor's economic, employment and financial situation and, notwithstanding any statutory or regulatory provision to the contrary, obtain all information enabling him to know the debtor's accurate economic and financial situation from banking and financial institutions.

#### **Article L. 611-7**

The conciliator's duty is to promote the conclusion of an amicable agreement between the debtor and its main creditors as well as, if applicable, its usual contracting partners, which is intended to put an end to the difficulties faced by the business. He may also make any proposals for the safeguarding of the business, the continuation of the economic activity and the maintenance of employment.

For this purpose, the conciliator may obtain all useful information from the debtor. The presiding judge of the court shall transmit to the mediator all information in his possession and, if applicable, the results of the investigation referred to under the fifth paragraph of Article L. 611-6.

Financial authorities, social security bodies, institutions managing the unemployment insurance system provided for by Articles L. 351-3 and following of the Labour Code and institutions governed by Book IX of the Social Security Code may consent to a cancellation of debt under the conditions provided for by Article L. 626-6 of this Code. It may be decided under these same conditions to transfer the rank of privilege<sup>66</sup> or hypothec<sup>67</sup> or to abandon these securities.

The mediator shall inform the presiding judge of the court of the progress of his duties and state all relevant comments on the debtor's performance.

If, during the proceedings, the debtor is served with formal notice or sued by a creditor, the judge who has commenced the proceedings may, at the debtor's request and after having been informed of the situation by the mediator, apply Articles 1244-1 to 1244-3 of the Civil Code.

If an agreement cannot be reached, the mediator shall immediately submit a report to the presiding judge of the court. The presiding judge of the court shall terminate the mediator's duties and the conciliation proceedings. The presiding judge's decision shall be notified to the debtor.

#### **Article L. 611-8**

I. - Upon the joint petition of the parties, the presiding judge of the court shall record their agreement and make it enforceable. He shall rule upon the case based on the debtor's certified statement attesting that he was not in a state of cessation of payments at the time the agreement was entered into or that the agreement has put an end to the state of cessation of payments. The decision recording the agreement shall not be subject to publication formalities and shall not be appealed against. The agreement shall terminate the composition proceedings.

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<sup>66</sup> A security conferring a preferential right to payment, a "privilege", often created by statute. See the Civil Code from Article 2331.

<sup>67</sup> "Hypothèque", the main type of land charge. See the Civil Code, from Article 2323 and from Article 2993.

II. - However, at the debtor's request, the court shall approve the agreement obtained if the following conditions are met:

1° The debtor is not in a state of cessation of payments or the agreement puts an end to it;

2° The terms of the agreement should normally ensure the continuity of the business's activity;

3° The agreement is not harmful to the interests of non-signatory creditors.

#### **Article L. 611-9**

The court shall rule upon the approval of the agreement after having heard or duly summoned to the judge's chambers, the debtor, the creditors who are party to the agreement, the representatives of the works council or, in the absence of a works council, the employee delegates, the mediator and the Public Prosecutor's Office. The supervisory body or, if any, relevant authority of a debtor who runs an independent profession with a statutory or regulated status or whose designation is protected, shall be heard or summoned under the same conditions.

The court may hear any other person whose testimony is deemed useful.

#### **Article L. 611-10**

The approval of the agreement shall terminate the composition proceedings.

Where the debtor is subject to a statutory audit of its accounts, the approved agreement will be transmitted to the statutory auditor. The approval decision shall be filed with the clerk's office, where any interested party may consult it, and be published. It shall be subject to appeal by the Public Prosecutor's Office and in the event of a challenge by the parties to the agreement concerning the privilege mentioned in Article L. 611-11. It may also be subject to third-party proceedings. A decision to refuse to approve the agreement shall not be published. It shall be subject to appeal.

#### **Article L. 611-10-1**

During its performance period, the recognised or approved agreement shall interrupt or prohibit all court action or stop all actions filed by creditors individually relating to the debtor's movable property as well as immovable property for the payment of claims referred to in the agreement. It shall interrupt, for the same period, the time limits given to creditors that are parties to the agreement, under the penalty of loss or termination of rights attached to the claims stipulated in the agreement.

#### **Article L. 611-10-2**

Individuals who are co-obliged or who have granted a personal guarantee

or assigned or transferred an encumbered property may benefit from the provisions of the recognised or approved agreement.

The approved agreement shall lead to the automatic removal of any prohibition from issuing cheques, imposed in compliance with Article L. 131-73 of the Monetary and Financial Code after rejection of a cheque issued prior to the commencement of the conciliation proceedings. When the debtor is a single-member société à responsabilité limitée, this prohibition is raised on the accounts relating to the assets concerned by the proceedings.

#### **Article L. 611-10-3**

Upon a petition by one of the parties to the recognised agreement, the presiding judge of the court, if he observes non-performance of the obligations emanating from the agreement, shall pronounce the rescission of the agreement.

The court shall pronounce the rescission of the approved agreement under the same conditions.

The presiding judge or the court that decides to rescind the agreement may also pronounce the lapse of all payment times granted pursuant to the fifth paragraph of Article L. 611-7.

#### **Article L. 611-11**

If safeguarding, judicial restructuring<sup>68</sup> or judicial liquidation proceedings are commenced, those persons who, under the approved agreement referred to under Article L. 611-8 (II), have made a contribution of fresh funds to the debtor in order to ensure the continuation and long-term future of the business's activity will be paid, up to the amount of this sum, in priority before all other claims prior to the commencement of the composition proceedings, according to the rank fixed under Article L. 622-17(II) and Article L. 641-13(II).

Persons who, in the approved agreement, supply new assets or services in order to ensure the continuation and long-term future of the business shall benefit from the same privilege<sup>69</sup> for the price of the assets or services.

This provision shall not apply to contributions made by shareholders or partners in the form of a capital increase.

Creditors that are signatories to the agreement may not benefit directly or indirectly from this provision in respect of their contributions prior to the commencement of the composition proceedings.

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<sup>68</sup> "Redressement judiciaire", an insolvency process intended to rescue, see Book VI of this Code, from Article L. 631-1.

<sup>69</sup> See the English translation of the "privilège" in the English version of the French Civil Code (from Article 2323).

#### **Article L. 611-12**

The commencement of safeguarding, judicial restructuring or judicial liquidation proceedings shall automatically terminate the agreement recognised or approved in compliance with Article L. 611-8.

In this case, the creditors will recover all their claims and guarantees, after deduction of sums received, without prejudice to the provisions of Article L. 611-11.

#### **Article L. 611-13**

The duties of a special commissioner or those of the mediator may not be carried out by any person who has received during the last twenty-four months remuneration or payment from the debtor, from any of the debtor's creditors or from a person who controls or is controlled by the debtor as defined by Article L. 233-16 (of this Code), for whatever reason, directly or indirectly, other than remuneration or payment for a special commission or duties in connection with an amicable settlement or a composition carried out in favour of the same debtor or the same creditor. The existence of remuneration or payment from a debtor who is a single-member société à responsabilité limitée is evaluated taking into consideration all the assets held by this debtor. The person thus appointed must attest on his honour, at the moment of acceptance of his duties, that he complies with these prohibitions.

The duties of the special commissioner or those of the conciliator may not be entrusted to any Tribunal de Commerce judge who is either in office or who has left office within the previous five years.

#### **Article L. 611-14**

Having obtained the debtor's approval, the presiding judge of the court shall determine the conditions of remuneration of the special commissioner, the conciliator and, if necessary, the expert, at the time of their appointment, on the basis of the work entailed in performing their duties. Their remuneration shall be fixed by order of the presiding judge of the court on completion of their duties.

Appeals against the decision defining the remuneration shall be filed with the First presiding judge of the Cour d'Appel<sup>70</sup> within a time limit to be fixed by a Conseil d'Etat decree.

#### **Article L. 611-15**

Any person who has taken part in the composition proceedings or in a special commission (mandat ad hoc) or who, by virtue of his duties, knows about these shall be bound by a duty of confidentiality.

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<sup>70</sup> Court of Appeal.



# **LEGISLATIVE PART**

## ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

### **TITLE I: PREVENTION OF DIFFICULTIES FACED BY BUSINESSES**

#### **CHAPTER II: PROVISIONS APPLICABLE TO NON-COMMERCIAL PRIVATE LAW ENTITIES ENGAGED IN ECONOMIC ACTIVITIES**

##### **Article L. 612-1**

Non-commercial private law entities whose number of employees, sales turnover net of tax or current revenues and total balance sheet assets or liabilities exceed, in respect of two of these criteria, the thresholds fixed by a Conseil d'Etat decree, must draw up an annual balance sheet, income statement and notes. The methods and conditions for establishing these documents shall be fixed by a decree.

These legal entities must appoint at least one statutory auditor and one deputy statutory auditor.

For farming cooperatives and agricultural collective interest companies that do not have the commercial form and whose financial securities are not admitted for trading on a regulated market, this obligation may be met, under the conditions defined in Article L. 527-1-1 of the Rural and Maritime Fisheries Code, by using the services of an approved federation for the review mentioned in Article L. 527-1 of the same code.

The penalties laid down in Article L. 242-8 shall apply to managers of the legal entities referred to in the first paragraph of this article who fail to draw up an annual balance sheet, income statement and notes.

Even if the thresholds provided for in the first paragraph have not been reached, non-commercial private-law companies may appoint at least one statutory auditor and one alternate auditor under the same conditions as in the second paragraph. In this case, the statutory auditor and the alternate auditor shall be subject to the same obligations, face the same civil and criminal liabilities and have the same powers as if they were appointed in accordance with the first paragraph.

##### **Article L. 612-2**

Non-commercial private-law companies, for which any two of the following criteria: total number of employees, pre-tax turnover, resources or balance-sheet total - exceed a threshold specified by a Conseil d'Etat decree must prepare a statement of the liquid and current asset, excluding operating assets and of current liabilities, a pro forma income statement, a cash flow statement and a financing plan.

The frequency, time limits and methods for drawing up these documents

shall be specified by a decree.

These documents shall be analysed in the reports to be drawn up by the management body on the future of the legal entity. These documents and reports shall simultaneously be sent to the statutory auditors, to the works council or, in the absence of a works council, to the employee representatives, and to the supervisory body, where one exists.

Where the provisions of the preceding paragraphs are not complied with or where the information given in the reports referred to under the preceding paragraph requires his comment, the statutory auditor shall signal it in a written report, which he shall submit to the body responsible for administration or management. This report shall be sent to the works council or, in the absence of a works council, to the employee delegates. This report shall also be presented to the next meeting of the governing body.

### **Article L. 612-3**

Where the statutory auditor of a legal entity referred to under Articles L. 612-1 and L. 612-4 discovers, in the course of his duties, facts that may threaten the business continuity of the legal entity, he shall inform the managers of the legal entity according to the conditions laid down in a Conseil d'Etat decree.

If no reply is received within the time limit laid down in a Conseil d'Etat decree, or if the response does not provide any assurance as to the business continuity, the statutory auditor shall direct the managers in writing, with a copy to the presiding judge of the Tribunal de Grande Instance, to request the collegiate board of the legal entity to deliberate upon the facts in question. The statutory auditor shall be called to attend this meeting. The decisions of the collegiate board shall be notified to the works council or, in the absence of a works council, to the employee delegates and to the presiding judge of the Tribunal de Grande Instance.

Where the collegiate board of the legal entity has not met to deliberate on the facts identified or where the statutory auditor has not been called to this meeting or if the auditor notes that the business continuity of the undertaking remains in jeopardy despite the decisions taken, a general meeting shall be called under the conditions and within the time limit defined by a Conseil d'Etat decree. The statutory auditor shall draw up a special report, which shall be presented at this meeting. This report shall be sent to the works council or, in the absence of a works council, to the employee delegates.

If, at the end of the general meeting, the auditor notes that the decisions taken do not guarantee the continued operation of the undertaking, he shall inform the presiding judge of the court of the steps taken and submit the results of these steps.

Within six months from the beginning of the procedure, the statutory

auditor may resume the procedure from the stage where he had thought it possible to terminate it, when, despite the elements that justified this assessment, the continuity of the business continues to be in jeopardy and urgency requires that measures be immediately adopted.

The provisions of this article shall not apply where conciliation or safeguarding proceedings have been initiated by the debtor pursuant to Articles L. 611-6 and L. 620-1.

#### **Article L. 612-4**

Any association that has received one or more annual grants from public authorities, as defined by Article 1 of the Act of 12 April 2000, or from public bodies of an industrial or commercial nature, the total amount of which exceeds a threshold fixed by decree, must prepare an annual financial statement including a balance sheet, an income statement and notes, according to methods specified by decree. These associations must publish their annual financial statements and the statutory auditor's report, according to conditions defined by a Conseil d'Etat decree.

These same associations shall be required to appoint at least one statutory auditor and one alternate auditor.

#### **Article L. 612-5**

The legal representative or the statutory auditor, if any, of a non-commercial private-law company or of an association referred to under Article L. 612-4 shall present a report regarding the agreements entered into directly or through anybody standing between the legal entity and one of its directors or one of the persons acting as an officer, to the governing body or, in the absence of a governing body, attaches such report to the documents sent to the members.

The same shall apply to agreements entered into between this legal entity and another legal entity of which a partner with unlimited liability, manager, director general manager, deputy general manager, member of Board of Directors or Supervisory Board, or shareholder who holds more a fraction of voting rights of more than 10% of the voting rights, is simultaneously a director or acts as a legal representative of the aforementioned legal entity.

The governing body shall rule upon the report.

A Conseil d'Etat decree shall define the conditions according to which the report is drawn up.

However, agreements that are not approved shall nevertheless take effect. The harmful effects on the legal entity resulting from such an

agreement may be borne, individually or having solidary<sup>71</sup> responsibility as the case may be, by the director or the person acting as a legal representative.

The provisions of this article shall not apply to ordinary contracts entered into under normal terms and conditions which, due to their object or their financial implications, are of no great importance for any of the parties.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE II: SAFEGUARDING PROCEEDINGS**

##### **Article L. 620-1**

A safeguarding procedure is established at the request of the debtor mentioned in Article L. 620-2 who can prove that although it is not faced with a cessation of payments, it has difficulties that it is unable to overcome. This purpose of this procedure is to facilitate the reorganisation of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities.

The safeguarding proceedings shall give rise to a plan to be confirmed by a court order at the end of an observation period and, where appropriate, to the formation of two committees of creditors, in compliance with the provisions of Articles L. 626-29 and L. 626-30.

##### **Article L. 620-2**

The safeguarding proceedings shall apply to all persons engaged in a retail activity or artisanal trade, farmers, all other natural persons engaged in an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, as well as all private-law companies.

Except in the case of separate assets of the single-member société à responsabilité limitée, new safeguarding proceedings may not be commenced with respect to any person already subject to such proceedings or to judicial restructuring or judicial liquidation proceedings if the operations of the plan that it has given rise to have not been terminated or if the liquidation proceedings have not been closed.

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<sup>71</sup> See the Civil Code, from Article 1197. This English term is now in use in European texts, see Christian von Bar and Eric Clive (eds.), *Principles, Definitions and Model Rules of European Private Law* (Oxford, University Press 2010) III. – 4:103.

# **LEGISLATIVE PART**

## ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

### **TITLE II: SAFEGUARDING PROCEEDINGS**

#### **CHAPTER I: COMMENCEMENT OF THE SAFEGUARDING PROCEEDINGS**

##### **Article L. 621-1**

The Court shall issue an order on the commencement of the proceedings after having heard in or duly summoned to the judge's chambers, the debtor, representatives of the works council or, in the absence of a works council, the employee delegates. The Court may hear any other person whose testimony it deems useful.

In addition, where the debtor is an independent professional with a statutory or regulated status or whose designation is protected, the Court shall decide, if necessary, after hearing or giving notice to the supervisory body or relevant authority, under the same conditions.

The Court may, before making a ruling, appoint a judge who shall gather information regarding the business's financial, economic and employment situation.

This judge may apply the provisions of Article L. 623-2.

He may be advised by any expert of his choice.

The hearing for the commencement of safeguarding proceedings with respect to a debtor who benefits or has benefited from a special commission or from conciliation proceedings during the preceding eighteen months must be held in the presence of the Public Prosecutor, unless it concerns separate assets of the single-member société à responsabilité limitée.

In this case, the Court may, of its own motion or at the request of the Public Prosecutor's Office, obtain all documents and deeds relating to the special commission or the composition proceedings, notwithstanding the provisions of Article L. 611-15.

##### **Article L. 621-2**

The competent court is the Tribunal de Commerce if the debtor is engaged in a retail or trade activity. The Tribunal de Grande Instance shall be competent in other cases.

At the request of the administrator, the court-appointed receiver, the Public Prosecutor's Office or on the court's own motion, the commenced proceedings may be extended to one or more other persons where their assets are intermingled with those of the debtor or where the legal entity is a sham. The court that has commenced the initial proceedings shall remain

competent for this purpose.

Under the same conditions, one or more other assets of the single-member société à responsabilité limitée debtor may be brought together under the assets concerned by the procedure, if these assets are intermingled. The same shall apply when the debtor has committed a serious breach to the rules set out in the second paragraph of Article L. 526-6 or to the obligations set out in Article L. 526-13 or fraud affecting a creditor with a general right of pledge<sup>72</sup> over the asset concerned by the proceedings.

For the enforcement of the second and third paragraphs of this article, the presiding judge of the court may order all the necessary precautionary measures with regard to the assets of the defendant of the action mentioned in the said paragraphs, at the request of the administrator, the court-appointed receiver, the Public Prosecutor's Office or on his own motion.

#### **Article L. 621-3**

The order shall commence an observation period not exceeding six months, which may be renewed once by a reasoned ruling at the request of the administrator, the debtor or the Public Prosecutor's Office.

It may also be extended exceptionally, at the request of the State Prosecutor, by a reasoned ruling of the Court for a period to be fixed by a Conseil d'Etat decree.

Where an agricultural business is involved, the Court may extend the observation period taking account of the current agricultural year and the practices specific to the farm's products.

#### **Article L. 621-4**

In the commencement order, the Court shall appoint the supervisory judge whose functions are specified in Article L. 621-9.

It may, if need be, appoint several supervisory judges.

The Court shall invite the works council or, in the absence of a works council, the employee delegates to appoint a representative from among the company's employees. In the absence of a works council or employee delegates, the employees shall elect a representative, who shall perform the functions attributed to these institutions by the provisions of this Title.

The terms and conditions for the appointment or election of the employees' representative shall be specified in a Conseil d'Etat decree. Where no employees' representative can be appointed or elected, a record of the default shall be drawn up by the debtor.

In the same order, without prejudice to the possibility of appointing one or

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<sup>72</sup> "Gage". See the Civil Code, from Article 2333.

more experts for duties that it shall determine, the Court shall appoint two court nominees, that is, a court-appointed receiver and an administrator, whose duties are specified in Article L. 622-20 and Article L. 622-1 respectively.

It may, at the request of the Public Prosecutor's Office, appoint several receivers or administrators.

However, the Court shall not be bound to appoint an administrator where the proceedings relate to a debtor whose number of employees and turnover net of tax are below the thresholds provided for by a Conseil d'Etat decree. In this case, the provisions of Chapter VII of this Title shall apply. Until the issue of the confirmation order of the plan, the Court may, at the request of the debtor, the court-appointed receiver or the Public Prosecutor's Office, decide to appoint an administrator.

The debtor may propose an administrator to be appointed by the court. The Public Prosecutor's Office may also propose the name of a court-appointed receiver. There must be a special justification for the rejection of the Public Prosecutor's Office.

When the proceedings are commenced with respect to a debtor who benefits or has benefited from a special commission or conciliation proceedings within the last eighteen months, the Public Prosecutor's Office may also object to the appointment of the special commissioner or mediator as administrator court-appointed receiver.

If the debtor so requests, the court shall appoint, in keeping with their respective remits as they result from the provisions applicable to them, an auctioneer, a bailiff, a notary or a sworn commodity broker to perform the inventory specified in Article L. 622-6.

Otherwise, Article L. 622-6-1 shall apply.

#### **Article L. 621-5**

No relatives or affines, up to the fourth degree included, of the debtor if he is a natural person, or managers, if the debtor is a legal entity, may be appointed to any one of the positions provided for in Article L. 621-4 except where this provision prohibits the appointment of an employees' representative.

#### **Article L. 621-6**

The employees' representative and employees who take part in the appointment process must not have received any of the convictions provided for in Article L. 6 of the Electoral Code. The employees' representative must be at least eighteen years old.

The Tribunal d'Instance that rules in final instance shall have jurisdiction on the objections raised against the appointment of the employees' representative.

#### **Article L. 621-7**

The Court may, of its own motion or on the initiative of the supervisory judge or at the request of the Public Prosecutor's Office, replace the administrator, the expert or the court-appointed receiver or add one or more administrators or court-appointed receivers to the ones already appointed.

The administrator, the court-appointed receiver or the creditor appointed as controller may ask the supervisory judge to apply to the Court for that purpose.

Where the debtor is an independent professional person with a statutory or regulated status or whose designation is protected, the supervisory body or relevant authority, as the case may be, may apply to the Public Prosecutor's Office for the same purpose.

The debtor may ask the supervisory judge to apply to the Court for the replacement of the administrator or the expert. Under the same conditions, any creditor may request the replacement of the court-appointed receiver.

Notwithstanding the foregoing paragraphs, when the administrator or court-appointed receiver asks for the replacement of the administrator or expert, the presiding judge of the court, to whom the supervisory judge has referred the matter, shall be competent to proceed therewith. The presiding judge of the court shall rule by issuing an order.

Only the works council or, in the absence of a works council, the employee delegates or, if there is none, only the business's employees, may replace the employees' representative.

#### **Article L. 621-8**

The administrator and the court-appointed receiver shall regularly inform the supervisory judge and the Public Prosecutor's Office of the progress of the proceedings. The supervisory judge and the Public Prosecutor's Office may request the disclosure of all deeds and documents relating to the proceedings at any time.

The Public Prosecutor's Office give to the supervisory judge, on the latter's request or of his own motion, notwithstanding any legal provision to the contrary, any information he holds and which may be useful for the proceedings.

#### **Article L. 621-9**

The supervisory judge shall supervise the speedy progress of the proceedings and the protection of the parties' interests.

Where the appointment of an expert is necessary, this may only be made by the supervisory judge, for the duties he shall determine, without affecting the powers of the Court provided for in Article L. 621-4 to appoint one or more experts. The terms for the remuneration of the expert shall be fixed



by a Conseil d'Etat decree.

The presiding judge of the court shall be competent to replace the supervisory judge who is unable to perform or has ceased his duties. The order by which the replacement shall be an administrative act of the court.

#### **Article L. 621-10**

The supervisory judge shall appoint up to five controllers from among those creditors requesting to be appointed. Where he appoints several controllers, he must ensure that at least one of them is chosen from among the secured creditors and one from among the unsecured creditors.

No relatives or affines, up to the fourth degree included, of the debtor who is a natural person or the directors of a legal entity, nor any person holding directly or indirectly all or part of the capital of the debtor or whose capital is held, in part or in all, by that same person, shall be appointed as controller or as representative of a legal entity appointed as controller.

Where the debtor is an independent professional person with a statutory or regulated status or whose designation is protected, the supervisory body or relevant authority, if any, shall act as an ex officio controller. In this case, the supervisory judge shall not appoint more than four controllers.

The controller shall be held liable only in case of gross negligence. He may be represented by one of his employees or by an advocate.

Any creditor appointed as controller may be removed by the Court at the request of the Public Prosecutor's Office.

#### **Article L. 621-11**

The controllers shall assist the court-appointed receiver in his functions and the supervisory judge in his duty of supervising the management of the business. They may consult all documents sent to the administrator and to the court-appointed receiver. They shall be bound by a duty of confidentiality. Controllers shall not be paid for their duties.

#### **Article L. 621-12**

If it appears, after the commencement of the proceedings, that the debtor was already in a state of cessation of payments at the time the commencement order was issued, the Court shall record this and fix the date of the cessation of payments under the conditions provided for in Article L. 631-8.

It shall convert the safeguarding proceedings into judicial restructuring proceedings.

If necessary, it may modify the length of the remaining observation period. For the purposes of estimating the debtor's assets in light of the inventory drawn up during the safeguarding proceedings, the Court shall appoint in consideration of their respective attributions as resulting from the

provisions applicable to them, an auctioneer, a bailiff, a notary or an accredited commodity broker.

An action may be filed with the court by the administrator, the court-appointed receiver or the Public Prosecutor's Office to that effect. The Court may also initiate an action of its own motion. It shall rule upon the case after having heard or duly summoned the debtor.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE II: SAFEGUARDING PROCEEDINGS**

##### **CHAPTER II: THE BUSINESS DURING THE OBSERVATION PERIOD**

###### **Article L. 622-1**

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

II. - Where the Court, in accordance with the provisions of Article L. 621-4, appoints one or more administrators, it will assign them to jointly or individually supervise the debtor's management operations or to assist the debtor in all or some of such operations.

III. - In performing his duty of assistance, the administrator must comply with the legal and contractual obligations incumbent on the head of the business.

IV. - At any time, the Court may alter the administrator's duties at his request or the request of the court-appointed receiver or that of the Public Prosecutor's Office.

V. - The administrator may operate, with his signature, the debtor's bank and Post Office accounts if the debtor is prohibited from so doing under Article 65-2 and the third paragraph of Article 68 of the Decree of 30 October 1935 on the unification of the law governing cheques.

###### **Article L. 622-3**

The debtor shall continue to carry out acts of disposal and management over his personal estate as well as to exercise rights and actions not included within the administrator's duties.

In addition, subject to the provisions of Articles L. 622-7 and L. 622-13, the daily management operations that the debtor performs alone shall be deemed valid with respect to third parties acting in good faith.

###### **Article L. 622-4**

As from the time of his entry into office, the administrator must either

require the head of the business to carry out all acts necessary for preserving the interests of the business against its debtors and for maintaining the production capacity or perform these actions himself as the case may be.

The administrator shall be entitled to take out, on behalf of the business, any hypothec, pledge of incorporeal movables<sup>73</sup>, pledge of corporeal movables or privilege<sup>74</sup> that the debtor may have neglected to secure or renew.

#### **Article L. 622-5**

As of the issue of the commencement order, all third party holders must hand over to the administrator or, in the absence of an administrator, to the court-appointed receiver, at the latter's request, all documents and books of account for examination.

#### **Article L. 622-6**

From the commencement of the proceedings, an inventory shall be made of the debtor's estate and of any encumbrances attached thereto. The debtor shall add to the inventory to be given to the court-appointed administrator and the court-appointed receiver a statement with respect to assets he holds that may be claimed by a third party. The limited liability individual entrepreneur debtor shall also add to the said inventory the assets held in connection with the activity for which the proceedings have been initiated which are included in another of his estates and for which he might request the takeover under the conditions set out in Article L. 624-19.

The debtor shall give the administrator and the court-appointed receiver a list of its creditors, the amount of its debts and the main executory contracts. The debtor shall inform them of any pending proceedings to which it is a party.

The administrator or, if none has been appointed, the court-appointed receiver may, notwithstanding any statutory or regulatory rule to the contrary, receive information enabling him to know the exact position of the debtor's estate from public authorities and bodies, pension and social security institutions, credit institutions, electronic money institutions, payment institutions and bodies responsible for the centralisation of information on banking risks and payment incidents.

Where the debtor is an independent professional person with a statutory or regulated status or whose designation is protected, the inventory will be drawn up in the presence of a representative of the debtor's supervisory body or relevant authority, if any. The inventory may not infringe the debtor's duty of professional confidentiality under any circumstances.

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<sup>73</sup> "Nantissement": See the Civil Code, from Article 2355.

<sup>74</sup> A security conferring a preferential right to payment.

The absence of an inventory shall not preclude actions for recovery or restitution.

A Conseil d'Etat decree shall define the conditions under which this article shall apply.

#### **Article L. 622-6-1**

Unless the commencement order has appointed a public officer or an accredited commodity broker tasked with drawing up the inventory, the inventory shall be prepared by the debtor and certified by an auditor or witnessed by a public accountant. The provisions of paragraph four of Article L. 622-6 shall not apply in this case.

If the debtor does not initiate the inventory operations within a period of eight days reckoned from the commencement order or does not complete the said operations within a period set by the order, the supervisory judge shall appoint, to start or finish the said operations, an auctioneer, a bailiff, a notary or an accredited commodity broker in consideration of their respective remits as resulting from the provisions applicable to them. An action may be filed by the administrator, the court-appointed receiver or the Public Prosecutor's Office to that effect. The court may also initiate an action of its own motion. The supervisory judge may extend the period set for completing the inventory operations.

#### **Article L. 622-7**

I. - The order commencing the proceedings shall automatically prohibit payment of claims arising prior to the issue of the commencement order, except set-off payments of connected claims.

It shall also automatically prohibit the payment of any claim arising after the commencement order, not mentioned in I of Article L. 622-17.

The prohibitions shall not apply to the payment of food claims.

Similarly, it shall automatically establish the non-enforceability of the retention right granted by paragraph 4 of Article 2286 of the Civil Code during the observation period and the performance of the plan, unless the pledged asset is included in a business disposal decided in application of Article L. 626-1.

Lastly, it shall prohibit the conclusion and the implementation of a *lex commissariat*.

II. - The supervisory judge may allow the debtor to carry out an act of disposal not included in the ordinary management of the business, to grant a hypothec, a pledge of corporeal movables or a pledge of incorporeal movables or to compromise or settle debts.

The supervisory judge may also authorise the payment of debts prior to the ruling, to withdraw the pledge or legitimately-held object or to obtain the return of assets and rights transferred as guarantee in a fiduciary estate,

when this withdrawal or return is justified by the continuation of the activity. In addition, this payment can be authorised to exercise the purchase option of a finance lease contract where this exercise of option is justified by the continuation of the business and the upcoming payment is an amount lower than the market value of the asset covered by the contract.

III. - All acts or payments carried out in violation of the provisions of this article shall be nullified on the petition of any interested party or of the Public Prosecutor's Office, to be submitted within a three-year period beginning with the performance of the creation or the payment of the debt. Where the act has to be published, this period will run from the date of publication.

#### **Article L. 622-8**

When an asset charged with a special privilege<sup>75</sup>, a pledge of corporeal movables, a pledge of incorporeal movables or a hypothec is sold, the portion of the price corresponding to the claims secured by these guarantees will be placed on a deposit account with the Caisse des Dépôts et Consignations. After the confirmation of the plan, creditors whose claims are secured by these guarantees or by a general privilege<sup>76</sup> shall be paid out of the proceeds according to their priority and in compliance with Article L. 626-22 where they are subject to the time limits set out in the plan.

The supervisory judge may order interim payment of the whole or part of the creditors' claims of the secured on the asset. Save where the supervisory judge has issued a specially reasoned ruling or where the payment is in favour of the Treasury benefits institutions or similar organisations, the interim payment will be subject to the presentation by its beneficiary of a guarantee provided by a credit institution.

The debtor may propose to creditors, substitution for guarantees equivalent to those they already hold. In the absence of agreement, the supervisory judge may order this substitution. An appeal against this order may be filed with the Cour d'Appel.

#### **Article L. 622-9**

The business's activity shall be continued during the observation period, subject to the provisions of Articles L. 622-10 to L. 622-16.

#### **Article L. 622-10**

At any time during the observation period, the court, at the request of the debtor, may order the partial cessation of the activity.

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<sup>75</sup> A special class of preferential security. See the Civil Code (Article 2332).

<sup>76</sup> A preferential security over a general assets of a person or legal person. See the Civil Code (Article 2331).

Under the same conditions, the court, on the petition of the debtor, the administrator, the court-appointed receiver, the Public Prosecutor's Office or of its own motion, will convert the safeguarding proceedings into judicial restructuring proceedings if the conditions in Article L. 631-1 are met or will order judicial liquidation proceedings if the conditions of Article L. 640-1 are met.

On the petition of the debtor, it shall also decide the conversion into judicial restructuring proceedings if the adoption of safeguarding plan is clearly impossible and if the closing of the proceedings would certainly and shortly lead to the cessation of payments.

It shall rule upon the case after having heard or duly summoned the debtor, the administrator, the court-appointed receiver, the controllers, the works council, or, in the absence of a works council, the employee delegates and after having received the Public Prosecutor's Office opinion.

The Court, when converting the safeguarding proceedings into judicial restructuring proceedings, may, if necessary, alter the length of the remaining observation period.

For the purposes of estimating the debtor's assets in light of the inventory drawn up during the safeguarding proceedings, the Court shall appoint in consideration of their respective attributions as resulting from the provisions applicable to them, an auctioneer, a bailiff, a notary or an accredited commodity broker.

#### **Article L. 622-11**

Where the Court pronounces the liquidation it will terminate the observation period and the administrator's duties, subject to the provisions of Article L. 641-10. Under the conditions set out in the last paragraph of Article L. 622-10, it shall appoint a person to carry out the estimate of the debtor's assets.

#### **Article L. 622-12**

Where the difficulties that were the grounds for the commencement of the proceedings disappear, the Court will terminate the proceedings at the debtor's request. It shall rule upon the case as provided by the fourth paragraph of Article L. 622-10.

#### **Article L. 622-13**

I. - Notwithstanding any legal rule or contractual term to the contrary, the indivisibility, termination or rescission of an executory contract may not result from the commencement of safeguarding proceedings alone.

The other party must perform its obligations despite the non-performance by the debtor of the obligations entered into prior to the issue of the commencement order. The non-performance of these obligations shall only

give creditors a right to submission of claims.

II. - Only the administrator has the right to require the debtor's contracting party to perform executory contracts in exchange for the performance of the debtor's obligations.

Where the performance concerns the payment of a sum of money, it must be paid promptly, except where the administrator is given a moratorium by the other party. Based on the documentary predictions in his possession, the administrator must ensure at the time he requires the performance of the contract that he will have the necessary funds at his disposal. Where the contract is to be performed over time and paid in instalments, the administrator will terminate it if he believes that he will not have the necessary funds to satisfy the obligations of the next term.

III. - The executory contract shall be automatically rescinded:

1° After a formal notice to take a position on the continuation of the contract sent by the contracting party to the administrator which remains unanswered after one month. Before this time limit expires, the supervisory judge may grant the administrator a shorter time limit or an extension, which may not exceed two months, to take a position;

2° Failing payment under the terms defined in II and failing an agreement with the contracting party to continue the contract relations; In this case, the Public Prosecutor's Office, the administrator, the court-appointed receiver or a controller may file a case with the court for the purposes of terminating the observation period.

IV. - At the administrator's request, the supervisory judge shall pronounce the termination if it is necessary for the debtor's safeguarding proceedings and is not overly detrimental to the interests of the contracting party.

V. - If the administrator does not avail itself of the right to continue the contract or terminates the said contract under the conditions of II or if the termination is pronounced in application of IV, the non-performance may lead to damages in favour of the contracting party, for an amount that shall be reported as a liability. The contracting party may however postpone the reimbursement of sums paid in excess by the debtor in performance of the contract until the question of damages is settled.

VI. - The provisions of this article shall not apply to employment contracts. They neither concern trust agreements, with the exception of the agreement for the performance of which the debtor maintains the use or enjoyment of the assets or rights transferred in a fiduciary estate.

#### **Article L. 622-14**

Without prejudice to the application of points I and II of Article L. 622-13, the termination of the lease agreement for buildings leased to the debtor and used for the business activity shall be made under the conditions below:

1° On the day the lessor is informed of the administrator's decision not to

continue the lease. In this case, failure to perform may result in damages in favour of the contracting party, for an amount to be reported as a liability. The contracting party may however postpone the reimbursement of sums paid in excess by the debtor in performance of the contract until the question of damages is settled;

2° If the lessor requests the termination or has termination of the lease recorded due to non-payment of the rent or tenant's expenses in connection with the occupancy after the issue of the commencement order, since the lessor may take action only at the end of a three month period from the date of issue of the order.

If the sums are paid before this period has elapsed, there is no cause to terminate the lease.

Notwithstanding any contractual clause to the contrary, the absence of activity during the observation period in one or more of the properties leased by the business shall not lead to the termination of the lease.

#### **Article L. 622-15**

If the lease is assigned, any clause imposing solidary liability with the assignee on the assignor shall be deemed unwritten.

#### **Article L. 622-16**

In the event of safeguarding proceedings, the lessor shall have a privilege<sup>77</sup> only on the rent of the last two years preceding the issue of the commencement order.

If the lease is terminated, the lessor will have, in addition, a privilege in respect of performance of the lease in the current year and damages that may be awarded by court.

If the lease is not terminated, the lessor may not demand payment of the rent yet to fall due where the guarantees given to him at the time of the contract are maintained or where those that have been given after the issue of the commencement order are regarded as sufficient.

The supervisory judge may allow the debtor or the administrator, as the case may be, to sell movable assets furnishing the leased premises that are likely to deteriorate or suffer rapid impairment, that are expensive to preserve or the sale of which does not undermine the existence of the business or the maintenance of sufficient guarantees for the lessor.

#### **Article L. 622-17**

I. - Claims arising in a proper manner after the issue of the commencement order for the needs of the proceedings or the observation period or as consideration for a service provided to the debtor during this

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<sup>77</sup> A security conferring a preferential right to payment.



period, shall be paid as they fall due.

II. - Where they are not paid as they fall due, these claims will be paid in priority before all the other claims, whether these are secured or not by privileges<sup>78</sup> or guarantees, except for those claims secured by the privilege provided for in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code, legal fees arising in a proper manner after the issue of the commencement order for the needs of the proceedings and those claims secured by the privilege created by Article L. 611-11 of this Code.

III. - They shall be paid in the following order:

1° Claims of wages and salaries for which funds have not been advanced in compliance with Articles L. 143-11-1 to L. 143-11-3 of the Labour Code;

2° Loans and claims arising from the performance of continued contracts according to the provisions of Article L. 622-13 and where the other party accepts deferred payments; These loans and the moratorium on payment shall be allowed by the supervisory judge within the limits necessary for the continuation of business operations during the observation period and shall be published. In the event of termination of a contract that had been continued in a proper manner, compensation and penalties will be excluded from this article.

3° Other claims, according to their priority.

IV. - Unpaid claims will lose the privilege<sup>79</sup> provided for by this article if they have not been notified to the administrator, or failing which, to the court-appointed receivers, or where these persons have ceased their functions, to the plan performance supervisor or the liquidator within a year from the end of the observation period.

#### **Article L. 622-18**

Any sum received by the administrator or court-appointed receiver, that has not been deposited on the debtor's bank or Post Office accounts in order to continue business operations, must immediately be deposited on a deposit account with the Caisse des Dépôts et Consignations.

If deposits are delayed, the administrator or the court-appointed receiver must pay interest on the unpaid amounts at the legal rate of interest plus five per cent.

#### **Article L. 622-19**

Any sum paid by the association referred to under Article L. 143-11-4 of the Labour Code in compliance with Articles L. 143-11-1 to L. 143-11-3 of the same Code shall be reported to the tax authority.

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<sup>78</sup> Securities conferring a preferential right to payment, "privileges".

<sup>79</sup> Here, right to preferential payment.

#### **Article L. 622-20**

Only the court-appointed receiver appointed by the Court may act on behalf of and in the general interest of the creditors. However, if the court-appointed receiver fails to act, any creditor appointed as controller may act in the general interest of the creditors under the conditions provided for in a Conseil d'Etat decree.

The court-appointed receiver shall transmit all comments that he receives from the controllers in the course of the proceedings to the supervisory judge and to the Public Prosecutor's Office.

Sums recovered following actions initiated by the court-appointed receiver or, if the court-appointed receiver fails to act, by the creditor(s) appointed as controllers, become part of the debtor's estate and shall be used to pay the debtor's liabilities according to the terms provided for paying liabilities if the continuation of the business is decided.

#### **Article L. 622-21**

I. - The issue of the commencement order shall stay or prohibit legal actions of all creditors whose claims are not referred to under Article L. 622-17 (I) seeking to obtain:

1° an order against the debtor to pay a sum of money.

2° the rescission of a contract on the grounds of non-payment of a sum of money.

II. - The issue of the commencement order shall also stay or prohibit any proceedings for enforcement on the part of these creditors on both movable and immovable properties in addition to any distribution procedure that did not result in a distribution prior to the commencement order.

III. - Hence, all time limits, to be observed under the penalty of loss or rescission of rights, shall be stayed.

#### **Article L. 622-22**

Save the provisions of Article L. 625-3, any pending proceedings shall be stayed until the creditor who initiated it has filed its submission of claim. Such proceedings shall then be resumed ipso jure for the sole purpose of verifying the claims and determining their amount after having duly summoned the court-appointed receiver and, as the case may be, the administrator or the plan performance supervisor appointed in compliance with Article L. 626-25.

#### **Article L. 622-23**

Legal actions and proceedings for enforcement against the debtor other than those referred to under Article L. 622-21 shall be continued during the observation period, after the court-appointed receiver and the administrator

have been summoned or after the action is resumed at their own initiative.

#### **Article L. 622-23-1**

Where assets or rights present in a fiduciary estate are covered by an agreement in the performance of which the indebted settlor retains the use or enjoyment thereof, no assignment or transfer of these assets or rights can intervene in favour of the trustee or a third party owing solely to the fact of the commencement of the proceedings, the stay of the plan or a payment default for a claim that arose prior to the commencement order. This prohibition shall occur, failing which the assignment or transfer will not be valid.

#### **Article L. 622-24**

From the date of publication of the order, all creditors other than employees whose claims arose prior to the issue of the commencement order shall submit their claims to the court-appointed receiver within time limits set by a Conseil d'Etat decree. Creditors who hold a published security or who are bound to the debtor by a published contract shall be notified in person or, where appropriate, at their elected domicile. The time limit for submitting claims with respect to these creditors shall run from notice of this information.

The claims may be submitted by the creditor or by any employee or proxy of his choice.

The claims must be submitted even if they are not proven by a document. Those claims whose amount is not yet definitively determined shall be submitted based on an assessment. The claims of the Public Treasury, provident institutions and social security as well as claims of the institutions provided for in Article L. 351-21 of the Labour Code for which no order for enforcement has been issued at the time of submitting shall be admitted on a provisional basis for the amount submitted. Whatever the case, the submissions of claims by the Public Treasury and social security shall always be made subject to any taxes and other claims not proven at the date of the filing of the submission of claims. Subject to pending court and administrative proceedings, final proof must be brought within the time limit provided for in Article L. 624-1, under the penalty of debarment.

Those institutions referred to under Article L. 143-11-4 of the Labour Code shall be subject to the provisions of this article for the sums paid by them as an advance and that shall be reimbursed to them under the conditions provided for claims arising prior to the issue of the order commencing the proceedings.

Claims properly arising after the issue of the commencement order, other than those referred to under Article L. 622-17(I), shall be subject to the provisions of this article. The time limits shall run as of the maturity date of

the claim. However, creditors whose claims arise from a successive performance contract shall file the total amount of their claim under the conditions provided for by a Conseil d'Etat decree.

The time limits for submitting claims of a civil party arising from a criminal offence shall run under the conditions set out in the first paragraph or as from a final judgement determining the amount thereof, where this decision occurs after the publication of the commencement order.

Alimony claims are not subject to the provisions of this article.

#### **Article L. 622-25**

The submission of claim shall state the amount of the claim due on the date of issue of the commencement order and the sums yet to fall due and their dates of maturity. It shall state the nature of the privilege<sup>80</sup> or security that secures the claim, if any.

Where the claim is expressed in a foreign currency, it shall be converted into Euros at the exchange rate prevailing on the date of issue of the commencement order.

Unless it results from an order for enforcement, the submitted claim shall be certified as genuine by the creditor. The supervisory judge may request that the statutory auditor's stamp or, failing this, the stamp of a public accountant, be affixed to the submission of claims. Any refusal to affix the stamp must be explained.

#### **Article L. 622-26**

If they fail to submit their claims within the time limits provided for in Article L. 622-24, the creditors will not participate in the allocation of funds and distribution of dividends unless the supervisory judge sets aside the debarment of their claims if they prove that they are not liable for the absence of submission of claims or that the debtor has deliberately omitted to mention their claim on the list described in the second paragraph of Article L. 622-6.

They may then participate only in the distributions of dividends made after their request.

Claims that are not properly submitted within these time frames cannot be enforced against the debtor during the performance of the plan and after the performance when the commitments stated in the plan or decided by the court have been met. During the execution of the plan, they shall also be unenforceable against co-obliged individuals or individuals who have granted a personal security or have allocated or assigned an asset as collateral.

A petition to set aside a debarment may be filed only within a six-month

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<sup>80</sup> A security conferring a preferential right to payment.

period. This period shall run from the date of publication of the commencement order or, for those institutions referred to under Article L. 143-11-4 of the Labour Code, from the end of the period during which the claims arising from an employment contract are secured by these institutions. With respect to creditors secured by a published security or bound to the debtor by a published contract, the period shall run from the receipt of the notice delivered to them. As an exception, the period shall be extended to one year with regard to creditors who were unable to know the existence of their claim before the end of the six months period referred to above.

#### **Article L. 622-27**

In the event of a dispute over the whole or part of a claim other than those referred to under Article L. 625-1, the court-appointed receiver shall notify the creditor concerned, by requesting him to give its explanations. A failure to reply within thirty days shall bar any later dispute over the court-appointed receiver's proposals.

#### **Article L. 622-28**

The issue of the commencement order shall stay the legal and contractual interest, as well as any interest due to late payment and surcharges, unless it concerns interest arising from loan contracts for a period of at least one year or contracts with payments deferred for at least one year. Individuals who are co-obliged or have granted a personal security or allocated or assigned an asset as collateral may avail themselves of the provisions of this paragraph.

The issue of the commencement order shall stay any action against individuals who are co-obligors or have granted an independent guarantee or have allocated or assigned an asset as collateral until judgement ordering the plan or pronouncing liquidation. The Court may subsequently grant them a moratorium or a deferred payment period for a maximum of two years.

Creditors secured by these guarantees may take protective measures.

#### **Article L. 622-29**

The issue of the commencement order shall not make payable claims mature on the day the order is issued. Any clause to the contrary shall be deemed unwritten.

#### **Article L. 622-30**

No hypothec, pledge of corporeal movables, pledge of incorporeal movables or privilege may be registered after the commencement order has been issued. The same shall apply to deeds and court decisions

transferring or creating rights in rem except where these deeds have obtained a legal date or the decisions have become enforceable prior to the issue of the commencement order.

However, the Public Treasury shall not lose its privilege<sup>81</sup> for claims that it was not required to register on the date of the issue of the commencement order and for claims to be collected after this date if these claims are submitted under the conditions provided for in Article L. 622-24.

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

#### **Article L. 622-31**

A creditor bearing obligations entered into, endorsed or guaranteed in solidarity<sup>82</sup> by two or more co-obligors subject to safeguarding proceedings, may submit its claim for the nominal value of its claim in all cases of proceedings.

#### **Article L. 622-32**

Co-obligors subject to safeguarding proceedings may not bring an action against each other regarding payments carried out except where the total of sums paid out in each case exceeds the total amount of the claim including the principal and other sums. In this case, the excess shall be payable, according to the order of the obligations, to the co-obligors who are secured by the others.

#### **Article L. 622-33**

If a creditor, entitled to solidary obligations entered into by a debtor subject to safeguarding proceedings, has received an advance payment on his claim from other co-obligors prior to the issue of the commencement order, the creditor may submit its claim only after deducting the advance payment and shall retain, for the remaining sum due to it, its rights against the co-obligors or the surety.

A co-obligor or surety who has made a partial payment may submit its claim up to the amount paid to discharge the debtor.

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<sup>81</sup> A security conferring a preferential right to payment.

<sup>82</sup> Solidarité or responsabilité solidaire means having solidary responsibility. Solidary is an English term. See the Civil Code, from Article 1197.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE II: SAFEGUARDING PROCEEDINGS**

##### **CHAPTER III: DRAFTING AN ECONOMIC, EMPLOYMENT AND ENVIRONMENTAL PLAN**

###### **Article L. 623-1**

The administrator, in cooperation with the debtor and possibly assisted by one or more experts, shall be required to draw up a report on the business's economic and employment situation.

The report on the economic and employment situation shall state the origin, extent and nature of the business's difficulties.

Where the business operates one or more classified plants within the meaning of Title I of Book V of the Environmental Code, the report on the economic and employment situation shall be supplemented by a report on the environmental situation that the administrator procures the drafting thereof under the conditions provided for by a Conseil d'Etat decree.

###### **Article L. 623-2**

The supervisory judge may, notwithstanding any statutory or regulatory rule to the contrary, obtain information enabling him to know the debtor's exact economic, financial, employment and net asset situation from statutory auditors, public accountants, employees or employees' representatives, public authorities and bodies, social security and provident institutions, credit institutions, electronic money institutions, payment institutions as well as from bodies responsible for the centralisation of information on banking risks and payment incidents.

###### **Article L. 623-3**

The administrator shall obtain from the supervisory judge all information and documents useful for the implementation of his duties and those of any experts.

Where the proceedings are commenced with respect to a business that benefits from an approved amicable agreement provided for in Article L. 611-8 of this code or in Article L. 351-6 of the Rural and Maritime Fisheries Code, the administrator will receive the expert's report provided for in Article L. 611-6 or, as the case may be, the expert's report and the report provided for in Articles L. 351-3 and L. 351-6 of the Rural and Maritime Fisheries Code.

The administrator shall consult the court-appointed receiver and hear any person capable of informing him about the business's position and the possibilities for its recovery, the conditions for settling its debts and the employment conditions under which the activity may be continued. He shall inform the debtor accordingly and consider the debtor's views and proposals.

He shall inform the court-appointed receiver as well as the works council or, in the absence of a works council, the employee delegates, of the progress of his duties.

Where the debtor is an independent professional person with a statutory or regulated status or whose designation is protected, the administrator shall consult the debtor's supervisory body or relevant authority, if any.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE II: SAFEGUARDING PROCEEDINGS**

##### **CHAPTER IV: DETERMINATION OF THE DEBTOR'S ESTATE**

###### ***Section 1: Verification and admission of claims***

###### **Article L. 624-1**

Within the time limit fixed by the Court, and after having received the debtor's views, the court-appointed receiver shall draw up the list of the submitted claims with his proposals for their admission, rejection or referral to the competent court. He shall transmit this list to the supervisory judge.

The court-appointed receiver may not be paid in respect of submitted claims that do not appear on the list drawn up within the time limit provided above, except for the claims submitted after this time limit in compliance with the last two paragraphs of Article L. 622-24.

###### **Article L. 624-2**

Based on the proposals submitted by the court-appointed receiver, the supervisory judge shall decide on the admission or rejection of the claims or note either the existence of a pending legal action or his lack of jurisdiction in respect of the dispute.

###### **Article L. 624-3**

The creditor, the debtor or the court-appointed receiver shall be entitled to file an appeal against the decisions of the supervisory judge pursuant to



the provisions of this Section.

However, a creditor whose claim is contested in whole or in part and who has not replied to the court-appointed receiver within the time limit provided for in Article L. 622-27 cannot appeal against the decision of the supervisory judge where the decision confirms the proposal of the court-appointed receiver.

The terms and forms of the appeal provided for in the first paragraph shall be specified by a Conseil d'Etat decree.

#### **Article L. 624-3-1**

Decisions to admit or reject claims or lack of jurisdiction pronounced by the supervisory judge shall be recorded in a statement that shall be filed at the registry of the court. Any interested person, other than those referred to in Article L. 624-3, may bring an action to the supervisory judge under the conditions provided for in a Conseil d'Etat decree.

#### **Article L. 624-4**

The supervisory judge's decision shall not be subject to appeal in the cases provided for in this Section where the value of the principal amount of the claim does not exceed the ceiling for claims within the jurisdiction of the court that commenced the proceedings.

### *Section 2: Rights of spouses*

#### **Article L. 624-5**

The spouse of a debtor subject to safeguarding proceedings shall specify the content of his/her personal property in compliance with the rules of the matrimonial regime and under the conditions provided for in Articles L. 624-9 and L. 624-10.

#### **Article L. 624-7**

Recovery of assets made in compliance with Article L. 624-5 may not be exercised except subject to debts and hypothecs that lawfully charge these assets.

#### **Article L. 624-8**

The spouse of the debtor who was at the time of his or her marriage, or who became, within one year of his or her marriage or within the following year, a farmer, retailer, tradesman or any other self-employed professional activity, may not file under the safeguarding proceedings, any action based on benefits granted by one spouse to the other in the marriage contract or during the marriage. For their part, creditors cannot profit from any benefits

granted by one of the spouses to the other.

*Section 3: Rights of sellers of movable property, recovery claim and restitution*

**Article L. 624-9**

A recovery claim against movable property may be filed only within a three-month period from the date of publication of the order commencing the proceedings.

**Article L. 624-10**

The owner of a property does not need to provide proof of ownership where the contract related to it has been published. He may claim the restitution of his property under the conditions provided for by a Conseil d'Etat decree.

**Article L. 624-10-1**

Where the right to restitution has been recognised under the conditions set out in Articles L. 624-9 or L. 624-10 and the asset is covered by an executory contract on the day of issue of the commencement order, the effective restitution shall occur on the day of the rescission or at the expiry of the contract.

**Article L. 624-11**

The privilege<sup>83</sup> and right of recovery created by Article 2332 (4°) of the Civil Code in favour of the seller of movables as well as the action for rescission of a contract may be exercised only within the limits of the provisions of Articles L. 624-12 to L. 624-18 of this Code.

**Article L. 624-12**

Goods may be claimed when the sale contract was rescinded prior to the issue of the commencement order, either pursuant to a court decision or pursuant to a condition subsequent, and if they still exist in kind, wholly or partially.

The recovery claim must also be admitted even if the rescission of the sale had been ordered or referred to by a court decision after the issue of the commencement order where the action for recovery or for rescission of a contract was initiated by the seller, for a reason other than non-payment of the sales price, prior to the issue of the commencement order.

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<sup>83</sup> A security conferring a preferential right to payment.

#### **Article L. 624-13**

Goods sent to the debtor may be reclaimed for such time as they have not been delivered to the debtor's premises or to the agent charged with selling them on the debtor's behalf.

However, the recovery claim will not be admissible if the goods have been resold, other than fraudulently, before their arrival, on the basis of correctly established invoices or transport documents.

#### **Article L. 624-14**

The seller may retain goods that have not been delivered or dispatched to the debtor or to a third party acting on the debtor's behalf.

#### **Article L. 624-15**

Bills of exchange and any other unpaid securities given by their owner to be collected or to be specially allocated to specific payments may be reclaimed if they remain in the debtor's portfolio.

#### **Article L. 624-16**

Movable property given to the debtor for a provisional period or those transferred into a fiduciary estate for which the debtor retains use or enjoyment thereof as a constituting debtor may be claimed if they still exist in kind.

Assets sold with retention of title clause may be claimed if they still exist in kind at the time of the issue of the commencement order. The parties must have previously agreed in writing to this clause no later than at the time of the delivery. It can also be done in a written document governing all the commercial transactions agreed upon between the parties.

The recovery claim in kind can be carried out under the same conditions on movable assets incorporated into another asset where these assets can be separated without suffering any damage. A recovery claim in kind can also be made on fungible items where assets of the same kind and same quality are in the hands of the debtor or any person holding them on his behalf.

In all cases, there may be no cause for a recovery claim if, by decision of the supervisory judge, the price is paid immediately. The supervisory judge may also, with the consent of the petitioning creditor, grant a moratorium. The payment of the price shall thus be considered equivalent to the payment of the debts referred to under Article L. 622-17(I).

#### **Article L. 624-17**

The administrator, with the consent of the debtor, or the debtor, with the

consent of the court-appointed receiver, may approve the recovery claim or restitution claim of assets set out in this Section. In the absence of consent or in the event of dispute, the request will be filed with the supervisory judge who will rule upon the fate of the contract based on the views of the creditor, the debtor and the court-appointed receiver.

#### **Article L. 624-18**

The price or portion of the price of the assets referred to under Article L. 624-16, which was neither paid nor settled in negotiable instruments or set off between the debtor and the purchaser on the issue of the order commencing the proceedings, may be claimed. The insurance benefit subrogated to the asset may also be claimed under the same conditions.

#### *Section 4: Special provisions relating to the single-member société à responsabilité limitée*

#### **Article L. 624-19**

The single-member société à responsabilité limitée debtor shall establish, under the conditions set out by Article L. 624-9, the content of the assets held in connection with the activity for which the commencement order was issued and which are included in another of his estates. The administrator, with the agreement of the court-appointed receiver, may approve the request regarding the recovery of the asset. Failing approval or in the absence of an administrator, the request shall be submitted to the supervisory judge.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE II: SAFEGUARDING PROCEEDINGS**

##### **CHAPTER V: PAYMENT OF CLAIMS RESULTING FROM EMPLOYMENT CONTRACTS**

#### *Section 1: Verification of claims*

#### **Article L. 625-1**

After verification, the court representative shall draw up, within the time limits provided for in Article L. 143-11-7 of the Labour Code, statements of claims resulting from an employment contract, after having heard or duly summoned the debtor.

The statements of claims shall be handed over to the employees'

representative under the conditions provided for in Article L. 625-2.

They must be signed by the supervisory judge, filed with the clerk of the court and shall be submitted to the publication formalities provided for by a Conseil d'Etat decree.

An employee whose claim does not appear in whole or in part on the statements of claims may, under the penalty of debarment, bring an action before the Labour Court within two months following the date of completion of the publication formalities provided for in the preceding paragraph. He may ask the employees' representative to assist him or to represent him before the Labour Court.

The debtor and the administrator, if he is required to provide assistance, shall be summoned.

#### **Article L. 625-2**

The court-appointed receiver shall hand over the statements of claims resulting from an employment contract to the employees' representative provided for in Article L. 621-4 for verification.

The court-appointed receiver must transmit all useful documents and information to the said employees' representative. Should any problem be encountered, the employees' representative may turn to the administrator and, where appropriate, apply to the supervisory judge. He has a duty of confidentiality as set out in Article L. 432-7 of the Labour Code. The time spent in carrying out his duties as described by the supervisory judge shall automatically be regarded as working time and shall be paid on the normal due date.

#### **Article L. 625-3**

Pending cases before the Labour Court on the date of issue of the commencement order will be continued in the presence of the court-appointed receiver and the administrator where he is assigned to provide assistance, or after having duly summoned the latter.

The court-appointed receiver shall inform the court hearing the case and the employees party thereto of the commencement of the safeguarding proceedings within ten days.

#### **Article L. 625-4**

Where the institutions referred to under Article L. 143-11-4 of the Labour Code refuse on whatsoever ground to pay a claim listed on the statements of claims resulting from an employment contract, they will inform the court-appointed receiver of their refusal and the court-appointed receiver shall immediately inform the employees' representative and the employee concerned.

The employee concerned may bring his case before the Labour Court.

The court-appointed receiver, the debtor and the administrator, if he is required to provide assistance, shall be summoned.

The employee may ask the employees' representative to assist him or to represent him before the Labour Court.

#### **Article L. 625-5**

Disputes brought before the Labour Court pursuant to Articles L. 625-1 and L. 625-4 shall be brought directly before the Labour Court judges.

#### **Article L. 625-6**

Statements of claims resulting from an employment contract, signed by the supervisory judge, as well as the decisions of the Labour Court shall be mentioned on the statement of claims submitted to the registry of the court. Any interested person, other than those referred to in Articles L. 625-1, L. 625-3 and L. 625-4, may bring an action or third party proceedings under the conditions provided for in a Conseil d'Etat decree.

#### *Section 2: Employees' privilege<sup>84</sup>*

#### **Article L. 625-7**

Claims resulting from an employment contract shall be secured in the event of commencement of safeguarding proceedings:

1° by the privilege established by Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code, for the reasons and amounts defined in the said articles;

2° by the privilege provided for by Article 2331 (4°) and Article 2104 (2°) of the Civil Code.

#### **Article L. 625-8**

Notwithstanding the existence of any other claim, claims secured by the privilege provided for by Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code must be paid by the debtor or, if he is required to provide assistance, by the administrator, upon the order of the supervisory judge, within ten days from the date of issue of the safeguarding proceedings commencement order, if the debtor or administrator has the necessary funds.

However, before determining the amount of these claims, the debtor or administrator, if he is required to provide assistance, must immediately, with the permission of the supervisory judge and depending upon the funds available, pay to the employees, on a provisional basis, a sum equal to one month's unpaid wages, on the basis of the latest pay slip, but without

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<sup>84</sup> A security conferring a preferential right to payment.

exceeding the ceiling referred to in Article L. 143-10 of the Labour Code.

In the event of insufficient available funds, the sums due under the terms of the two preceding paragraphs must be paid from the first funds received.

*Section 3: Guarantee for the payment of claims resulting from employment contracts*

**Article L. 625-9**

Notwithstanding the rules set out in Articles L. 625-7 and L. 625-8, claims resulting from employment contracts or apprenticeship contracts are secured under the conditions set out in Articles L. 3253-2 to L. 3253-4, L. 3253-6 to L. 3253-21 and L. 8252-3 of the Labour Code.

**LEGISLATIVE PART**

***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

**TITLE II: SAFEGUARDING PROCEEDINGS**

**CHAPTER VI: SAFEGUARDING PLAN**

**Article L. 626-1**

Where there is a serious likelihood of saving the business, the Court will draw up a plan, terminating the observation period in so doing.

The safeguarding plan shall include, if necessary, the cessation, the addition or the assignment of one or more activities.

Assignments made in compliance with this Article shall be subject to the provisions of Section I of Chapter II of Title IV and to Article L. 642-22.

The court-appointed receiver shall carry out the duties entrusted to the liquidator under these provisions.

The pre-emptive rights created by the Rural and Maritime Fisheries Code or the Town Planning Code shall not be exercised on a property included in an assignment of one or more activities decided in application of this article.

*Section 1: Drawing-up a draft plan*

**Article L. 626-2**

In light of the economic, social and, as applicable, environmental situation, the debtor, with the assistance of the administrator, proposes a plan, notwithstanding the application of the provisions of Article L. 622-10.

The draft plan shall state the prospects for turning the business around

on the basis of the operational possibilities and methods, market conditions and the means of finance available.

It shall define the terms and conditions for settling the liabilities and any performance guarantees that the debtor must provide to ensure the performance thereof.

The draft shall state and explain the level of and prospects for employment as well as the employment conditions for continuation of the business's operations. Where the draft provides for dismissals for economic reasons, it will review steps already taken and define the actions to be carried out to facilitate the re-employment and the compensation of employees whose jobs are under threat. The draft shall take into consideration any work documented in the environmental report.

It shall document, attach and analyse the purchase offers from third parties with regard to one or more activities. It shall state the activity or activities to be closed or added.

#### **Article L. 626-3**

Where the draft plan provides for a modification of share capital, a shareholders' extraordinary general meeting or a partners' meeting as well as, where their approval is necessary, the special meetings provided for in Articles L. 225-99 and L. 228-35-6 or the general meetings of the general body provided for in Article L. 228-103 will be called under the conditions provided for by a Conseil d'Etat decree.

If owners' net capital is less than half of the legal capital, due to the losses recognised in the accounts, the meeting will first be called upon to reconstitute owners' net capital up to the amount suggested by the administrator, which may not be less than half of the legal capital. It may also be called upon to decide on a reduction or increase of capital, to which one or more persons who have promised to implement the plan may subscribe.

Obligations entered into by shareholders or partners or by new subscribers shall be subject to the approval of the plan by the Court for their implementation.

Clauses providing for the approval of new shareholders or partners shall be deemed unwritten.

#### **Article L. 626-5**

The proposals for the settlement of debts may concern time limits, rebates and conversions into securities giving or likely to give rights to the capital. The administrator shall send these proposals as and when they are drafted and under the supervision of the supervisory judge, to the court-appointed receiver, the controllers as well as to the works council or, in the absence of a works council, to the employee delegates.



Where the proposal pertains to time limits and rebates, the court-appointed receiver shall seek, individually or collectively, the agreement of each creditor who has submitted a claim in accordance with Article L. 622-24.

In the event of consultation in writing, failure to reply within thirty days from receipt of the court-appointed receiver's letter shall be construed as acceptance. These provisions shall apply to the institutions described in Article L. 143-11-4 of the Labour Code with respect to the amounts stated in the fourth paragraph of Article L. 622-24, even if their claims have not yet been submitted. They also apply to the creditors mentioned in the first paragraph of Article L. 626-6 where the proposal submitted to them exclusively pertains to the payment time limits.

Where the proposal pertains to a conversion into securities giving rights to the capital, the court-appointed receiver shall seek, individually and in writing, the agreement of each creditor who has submitted its claim in accordance with Article L. 622-24.

Failure to reply within thirty days from receipt of the court-appointed receiver's letter shall be construed as acceptance.

The court-appointed receiver is not required to consult the creditors for whom the draft plan does not change the terms of payment or provides for full payment in cash right after the plan is defined or after the admission of their claims.

#### **Article L. 626-6**

Financial authorities, social security bodies, institutions managing the unemployment insurance system provided for in Articles L. 351-3 and following of the Labour Code as well as the institutions governed by Book IX of the Social Security Code may consent to cancel all or part of the debtor's debts on terms similar to those that would have been granted to the debtor, under normal market conditions, by any private economic agent placed in the same situation.

In this context, the financial authorities may cancel the full amount of direct taxes raised for the benefit of the State and local authorities as well as any other statutory revenue amounts payable by the debtor. With respect to indirect taxes raised on behalf of central and local government authorities, only late payment penalties, surcharges, penalties or fines may be cancelled.

The conditions for cancelling the debt shall be determined by decree.

Creditors referred to under the first paragraph may also decide to transfer the rank of their privilege or hypothec or to abandon these guarantees.

#### **Article L. 626-7**

The court-appointed receiver shall record the creditors' replies. This

record shall be sent to the debtor and the administrator as well as the controllers.

#### **Article L. 626-8**

The works council or, where there is none, employee delegates and the court-appointed receiver shall be informed and consulted about the measures that the debtor plans to propose in the draft plan in light of the information and offers received.

They shall also be informed, in addition to the controller or controllers, about the economic and social situation and about the draft plan, which shall be sent to them by the administrator and completed, if necessary, by his observations.

The documents referred to in the second paragraph shall be sent at the same time to the competent employment authorities. The minutes of the meeting, the agenda of which shows the consultation of the employee delegates shall be sent to the court as well as to the authority referred to above.

The Public Prosecutor's Office shall be notified accordingly.

#### *Section 2: Order confirming the plan and implementation of the plan*

#### **Article L. 626-9**

After having heard or duly summoned the debtor, the administrator, the court-appointed receiver, the controllers as well as the representatives of the works council or, in the absence of a works council, the employee delegates, the court shall rule based on the documents set out in Article L. 62-8, after having received the opinion of the Public Prosecutor's Office. If the proceedings are commenced for the benefit of a debtor whose number of employees or sales turnover excluding tax exceeds the thresholds fixed by a Conseil d'Etat decree, the hearing must be held in the presence of the Public Prosecutor's Office.

#### **Article L. 626-10**

The plan shall state the persons bound to implement it and all the commitments they have taken and which are necessary to safeguard the business. These commitments shall relate to the future of the business's activity, the terms and conditions for maintaining and financing the business, the settlement of liabilities that must be submitted as well as any guarantees given to ensure implementation of the plan.

The plan shall state and explain the level of and prospects for employment as well as the employment conditions for continuation of the business's operations.

The persons who will implement the plan, even as shareholders/partners,

shall not be bound to bear obligations other than the commitments they have accepted during its preparation, subject to the provisions of Articles L. 626-3 and L. 626-16.

#### **Article L. 626-11**

The order confirming the plan shall make its provisions binding on anyone.

Except for legal entities, co-obligors and persons who have granted a personal surety or allocated or assigned an asset as collateral may avail themselves of the provisions of the plan.

#### **Article L. 626-12**

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

#### **Article L. 626-13**

The confirmation of the plan by the court shall lead to the automatic lifting of the prohibition on issuing cheques, ordered on rejection of a cheque issued prior to the issue of the commencement order, in compliance with Article L. 131-73 of the Monetary and Financial Code. When the debtor is a single-member société à responsabilité limitée, this prohibition is raised on the accounts relating to the assets concerned by the proceedings.

#### **Article L. 626-14**

In the order confirming or modifying the plan, the court may decide that assets that it deems indispensable for the continuation of the business may not be alienated, for a period fixed by it, without its permission. The period of inalienability may not exceed that of the plan.

Where the court is presented with a request for permission to alienate an asset rendered inalienable by application of the first paragraph, it shall rule, on penalty of invalidity, after seeking the opinion of the Public Prosecutor's Office.

The formalities for publication of the temporary inalienability shall be carried out under the conditions provided for by a Conseil d'Etat decree.

Any act entered into in breach of the provisions of the first paragraph may be declared void at the request of any interested party or at the request of the Public Prosecutor's Office filed within three years from the date of the conclusion of the contract. Where the act has to be published, this period will run from the date of publication.

#### **Article L. 626-15**

The plan shall state the modification of the constitution necessary for the reorganisation of the company.

#### **Article L. 626-16**

Where necessary, the order confirming the plan shall give power of attorney to the administrator to convene, under the conditions provided for by a Conseil d'Etat decree, the general meeting competent to put into effect the modifications provided for in the plan.

#### **Article L. 626-17**

The partners or shareholders must pay the capital contribution they have subscribed to within the time limit determined by the court. In the event of immediate payment, they may benefit from set off up to the amount of their admitted claims and within the limit of the debt reduction included the plan in the form of debt cancellation or moratoria.

#### **Article L. 626-18**

The court shall take cognizance of the moratoria and cancellations accepted by the creditors in the manner provided for in the second paragraph of Article L. 626-5 and Article L. 626-6.

These moratoria and cancellations may, if necessary, be reduced by the court.

The court shall approve the agreements for conversion into securities accepted by the creditors under the conditions set out in paragraph three of Article L. 626-5, unless they are detrimental to the interests of the other creditors. It shall also make sure, if necessary, of the approval of the meetings mentioned in Article L. 626-3.

For the creditors other than those referred to in the first and second paragraphs of this article, where the payment terms stipulated by the parties prior to the commencement order exceed the plan period, the court shall issue an order to maintain these terms.

In the other cases, the court shall impose uniform payment terms, subject to the fifth paragraph of this article. The first payment may not be scheduled more than one year hence. The amount of each of the annuities provided for by the plan, as from the third, shall not be less than 5% of each of the admitted credits, except in the case of an agricultural business.

Where the principal of a credit remains fully due on the day of the first payment provided for by the plan, its reimbursement shall begin on the date of the annuity provided for by the plan which follows the due date stipulated by the parties prior to the commencement order. On this date, the principal shall be paid on the basis of the amount that would have been received by

the creditor if he had been subject to the uniform payment terms imposed by the court on the other creditors, from the start of the plan. The amount paid in respect of the following annuities shall be determined in accordance with the uniform payment terms imposed on the other creditors. If no creditor has been subject to the uniform payment terms, the amount paid in respect of the following annuities shall correspond to annual fractions equal to the amount of the outstanding principal.

The payment terms imposed in application of the fourth and fifth paragraphs cannot exceed the plan period.

For finance lease contracts, the terms set out in this article shall end if the finance lessee exercises its purchase option before their expiry. This may not be exercised if, subject to the deduction of accepted rebates, all sums contractually due have not been paid.

#### **Article L. 626-19**

The plan may grant creditors an option, consisting in a payment to be made within shorter uniform payment terms but with a proportionate reduction of the amount of the claim.

The reduction of the claim shall be definitely gained only after payment of the last instalment provided for by the plan for its payment.

#### **Article L. 626-20**

I. - By way of exception to the rules provided for in Articles L. 626-18 and L. 626-19, debt cancellations and moratoria shall not apply to:

1° claims secured by the privilege provided for in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code;

2° claims resulting from a contract of employment secured by the privilege provided for in Article 2101, 4° and Article 2104, 2° of the Civil Code where the amount of the claims has not been advanced by the institutions referred to under Article L. 143-11-4 of the Labour Code or has not been submitted to a subrogation.

II. - Within a limit of 5% of the estimated liabilities, the smallest claims taken in an ascending order of their amounts, and provided that each claim does not exceed the amount set by decree, shall be reimbursed without any cancellation or moratorium. This provision will not apply where the amount of the claims held by one and the same person exceeds one tenth of the percentage fixed above or where a subrogation has been agreed to or a payment has been made on behalf of another.

#### **Article L. 626-21**

The inclusion of a claim in the plan and the acceptance by the creditor of the moratoria, cancellations or conversion into securities granting or likely to grant rights to the capital shall not affect the final admission of the claim

in the liabilities.

Where the court-appointed receiver has proposed the admission of a claim and the supervisory judge has not received any opposing claim on all or part of the said claim, the related payments shall be made provisionally as soon as the decision for the plan becomes final, provided that it is stipulated in the said decision.

Sums to be distributed corresponding to the disputed claims shall be paid only as of the definitive admission of these claims in the liabilities. However, the court before which the case has been brought may order that the creditor will participate on a provisional basis, either totally or partially, in the distributions made before the definitive admission of the claim.

Unless the law provides otherwise, payments provided for in the plan shall be payable at the address of the payee.

The court shall determine the terms and conditions for the payment of dividends provided for in the plan. The dividends shall be paid to the plan performance supervisor who will distribute the amount received. Where the smooth performance of the plan so requires with respect to the special nature of the payments to be made, the court may, via an expressly reasoned decision and after seeking the advice of the Public Prosecutor's Office, allow the plan performance supervisor, under its authority, to pay the creditors through the intermediary of a lending institution especially organised to make retail payments in cash or in transferable securities.

#### **Article L. 626-22**

In the event of a sale of an asset charged with a special privilege, a pledge of corporeal movables, a pledge of incorporeal movables or a hypothec, the portion of the proceeds corresponding to the claims secured by these guarantees will be placed on a deposit account with the Caisse des Dépôts et Consignations and the creditors secured by these guarantees or by a general lien shall be paid out of the proceeds after payment of those claims secured by the lien provided for in Articles L. 3253-2 to L. 3253-4, L. 742-6 and L. 7313-8 of the Labour Code.

They shall receive dividends to fall due pursuant to the plan, reduced according to the advance payment, following their order of priority.

If an asset is charged with a special privilege, a pledge of corporeal movables, a pledge of incorporeal movables or a hypothec, another guarantee may be substituted for the said asset, where necessary, if it grants equivalent benefits. In the absence of agreement, the court may order this substitution.

#### **Article L. 626-23**

In the event of a partial assignment of assets, the proceeds shall be paid to the debtor except where Article L. 626-22 applies.

#### **Article L. 626-24**

The court may give the administrator the task of carrying out acts necessary to implement the plan to be determined by him.

The court-appointed receiver shall remain in office during the time necessary for the verification and drawing up of the definitive list of claims.

Where the duties of the administrator and the court-appointed receiver are completed, the proceedings shall be terminated under the conditions defined by a Conseil d'Etat decree.

#### **Article L. 626-25**

The court shall appoint the administrator or the court-appointed receiver as plan performance supervisor for the period defined in Article L. 626-12. The court may appoint several supervisors, if necessary.

Litigations initiated prior to the issue of the order confirming the plan and to which the administrator or the court-appointed receiver is a party shall be pursued by the plan performance supervisor or, if he is no longer in office, by a court-appointed receiver specially appointed for this purpose by the court.

The plan performance supervisor may also initiate action in the collective interest of creditors.

The plan performance supervisor may obtain all documents and information useful for his duties.

He shall inform the Presiding Judge of the court and the Public Prosecutor's Office of any failure in the implementation of the plan. He shall also inform the works council or, in the absence of a works council, the employee delegates.

Any sum received by the plan performance supervisor must be immediately placed on a deposit account with the Caisse des Dépôts et Consignations. If deposits are delayed, the plan performance supervisor must pay interest on the unpaid sums at the legal rate of interest plus five per cent.

The plan performance supervisor may be replaced by the court of its own motion or at the request of the Public Prosecutor's Office. Where the replacement is requested by the plan performance supervisor, the presiding judge of the court shall issue an order.

#### **Article L. 626-26**

Substantial modifications of the goals or means of the plan may be made only by the court, on request of the debtor and based on the report of the plan performance supervisor.

Article L. 626-6 shall apply.

The court shall rule upon the case after having received the opinion of the Public Prosecutor's Office and after hearing or duly summoning the debtor,

the plan performance supervisor, the controllers and representatives of the works council or, in the absence of a works council, the employee delegates and any interested party.

#### **Article L. 626-27**

I. - In the event of the debtor's failure to pay the dividends, the plan performance supervisor shall initiate a recovery procedure in accordance with the defined provisions. He is the only person authorised to do so. The court that confirmed the plan may, after the Public Prosecutor has given his opinion, order the rescission of the plan if the debtor does not fulfil its commitments within the time limits provided for in the plan. Where the debtor's cessation of payments is established during the performance of the plan, the court which has confirmed the plan shall, after the Public Prosecutor has given his opinion, order its rescission and commence receivership proceedings or if receivership is clearly impossible, judicial liquidation proceedings. The ruling pronouncing the rescission of the plan shall terminate all operations and the proceedings if they are in process. Subject to the provisions of the second paragraph of Article L. 626-19, the plan performance supervisor shall ensure recovery for creditors of all their claims and guarantees, after deduction of sums received, and lapse all moratoria granted.

II. - In the cases provided for under paragraphs two and three of (I), a creditor, the plan performance supervisor or the Public Prosecutor's Office may file an action for rescission with the court. The court may also initiate an action of its own motion.

III. - After the rescission of the plan and the commencement or pronouncement of the new proceedings, creditors who are subject to the plan shall be relieved from the need to submit their claims and guarantees. Claims included in the plan shall be automatically admitted less any sums already received.

#### **Article L. 626-28**

Where it is established that the commitments stated in the plan or ordered by the court have been performed, the court, at the request of the plan performance supervisor, the debtor or any interested party, will record that the plan has been implemented.

### *Section 3: Committee of creditors*

#### **Article L. 626-29**

Debtors whose accounts are certified by a statutory auditor or prepared by a public accountant and whose number of employees or sales turnover excluding tax exceeds the thresholds fixed by a Conseil d'Etat decree shall



be governed by the provisions of this Section. The other provisions of this chapter that do not contradict with the terms herein shall also apply.

On the petition of the debtor or the administrator, the supervisory judge may allow the application of this Section where this threshold is not reached.

#### **Article L. 626-30**

Credit institutions and similar institutions, as defined by Conseil d'Etat decree as well as the main suppliers of goods or services, shall be arranged into two committees of creditors by the court-appointed receiver. The composition of committees shall be determined in respect of claims arising prior to the commencement order for the proceedings.

Credit institutions and similar institutions, as well as all holders of a claim acquired from them or a supplier of goods or services shall be considered as members ipso jure of the committee of credit institutions. Excluding territorial authorities and their public institutions, each supplier of goods or services shall be a member ipso jure of the committee of the main suppliers where its claims account for more than 3% of the total claims of suppliers. The other suppliers may be members of this committee on invitation by the administrator.

For the application of the foregoing provisions to creditors beneficiaries of a trust created as guarantee by the debtor, only their claims without such a surety if any, are taken into account.

#### **Article L. 626-30-1**

The obligation or, as applicable, the right to be part of a committee constitutes an accessory of the claim existing prior to the issue of the commencement order and shall be transmitted ipso jure to its successive holders notwithstanding any clause to the contrary.

Membership of the committee of credit institutions or the committee of the main suppliers of goods or services shall be determined in accordance with the second and third paragraphs of Article L. 626-30.

The holder of the transferred claim shall not be informed of the debtor's proposals and is allowed to express a vote only from the day when the administrator was informed of the transfer according to the terms provided for by a Conseil d'Etat decree.

The creditor whose claim is extinguished or transmitted shall lose its membership.

#### **Article L. 626-30-2**

The debtor, with the assistance of the administrator, shall present proposals to the committees of creditors with a view to prepare the draft plan mentioned in Article L. 626-2.

Any creditor member of a committee may also submit such proposals to the debtor and to the administrator.

The draft plan proposed to the committees shall not be subject to the provisions of Article L. 626-12 nor to those of Article L. 626-18, with the exception of its last paragraph. It can specifically provide for payment terms, cancellations and where the debtor is a joint stock company whose shareholders are liable for losses up to their contributed capital, the conversion of claims into securities granting or likely to grant rights to the capital. It can establish a differentiated treatment between the creditors if justified by differences in situation. The plan shall take into account the subordination agreements between creditors entered into prior to the commencement of proceedings.

After discussion with the debtor and the administrator, the committees will vote on the draft plan, modified if necessary, within twenty to thirty days after the proposals have been sent by the debtor. At the request of the debtor or administrator, the supervisory judge may increase or reduce this period, which cannot however be shorter than two weeks.

The decision shall be made by each committee by a majority vote of its members, representing two-thirds of the total amount of the claims of all the members of the committee of creditors who have voted, as indicated by the debtor and certified by its statutory auditor(s) or, where none has been appointed, prepared by its public accountant. For creditors who are beneficiaries of a trust created as guarantee by the debtor, only the amount of their claims without such a surety shall be taken into account.

Creditors for whom the draft plan does not provide for changes in the terms of payment or provides for full payment in cash right after the plan is defined or after the admission of their claims shall not participate in voting.

#### **Article L. 626-31**

Where the draft plan has been adopted by each of the committees in accordance with the provisions of Article L. 626-30-2 and, as applicable, by the meeting of bondholders as specified by Article L. 626-32, the court shall ensure that the interests of all the creditors are sufficiently protected, and where appropriate, that the approval of the meeting or meetings mentioned in Article L. 626-3 has been obtained under the conditions set out in the said article. In this case, the court shall confirm the plan with respect to the adopted draft and in the manner provided for under Section 2 of this Chapter. Its decision shall make binding the proposals accepted by each committee to all their members.

Notwithstanding the provisions of Article L. 626-26, substantial modifications in the goals or means of the plan confirmed by the court in accordance with the first paragraph may occur only in the manner provided for under this section. In this case, the plan performance officer shall exercise the powers attributed to the court-appointed administrator.

#### **Article L. 626-32**

In the event of the existence of bonds, a general meeting comprising of all creditors holders of bonds issued in France or abroad, shall be convened under the conditions defined by Conseil d'Etat decree, in order to discuss the draft plan adopted by the committee of creditors.

The discussion may specifically pertain to payment terms, total or partial cancellation of the bond claims, and where the debtor is a public limited company whose shareholders are liable for losses up to their contributed capital, conversions of claims into securities granting or likely to grant rights to the capital. The draft plan may establish a differentiated treatment between bond creditors if justified by differences in situation. The plan shall take into account the subordination agreements between creditors entered into prior to the commencement of proceedings.

The decision shall be taken by a majority of two thirds of the amount of the bond claims held by the bearers who have expressed their vote, notwithstanding any clause to the contrary and independently of the law applicable to the issue contract. Bond creditors for whom the draft plan does not provide for changes in the terms of payment or provides for full payment in cash right after the plan is defined or after the admission of their claims shall not participate in voting.

#### **Article L. 626-33**

Creditors who are not members of the committees created in application of Article L. 626-30 and, for their claims with this surety attached, creditors beneficiaries of a trust created as collateral by the debtor shall be consulted according to the provisions of Articles L. 626-5 to 626-6.

The provisions of the plan relating to creditors who are not members of the committees of creditors formed in compliance with Article L. 626-30 shall be confirmed in the manner provided for under Articles L. 626-12 and L. 626-18 to L. 626-20.

#### **Article L. 626-34**

Where one or other of the committees of creditors and where applicable, the meeting of bondholders has not ruled upon the draft plan within a period of six months from the issue of the commencement order, where one of them has rejected the proposals made by the debtor or where the court has not adopted the plan in compliance with Article L. 626-31, the proceedings will be resumed to prepare a plan in the manner provided for in Articles L. 626-5 to L. 626-7 in order to adopt the said plan in the manner provided for under Articles L. 626-12 and L. 626-18 to L. 626-20.

#### **Article L. 626-34-1**

The court shall rule in the same decision on disputes relating to the

application of Articles L. 626-30 to L. 626-32 and on the definition or amendment of the plan.

Creditors may only dispute a decision of the committee or the meeting to which they belong.

#### **Article L. 626-35**

A Conseil d'Etat decree shall determine the conditions for the application of this Section.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE II: SAFEGUARDING PROCEEDINGS**

##### **CHAPTER VII: SPECIAL PROVISIONS IN THE ABSENCE OF A COURT-APPOINTED ADMINISTRATOR**

#### **Article L. 627-1**

The provisions of this Chapter shall apply where no administrator has been appointed by the court according to the fourth paragraph of Article L. 621-4.

The other provisions of this Title shall apply to the extent that they do not conflict with the provisions of this Chapter.

#### **Article L. 627-2**

The debtor shall, with the consent of the court-appointed receiver, exercise the power given to the administrator to assume executory contracts and request the termination of the lease in compliance with Articles L. 622-13 and L. 622-14.

In the event of disagreement, the supervisory judge will hear the petition of any interested party.

#### **Article L. 627-3**

During the observation period, the debtor, who may be assisted by an expert appointed by the court, shall prepare a draft plan. There shall be no economic, social and environmental position report.

The debtor shall send his proposals for the payment of the liabilities provided for in Article L. 626-5 to the court-appointed receiver and the supervisory judge and carry out the information, consultation and communication formalities as provided for under Articles L. 626-8.

For the implementation of Article L. 626-3, a shareholders' extraordinary

general meeting or a partners' meeting as well as, where their approval is necessary, the special meetings referred to under Articles L. 225-99 and L. 228-35-6 or the general meetings of the bodies referred to under Article L. 228-103, shall be convened in the manner provided for by a Conseil d'Etat decree. The supervisory judge shall determine the amount of the capital increase to be proposed to the meeting to reconstitute shareholders' equity.

#### **Article L. 627-4**

After the filing of the draft plan by the debtor with the clerk's office, the court shall make its rulings based on the report of the supervisory judge.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE II: SAFEGUARDING PROCEEDINGS**

##### **CHAPTER VIII: FAST-TRACK FINANCIAL BAILOUT**

#### **Article L. 628-1**

Proceedings for fast-track financial bailout proceedings shall be set up, subject to the rules applicable to the safeguarding proceedings and compliance with the provisions of this chapter.

The fast-track financial bailout proceedings shall commence at the request of a debtor, involved in a pending conciliation procedure and who meets the criteria mentioned in the first paragraph of Articles L. 620-1 and L. 626-29, who evidences that he has prepared a draft plan aimed at ensuring the sustainability of the company and who is likely to receive sufficiently broad support from the creditors mentioned in the paragraph below to make its adoption in the time limit set out in Article L. 628-6 probable.

For the application of this chapter, the debtor whose total balance sheet exceeds the threshold set by decree shall be deemed to have fulfilled the threshold conditions mentioned in the first paragraph of Article L. 626-29.

The commencement of the proceedings shall have an impact only on those creditors mentioned in Article L. 626-30 as having the status of members of the committee of credit institutions and, if necessary, those mentioned in Article L. 626-32.

#### **Article L. 628-2**

Notwithstanding Article L. 621-1, the court shall rule on the commencement of the proceedings after the mediator's report on the

implementation of the arbitration and on the prospects of the draft plan being adopted by the creditors concerned.

#### **Article L. 628-3**

Where the mediator is registered on the list provided for in Article L. 811-2, the court shall appoint him as the administrator. By an expressly reasoned decision, the court may appoint another person in the conditions set out in this same article.

#### **Article L. 628-4**

Only the committee of credit institutions set out in Article L. 626-30 and if appropriate, the general meeting of bond holders set out in Article L. 626-32 shall be created. The fifteen day period set out in the third paragraph of Article L. 626-30-2 shall be reduced to eight days.

#### **Article L. 628-5**

The creditors shall send the declaration of their claims to the court-appointed receiver under the conditions set out in Articles L. 622-24 to L. 622-26.

For the creditors mentioned in the last paragraph of Article L. 628-1 who participated in the arbitration, a list of claims on the date of the opening of the fast-track financial bailout shall be drawn up by the debtor and certified by the statutory auditors or, failing which, the public accountant. This list shall be filed at the registry of the court. The court-appointed receiver shall inform each creditor concerned about the characteristics of the claims on the list. Notwithstanding the first paragraph, these claims shall be considered as submitted, subject to their update if the creditors do not send the statement of these claims in the manner set out in the first paragraph.

A Conseil d'Etat decree shall specify the terms for applying this article.

#### **Article L. 628-6**

The court shall define the plan in the manner described in Article L. 626-31 within one month of the issue of the commencement order. This time limit may be extended by another month.

If the draft plan is neither adopted by the committee and by the meeting mentioned in Article L. 628-4 if any, nor defined within the time limit described in the first paragraph of this Article, the court shall terminate the proceedings.

#### **Article L. 628-7**

The decision taken in application of Article L. 662-2 through which a court was appointed to examine the arbitration procedure shall be construed as

an extension of territorial jurisdiction in favour of the same court for examining the fast-track safeguarding proceedings that follow it.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE III: JUDICIAL RESTRUCTURING<sup>85</sup>**

##### **CHAPTER I: COMMENCEMENT AND CONDUCT OF THE JUDICIAL RESTRUCTURING**

###### **Article L. 631-1**

This article institutes a judicial restructuring available to any debtor referred to under Articles L. 631-2 or L. 631-3 which, being unable to pay its accrued liabilities with its quick assets, is in a state of cessation of payments. The debtor who establishes that the credit reserves or moratoria granted to it by its creditors are sufficient to allow it to meet its accrued liabilities with its quick assets, is not in a state of cessation of payments.

The purpose of the judicial restructuring is to allow the continuation of the business's operations, the maintenance of employment and the settlement of its liabilities. It shall give rise to a plan to be confirmed by a court ruling at the end of an observation period and, as the case may be, to the formation of two committees of creditors according to the provisions of Articles L. 626-29 and L. 626-30.

###### **Article L. 631-2**

The judicial restructuring procedure shall apply to all persons engaged in a retail activity or artisanal trade, farmers, all other natural persons engaged in an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, as well as private-law entities.

Unless it pertains to the separate estate of a single-member société à responsabilité limitée, no new judicial restructuring proceedings may be commenced with respect to a debtor subject to such a procedure, safeguarding to proceedings or judicial liquidation proceedings, for as long as the operations of the plan resulting from it have not been terminated or if the liquidation proceedings have not been closed.

###### **Article L. 631-3**

Likewise, the judicial restructuring procedure will apply to those persons

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<sup>85</sup> "Redressement judiciaire", an insolvency process intended to rescue.

referred to under the first paragraph of Article L. 631-2 after the end of their professional activity if all or part of their liabilities arises from it.

Where a person engaged in a retail activity or an artisanal trade, or any farmer, or any other natural person running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, dies while in a state of cessation of payments, a case may be filed with the court within one year from the date of death, upon the writ of summons of a creditor, whatever the nature of the creditor's claim, or upon the petition of the Public Prosecutor's Office. The court may also initiate a case of its own motion within the same time limit and any heir of the debtor may bring an action before the court with no time limit.

#### **Article L. 631-4**

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

If the conciliation proceedings fail, the court will initiate a case of its own motion in order to rule upon the commencement of judicial restructuring proceedings if it appears from the mediator's report that the debtor is in a state of cessation of payments.

#### **Article L. 631-5**

Where there are no conciliation proceedings pending, the court may also initiate a case on the petition of the Public Prosecutor's Office for the purpose of commencing judicial restructuring proceedings.

Under the same condition, the proceedings may also be commenced upon a writ of summons of a creditor, whatever the nature of its claim. However, where the debtor has ceased its professional activity, the writ of summons must be filed within one year from:

1° the striking out from the Commercial and Companies register. Where a legal entity is concerned, the time limit will run from the date of the striking out subsequent to the publication of the closing of the liquidation operations;

2° the cessation of activity where a person engaged in an artisanal trade activity, a farmer, a person running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, is concerned;

3° the publication on the completion of liquidation operations, where a legal entity not subject to registration is concerned.

Furthermore, the proceedings may be commenced with respect to a debtor running an agricultural activity that is not incorporated in the form of



a commercial company only if a case has been filed with the president of the Tribunal de Grande Instance , prior to the writ of summons, for the appointment of a mediator in compliance with the provisions of Article L. 351-2 of the Rural and Maritime Fisheries Code.

#### **Article L. 631-6**

The works council or, in the absence of a works council, the employee delegates may inform the president of the court or the Public Prosecutor's Office of any fact showing the debtor is in a state of cessation of payments.

#### **Article L. 631-7**

Articles L. 621-1, L. 621-2 and L. 621-3 shall apply to the judicial restructuring procedure.

#### **Article L. 631-8**

The court shall determine the date of the cessation of payments. If a date is not being determined, the date of the cessation of payments shall be deemed to be that of the issue of the commencement order.

The date of the cessation of payments may be moved once or more times, without however going back more than eighteen months before the date of issue of the commencement order. Except in cases of fraud, it may not be moved to a date prior to the final decision endorsing an amicable agreement in compliance with Article L. 611-8 (II).

An action may be filed with the court by the administrator, the court-appointed receiver or the Public Prosecutor's Office to that effect. It shall rule upon the case after having heard or duly summoned the debtor.

The petition for modifying this date must be filed with the court within a year from the issue of the commencement order.

Where Article L. 621-12 is applied, the commencement order mentioned in the first and second paragraphs shall be the one for the safeguarding proceedings and the time limit mentioned in the fourth paragraph shall run from the day of the issue that converted the safeguarding proceedings.

#### **Article L. 631-9**

Article L. 621-4, with the exception of the first sentence of the fifth paragraph and the sixth paragraph, as well as Articles L. 621-5 to L. 621-11 are applicable to the judicial restructuring procedure. The court may initiate an action of its own motion for the purposes referred to under the third and fourth paragraphs of Article L. 621-4.

The Public Prosecutor's Office may propose court-appointed receivers to the court for appointment. There must be specific grounds for the rejection of this proposal.

For the purposes of drawing up the inventory set out in Article L. 622-6

and estimating the debtor's assets, the Court shall appoint in consideration of their respective attributions as resulting from the provisions applicable to them, an auctioneer, a bailiff, a notary or an accredited commodity broker.

#### **Article L. 631-10**

As of the date of the commencement order, the shares, the equity securities or transferable securities giving rights to the capital of the legal entity which has been the subject of the commencement order and which are held, directly or indirectly by the de jure or de facto managers, whether remunerated or not, may only be assigned, under penalty of nullity, in the manner provided for by the court.

Equity instruments or securities giving rights to the capital shall be transferred to a special blocked account, opened by the administrator in the name of the holder and held by the company or a financial intermediary as the case may be. No transactions may be made on the account without the permission of the supervisory judge.

The administrator shall mention, if necessary, the prohibition to transfer the shares held directly or indirectly by the managers in the legal entity's registers.

#### **Article L. 631-10-1**

As the request of the administrator or court-appointed receiver, the presiding judge of the Court may order any useful protective measure in relation to the assets of the de jure or de facto manager against whom the administrator or court-appointed receiver filed an action for liability based on a fault that contributed to the debtor's cessation of payments.

#### **Article L. 631-10-2**

The representatives of the work's council or, in the absence of a works council, the employee delegates, shall be informed by the administrator or, in the absence of an administrator, the court-appointed receiver, of the terms for implementing the protective measures taken pursuant to Article L. 621-2.

#### **Article L. 631-11**

The supervisory judge shall determine the remuneration for the duties performed by the debtor if the debtor is a natural person or by the managers of a legal entity.

In the absence of remuneration, the persons referred to in the preceding paragraph may obtain subsidies to be fixed by the supervisory judge for themselves or their families, out of the assets. Where the debtor is a single-member société à responsabilité limitée, the supervisory judge shall take account of the income received in respect of the estates not covered by the

procedure.

#### **Article L. 631-12**

In addition to the powers which are conferred upon them by this Title, the duties of the administrator(s) shall be set by the court.

The court may require them jointly or separately to assist the debtor in all or certain management operations, or to carry out the entire management of the business, or part of it, alone. Where the administrator(s) is (are) required to carry out the entire management of the business alone and all the thresholds fixed by the fourth paragraph of Article L. 621-4 have been reached, the court will appoint one or more experts to assist them in carrying out their management tasks. In other cases, the court may appoint them. The president of the court shall determine the remuneration of the experts, which shall be covered by the insolvency estate.

In performing his duties, the administrator must comply with the legal and contractual obligations incumbent upon the debtor.

The court may alter the duties of the administrator at any time, at his request or at the request the court-appointed receiver or that of the Public Prosecutor's Office or of its own motion.

The administrator will operate, under his signature, any bank or Post Office accounts of the debtor where the debtor is prohibited from so doing under Articles L. 131-72 or L. 163-6 of the Monetary and Financial Code.

#### **Article L. 631-13**

From the date on which the proceedings are commenced, third parties shall be allowed to submit offers to the administrator in relation to the maintenance of the activity of the business through a partial or complete assignment of the business's assets according to the provisions of Section I of Chapter II of Title IV.

#### **Article L. 631-14**

Articles L. 622-3 to L. 622-9 with the exception of Article L. 622-6-1 and L. 622-13 to L. 622-33 shall apply to the judicial restructuring procedure, subject to the provisions below.

An estimate of the debtor's assets shall be made at the same time as the inventory set out in Article L. 622-6.

Where the administrator has been assigned representation duties, he shall perform the prerogatives granted to the debtor by Article L. 622-7 (II) and by the third paragraph of Article L. 622-8.

In the event of assistance duties, he shall provide such assistance together with the debtor.

Where the judicial restructuring procedure has been commenced in application of paragraph three of Article L. 626-27 and the debtor has

transferred the assets or rights in a fiduciary estate prior to the commencement of the safeguarding proceedings that led to the rescinded plan, the agreement the performance of which grants the use or possession of those assets or rights, shall not be subject to the provisions of Article L. 622-13 and the provisions of Article L. 622-23-1 shall not apply.

For the application of Article L. 622-23, the administrator must be summoned if he has a duty of representation.

Co-obliged persons or persons who have granted a personal security or have allocated or assigned an asset as collateral shall not benefit from the non-enforceability set out in the second paragraph of Article L. 622-26 and may not benefit from the provisions set out in the first paragraph of Article L. 622-28.

#### **Article L. 631-15**

I. - At the latest within two months from the date of issue of the commencement order, the court shall order the observation period to be continued if it appears to the court that the debtor will have sufficient financial resources. However, where the debtor runs an agricultural activity, this time limit may be modified in accordance with the agricultural year in progress as well as the specific practices with respect to the farm's products.

The court shall rule upon the case based on a report filed 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 court-appointed receiver, one of the controllers, the Public Prosecutor's Office or of its own motion may order the partial cessation of the activity or will pronounce its judicial liquidation, if the judicial restructuring is impossible.

It shall rule upon the case after having heard or duly summoned the debtor, the administrator, the court-appointed receiver, the controllers, the works council, or, in the absence of a works council, the employee delegates and after having received the opinion of the Public Prosecutor's Office .

Where the Court pronounces the judicial liquidation it will terminate the observation period and the administrator's duties, subject to the provisions of Article L. 641-10.

#### **Article L. 631-16**

If it appears, during the observation period, that the debtor has enough money to pay off its creditors and the fees and related costs of the proceedings, the court may terminate the proceedings.

It shall rule upon the case on the request of the debtor in the manner provided for by the second paragraph of Article L. 631-15 (II).

#### **Article L. 631-17**

Where dismissals for economic reasons are urgent, inevitable and indispensable during the observation period, the administrator may be allowed by the supervisory judge to implement these dismissals.

Before applying to the supervisory judge, the administrator shall implement the dismissal plan in the manner provided for by Article L. 1233-58 of the Labour Code. He shall attach, in support at the request transmitted to the supervisory judge, the opinion received and supporting documents of the steps he has taken to facilitate the compensation and re-employment of the dismissed employees, as well as the decision of the administrative authority set out in Article L. 1233-57-4 of the Labour Code.

#### **Article L. 631-18**

The provisions of Chapters III, IV and V of Title II of this Book shall apply to judicial restructuring proceedings, subject to the provisions below.

For the application of the fourth paragraph of Article L. 623-3, the consultation shall pertain to the steps that the administrator plans to propose and the debtor shall also be consulted.

The appeal provided for in the first paragraph of Article L. 624-3 will also be available to the administrator where he is assigned to manage the business.

For the application of Article L. 625-1, the court-appointed receiver who is summoned to appear before the Labour Court or, otherwise, the claimant, shall summon the institutions mentioned under Article L. 3253-14 of the Labour Code to appear before the Labour Court. The administrator shall be the only one to be summoned where he is tasked with managing the business.

For the application of Article L. 625-3, the institutions referred to under Article L. 3253-14 of the Labour Code shall be summoned by the court-appointed receiver or, otherwise, by the petitioning employees, within ten days from the issue of the commencement order of the judicial restructuring proceedings or from the issue of the order converting the safeguarding proceedings into judicial restructuring proceedings. Likewise, pending cases before the Labour court on the date of issue of the commencement order will be continued in the presence of the court-appointed receiver and the administrator or those duly summoned.

For the application of Article L. 625-4, in addition to the court-appointed receiver, the administrator alone shall be summoned where he is tasked with managing the business.

The administrator alone shall be bound by the obligations set out in Article L. 625-8 where he is tasked with managing the business.

#### **Article L. 631-19**

I. - The provisions of chapter VI of title II shall apply to the restructuring plan, subject to the provisions below.

The administrator is responsible, with the assistance of the debtor, to prepare the draft plan and, as appropriate, present to the creditor committees the proposals set out in the first paragraph of Article L. 626-30-2.

For the application of the first paragraph of Article L. 626-8, the information and the consultation shall pertain to the steps that the administrator plans to propose.

II. - The plan shall be defined by the court after the procedure set out in Article L. 1233-58 of the Labour Code has been implemented by the director, with the exception of point 6 of I of the first three paragraphs of II of this article.

The plan shall state in particular the dismissals that must be made within one month following the date of issue of the order. Within this time limit, the administrative authority shall validate or approve the dismissal project in the manner set out by Articles L. 1233-57-2 and L. 1233-57-3 of the same code. Within this time limit, these dismissals shall be made by an ordinary notification by the administrator, subject to the rights related to notice of termination provided for by law or collective bargaining agreements.

Where the dismissal concerns an employee benefiting from special protection with respect to dismissal, this one month time limit after the issue of the order shall be that within which the intention to terminate the employment contract must be made known.

#### **Article L. 631-19-1**

Where the restructuring of the business so requires, the court, at the request of the Public Prosecutor's Office, may make the adoption of the plan contingent on the replacement of one or several business managers.

To achieve this and under the same conditions, the court may order that the shares in the company, equity instruments or securities giving rights to the capital, held by one or more de jure or de facto managers, may not be transferred and decide that any attached voting rights will be exercised, for a period that it will determine, by a court-appointed receiver appointed for this purpose. Likewise, it may order the assignment of the shares in the company, equity instruments or securities giving rights to the capital held by the same persons. The price of the assignment shall be determined by an expert.

The Court shall issue an order after having heard or duly summoned the managers and the representatives of the works council or, in the absence of a works council, the employee delegates.

The provisions of this article shall not apply where the debtor is an independent professional person subject to a legislative or regulatory status.

#### **Article L. 631-20**

Notwithstanding the provisions of Article L. 626-11, co-obligors and those who have consented to a personal security or who have assigned or granted an asset as collateral may not avail themselves of the provisions of the plan.

#### **Article L. 631-20-1**

By way of exception to the provisions of the third paragraph of Article L. 626-27, where the debtor's cessation of payments is established during the performance of the plan, the court which has confirmed the plan shall, after the Public Prosecutor has given his opinion, order its rescission and commence judicial liquidation proceedings.

#### **Article L. 631-21**

The provisions of Chapter VII of Title II shall apply to the restructuring plan.

During the observation period, the business operations shall be carried on by the debtor, who exercises the powers granted to the administrator by Article L. 631-17 and carries out the notifications provided for in the second paragraph of II of Article L. 631-19.

The court-appointed receiver shall exercise the functions devolved to the administrator by the second and third paragraphs of Article L. 631-10.

#### **Article L. 631-21-1**

Where the court considers that the total or partial disposal of the business can be envisaged, it shall appoint an administrator, if it has not already appointed one, for the purposes of beginning all the actions required to prepare this disposal and as appropriate, its implementation.

#### **Article L. 631-22**

At the request of the administrator, the court may order the disposal of all or part of the business as a going concern if the debtor is unable to restructure the business on its own. The provisions of section 1 of chapter II of title IV, with the exception of Article L. 642-2 and Article L. 642-22 shall apply to this disposal. The court-appointed receiver shall perform the duties entrusted to the liquidator.

The administrator shall remain in office in order to carry out all acts necessary to implement the assignment.

Where total or partial assignment has been ordered pursuant to the first paragraph, the procedure shall be continued within the time limits set out in Article L. 621-3.

If the definition of a restructuring plan cannot be obtained, the court shall issue an order for the judicial liquidation proceedings and terminate the observation as well as the duties of the administrator, subject to the provisions of Article L. 641-10.

Assets not included in the assignment plan shall then be disposed of under the conditions provided for under section 2 of chapter II of Book IV.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE III: JUDICIAL RESTRUCTURING**

##### **CHAPTER II: THE NULLITY OF CERTAIN INSTRUMENTS**

###### **Article L. 632-1**

I. - When they have occurred since the date of the cessation of payments, the acts below shall be considered null and void:

1° All acts for no consideration used to convey movable or immovable property;

2° Any commutation agreement in which the debtor's obligations significantly exceed those of the other party;

3° Any payment, whatever the method, for debts not due on the payment day;

4° Any payment for debts due, through any means other than cash, commercial bills, bank transfer, assignment slips referred to by Act No. 81 of 2 January 1981 facilitating credit to companies or any other payment means commonly accepted in the business relations;

5° Any deposit and any payments of sums made in application of Article 2075-1 of the Civil Code (1), failing a court decision that has become final;

6° Any hypothec by agreement<sup>86</sup>, any judicial hypothec as well as the legal hypothec of spouses and any rights of pledge - of corporeal or incorporeal movables - formed on the debtor's assets for previously contracted debts;

7° Any protective measure, unless the registration or the seizure deed occurred prior to the date of cessation of payment;

8° Any authorisation and exercise of the options defined in Articles 225-177 and following of this code;

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<sup>86</sup> Hypothèque conventionnelle.



9° Any transfer of the assets or rights in a fiduciary estate, unless the transfer occurred as collateral for a debt contracted at the same time;

10° Any rider to a trust agreement assigning the rights or assets already transferred in a fiduciary estate as collateral for debts contracted prior to this rider;

11° Where the debtor is a single-member société à responsabilité limitée, any allocation or change in the allocation of an asset, subject to the payment of the revenues mentioned in Article L. 526-18, which has resulted in the depletion of the estate covered by the procedure in favour of another estate of the said single-member company.

II. - The court may, in addition, overturn the gratuitous acts described in point 1 of I made within six months prior to the date of the cessation of payments.

#### **Article L. 632-2**

Payments for debts due made as from the date of cessation of payments and the acts for valuable consideration carried out as from that same date may be cancelled if those who dealt with the debtor had prior knowledge of the cessation of payments.

Any third-party holder notice, any seizure allocation or any objection may also be overturned if it has been delivered or practised by a creditor as from the date of the cessation of payments and in knowledge thereof.

#### **Article L. 632-3**

The provisions of Articles L. 632-1 and L. 632-1 shall have no impact on the validity of payment of a bill of exchange, a promissory note or a cheque.

However, the administrator or the court-appointed receiver may file an action related thereto against the drawer of the bill of exchange or, in the case of drawing on an account, against the principal, as well as against the beneficiary of the cheque and the first endorser of a promissory note, if it is established that they knew about the cessation of payments

#### **Article L. 632-4**

The action for annulment shall be brought by the administrator, the court-appointed receiver, the plan performance supervisor or the Public Prosecutor's Office.

It shall result in reforming the debtor's assets.

# **LEGISLATIVE PART**

## ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

### **TITLE IV: THE JUDICIAL LIQUIDATION PROCEDURE**

#### **PRELIMINARY CHAPTER: CONDITIONS FOR COMMENCING JUDICIAL LIQUIDATION PROCEEDINGS**

##### **Article L. 640-1**

This article institutes a judicial liquidation procedure available to any debtor mentioned in Article L. 640-2 that is in a state of cessation of payments and whose restructuring is manifestly impossible.

The purpose of the judicial liquidation procedure is to end the business activity or to sell the debtor's assets through a general or separate sale of its interests and property.

##### **Article L. 640-2**

The judicial liquidation procedure shall apply to any person engaged in a retail activity or an artisanal trade, to farmers, other natural persons running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, as well as private-law entities.

Unless it pertains to the separate estates of a single-member société à responsabilité limitée, no new judicial liquidation procedure may be commenced with respect to a debtor subject to such a procedure, for as long as the said procedure has not been closed or to a safeguarding or judicial restructuring procedure so long as the operations of the plan resulting therefrom have not been terminated.

##### **Article L. 640-3**

The judicial liquidation procedure will also be available to those persons referred to under the first paragraph of Article L. 640-2 once they have ceased their professional activity if all or part of their liabilities arises from the said activity.

Where a person engaged in a retail activity or an artisanal trade, or any farmer, or any other natural person running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, dies while in a state of cessation of payments, a case may be filed with the court within one year from the date of death, upon the writ of summons of a creditor, whatever

the nature of the creditor's claim, or upon the petition of the Public Prosecutor's Office. The court may also initiate a case of its own motion within the same time limit. Any heir of the debtor may bring an action before the court, with no time limit.

#### **Article L. 640-4**

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

In the event of failure of the conciliation proceedings, if the court notes, while ruling according to the second paragraph of Article L. 631-4, that the conditions referred to under Article L. 640-1 are met, it will commence judicial liquidation proceedings.

#### **Article L. 640-5**

Where there are no conciliation proceedings pending, the court may also initiate a case of its own motion or on the petition of the Public Prosecutor's Office for the purpose of commencing judicial liquidation proceedings.

Under the same condition, the proceedings may also be commenced upon a writ of summons of a creditor, whatever the nature of its claim. However, where the debtor has ceased its professional activity, the writ of summons must be filed within one year from:

1° the striking out from the Commercial and Companies register. Where a legal entity is concerned, the time limit will run from the date of the striking out subsequent to the publication of the closing of the liquidation operations;

2° the cessation of activity where a person engaged in an artisanal trade activity, a farmer, a person running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, is concerned;

3° the publication on the completion of liquidation operations, where a legal entity not subject to registration is concerned.

Furthermore, the proceedings may be commenced with respect to a debtor running an agricultural activity that is not incorporated in the form of a commercial company only if a case has been filed with the president of the Tribunal de Grande Instance, prior to the writ of summons, for the appointment of a mediator in compliance with the provisions of Article L. 351-2 of the Rural and Maritime Fisheries Code.

#### **Article L. 640-6**

The works council or, in the absence of a works council, the employee delegates may inform the president of the court or the Public Prosecutor's

Office of any fact showing the debtor is in a state of cessation of payments.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE IV: THE JUDICIAL LIQUIDATION PROCEDURE**

##### **CHAPTER I: THE JUDICIAL LIQUIDATION ORDER**

###### **Article L. 641-1**

I. - Articles L. 621-1, L. 621-2 shall apply to the liquidation procedure.

II. - In the order commencing the judicial liquidation procedure, the court shall appoint the supervisory judge. It may, if need be, appoint several supervisory judges. In the same order, notwithstanding the possibility of appointing one or several experts for an engagement that it shall determine, the court shall appoint a registered court-appointed receiver as a receiver, or a person selected on the basis of the first paragraph of Article L. 812-2.

It may, at the request of the Public Prosecutor's Office or of its own motion, appoint several liquidators.

The Public Prosecutor's Office may propose a liquidator to the court for appointment. There must be specific grounds for the rejection of this proposal. Where the procedure commences with respect to the debtor who benefits from or who benefited from a special commission or an arbitration procedure in the previous eighteen months, the Public Prosecutor's Office may in addition object to the appointment of the special commissioner or the mediator as liquidator.

An employees' representative shall be appointed in the manner provided for by the second paragraph of Article L. 621-4 and Article L. 621-6.

He shall perform the duties provided for in Article L. 625-2.

The controllers shall be appointed and carry out their functions in the same manner as those provided for in Title II. For the purposes of drawing up the inventory set out in Article L. 622-6 and estimating the debtor's assets, the Court shall appoint in consideration of their respective attributes resulting from the provisions applicable to them, an auctioneer, a bailiff, a notary or an accredited commodity broker.

III. - Where the judicial liquidation is pronounced during the observation period of safeguarding or judicial restructuring proceedings, the court will appoint the court-appointed receiver as liquidator. However, the court may, through a reasoned order, at the request of the administrator, a creditor, the debtor or the Public Prosecutor's Office, appoint another person as liquidator under the conditions provided for by Article L. 812-2.

Where the debtor runs an independent professional activity with a statutory or regulated status or whose designation is protected, the petition may also be submitted to the court by the debtor's relevant supervisory body or authority, if any.

IV. - The date of the cessation of payments shall be fixed in the manner provided for in Article L. 631-8.

#### **Article L. 641-1-1**

The court may of its own motion or on the proposal of the supervisory judge or the request of the Public Prosecutor's Office proceed to replace the liquidator, the expert or the administrator if one has been appointed in application of Article L. 641-10 or attach one or several receivers or administrators to those already mentioned

The liquidator, administrator, or the creditor appointed as controller may ask the supervisory judge to apply to the Court for that purpose.

Where the debtor is an independent professional person with a statutory or regulated status or whose designation is protected, the supervisory body or relevant authority, as the case may be, may apply to the Public Prosecutor's Office for the same purpose.

The debtor may ask the supervisory judge to apply to the Court for the replacement of the expert.

Under the same conditions, all creditors are entitled to request the replacement of the liquidator.

Notwithstanding the foregoing paragraphs, where the liquidator or administrator requests their replacement, the presiding judge of the court, petitioned on the matter by the supervisory judge, shall have jurisdiction to do so. He shall issue an order.

Only the works council or, in the absence of a works council, the employee delegates or, if there is none, only the business's employees, may replace the employees' representative.

#### **Article L. 641-2**

The simplified liquidation procedure provided for under Chapter IV of this Title shall be applied if it appears that the debtor's assets include no immovable property and if the number of its employees during the six months prior to the commencement of the proceedings and its sales turnover excluding tax are equal to or less than the thresholds fixed by a Conseil d'Etat decree.

If the court has sufficient data to allow it to verify that the conditions mentioned in the first paragraph are met, it shall rule on this application in the order for the judicial liquidation proceedings. Otherwise, the Presiding judge of the court shall rule with regard to the debtor's situation established by the liquidator within the month of his appointment.

#### **Article L. 641-2-1**

In the absence of immovable property and if the number of the debtor's employees and its sales turnover excluding tax exceed the thresholds fixed in application of Article L. 641-2 without exceeding the thresholds fixed by decree, an order may be issued for the application of the simplified procedure provided for by Chapter IV of this title.

If the judicial liquidation proceedings are pronounced during an observation period, the Court shall rule on this application in the order for the judicial liquidation proceedings. Otherwise, the Presiding judge of the court shall make a decision with regard to the debtor's situation established by the liquidator within the month of his appointment.

#### **Article L. 641-3**

The order commencing the judicial liquidation proceedings shall have the same effect as those provided for safeguarding proceedings in the first and third paragraphs of Article L. 622-7 (I and III) and in Articles L. 622-21, L. 622-22, by the first sentence of Article L. 622-28 and by Article L. 622-30.

The supervisory judge may order the liquidator or the administrator where one has been appointed to pay claims arising prior to the issue of the order, to withdraw a pledge or possession of a thing held lawfully, or where the upcoming payment is for an amount lower than the market value of the asset covered by the contract, to exercise the purchase option of a leasing contract.

Where the commencement order for judicial liquidation proceedings is issued or pronounced in respect of a legal entity, the provisions set out with respect to the closing and approval of annual financial statements shall no longer apply, unless, as appropriate, during the provisional continuation of business activity as authorised by the court.

The creditors shall submit their claims to the liquidator in the manner provided for in Articles L. 622-24 to L. 622-27 and L. 622-31 to L. 622-33.

#### **Article L. 641-4**

The liquidator shall carry out liquidation operations at the same time as the verification of the claims. He may initiate or pursue actions that are within the competence of the court-appointed receiver.

The verification of unsecured claims need not be made if it appears that the proceeds of the asset sales will be totally absorbed by legal fees and claims secured by a privilege<sup>87</sup> unless, in the case of a legal entity or a single-member limited liability company, there is no reason for holding the de jure or de facto managers, or société à responsabilité limitée liable for all or part of the liabilities pursuant to Articles L. 651-2.

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<sup>87</sup> A security conferring a preferential right to payment.

The liquidator shall carry out the duties entrusted to the administrator and the court-appointed receiver 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.

The dismissals carried out by the liquidator pursuant to the decision commencing or pronouncing the liquidation, as applicable, at the end of the provisional continuation of the business activity authorised by the court, shall be subject to the provisions of Article L. 1233-58 of the Labour Code.

#### **Article L. 641-5**

Where the judicial liquidation is pronounced during the observation period of safeguarding proceedings or of judicial restructuring proceedings, the liquidator will carry out the liquidation operations at the same time as, where appropriate, he completes the verification of claims and determines the priority order of the creditors. He shall continue the legal actions initiated prior to the issue of the liquidation order by the administrator or by the court-appointed receiver and may initiate new legal actions that are within the competence of the court-appointed receiver.

#### **Article L. 641-6**

No spouse or partner linked by a civil pact of solidarity, no relative or blood relations, up to the fourth degree included, of the natural person debtor or the managers, if the debtor is a legal entity, may be appointed to any one of the positions provided for in Article L. 641-4 or L. 641-10, except where this provision prohibits the appointment of an employee representative.

#### **Article L. 641-7**

The liquidator shall inform the supervisory judge, the debtor and the Public Prosecutor's Office of the progress of the proceedings, at least every three months.

The supervisory judge and the Public Prosecutor's Office may request the disclosure of all deeds and documents relating to the proceedings at any time.

#### **Article L. 641-8**

Any sum received by the liquidator in the performance of his duties must immediately be placed on a deposit account with the Caisse des Dépôts et Consignations. If deposits are delayed, the liquidator must pay interest on the unpaid sums at the legal rate of interest plus five per cent.

The liquidator shall report any sum paid by the association referred to under Article L. 3253-14 of the Labour Code in compliance with Articles L. 3253-8 to L. 3253-13 of the same Code shall be reported to the tax authority.

#### **Article L. 641-9**

I. - The order commencing or pronouncing the judicial liquidation proceedings shall also give rise, from its date of issue, to the divestment of the debtor from the management and the right to dispose of its assets, including even those acquired by any means, until the closing of the judicial liquidation proceedings. The debtor's rights and rights of action over its estate shall be exercised by the liquidator during the judicial liquidation proceedings.

However, the debtor may initiate or join the case as a civil party with the aim of proving the guilt of the perpetrator of a crime or a misdemeanour of which the debtor has been a victim.

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

II. - Where the debtor is a legal entity, the managers in office on the date of issue of the judicial liquidation order shall remain in office, unless the constitution or a resolution passed by a shareholders' or partners' general meeting provides otherwise. In case of need, a representative may be appointed in their place by order of the president of the court at the request of any interested party, the liquidator or the Public Prosecutor's Office.

The registered office shall be deemed to be fixed at the address for service of the legal representative of the entity or of the appointed representative.

III. - Where the debtor is a natural person, he may not carry out any of the activities provided for in the first paragraph of Article L. 640-2, during the judicial liquidation proceedings.

However, the debtor who is a single-member société à responsabilité limitée company may continue to run one or several of these activities, if the said activities involve an estate other than the one covered by the proceedings.

#### **Article L. 641-10**

If the assignment, in whole or in part, of the business as a going concern can be considered or if the public interest or that of the creditors demands it, the maintenance of the activities may be allowed by the court for the maximum period to be determined by a Conseil d'Etat decree. It may be extended at the request of the Public Prosecutor's Office for a period to be determined in the same way. Where an agricultural activity is involved, the period will be determined by the court by reference to the current agricultural year as well as to the practices specific to the farm's products.

The liquidator shall manage the business.

He may dismiss employees under the conditions provided for in Article L. 631-17.



Where appropriate, he shall prepare an assignment plan, carry out the acts necessary to implement the plan, receive and distribute the price of the assignment.

However, where the number of persons employed by the business or the sales turnover exceeds or is equal to the thresholds fixed by a Conseil d'Etat decree or, where necessary, the court will appoint an administrator to manage the business.

In this case, the administrator shall exercise the prerogatives granted to the liquidator by Articles L. 641-11-1 and L. 641-12.

He shall prepare the assignment plan, carry out the acts necessary to implement the plan and, under the conditions provided for in Article L. 631-17, he may dismiss employees.

Where the administrator does not have the necessary cash to continue the business's activities, he may require the liquidator to provide it with the permission of the supervisory judge.

The liquidator or the administrator, where one has been appointed, shall perform the functions entrusted to the administrator or court-appointed receiver, as the case may be, by Articles L. 622-4 and L. 624-6.

The order of a plan for total assignment of assets or the expiration of the time limit set in application of the first paragraph shall terminate the continuation of the business. The court may also decide to terminate the continuation of the business at any time if it is no longer justified.

#### **Article L. 641-11**

The supervisory judge shall perform the duties entrusted to him by Articles L. 621-9, L. 623-2 and L. 631-11, and by the fourth paragraph of Article L. 622-16.

Where the supervisory judge is unable or has ceased his duties, he shall be replaced in the manner provided for in the third paragraph of Article L. 621-9.

Information held by the Public Prosecutor's Office shall be transmitted to it according to the rules provided for in the second paragraph of Article L. 621-8.

The liquidator and the administrator, where one has been appointed, shall receive all information useful for carrying out their duties from the supervisory judge.

#### **Article L. 641-11-1**

I. - Notwithstanding any legal rule or contractual term to the contrary, the indivisibility, termination or rescission of an executory contract may not result from the commencement or pronouncement of judicial liquidation proceedings alone.

The other party must perform its obligations despite the non-performance

by the debtor of the obligations entered into prior to the issue of the commencement order. The non-performance of these obligations shall only give creditors a right to submission of claims.

II. - Only the liquidator has the right to require the debtor's contracting party to perform executory contracts in exchange for the performance of the debtor's obligations.

Where the performance concerns the payment of a sum of money, it must be paid promptly, except where the liquidator is given a moratorium by the other party. Based on the forecast documents in his possession, the liquidator shall ensure at the time he requires the performance of the contract that he will have the necessary funds at his disposal. Where the contract is to be performed over time and paid in instalments, the liquidator will terminate it if he believes that he will not have the necessary funds to satisfy the obligations of the next term.

III. - The executory contract shall be automatically rescinded:

1° After a formal notice to take position on the continuation of the contract has been sent by the contracting party to the liquidator and remains unanswered after more than one month. Before this time limit expires, the supervisory judge may grant the liquidator a shorter time limit or an extension, which may not exceed two months, to take a position;

2° Failure to pay under the conditions defined in II and agreement with the contracting party to continue the contract relations;

3° Where the debtor's performance pertains to the payment of a sum of money, on the day where the contracting party is informed of the liquidator's decision not to continue the contract.

IV. - At the liquidator's request, where the debtor's service no longer pertains to the payment of a sum of money, the termination shall be pronounced by the supervisory judge if it is required for liquidation operations and is not overly detrimental to the interests of the contracting party.

V. - If the liquidator does not avail himself of the right to continue the contract or terminates the said contract under the conditions of II or if the termination of the contract is pronounced in application of IV, the non-performance may lead to damages in favour of the contracting party, the amount of which shall be reported as a liability. The contracting party may however postpone the reimbursement of sums paid in excess by the debtor in performance of the contract until the question of damages is settled.

VI. - The provisions of this article shall not apply to employment contracts. Furthermore, they shall not apply to trust agreements and to the agreement for the performance of which the debtor maintains the use or enjoyment of the assets or rights transferred in a fiduciary estate.

#### **Article L. 641-12**

Without prejudice to the application of points I and II of Article L. 641-11-

1, the lease for buildings used by the debtor for the business activity shall be terminated in the conditions below:

1° On the day where the lessor is informed of the liquidator's decision not to continue the lease;

2° When the lessor requests the termination of the lease by court order or have its automatic termination recorded for reasons existing prior to the issue of the order commencing the judicial liquidation proceedings or, where the latter has been pronounced following safeguarding or judicial restructuring proceedings, for reasons existing prior to the issue of the order commencing the previous proceedings. The lessor must, if it has not done so already, file this request within three months as of the publication of the order commencing the judicial liquidation proceedings;

3° The lessor may also request the termination of the lease by court order or have its automatic termination recorded because of a default in the payment of the rent or tenant's expenses related to the occupancy after the issue of the commencement order of the judicial liquidation proceedings, under the conditions provided for in the third, fourth and fifth paragraphs of Article L. 622-14.

The liquidator may assign the lease under the conditions stipulated in the agreement entered into with the lessor with all the rights and obligations attached therein. In this case, any clause imposing solidary liability with the assignee on the assignor shall be deemed unwritten.

The lessor's privilege shall be determined according to the first three paragraphs of Article L. 622-16.

#### **Article L. 641-12-1**

If the debtor is a party to and sole beneficiary of a trust agreement, the commencement or pronouncement of judicial liquidation proceedings against it shall lead to the automatic termination of the said agreement and the return into its estate of the rights, assets or sureties present in the fiduciary estate.

#### **Article L. 641-13**

I. - Claims arising in a proper manner after the issue of the order commencing or pronouncing the judicial liquidation proceedings for the needs of the proceedings or provisional continuation of the activity authorised in application of Article 641-10 or as consideration for a service provided to the debtor during the business continuation shall be paid as they fall due.

In the event of the pronouncement of the judicial liquidation proceedings, claims arising in a proper manner after the issue of the commencement order for the safeguarding proceedings or the judicial restructuring proceedings mentioned under Article L. 622-17 (I) shall also be paid as

they fall due.

II. - Where they are not paid as they fall due, these claims shall be paid in priority before all other claims, except for the claims secured by the lien provided for in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Labour Code, legal fees arising in a proper manner after the issue of the commencement order for the needs of the proceedings, those that are secured by the lien provided for in Article L. 611-11 of this Code as well as those that are secured by a security over immovable assets or those secured by a special security over movable assets to which a right of retention is attached or those formed in compliance with Chapter V of Title II of Book V.

III. - They shall be paid in the following order:

1° Claims of wages and salaries for which funds have not been advanced in compliance with Articles L. 143-11-1 to L. 143-11-3 of the Labour Code;

2° Loans and claims arising from the continued performance of executory contracts according to the provisions of Article L. 622-13 of this Code and where the other party accepts deferred payments. These loans and the moratorium shall be allowed by the supervisory judge within the limits necessary for the continuation of business operations during the observation period and shall be published. In the event of termination of a contract that had been continued in a proper manner, compensation and penalties will be excluded from this article.

3° Sums that have been advanced in application of Article L. 143-11-1 (3°) of the Labour Code;

4° Other claims, according to their priority.

IV. - Unpaid claims will lose the privilege provided for by this article if they have not been notified to the court-appointed receiver or the administrator, where one has been appointed, or the liquidator, no later than six months from the publication of the order commencing or pronouncing the liquidation proceedings or, failing this, within one year from the publication of the order confirming the assignment plan.

#### **Article L. 641-14**

The provisions of Chapters IV and V of Title II of this Book on the determination of the debtor's assets and the payment of claims resulting from an employment contract as well as the provisions of Chapter II of Title III of this Book on the nullity of certain acts shall apply to judicial liquidation proceedings.

However, for the application of Article L. 625-1, the liquidator summoned before the Labour court or, the petitioner shall summon the institutions referred to under Article L. 143-11-4 of the Labour Code before the Labour court.

To implement Article L. 625-3 of this Code, the institutions referred to under Article L. 143-11-4 of the Labour Code shall be summoned by the

liquidator or by the petitioning employees, within ten days from the issue of the commencement order of the judicial liquidation proceedings or of the order pronouncing the same.

#### **Article L. 641-15**

In the course of the judicial liquidation proceedings, the supervisory judge may order that the liquidator or the administrator, where one has been appointed, receive all correspondence sent to the debtor.

The debtor, having been informed, may be present when the correspondence is being opened. However, any summons before a court, any notice of orders or any other correspondence of personal nature must immediately be given or returned to the debtor. Where the debtor is a single-member société à responsabilité limitée, any letter pertaining to an estate other than the one covered by the proceedings shall also be immediately handed over or returned to the said debtor.

The supervisory judge may allow the liquidator and the administrator, where one has been appointed, to have access to the electronic mail received by the debtor under the conditions to be determined by a Conseil d'Etat decree.

Where the debtor is engaged in an activity subject to professional confidentiality rules, the provisions of this article shall not apply.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE IV: THE JUDICIAL LIQUIDATION PROCEDURE**

##### **CHAPTER II: REALISATION OF ASSETS**

##### ***Section 1: Assignment of the Business***

#### **Article L. 642-1**

The assignment of the business is aimed at maintaining the activities capable of being operated autonomously, maintaining all or part of the related employment contracts and settling the liabilities.

The assignment may relate to all or some of the assets. In the latter case, it shall relate to a group of assets which are the means of production that form one or more complete and autonomous branch or branches of activity.

Where such a group consists mainly of a right to a farm lease, the court may, subject to rights of indemnity for the outgoing lessee and notwithstanding any other provisions governing the agricultural tenancy

agreement, either allow the lessor, his spouse or one of his descendants to take back the business in order to operate it or assign the farm lease to another lessee proposed by the lessor or, if none, to any potential lessee whose offer has been received under the conditions provided for by Articles L. 642-2, L. 642-4 and L. 642-5.

Provisions relating to the exercise of supervision of agricultural businesses<sup>88</sup> shall not apply. However, if several offers have been received, the court shall take into account the provisions of 1° to 4° and 6° to 9° of Article L. 331-3 of the Rural and Maritime Fisheries Code.

Where the debtor is a public or law official, the liquidator may perform the debtor's right to present a successor to the Minister of Justice.

#### **Article L. 642-2**

I. - Where the court deems that the total or partial assignment of the business as a going concern may be considered, it shall allow the continuation of operations and set the time limit during which purchase offers must be sent to the liquidator and to the administrator, where one has been appointed.

However, if offers received in compliance with Article L. 631-13 meet the requirements provided for under (II) of this article and if they are satisfactory, the court may decide not to apply the preceding paragraph.

II. - All offers must be made in writing and shall state:

1° the precise identification of the assets, rights and contracts included in the offer;

2° the forecasts for activity levels and financing;

3° the price offered, payment conditions, the status of the contributors of capital and, where appropriate, the status of their guarantors. If the offer includes a recourse to borrowing, it must state the conditions, in particular the duration;

4° the date of the assignment;

5° the level and prospects for employment needed for the activity considered;

6° the performance guarantees given;

7° the predictions for the sale of assets during the two years following the assignment;

8° the duration of each of the commitments made by the offeror.

III. - Where the debtor is an independent professional person with a statutory or regulated status or whose designation is protected, the offer must also state the assignee's professional status.

IV. - The liquidator or the administrator, where one is appointed, shall inform the debtor, the employees' representative and the controllers of the content of the offers received. He shall file these with the registry of the

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<sup>88</sup> Contrôle des structures des exploitations agricoles.

court where any interested party may consult them.

They shall be notified, where appropriate, to the debtor's supervisory body or relevant authority.

V. - The offer may neither be modified, except in a manner more favourable to the aims referred to under the first paragraph of Article L. 642-1, nor withdrawn. It shall be binding on the offeror until the issue of the court order confirming the plan.

Where an appeal against the order confirming the plan is filed, only the assignee will remain bound by his offer.

#### **Article L. 642-3**

The debtor, on the basis of any of any of its estates, the de jure or de facto manager of the legal entity subject to judicial liquidation proceedings, the relatives or affines up to the second degree included of the managers or the debtor if he is a natural person, persons who are or were controllers during the proceedings shall not be allowed, directly or through an agent, to present an offer. Likewise, these persons are prohibited from buying, directly or indirectly, within the five years following the assignment, all or part of the assets included in this assignment, directly or indirectly, as well as from buying stocks or shares in the capital of any company having, as part of its property holding, directly or indirectly, all or part of these assets, as well as securities giving a right to the capital of this company or partnership within the same period.

However, where an agricultural activity is involved, the court may make an exception to these prohibitions and allow the assignment to one of the persons referred to under the first paragraph, excluding the controllers and the debtor for any of its estates. In the other cases and subject to the same exceptions, the court, at the request of the Public Prosecutor's Office, may allow the assignment to one of the persons referred to under the first paragraph by a specially reasoned ruling, after having sought the opinion of the controllers.

Any act entered into in violation of the provisions of this article shall be declared void at the request of any interested party or of the Public Prosecutor's Office, filed within three years from the date of the conclusion of the act. Where the act has to be published, this period will run from the date of publication.

#### **Article L. 642-4**

The liquidator or the administrator, where one is appointed, shall provide the court with all the material that will help it to examine the seriousness of the offer as well as whether the offeror is a third party within the meaning of the provisions of Article L. 642-3.

He shall also provide the court with all the material that will help to assess

the terms under which liabilities will be settled, in particular with respect to the price offered, the assets remaining to be recovered or sold, the debts arising in the period of continuation of business operations and, where appropriate, the other debts for which the debtor remains still liable.

#### **Article L. 642-5**

After having received the opinion of the Public Prosecutor's Office and after having heard or duly summoned the debtor, the liquidator, the administrator where one is appointed, the representatives of the works council or, in the absence of a works council, the employee delegates and the controllers, the court will accept the offer which allow the most prolonged maintenance of employments attached to the assets assigned and the payment of the creditors, under the best conditions and which presents the best guarantees for its implementation. The court shall confirm one or more assignment plans.

The hearing must be held in the presence of the Public Prosecutor's Office where the proceedings relate to a debtor whose number of employees, sales turnover excluding tax or assets exceed(s) the thresholds fixed by a Conseil d'Etat decree.

The order confirming the plan shall make its provisions binding on anyone.

The pre-emptive rights created by the Rural and Maritime Fisheries Code or the Town Planning Code shall not be exercised on a property included in this plan.

Where the plan provides for dismissals on economic grounds, it shall not be defined by the court until the procedure set out in Article L. 1233-58 of the Labour Code has been implemented, with the exception of point 6° of I of the first three paragraphs of II of this article. The plan shall state in particular the dismissals that must be made within one month following the date of issue of the order. Within this time limit, the administrative authority shall validate or approve the dismissal project in the manner set out by Articles L. 1233-57-2 and L. 1233-57-3 of the same code. Within this time limit, these dismissals shall be made by way of an ordinary notification by the liquidator, or by the administrator, where one has been appointed, subject to the rights related to notice of termination of employment contracts provided for by law or collective bargaining agreements or contracts.

Where the dismissal concerns an employee benefiting from special protection with respect to dismissal, this one month time limit after the issue of the order shall be that within which the intention to terminate the employment contract must be manifested.



#### **Article L. 642-6**

Substantial modifications in the aims or means of the plan may be made only by the court, on the petition of the assignee.

The court shall rule upon the case after having heard or duly summoned the liquidator, the administrator where one is appointed, the controllers, the representatives of the works council or, in the absence of a works council, the employee delegates and any interested person and after having received the opinion of the Public Prosecutor's Office.

However, the amount of the price of the assignment as determined in the order confirming the plan may not be modified.

#### **Article L. 642-7**

The court will determine the finance leases, rental contracts or contracts for the supply of goods or services necessary for the maintenance of activity based on the views of the debtor's contracting parties transmitted to the liquidator or the administrator, where one is appointed.

The order confirming the plan shall result in the assignment of these contracts, even if the assignment is preceded by a trading lease arrangement [location-gérance] provided for in Article L. 642-13.

These contracts must be performed in the conditions in force on the day of the commencement of the proceedings, notwithstanding any clause to the contrary.

In the event of the assignment of a finance lease contract, the lessee may exercise the option to purchase only after payment of the sums remaining due within the limit of the value of the assets determined by the common agreement of the parties or, failing this, by the court at the date of the assignment.

The agreement for the performance of which the constituting debtor retains the use or possession of the assets or rights transferred as collateral in a fiduciary estate shall not be assigned to the assignee, unless approved by the beneficiaries of the trust agreement.

#### **Article L. 642-8**

For the implementation of the plan confirmed by the court, the liquidator or the administrator, where one is appointed, shall perform all acts necessary for the completion of the assignment. While these acts are being carried out and on proof that the price of the assignment has been deposited or an equivalent guarantee has been given, the court may entrust the assignee, on the request of the assignee and as its responsibility, with the management of the business assigned.

Where the assignment includes the goodwill, no increase in price (surenchère) will be allowed.

#### **Article L. 642-9**

As long as the price of the assignment has not been fully paid, the assignee may not alienate or give in a trading lease arrangement the tangible or intangible assets acquired, other than inventories.

However, partial or complete alienation, use as security, leasing or inclusion in a trading leasing arrangement may be allowed by the court upon a report by the liquidator who must first consult the works council or, in the absence of a works council, the employee delegates. The court must take into consideration the guarantees offered by the assignee.

The court must allow any substitutions of assignee which is in the order confirming the plan, without prejudice to the implementation of the provisions of Article L. 642-6.

The person whose offer has been accepted by the court shall continue to have solidary liability for the performance of commitments subscribed by him.

Any act entered into in violation of the provisions of the previous paragraphs shall be declared void on the request of any interested party or of the Public Prosecutor's Office, filed within three years from the date of the conclusion of the act. Where the act has to be published, this period will run from the date of publication.

#### **Article L. 642-10**

The Court may stipulate in the order defining the assignment plan that all or part of the transferred assets shall not be alienated without its prior authorisation, for a period defined by the said Court.

The formalities for publication of the temporary inalienability shall be carried out under the conditions provided for by a Conseil d'Etat decree.

Where the court is presented with a request for permission to alienate an asset rendered inalienable by application of the first paragraph, it shall rule, with a penalty of invalidity for default, after seeking the opinion of the Public Prosecutor's Office.

Any act entered into in breach of the provisions of the first paragraph may be declared void at the request of any interested party or at the request of the Public Prosecutor's Office filed within three years from the date of the conclusion of the contract. Where the act has to be published, this period will run from the date of publication.

#### **Article L. 642-11**

The assignee shall report to the liquidator on the implementation of the provisions provided for in the assignment plan.

If the assignee does not fulfil its commitments, the court may, on the petition of either of the Public Prosecutor's Office, or of the liquidator, of a creditor, of any interested party or of its own motion, after having received

the opinion of the Public Prosecutor, pronounce the rescission of the plan, without prejudice to any damages to be claimed.

The court may order the rescission or cancellation of any acts entered into for the implementation of the rescinded plan. Repayment of the price paid by the assignee may not be sought.

#### **Article L. 642-12**

Where the assignment includes assets charged with a special privilege<sup>89</sup>, a pledge of corporeal movables, a pledge of incorporeal movables or a hypothec, a portion of the price will be set aside by the court for each asset for the distribution of the price and the exercise of preferential rights.

The payment of the price of the assignment shall bar the exercise against the assignee of the creditors' rights attached to the assets.

Until full payment of the price entailing the removal of the rights registered over the assets included in the assignment, creditors holding a right to sue the asset-holder (*droit de suite*) may exercise it only where the asset assigned is alienated by the assignee.

However, liability for special securities over immovable and movable assets guaranteeing the repayment of a loan granted to the business for the financing of the encumbered asset shall be conveyed to the assignee. The latter shall be required to pay to the creditor the instalments agreed with the creditor and that remain due as of the transfer of property or, in the event of a trading lease agreement, as of taking possession of the encumbered asset. An exception to the provisions of this paragraph may be made by agreement between the assignee and the creditors holding the securities.

The provisions of this article shall have no impact on the right of retention acquired by the creditor on the assets included in the assignment.

#### **Article L. 642-13**

In the order confirming the assignment plan, the court may allow the conclusion of a trading lease agreement, even in the presence of any clause to the contrary, notably in the lease of the immovable property, in favour of the person who has presented the acquisition offer which will allow the most prolonged maintenance of employments attached to the assets assigned and the payment of the creditors, under the best conditions.

The court shall rule upon the case after having heard or duly summoned the liquidator, the administrator where one is appointed, the controllers, the representatives of the works council or, in the absence of a works council,

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<sup>89</sup> A special class of "privilège", a security conferring a preferential right to payment.

the employee delegates and any interested person and after having received the opinion of the Public Prosecutor's Office.

#### **Article L. 642-14**

The provisions of Articles L. 144-3, L. 144-4 and L. 144-7 on trading lease agreements shall not apply.

#### **Article L. 642-15**

In the event of a trading lease agreement, the business must be effectively assigned within the two years following the date of issue of the order confirming the plan.

#### **Article L. 642-16**

The liquidator may require the lessee-manager [locataire-gérant] to hand over to him all the documents and information required to perform his duties. He shall report to the court on any damage to the assets included in the trading lease agreement and on any breach of obligations incumbent on the lessee manager.

The court, of its own motion or at the request of the liquidator or of the Public Prosecutor, may order the termination of the trading lease agreement and the rescission of the plan.

#### **Article L. 642-17**

If the lessee-manager does not fulfil his obligation to acquire the business under the terms and within the time limits fixed in the plan, the court, of its own motion or at the request of the liquidator or the Public Prosecutor's Office, shall order the termination of the trading lease agreement and the rescission of the plan, without prejudice to damages to be claimed.

However, where the lessee-manager proves that he cannot acquire the business under the terms initially stipulated for a reason for which he is not responsible, he may ask the court to modify the terms, except with respect to the price and the time limit provided for in Article L. 642-15.

The court shall rule upon the case before the expiry of the leasing contract, after having received the opinion of the Public Prosecutor's Office and after having heard or duly summoned the debtor, the liquidator, the administrator where one is appointed, the controllers, the representatives of the works council or, in the absence of a works council, the employee delegates and any interested person.

## *Section 2: Assignment of the debtor's assets*

### **Article L. 642-18**

Sales of immovable property shall be organised in accordance with Articles 2204 to 2212 of the Civil Code, with the exception of Articles 2206 and 2211, provided that these provisions do not contradict the provisions of this Code.

The supervisory judge shall set the price and essential terms of the sale.

Where an action to seize immovable property initiated prior to the commencement of safeguarding, judicial restructuring or judicial liquidation proceedings is suspended due to the proceedings, the liquidator may be subrogated in the rights of the seizing creditor for the acts performed by the creditor, which are deemed to have been performed on behalf of the liquidator who sells the immovable property. The seizure of the immovable property may resume at the stage it had reached when the commencement order suspended it.

The supervisory judge may, if the nature of the assets, their location or the offers received are such as to allow an amicable sale on the best conditions, order a sale by voluntary public auction at the upset price he shall determine or allow a private sale at a price and on the terms that he shall determine. In the event of a voluntary public auction, Articles 2205, 2207 to 2209 and 2212 of the Civil Code shall apply, subject to the condition stipulated in the first paragraph and higher bids may still be made.

For public auctions organised in application of the foregoing paragraphs, the payment of the price to the liquidator and the sale fees shall entail the discharge of hypothecs and any privilege against the debtor. The auctioneer may not, before making these payments, carry out an act of disposal on the assets with the exception of the constitution of a hypothec attached to a loan agreement contracted for the acquisition of the said asset.

The liquidator shall distribute the proceeds of the sale and settle the priority among the creditors, subject to any disputes that may be filed with the enforcement judge ("juge de l'exécution").

In the event of judicial liquidation proceedings involving a farmer, the court may, by taking into account the debtor's personal and family situation, set and grant him a grace period to leave his main residence.

The terms and conditions for applying this article shall be determined by a Conseil d'Etat decree.

### **Article L. 642-19**

The supervisory judge may either order the sale by public auction or

authorise, at the price and terms that he shall determine, the private sale of the debtor's other assets. Where the sale takes place through a public auction, it shall be carried out as provided for, as the case may be, by the second paragraph of Article L. 322-2 or by Articles L. 322-4 or L. 322-7.

The supervisory judge may require that the draft for an amicable sale be submitted to him to ascertain whether the terms he has provided for have been complied with.

#### **Article L. 642-19-1**

The ways and means for appealing the decisions taken by the supervisory judge in compliance with Articles L. 642-18 and L. 642-19 shall be set by a Conseil d'Etat decree.

#### **Article L. 642-20**

The provisions of Article L. 642-3 shall apply to the assignment of assets implemented in compliance with Articles L. 642-18 and L. 642-19.

In this case, the powers of the court shall be performed by the supervisory judge.

However, where a movable asset is required for the daily necessities of life and for a small value, the supervisory judge may, through an especially reasoned order, authorise one of the persons mentioned in the first paragraph of Article L. 642-3 to apply for the acquisition, with the exception of controllers. The judge shall rule after seeking the opinion of the Public Prosecutor's Office.

#### **Article L. 642-20-1**

Failing the withdrawal of the pledge or of the legally-held object in the manner provided for in the second paragraph of Article L. 641-3, the liquidator shall, within six months of the issue of the order for the judicial liquidation proceedings, request from the supervisory judge the authorisation to carry out such withdrawal. The liquidator shall give the creditor notice of the permission fifteen days before the sale.

The pledgee, even if its claim has not yet been admitted, may request the supervisory judge, before the sale, that the pledged asset be assigned to him, her or it by order of court (attribution judiciaire). If the claim is rejected, in whole or in part, the asset or its value will be returned, except for the admitted amount of the claim.

In the event of sale by the liquidator, the right of retention will automatically be transferred to the proceeds. Any registration to safeguard the pledge shall be removed upon the request of the liquidator.

### *Section 3: Common provisions*

#### **Article L. 642-22**

Any assignment of the business as a going concern and any sale of assets must be preceded by publication under the conditions to be determined in a Conseil d'Etat decree according to the size of the business and the nature of the assets to be sold.

#### **Article L. 642-23**

Before any sale or destruction of the debtor's archives, the liquidator shall inform the competent public authority for the conservation of archives. The authority has a right of pre-emption.

The liquidator, with the consent of the debtor's supervisory body or authority, shall determine the future use of archives of a debtor bound by professional confidentiality rules.

#### **Article L. 642-24**

The liquidator may, with the permission of the supervisory judge and after having heard or duly summoned the debtor, compromise or settle any disputes of interest to the creditors collectively, even those relating to rights and litigation over immovable property.

If the value of the object of the compromise or settlement is not specified or exceeds the jurisdiction of final judgement of the court, the compromise or the settlement must be approved by court order.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE IV: THE JUDICIAL LIQUIDATION PROCEDURE**

##### **CHAPTER III: SETTLEMENT OF LIABILITIES**

##### *Section 1: Payment of creditors*

#### **Article L. 643-1**

The order commencing or pronouncing the judicial liquidation proceedings shall cause all claims to fall due. However, where the court allows business operations to continue because a total or partial assignment of the business as a going concern is considered, claims which have not yet fallen due will become due on the date of issue of the order of

the assignment, or failing which, on the date on which the business continuation is terminated.

Where these claims are expressed in a currency other than that of the country where the judicial liquidation is pronounced, they will be converted into the currency of this country at the exchange rate on the date of issue of the order.

#### **Article L. 643-2**

Creditors holding a special privilege, a pledge of corporeal movables, a pledge of incorporeal movables or a hypothec and the Public Treasury with respect to its claims secured by a privilege may, once they have submitted their claims even if these have not yet been admitted, exercise their right to bring separate action if the liquidator has not begun to sell the charged assets within three months from the date of issue of the order commencing or pronouncing the judicial liquidation proceedings.

Where the court has fixed a time limit in compliance with Article L. 642-2, these creditors may exercise their right to bring separate action at the end of this time limit, if no offer including this asset has been presented.

In the event of sale of immovable property, the provisions of the first, third and fifth paragraphs of Article L. 642-18 shall apply. Where an action for seizure of immovable property has been initiated prior to the date of issue of the commencement order, the creditor holding a hypothec shall be relieved, upon resumption of separate actions, from any acts and formalities carried out before the issue of the order.

#### **Article L. 643-3**

The supervisory judge may, of his own motion or at the request of the liquidator or of a creditor, order the payment, on a provisional basis, of a portion of a claim that has definitively been admitted.

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

Where the request for an interim payment relates to a claim secured by a privilege held by tax services, social security bodies, institutions managing the unemployment insurance system provided for in Articles L. 351-3 and following of the Labour Code and institutions governed by Book IX of the Social Security Code, the guarantee provided for in the second paragraph will not be required.

#### **Article L. 643-4**

If one or more distributions of sums occur prior to the distribution of the proceeds upon sale of immovable property, admitted privileged creditors and hypothecary creditors may participate in the distribution proportionately to their total claims.



After the sale of immovable property and the final settlement of the ranking among the hypothecary creditors and creditors secured by a privilege, those who rank well enough to be paid out of the proceeds of immovable property for the whole of their claim shall receive the amount fixed according to their rank only after deducting the sums they have already received.

The sums deducted shall be distributed to unsecured creditors.

#### **Article L. 643-5**

The rights of creditors holding hypothecs that rank partially in the distribution of the proceeds of immovable property shall be paid according to the amount owed to them after the settlement of the ranking of hypothecs. The excess amount that they have received in previous distributions with respect to the dividend calculated after the settlement of the ranking shall be retained from the amount fixed within the framework of the order of priority of hypothecs and shall be included in those sums to be distributed to unsecured creditors.

#### **Article L. 643-6**

Creditors secured by a privileged or creditors holding hypothecs, who are not fully paid out of the proceeds of immovable property, shall stand alongside unsecured creditors for the remaining amounts due to them.

#### **Article L. 643-7**

The provisions of Articles L. 643-4 to L. 643-6 shall apply to creditors secured by a special security over a movable property, subject to the second paragraph of Article L. 642-20-1.

#### **Article L. 643-8**

The proceeds of the assets shall be divided among all creditors in proportion to their admitted claims after the deduction of court fees and expenses incurred in the course of the judicial liquidation proceedings, the subsidies granted to the natural person debtor or to managers or to their families and sums paid to creditors secured by a privilege.

The portion corresponding to claims with respect to which the court has not yet given a final admission order and, in particular, the remuneration of managers will be kept in reserve for as long as no ruling has been made on their case.

## *Section 2: Closing of judicial liquidation proceedings*

### **Article L. 643-9**

In the order commencing or pronouncing the judicial liquidation proceedings, the court shall determine the time limit at the end of which the closing of the case should be examined. If the closure cannot be pronounced at the end of this time limit, the court may extend the term by a ruling giving reasons.

Where there are no due liabilities any more, or where the liquidator has sufficient sums at his disposal to satisfy the creditors or where the pursuit of the judicial liquidation operations has become impossible due to the excess of liabilities over assets, the court will order the closing of the judicial liquidation, after having heard or duly summoned the debtor.

The liquidator, the debtor or the Public Prosecutor's Office may apply to the court at any time. The court may initiate a case of its own motion. At the expiry of a two-year period from the date of issue of the order commencing the judicial liquidation proceedings, any creditor may also file a case with the court seeking the closing of the proceedings.

In the event of an assignment plan, the court will pronounce the closing of the case only after having established that the assignee has performed his obligations.

### **Article L. 643-10**

The liquidator shall submit his accounts. He shall be accountable for documents given to him in the course of the proceedings for five years beginning with the submission of his accounts.

### **Article L. 643-11**

I. - The final decree closing the judicial liquidation due to an excess of liabilities over assets shall not allow creditors to recover their separate right of action against the debtor except where their claim results from:

1° a criminal conviction of the debtor;

2° rights attached to the person of the creditor.

II. - However, a surety or a co-obligor who has made a payment in place of the debtor may sue the latter.

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

1° the personal disqualification of the debtor has been ordered;

2° the debtor has been found guilty of criminal bankruptcy;

3° the debtor, on the basis of any of its estates, or a legal entity of which he was a manager has been submitted to previous judicial liquidation proceedings closed due to an excess of liabilities over assets less than five

years before the commencement of the one to which he is currently submitted;

4° the proceedings have been commenced as territorial proceedings as defined by Article 3 (2) of Council Regulation (EC) No. 1346/2000 relative to insolvency proceedings.

IV. - In addition, in the event of fraud affecting one or more creditors, the court shall allow the resumption of individual right of action by creditors against the debtor. The court shall decide at the time of the closure of the proceedings after having heard or duly summoned the debtor, the liquidator and the controllers. It may take its decision after the closure of the proceedings, at the request of any interested party, under the same conditions.

V. - Creditors who recover their right to file individual action and whose claims have been admitted must first obtain an order for enforcement to be able to exercise this right. Where they already have such an order, they must have first arranged for the recognition of the fact that they meet the conditions set out in this article. The presiding judge of the court, ruling on such petition, shall issue an order.

Creditors who recover their separate right of action and whose claims have not been verified may implement the said right under ordinary law conditions.

VI. - Where the closure of the judicial liquidation proceedings for insufficient assets is pronounced at the end of the commencement of proceedings on the basis of the activity of a single-member société à responsabilité limitée to whom an estate is assigned, the court shall, in case of fraud in respect of one or several creditors, authorise the separate right to action of any creditor on the assets included in the unallocated estate of this single-member company. The court shall rule under the conditions set out in IV. The creditors shall exercise the rights granted to them by these provisions under the conditions set out in V.

#### **Article L. 643-12**

The closure of the judicial liquidation proceedings shall stay the effects of the prohibition to issue cheques, imposed on the debtor in compliance with Article L. 65-3 of the decree of 30 October 1935 unifying the law governing cheques and relating to payment cards, imposed on rejection of a cheque issued prior to the issue of the commencement order. However, where the debtor is a single-member société à responsabilité limitée, this prohibition shall be limited to the accounts related to the estate included in the proceedings.

If the creditors recover their individual rights of action, this prohibition shall resume its effect beginning with the issue of the enforcement order mentioned in V of Article L. 643-11.

### **Article L. 643-13**

If the closure of the judicial liquidation proceedings is pronounced due to an excess of liabilities over assets and it appears that assets have not been sold or that litigation in the interest of creditors has not been initiated during the proceedings, the latter may be resumed.

The liquidator previously appointed, the Public Prosecutor's Office or any interested creditor may apply to the court. The court may also initiate an action of its own motion. If the action is filed by a creditor, he must show that he has deposited the funds necessary for the procedural expenses with the registry of the court. This amount deposited for legal fees will be reimbursed as a priority claim out of sums recovered following the resumption of the proceedings.

If the assets of the debtor are composed of a sum of money, the proceedings provided for in Chapter IV of this Title shall automatically apply.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE IV: THE JUDICIAL LIQUIDATION PROCEDURE**

##### **CHAPTER IV: THE SIMPLIFIED JUDICIAL LIQUIDATION PROCEDURE**

### **Article L. 644-1**

The simplified judicial liquidation procedure shall be governed by the rules applicable to normal judicial liquidation proceedings, subject to the provisions of this chapter.

### **Article L. 644-2**

Notwithstanding the provisions of Article L. 642-19, where the simplified procedure is decided pursuant to Article L. 641-2, the liquidator shall proceed to the sale of the movable assets through a private sale or public auction within the three months following the issue of the order for the judicial liquidation proceedings.

At the end of this period, the remaining assets shall be sold at a public auction.

Where the decision for the simplified procedure is taken pursuant to Article L. 641-2-1, the Court or the Presiding Judge of the Court, as applicable, shall determine the debtor's assets that may be put up for a private sale in the three months following its decision. Subject to this reserve, the assets shall be sold in a public auction.

#### **Article L. 644-3**

Notwithstanding the provisions of Article L. 641-4, the verification shall be limited to those claims of which the ranking could enable payment in the distribution and to claims resulting from a contract of employment.

#### **Article L. 644-4**

At the end of the claims verification and admission procedure as set out in Article L. 644-3 and the realisation of the assets, the liquidator shall include its proposals for distribution on the claims statement. This statement thus completed shall be filed at the registry of the court and shall be published.

Any interested party may have access to the statement and, with the exclusion of the liquidator, may bring an action before the supervisory judge under the conditions fixed by Conseil d'Etat decree. The debtor's claims shall only concern the distribution proposals. Claims from creditors shall not be formed against decisions of the supervisory judge appearing on the statement of claims to which they are party.

The supervisory judge shall rule on the disputes through an order that may be appealed within a period fixed by Conseil d'Etat decree.

The liquidator shall carry out the distribution according to its proposals or the order given.

#### **Article L. 644-5**

No later than within a period of one year from the decision that ordered or decided on the application of the simplified procedure, the court shall announce the closing of the judicial liquidation proceedings, having heard or duly summoned the debtor.

It may decide to continue the proceedings for a period not exceeding three months by way of a specially reasoned ruling.

#### **Article L. 644-6**

At any time, the court may decide, by way of a specially reasoned ruling, to cease applying the exceptions of this chapter.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE V: LIABILITIES AND SANCTIONS**

##### **Article L. 650-1**

Where safeguarding, judicial restructuring or judicial liquidation proceedings have commenced, creditors may not be held liable for harm suffered due to credits granted, except in cases of fraud, indisputable interference in the management of the debtor or if the guarantees obtained in return for the loans or credits are out of proportion to these.

If the liability of a creditor is established, the guarantees obtained for the loans may be cancelled or reduced by the judge.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE V: LIABILITIES AND SANCTIONS**

##### **CHAPTER I: LIABILITY FOR EXCESS OF LIABILITIES OVER ASSETS**

##### **Article L. 651-1**

The provisions of this chapter shall apply to the managers of private law entities submitted to insolvency proceedings as well as to individuals who serve as permanent representatives of managing legal entities and to single-member société à responsabilité limitée.

##### **Article L. 651-2**

Where the judicial liquidation proceedings of a legal entity reveals an excess of liabilities over assets, the court may, in instances where management fault has contributed to the excess of liabilities over assets, decide that the debts of the legal entity will be borne, in whole or in part, by all or some of the de jure or de facto managers, or by some of them who have contributed to the management fault. If there are several managers, the court may, by way of a reasoned ruling, declare that they are liable in solidarity.

Where the judicial liquidation proceedings have commenced or been pronounced due to the activity of a single-member société à responsabilité

limitée to which an estate has been allocated, the court may, under the same conditions, sentence that single-member company to pay all or part of the excess of liabilities over assets. The sum incumbent on it shall be deducted from its unallocated estate.

The right of action shall be barred after three years from the issue of the order pronouncing the judicial liquidation proceedings.

Sums paid by the managers or the single-member société à responsabilité limitée shall form part of the debtor's estate. They shall be distributed on a pro rata basis to all creditors. The managers or the single-member société à responsabilité limitée may participate in the distributions up to the amount of the sums for the payment of which they were sentenced.

#### **Article L. 651-3**

The liquidator or the Public Prosecutor's Office shall apply to the court in the cases provided for in Article L. 651-2.

Where the liquidator entitled to bring them has not applied for the action provided for in that article and has not answered to default notice delivered to him within the time limit and under conditions to be determined by a Conseil d'Etat decree, a majority of creditors appointed as controllers may also apply to the court in the collective interest of creditors.

The supervisory judge may neither sit in judgement nor participate in deliberations.

The fees and irrecoverable costs to which the manager or the single-member société à responsabilité limitée has been sentenced to pay shall be paid by priority on the sums paid to fill the liabilities.

#### **Article L. 651-4**

For applying the provisions of Article L. 651-2, of his own motion or at the request of one of the persons referred to under Article L. 651-3, the president of the court may charge the supervisory judge or, failing this, one of the members of the court, to obtain, notwithstanding any statutory rule to the contrary, any document or information on the estate of the managers and the individuals who serve as permanent representatives of the managing legal entities provided for in Article L. 651-1, or on the income and the unallocated estate of the single-member société à responsabilité limitée from the public authorities and bodies, provident institutions, social security bodies, credit institutions, electronic money institutions and credit institutions.

The Presiding Judge of the court may, in the same conditions, order any useful protective measure with regard to the assets of the managers or their representatives described in the foregoing paragraph or the assets of the single-member société à responsabilité limitée included in their estate

not allocated to the company. He may maintain the protective measure ordered in respect of the de jure or de facto manager of the assets in application of Article L. 631-10-1.

The provisions of this article shall also apply to members of or partners in the legal entity submitted to the safeguarding, judicial restructuring or judicial liquidation proceedings, where they have solidary liability for its debts.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE V: LIABILITIES AND SANCTIONS**

##### **CHAPTER III: PERSONAL DISQUALIFICATION AND OTHER PROHIBITIONS**

###### **Article L. 653-1**

I. - Where judicial restructuring or judicial liquidation proceedings are commenced, the provisions of this chapter shall apply to:

1° Natural persons engaged in a retail activity or an artisanal trade, farmers, and any other natural person running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected;

2° Natural persons who are de facto or de jure managers of legal entities;

3° Natural persons, who serve as permanent representatives of legal entities, managers of legal entities defined under (2°).

These same provisions shall not apply to natural persons or managers of a legal entity running an independent professional activity and, for that reason, subject to disciplinary rules.

II. - The rights of action provided for in this chapter shall be barred after three years from the issue of the order pronouncing the commencement of the proceedings provided for under (I).

###### **Article L. 653-2**

Personal disqualification shall entail a prohibition from running, managing, administering or controlling, directly or indirectly, any retail activity or artisan trade, any agricultural activity or any business operating any other independent activity and any legal entity.

###### **Article L. 653-3**

I. - The court may pronounce the personal disqualification of any person referred to under Article L. 653-1 (I) (1), subject to the exceptions provided



for in the last paragraph of the same article, against whom any of the following facts has been proven:

1° abusively operating an unprofitable business activity that would necessarily lead to cessation of payments;

2° *[repealed]*.

3° embezzling or concealing all or part of his assets or fraudulently increasing his liabilities.

II. - Furthermore, the facts below may be held against a single-member société à responsabilité limitée, under the same reservation:

1° Having disposed of assets from the estate covered by the proceedings as if they were included in another of its estate;

2° Having carried out commercial actions in an interest other than that of this activity under the cover of the activity described by the procedure masking its actions;

3° Using property or credit of the business covered by the proceedings, against the interests of that business, for personal purposes or in favour of another legal entity or business in which he had a direct or indirect interest.

#### **Article L. 653-4**

A court may pronounce the personal disqualification of any person provided for in Article L. 653-1 against whom any of the following facts has been proven:

1° Selling property belonging to the legal entity as his own;

2° Carrying out company transactions to further his personal interests, using the legal entity as a cover for his schemes;

3° Using property or credit of the legal entity, against that entity's interests, for personal purposes or in favour of another legal entity or business in which he had a direct or indirect interest;

4° Abusively pursuing, for his personal interest, an unprofitable business activity that would necessarily lead to the legal entity's insolvency;

5° Embezzling or concealing all or part of the assets of the legal entity or fraudulently increasing its debts.

#### **Article L. 653-5**

The court may pronounce the personal disqualification of any person provided for in Article L. 653-1 against whom any of the following facts has been proved:

1° Having engaged in a retail activity or artisanal trade or agricultural activity or having held a management or administrative position in a legal entity in violation of a prohibition provided for by law;

2° Purchasing goods for services for resale at below market prices or using ruinous means to procure funds, with the intention of avoiding or delaying the commencement of judicial restructuring or judicial liquidation

proceedings.

3° Entering into, on behalf of another, without consideration, commitments deemed to be disproportionate when they were entered into, given the situation of the business or the legal entity;

4° Paying or causing someone else to pay a creditor, after cessation of payments and while being aware of this, to the prejudice of other creditors;

5° Hampering the smooth progress of the insolvency proceedings by voluntarily abstaining from co-operating with the persons (authorities) in charge of the proceedings;

6° Destroying accounting documents, not keeping accounts where applicable texts made this an obligation or keeping accounts that are fictitious, clearly incomplete or irregular with respect to the applicable provisions.

#### **Article L. 653-6**

The court may pronounce the personal bankruptcy of the manager of legal entity or of the single-member société à responsabilité limitée who have not paid the debts incumbent on them pursuant to Article L. 651-2.

#### **Article L. 653-7**

The court-appointed receiver, the liquidator or the Public Prosecutor's Office may apply to the court in the cases provided for in Articles L. 653-3 to L. 653-6 and L. 653-8.

Where the court-appointed receiver entitled to bring such actions has not applied for the said actions provided for in these articles and has not answered to a default notice delivered to him within the time limit and under conditions to be determined by a Conseil d'Etat decree, a majority of creditors appointed as controllers may also apply to the court in the collective interest of creditors at any time during the proceedings.

The supervisory judge may neither sit in judgement nor participate in deliberations.

#### **Article L. 653-8**

In the cases provided for under Articles L. 653-3 to L. 653-6, a court may pronounce, instead of personal disqualification, a prohibition from managing, running, administering or controlling, directly or indirectly, any commercial or craftsman's business, any agricultural activity or any legal entity or one or more of these.

The prohibition provided for in the first paragraph may also be pronounced against any person referred to in Article L. 653-1 who, in bad faith, has not given to the court-appointed receiver, the administrator or the liquidator, information he is bound to disclose to them in compliance with Article L. 622-6 within the month following the date of issue of the

commencement order.

The same prohibition may also be pronounced against any person referred to in Article L. 653-1 who has omitted to apply for the commencement of judicial restructuring or judicial liquidation proceedings, within the time limit of forty-five days, from the cessation of payments, without having otherwise filed for the commencement of conciliation proceedings.

#### **Article L. 653-9**

The voting rights of managers under personal bankruptcy or under a prohibition provided for in Article L. 653-8 shall be exercised in the meetings of legal entities subject to safeguarding, judicial restructuring or judicial liquidation proceedings by a nominee appointed by the court for this purpose at the request of the administrator, the liquidator or the plan performance supervisor.

The court may order these managers or some of them to sell shares or share capital in the capital of legal entities or order a forced sale through a court-appointed receiver, if necessary after an expert's report. The proceeds of the sale shall be used to pay the debts of the entity borne by the managers.

#### **Article L. 653-10**

The court that pronounces the personal disqualification may pronounce the ineligibility to occupy a public office. The ineligibility shall last the period of the personal disqualification, without exceeding a five-year period. Where the decision becomes definitive, the Public Prosecutor's Office will inform the interested party of his ineligibility, which shall take effect on the date of notice.

#### **Article L. 653-11**

Where a court pronounces the personal disqualification or the prohibition provided for in Article L. 653-8, it will fix the duration for the prohibition, which may not exceed fifteen years. It may order the provisional enforcement of its decision. The loss of rights, prohibitions and ineligibility to occupy a public office shall automatically cease at the end of the fixed term, without any need for a court decision.

The final decree closing the proceedings on the grounds of extinguishment of liabilities shall, even after performance of a sentence pronounced against the said debtor pursuant to Article L. 651-2, restore all the rights of the natural person debtor or the managers of the legal entity. It shall exempt or relieve them from any loss of rights, prohibition and ineligibility to occupy a public office.

The head of the business or manager concerned may request the court

to relieve him from, in whole or in part, any loss of rights, prohibition and ineligibility to occupy a public office if he has made a sufficient contribution to the payment of liabilities.

Where he is subject to the prohibition provided for in Article L. 653-8, he may be relieved of such prohibition if he presents guarantees showing his capacity to manage or control one or more businesses or legal entities provided for in the same article.

Where a complete relief from any loss of rights, prohibition and ineligibility is pronounced, the court's decision will entail rehabilitation.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE V: LIABILITIES AND SANCTIONS**

##### **CHAPTER IV: CRIMINAL BANKRUPTCY AND OTHER OFFENCES**

###### ***Section 1: Criminal bankruptcy***

###### **Article L. 654-1**

The provisions of this section shall apply to:

1° All natural persons engaged in a retail activity or artisanal trade, any farmer, and any natural person running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected;

2° Persons who, directly or indirectly, de jure or de facto, have managed or liquidated a private law entity;

3° Natural persons, who serve as permanent representatives of the managing legal entities referred to under (2°) above.

###### **Article L. 654-2**

Where judicial restructuring or judicial liquidation proceedings are commenced, any person referred to under Article L. 654-1 shall be guilty of criminal bankruptcy where any of the following offences is proved against them:

1° Either purchasing goods or services for resale at below market prices or using ruinous means to procure funds, with the intention of avoiding or delaying the commencement of judicial restructuring or judicial liquidation proceedings.

2° Embezzling or concealing all or part of the debtor's assets;

3° Fraudulently increasing the debtor's liabilities;

4° Keeping fictitious accounts or destroying accounting documents belonging to the business or legal entity or failing to keep any accounts where the applicable texts impose an obligation so to do;

5° Keeping accounts that are manifestly incomplete or irregular with regard to legal provisions.

#### **Article L. 654-3**

Criminal bankruptcy shall be punishable by five years' imprisonment and a fine of 75,000 Euros.

#### **Article L. 654-4**

Where the culprit of or accomplice to criminal bankruptcy is a manager of a business that provides investment services, the penalties will be increased to seven years' imprisonment and a fine of 100, 000 Euros.

#### **Article L. 654-5**

Natural persons found guilty of those offences provided for in Articles L. 654-3 and L. 654-4 shall also incur the following additional penalties:

1° prohibition from exercising civic, civil and family rights, according to the terms and conditions set by Article 131-26 of the Penal Code;

2° Prohibition, according to the methods described in Article 131-27 of the Penal Code, from holding public office, engaging in a professional or social activity while practising or in connection with the practice of the activity for which the infringement was committed, or exercising a commercial or industrial profession, directing, governing, managing or controlling in any capacity whatsoever, directly or indirectly, in their name or on behalf of a third party, a commercial or industrial undertaking or a commercial enterprise. These prohibitions to act may be pronounced at the same time;

3° Ineligibility for public procurement contracts for a maximum period of five years;

4° Prohibition, for a maximum period of five years, from issuing cheques other than those allowing for the withdrawal of funds by the drawer from the issuing bank or from issuing certified cheques;

5° Display or publication of the court order under the conditions provided for in Article 131-35 of the Penal Code.

#### **Article L. 654-6**

The criminal court that finds one of the persons referred to under Article L. 654-1 guilty of criminal bankruptcy may, in the manner provided for in the first paragraph of Article L. 653-11, pronounce either this person's personal bankruptcy or the prohibition provided for in Article L. 653-8 unless a Civil or High court has already imposed such a sanction by a final decision taken

in connection with these same facts.

#### **Article L. 654-7**

Natural persons found criminally liable for those offences set out in Articles L. 654-3 and L. 654-4 shall also incur the following additional penalties:

1° A fine, under the terms and conditions provided for in Article 131-38 of the Penal Code;

2° The penalties provided for in Article 131-39 of the Penal Code.

The prohibition provided for in Article 131-39 (2°) of the Penal Code shall relate to the activity in the exercise of which or while being exercised the offence was committed.

#### *Section 2: Other offences*

#### **Article L. 654-8**

Two years' imprisonment and a fine of 30, 000 Euros shall apply to:

1° Any person mentioned in Article L. 654-1, who performs an act or makes a payment in violation of the provisions of Article L. 622-7;

2° Any person mentioned in Article L. 654-1, who makes a payment in violation of the procedures set out for settling liabilities set out in the safeguarding or restructuring plan or who carries out an act of disposal without the authorization set out in Article L. 626-14;

3° Any person who, during the observation period or during the implementation of the safeguarding plan or restructuring plan, while being aware of the debtor's situation, concludes with the debtor one of the acts referred to at (1°) and (2°) or receives from him an irregular payment.

4° Any person who disposes of an asset made inalienable pursuant to Article L. 642-10.

#### **Article L. 654-9**

The penalties provided for in Articles L. 654-3 to L. 654-5 shall apply to any person who:

1° In the interest of the persons referred to under Article L. 654-1, removes, illegally holds or conceals all or part of the movable and immovable property belonging to these persons, these assets being, if the person is a single-member société à responsabilité limitée, part of the estate covered by the proceedings, without prejudice to the application of Article 121-7 of the Penal Code;

2° Fraudulently submits alleged claims in safeguarding, judicial restructuring or judicial liquidation proceedings, either in his name or by using an agent;

3° While running a retail activity or artisanal trade, farming or any other

independent activity, under someone else's name or using a false name, is convicted of one of the offences provided for in Article L. 654-14.

#### **Article L. 654-10**

A spouse, descendant, ancestor or collateral relatives or affines of the persons referred to under Article L. 654-1 who embezzles, conceals or illegally holds assets included in the insolvency estate of a debtor subject to judicial restructuring or judicial liquidation proceedings, shall incur the penalties provided for in Article 314-1 of the Penal Code.

#### **Article L. 654-11**

In those cases provided for in the preceding articles, the court hearing the case shall rule upon, even where the offender is acquitted:

- 1° Of its own motion, the return into the debtor's assets of all the property, rights and claims that have been fraudulently removed;
- 2° The compensation which would be claimed.

#### **Article L. 654-12**

I. - The penalties provided for under Article 314-2 of the Penal Code shall apply to any administrator, court-appointed receiver, liquidator or plan performance supervisor who:

- 1° Voluntarily harms the creditors' or the debtor's interests by either using the payments received while carrying out his duties for his own profit or by causing others to grant him benefits that he is aware that they are not due;
- 2° Makes use, in his own interest, of his powers for a purpose he knows to be contrary to the creditors' or the debtor's interests.

II. - The same penalties shall apply to any administrator, court-appointed receiver, liquidator, plan performance supervisor or any other person, except the employees' representatives, who has taken part in the proceedings in any capacity whatsoever, who, directly or indirectly, acquires the debtor's assets for his own account or uses them for his own profit. The court hearing the case shall declare void the acquisition and rule upon the compensation that would be claimed.

#### **Article L. 654-13**

A creditor, who, after the issue of the order commencing the safeguarding, judicial restructuring or judicial liquidation proceedings, enters into an agreement giving rise to a special advantage to be borne by the debtor, shall be punishable by the penalties provided for in Article 314-1 of the Penal Code.

The court hearing the case shall declare void the agreement.

#### **Article L. 654-14**

The penalties provided for in Articles L. 654-3 to L. 654-5 shall apply to those persons referred to under Article L. 654-1 (2°) and (3°) who, in bad faith and in order to remove all or part of their assets from being subject to actions initiated by the legal entity to which the commencement order of the safeguarding, judicial restructuring or judicial liquidation proceedings applies, or from those actions initiated by the partners/shareholders or creditors of the legal entity, who embezzle or conceal, or attempt to embezzle or conceal, all or part of their assets, or who fraudulently cause others to regard them as debtors for sums of money that they do not owe.

The same penalties shall apply to the owner of the single-member société à responsabilité limitée who has been the subject of a commencement order for safeguarding, judicial restructuring or judicial liquidation proceedings on the basis of an activity to which an estate is allocated, in bad faith, for the purpose of avoiding the payment of a sentence that may be pronounced or has already been pronounced in application of the second paragraph of Article L. 651-2, embezzling or concealing or attempting to embezzle or conceal, all or part of the goods of their unallocated estate, or for being fraudulently recognized as a creditor of the said debtor for sums that he does not owe.

#### **Article L. 654-15**

Anyone who runs a professional activity or holds a position in violation of any prohibition, loss of rights or incapacity provided for in Articles L. 653-2 and L. 653-8, shall be punished by two years' imprisonment and a fine of 375 000 Euros.

#### *Section 3: Rules of procedure*

#### **Article L. 654-16**

For the application of the provisions of Sections I and II of this chapter, the limitation period applicable to penal actions shall run from the date of issue of the commencement order of safeguarding, judicial restructuring or judicial liquidation proceedings where the incriminating facts occurred prior to this date.

#### **Article L. 654-17**

The case shall be filed with the appropriate Criminal court either by the action of the Public Prosecutor's Office or by an action for damages as a civil party initiated by the administrator, the court-appointed receiver, the employees' representative, the plan performance supervisor, the liquidator or a majority of creditors appointed as controllers acting in the collective



interest of the creditors where the court-appointed receiver entitled to bring action has not done so after notice delivered to him within a time limit and under the conditions to be determined by a Conseil d'Etat decree.

#### **Article L. 654-18**

The Public Prosecutor's Office may require the administrator or the liquidator to hand over all contracts and documents held by them.

#### **Article L. 654-19**

The legal fees of the cases filed by the administrator, the court-appointed receiver, the employees' representative, the plan performance supervisor or the liquidator shall be borne by the Public Treasury in the event of acquittal.

In the event of conviction, the Public Treasury may bring an action for repayment against the debtor only after the closing of the judicial liquidation proceedings.

#### **Article L. 654-20**

Rulings and sentences of a first degree court and court of appeal judgments of conviction pronounced in compliance with this chapter shall be published at the expense of the convicted person.

### **LEGISLATIVE PART**

#### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE VI: GENERAL PROCEDURAL PROVISIONS**

##### **CHAPTER I: MEANS OF REDRESS**

#### **Article L. 661-1**

I. - Appeal or appeal in cassation<sup>90</sup> may be filed against:

1° Decisions regarding the commencement of safeguarding or judicial restructuring proceedings taken by the debtor, the prosecuting creditor and the Public Prosecutor's Office;

2° Decisions regarding the commencement of the judicial liquidation proceedings taken by the debtor, prosecuting creditor, the works council or failing which, the employee delegates and the Public Prosecutor's Office;

3° Decisions regarding the extension of safeguarding, judicial

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<sup>90</sup> Cassation is the quashing of a judgement, as conducted by the Cour de Cassation, rather than usually substituting its own judgement.

restructuring or judicial liquidation proceedings or on the combination of estates taken by the debtor involved in the proceedings, by the debtor concerned by the extension, by the court-appointed receiver or liquidator, administrator or Public Prosecutor's Office;

4° Decisions regarding the conversion of safeguarding proceedings into judicial restructuring proceedings taken by the debtor, the administrator, the court-appointed receiver and the Public Prosecutor's Office;

5° Decisions regarding the issue order for the judicial liquidation proceedings during the observation period from the debtor, administrator, the court-appointed receiver, the works council or failing which, the employee delegates and the Public Prosecutor's Office ;

6° Decisions regarding the adoption of the safeguarding plan or the restructuring plan taken by the debtor, the administrator, the court-appointed receiver, the works council or failing which, the employee delegates and the Public Prosecutor's Office, and by the creditor who contested such decision pursuant to L. 626-34-1;

7° Decisions regarding the modification of the safeguarding plan or the restructuring plan taken by the debtor, the plan performance supervisor, the works council or failing which, the employee delegates and the Public Prosecutor's Office, as well as from the creditor who contested such decision pursuant to L. 626-34-1;

8° Decisions regarding the termination of the safeguarding plan or the restructuring plan taken by the debtor, the plan performance supervisor, the works council or failing which, the employee delegates, and by the prosecuting creditor and the Public Prosecutor's Office ;

II. - The appeal by the Public Prosecutor's Office has a suspensive effect, except with respect to decisions ruling upon the commencement of safeguarding or judicial restructuring proceedings.

III. - In the absence of a works council or of an employee delegate, the employees' representative shall exercise the means of redress given to these institutions by this article.

#### **Article L. 661-2**

The decisions referred to in 1° to 5° of Article L. 661-1 (I), with the exception of 4° shall be subject to third-party proceedings. The judgement ruling upon third-party proceedings shall be subject to appeal and appeal in cassation by the third party.

#### **Article L. 661-3**

The decisions confirming or modifying the safeguarding or restructuring plan or rejecting the rescission of this plan shall be subject to third-party proceedings.

The judgement ruling upon third-party proceedings shall be subject to

appeal and appeal in cassation by the third party.

Third-party proceedings may not be brought against decisions rejecting the adoption or modification of the safeguarding or restructuring plan or pronouncing the rescission of this plan.

#### **Article L. 661-4**

The rulings or orders relating to the appointment or the replacement of the supervisory judge shall not be appealed.

#### **Article L. 661-6**

I. - The following can only be appealed by the Public Prosecutor's Office:

1° Rulings or orders relating to the appointment or the replacement of the administrator, the court-appointed receiver, the plan performance supervisor, the liquidator, the controllers, or the expert(s);

2° orders upon the duration of the observation period, the continuation or cessation of activity.

II. - Only the debtor or the Public Prosecutor's Office may appeal rulings regarding the modification of the administrator's task.

III. - Only the debtor, the Public Prosecutor's Office or the assignee or the contracting party referred to under Article L. 642-7 may appeal against rulings which confirm or reject the assignment plan of the business. The assignee may appeal against the order confirming the assignment plan only if it imposes obligations on him other than the commitments that he has accepted during the preparation of the plan. The contracting party referred to under Article L. 642-7 may appeal only against the section of the order which relates to the assignment of the contract.

IV. - Only the Public Prosecutor's Office or the assignee within the limits referred to under the preceding paragraph, may appeal against orders modifying the assignment plan. V.- Only the debtor, the administrator, the liquidator, the assignee, and the Public Prosecutor's Office may appeal against rulings regarding the rescission of the assignment plan. VI. The appeal of the Public Prosecutor's Office shall have a suspensive effect.

#### **Article L. 661-7**

No third-party proceedings or appeal in cassation<sup>91</sup> can be filed against rulings mentioned in Article L. 661-6, or against decisions rendered pursuant to I and II of the same article.

Only the Public Prosecutor's Office may file an appeal in cassation<sup>92</sup> against court of appeal judgements delivered in compliance with Article L.

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<sup>91</sup> The highest private-law court, the Cour de Cassation quashes judgements ("cassation"), it does not substitute its own judgement except in limited circumstances.

<sup>92</sup> See above.

661-6 (III, IV and V).

#### **Article L. 661-8**

Where the Public Prosecutor's Office must be kept informed about safeguarding, judicial restructuring or judicial liquidation proceedings and the grounds for the corporate managers' liability, the appeal in cassation for absence of information shall be available to him only.

#### **Article L. 661-9**

In the event of invalidation of the ruling that gives rise to the transfer of the case to the first-degree court, the Cour d'Appel may begin a new observation period. This period shall not exceed three months.

In the event of an appeal against the order ruling on judicial liquidation during the observation period or confirming or rejecting the safeguarding or restructuring plan and when the provisional enforcement is halted, the observation period will be prolonged until the Cour d'Appel judgement.

#### **Article L. 661-10**

For the application of this Title, the members of the works council or the employee delegates shall appoint the person entitled to exercise the means of redress on their behalf from amongst their number.

#### **Article L. 661-11**

The decisions delivered in compliance with Chapters I, II and III of Title V shall be subject to appeal by the Public Prosecutor's Office.

The appeal of the Public Prosecutor's Office shall have a suspensive effect.

#### **Article L. 661-12**

The Public Prosecutor's Office may file the appeal set out in this chapter even if he did not act as the principal party.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE VI: GENERAL PROCEDURAL PROVISIONS**

##### **CHAPTER II: OTHER PROVISIONS**

###### **Article L. 662-1**

No opposition or proceedings for enforcement of any nature concerning the sums paid into the Caisse des Dépôts et Consignations shall be admissible.

###### **Article L. 662-2**

When the interests involved justify it, the court of appeal may decide to refer the case to another court of comparable degree that has jurisdiction within the territorial jurisdiction of the Cour d'Appel, to hear the special commission (mandat ad hoc), the composition proceedings or safeguarding proceedings, judicial restructuring or judicial liquidation proceedings, under the conditions to be fixed by a decree. The Cour de Cassation<sup>93</sup>, to which the case is referred in the same manner, may refer the case to a court within the territorial jurisdiction of another Cour d'Appel.

###### **Article L. 662-3**

Hearings before the Tribunal de Commerce and the Tribunal de Grande Instance shall take place in the judge's chambers. However, the hearings will ipso jure be public after the commencement of the proceedings if the debtor, the court-appointed receiver, the administrator, the liquidator, the employees' representative or the Public Prosecutor's Office requests it. The president of the Court may decide that they will take place or will continue in the judge's chambers if disturbances occur that undermine the peaceful progress of the hearing.

Notwithstanding the provisions of the first paragraph, the hearings relating to the steps taken in compliance with Chapters I and III of Title V shall take place in public. The Presiding judge of the court may decide that they will take place in the judge's chambers if one of the persons summoned requests it before the commencement of the hearing.

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<sup>93</sup> France's highest court for civil and commercial law, unless this concerns constitutional matters.

#### **Article L. 662-4**

Any dismissal of the employees' representative referred to under Articles L. 621-4 and L. 641-1, planned by the administrator, the employer or the liquidator, as the case may be, is required to be submitted to the works council, which shall give its opinion on the planned dismissal.

The dismissal may occur only after the permission of the Labour Inspector who supervises the establishment. When there is no works council in the establishment, the case will be referred directly to the Labour Inspector.

However, in the event of serious misconduct, the administrator, the employer or the liquidator, as the case may be, may pronounce the immediate suspension of the interested party while awaiting the final decision. If the dismissal is refused, the suspension will be cancelled and its effects will automatically be removed.

The protection instituted in favour of the employees' representative for the exercise of his duties defined by Article L. 625-2 will cease when all sums paid to the court-appointed receiver by the institutions referred to under Article L. 143-11-4 of the Labour Code, in compliance with the tenth paragraph of Article L. 143-11-7 of that code, shall be transferred by the court-appointed receiver to the employees.

Where the employees' representative discharges his duties in the stead of a works council or, as the case may be, of employee delegates, the protection will cease at the end of the last hearing or consultation planned by the judicial restructuring proceedings.

#### **Article L. 662-5**

The funds held by the "syndics"<sup>94</sup> in a settlement or liquidation of assets governed by Act No 67-563 of 13 July 1967, on settlement or liquidation of assets proceedings, personal disqualification and criminal bankruptcies shall immediately be placed on a deposit account with the Caisse des Dépôts et Consignations. If the deposits are delayed, the "syndic" must pay interest on the unpaid sums at the legal rate of interest plus five per cent.

#### **Article L. 662-6**

The registry of the Tribunal de Commerce and that of the Tribunal de Grande instance shall draw up at the end of every six-month period the list of court-appointed administrators and court-appointed receivers appointed by the court and the other people to whom a commission related to the proceedings governed by this Book is given by that court, for this period. They shall state, with respect to each interested party, all the cases allotted to him and information relating to the debtors in question provided for by a

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<sup>94</sup> Administrators or liquidators.

Conseil d'Etat decree.

This information shall be disclosed to the Minister of Justice, to the Public Prosecutor's Office of the territorial jurisdiction concerned and to the authorities responsible for the supervision and the inspection of the administrator and the court-appointed receivers, according to the terms and conditions determined by a Conseil d'Etat decree.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE VI: GENERAL PROCEDURAL PROVISIONS**

##### **CHAPTER III : PROCEDURAL COSTS**

###### **Article L. 663-1**

I. - Where the debtor's available funds are not immediately sufficient, the Public Treasury, upon a reasoned ruling of the supervisory judge will advance funds to pay fees, taxes, royalties or emoluments received by the registries of the courts, remunerations of attorney-at-law insofar as they are regulated, expenses incurred for serving notice and publication formalities and payment of the experts appointed by the court, after the agreement of the Public Prosecutor's Office, related to:

1° The decisions pronounced in the course of safeguarding, judicial restructuring or judicial liquidation proceedings delivered in the collective interest of the creditors or that of the debtor;

2° The exercise of actions intended to preserve or reconstitute the debtor's estate or exercised in the collective interest of the creditors; and

3° The exercise of actions provided for in Articles L. 653-3 to L. 653-6.

The agreement of the Public Prosecutor's Office is not required for the advancement of funds for the remuneration of public officers or certified commodity brokers appointed by the court pursuant to Articles L. 621-4, L. 621-12, L. 622-6-1, L. 622-10, L. 631-9 or L. 641-1 to draw up the inventory set out in Article L. 622-6 and as the case may be, the estimate of the debtor's assets.

II. - The Public Treasury shall also, upon a reasoned order of the president of the Court, advance funds to pay the same expenses connected with an action for rescission and modification of the plan.

III. - These provisions shall apply to appeals and appeals in cassation procedures against all the decisions referred to above.

IV. - For the refunding of its advances, the Public Treasury shall be

secured by the privilege<sup>95</sup> applicable to legal fees.

#### **Article L. 663-1**

I. - Where the debtor's available funds are not immediately sufficient, the Public Treasury, upon a reasoned ruling of the supervisory judge will advance funds to pay fees, taxes, royalties or emoluments due to the registers of the court, fixed disbursements and emoluments due to appeal courts avoués<sup>96</sup> and remunerations of advocates insofar as they are regulated, expenses incurred for serving notice and publication formalities and payment of the experts appointed by the court, after the agreement of the Public Prosecutor's Office , related to:

1° the decisions pronounced in the course of safeguarding, judicial restructuring or judicial liquidation proceedings delivered in the collective interest of the creditors or that of the debtor;

2° the exercise of actions intended to preserve or reconstitute the debtor's estate or exercised in the collective interest of the creditors; and

3° the exercise of actions provided for in Articles L. 653-3 to L. 653-6.

The Public Prosecutor's Office is not required for the advancement of funds for the remuneration of public officers or certified commodity brokers appointed by the court pursuant to Articles L. 621-4, L. 621-12, L. 622-6-1, L. 622-10, L. 631-9 or L. 641-1 to draw up the inventory set out in Article L. 622-6 and as the case may be, the estimate of the debtor's assets.

II. - The Public Treasury shall also, upon a reasoned order of the president of the Court, advance funds to pay the same expenses connected with an action for rescission and modification of the plan.

III. - These provisions shall apply to appeals and appeals in cassation procedures against all the decisions referred to above.

IV. - For the refunding of its advances, the Public Treasury shall be secured by the privilege<sup>97</sup> applicable to legal fees.

#### **Article L. 663-1-1**

Where the protective measures ordered pursuant to Articles L. 621-2, L. 631-10-1 and L. 651-4 pertain to the assets whose retention or holding generates expenses or which are likely to decline, the supervisory judge may authorise, at the prices and on the terms that he determines, the administrator if one has been appointed, the court-appointed receiver or the liquidator to assign such assets. The proceeds from this assignment shall be paid immediately into the savings account of the Caisse des Dépôts et Consignations.

The supervisory judge may allow the proceeds from this assignment to

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<sup>95</sup> A security conferring a preferential right to payment.

<sup>96</sup> Advocates responsible for appeal court work or higher.

<sup>97</sup> A security conferring a preferential right to payment.



be used to pay the expenses incurred by the administrator, the court-appointed receiver or the liquidator for the business management needs of the owner of these assets, including to ensure compliance with the social and environmental obligations arising from the ownership of these assets, if the debtor's available funds are not sufficient.

#### **Article L. 663-2**

A Conseil d'Etat decree shall specify the conditions of remuneration of administrators, court-appointed receivers, plan performance supervisors and liquidators. This remuneration shall preclude any other remuneration or reimbursement of legal fees for the same proceedings or for subsequent duties that would be a continuation of the same proceedings.

#### **Article L. 663-3**

If the proceeds of the sale of the business's assets do not allow the liquidator or the court-appointed receiver to obtain, as remuneration due to him pursuant to the provisions of Article L. 663-2, a sum at least equal to a threshold fixed by a Conseil d'Etat decree, the case will be declared as lacking funds by court order, on proposal of the supervisory judge and based on the supporting documents presented by the liquidator or the court-appointed receiver.

The same decision shall determine the sum corresponding to the difference between the remuneration actually received by the liquidator or the court-appointed receiver and the threshold specified in the first paragraph.

The sum paid to the court-appointed receiver or to the liquidator shall be deducted from a portion of the interest paid by the Caisse des Dépôts et Consignations on the funds deposited pursuant to Articles L. 622-18, L. 626-25 and L. 641-8. This portion shall be specially assigned to a fund managed by the Caisse des Dépôts et Consignations under the supervision of an administration committee. The conditions for application of this paragraph shall be fixed by a Conseil d'Etat decree.

#### **Article L. 663-4**

The supervisory judge shall have his travelling expenses reimbursed from the debtor's assets.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE VII: PROVISIONS SPECIFIC TO THE DEPARTMENTS OF MOSELLE, BAS-RHIN AND HAUT-RHIN**

##### **Article L. 670-1**

The provisions of this Title are applicable to natural persons, domiciled in the départements of Moselle, Bas-Rhin and Haut-Rhin, and to their estate on death, who are neither farmers nor persons nor persons engaged in a retail activity or artisanal trade or any other independent profession, including independent professional persons with a statutory or regulated status, if they are in good faith and in a state of evident and known insolvency. The provisions of Titles II to VI of this Book shall apply insofar as they are not contrary to the provisions of this Title.

Prior to issuing the order on the commencement of proceedings, the court shall appoint, if it considers it useful, a qualified person selected from the list of the approved organisations, to collect all information on the debtor's economic and employment situation.

The losses of rights and prohibitions resulting from personal disqualification shall not be applicable to these persons.

##### **Article L. 670-1-1**

This title also applies to natural persons domiciled in the départements of Moselle, Bas-Rhin and Haut-Rhin having filed a declaration of constitution of assets allocated in accordance with Article L. 526-7 and where the agricultural, commercial, artisanal or independent is exclusively exercised with allocation of assets.

Unless otherwise stipulated, references made to the person, debtor, the contract or the contracting party shall be understood respectively as:

- # the person as the holder of an unallocated asset;
- # the debtor as the holder of an unallocated asset;
- # the contract signed by the debtor as defined;
- # the contracting party who signed such a contract with him.

The provisions that pertain to the assets, rights or obligations of the persons mentioned in the first paragraph must, unless provided otherwise, be understood as pertaining to the items of the unallocated estate alone. The provisions that pertain to the rights or obligations of these persons shall apply, unless provided otherwise, within the limits of the unallocated estate alone.

#### **Article L. 670-2**

The supervisory judge may order exemption from carrying out an inventory of the assets of the persons referred to under Article L. 670-1.

#### **Article L. 670-3**

In the event of judicial liquidation proceedings, the verification of claims shall not be carried out if it appears that the proceeds of the sale of the assets will entirely be absorbed by the legal fees, unless otherwise decided by the supervisory judge.

#### **Article L. 670-4**

On issue of the final decree closing operations of the judicial liquidation proceedings, the Court may, exceptionally, require the debtor to contribute to settlement of the liabilities in the proportions that it shall determine. The court shall appoint in this order a statutory auditor to supervise the performance of the contribution.

To fix the proportions of the contribution, the court will take into account the debtor's means, to be determined by taking into consideration the debtor's irreducible revenue and obligations. The court shall reduce the amount of the contribution in the event of a decrease of the revenue or increase of the obligations of the contributor.

The contributor's payment must be made within a time limit of two years.

#### **Article L. 670-5**

In addition to the cases provided for in Article L. 643-11, the creditors will also recover their right to initiate individual proceedings against the debtor where the court ascertains, of its own motion or at the request of the supervisor, the non-performance of the contribution provided for in Article L. 670-4.

#### **Article L. 670-6**

The order pronouncing the judicial liquidation proceedings shall be recorded for a period of five years in the records provided for in Article L. 333-4 of the Consumer Code and shall no longer be mentioned in the interested party's criminal record.

#### **Article L. 670-7**

The tax base and assessment of the tax on legal fees for judicial restructuring or judicial liquidation proceedings shall temporarily be settled in accordance with the provisions of local laws.

#### **Article L. 670-8**

The provisions of Article 1 of Act No 75-1256 of 27 December 1975 on certain sales of immovable property in the départements of Haut-Rhin, Bas-Rhin and Moselle shall cease to be applicable to forced sales of immovable properties which are included in the estate of a debtor submitted to judicial restructuring proceedings commenced after 1 January 1986.

## **LEGISLATIVE PART**

### ***BOOK VI: DIFFICULTIES FACED BY BUSINESSES***

#### **TITLE VIII: SPECIAL PROVISIONS RELATING TO THE SINGLE-MEMBER SOCIÉTÉ À RESPONSABILITÉ LIMITÉE DEBTOR**

##### **Article L. 680-1**

Where the provisions of titles I to VI of this book apply owing to the professional activities exercised by a single-member société à responsabilité limitée, these provisions shall apply to each estate.

##### **Article L. 680-2**

The provisions of titles I to VI of this book which pertain to the economic position or the assets, rights or obligations of the single-member société à responsabilité limitée must, unless provided otherwise, be understood as pertaining to the items of only the estate allocated to the activity in difficulty or, if the activity is carried out without allocation of estate, the unallocated estate only.

##### **Article L. 680-3**

The provisions of titles I to VI of this book which pertain to the rights or obligations of the creditors of the single-member société à responsabilité limitée debtor shall apply, unless provided otherwise, within the limits of the activity in difficulty only or, if the activity is carried out without allocation of estate, the unallocated estate only.

##### **Article L. 680-4**

Unless otherwise stipulated, any reference made by titles I to VI of this book to the debtor, the company, the contract, the contracting party shall be understood respectively as:

- # the debtor as the person running the activity in difficulty and holder of the estate attached thereto, excluding any other;
- # the company operated in connection with the activity in difficulty;
- # if an estate is assigned to the activity in difficulty, the contract signed on the occasion of the exercise of this activity or, if the activity is exercised

without allocation of estate, the contract entered into outside the activity or activities to which the estate is allocated;

# the contracting party who concluded the contract mentioned in the previous paragraph.

#### **Article L. 680-5**

Where the provisions of titles I to VI of this book are applied on the basis of a professional activity exercised without allocation of estate, the asset and liability items which, as appropriate, are derived from an estate whose allocation has ceased to produce its effects in application of Article L. 526-15 shall be considered as being outside the unallocated estate. This exclusion shall end insofar as the claims comprising the former estate are extinguished.

This article shall not apply if the exercise of the activity to which the estate was allocated continued after the cessation of the allocation.

#### **Article L. 680-6**

The commencement order for safeguarding, judicial restructuring or judicial liquidation proceedings shall imply, by operation of law, until the closure of the proceedings or, as the case may be, until the end of the plan operations, prohibition for any debtor to allocate to a professional activity an asset included in the estate covered by the proceedings or, subject to the payment of the revenues mentioned in Article L. 526-18, to modify the allocation of such an asset, where it would lead to the diminution of the assets in the said estate.

Any act entered into in breach of the provisions of this article shall be declared void at the request of any interested party or of the Public Prosecutor's Office filed within three years from the its date.

#### **Article L. 680-7**

Notwithstanding the jurisdiction granted to the supervisory judge by Article L. 624-19, the court ruling on safeguarding, judicial restructuring or judicial liquidation proceedings commenced against a single-member société à responsabilité limitée competent to examine disputes regarding the allocation of items of the estate of the said single member which may arise in the course of these proceedings.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE<sup>98</sup> AND THE ORGANISATION OF TRADE***

#### **TITLE I: CHAMBERS OF COMMERCE AND INDUSTRY**

##### **Article L. 710-1**

Departmental establishments or chambers which are members of the network of chambers of commerce and industry, in their capacity as intermediate State authorities, shall each have a function to represent the interests of industry, commerce and services towards public or foreign authorities. They will provide the interface between the various stakeholders involved and will carry out their activities without prejudice to the duties of representation conferred on professional or interprofessional organisations by the legislation and regulations in force and to the duties carried out by territorial authorities within the framework of their free administration.

The network and each establishment or departmental chamber therein shall contribute to the economic development, attractiveness and urban planning of the territories, and shall also support companies and associations thereof by fulfilling, in conditions determined by decree, any public service mission and any general interest mission necessary for the accomplishment of such missions.

To this end, each establishment or departmental chamber in the network may undertake, in compliance where applicable with the sectorial plans applying to them:

1° General interest missions entrusted to them by the legislation and regulations;

2° Support, mentoring, liaison and advisory services to those starting up or taking over businesses, in compliance with the legislative and regulatory provisions applicable to competition law;

3° A support and advisory mission to encourage the international development of businesses and the exporting of their production, in partnership with the French Agency for International Business Development;

4° A mission to encourage initial or ongoing professional training, in particular through public and private teaching establishments that it sets up, manages or finances;

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<sup>98</sup> The first instance specialist commercial courts.

5° A mission to set up and manage facilities, particularly port and airport facilities;

6° For-profit missions entrusted to it by a public corporation or that may prove necessary to fulfil their other missions;

7° Any expert assessment, consultation or research mission requested by the public authorities on an issue relating to industry, trade, services, economic development, professional training or urban planning, without prejudice to work initiated by them.

The Network of Chambers of Commerce and Industry shall comprise the assembly of French chambers of commerce and industry, regional chambers of commerce and industry, territorial chambers of commerce and industry, departmental chambers of commerce and industry in Ile-de-France, and cross-trade groups formed by several regional or territorial chambers.

The assembly of French chambers of commerce and industry, regional chambers of commerce and industry, territorial chambers of commerce and industry and cross-trade groups are public establishments placed under State supervision and administered by elected business managers. The departmental chambers of commerce and industry of Ile-de-France are attached to the chamber of commerce and industry of the Paris-Ile-de-France region and have no legal personality.

Regional chambers of commerce and industry have the benefit of financial impositions of any kind afforded by law.

The resources of the public establishments in the network are also ensured by:

1° Any other legal resource within their specialism;

2° Sales of or remuneration for their activities or services they manage;

3° Dividends and other income from participating interests held in their subsidiaries;

4° Subsidies, donations and legacies awarded to them.

Each establishment in the network of chambers of commerce and industry shall perform analytical accounting made available to supervisory and controlling authorities to prove that public resources have been used in compliance with national and Community competition rules and not to finance market activities.

Under conditions defined by decree, public establishments in the network may make settlements and compromises. As regards their debts, they are subject to Law No 68-1250 of 31 December 1968 on the prescription period of debts owed by the State, departments, municipalities and public establishments.

They may, with the approval of the supervisory authority, take part in the foundation and share capital of non-commercial partnerships and limited companies whose corporate purpose comes under the remit of their missions. They may, under the same conditions, take part in setting up

public or private interest groups and any public law corporation.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE<sup>1</sup> AND THE ORGANISATION OF TRADE***

#### **TITLE I: CHAMBERS OF COMMERCE AND INDUSTRY**

##### **CHAPTER I: – ORGANISATION AND MISSIONS OF THE NETWORK OF CHAMBERS OF COMMERCE AND INDUSTRY**

##### ***Section 1: Territorial and departmental chambers of commerce and industry of Ile-de-France***

##### **Article L. 711-1**

Territorial chambers of commerce and industry shall be set up by decree on the basis of the master plan referred to in 2° of Article L. 711-8. The act of setting up determines the district of the chamber and its registered office and the chamber of commerce and industry to which it is attached.

Any modification shall be made in the same way.

Territorial chambers of commerce and industry located within the scope of an urban centre as defined by the General Code of Local Government may take the name of the chamber of commerce and industry of that urban centre. In this case, it shall replace the pre-existing territorial chamber of commerce and industry. In compliance with the guidance given by the competent regional chamber of commerce and industry and within the framework of regional sectorial plans, the metropolitan chamber of commerce and industry has, as a matter of priority, powers provided for territorial chambers of commerce and industry under Article L. 710-1 to drive the economic, industrial and commercial life of the living area corresponding to its district, without prejudice to powers devolved to territorial authorities.

Subject to the provisions of the second paragraph, the metropolitan chamber of commerce and industry is governed by the provisions relating to territorial chambers of commerce and industry.

The territorial and departmental chambers of commerce and industry in Ile-de-France may carry out experiments which must be in line with the regional strategy referred to in 1° of Article L. 711-8. The particulars of such experiments shall be determined in a Conseil d'Etat decree.

Territorial chambers of commerce and industry are attached to regional chambers of commerce and industry.

Territorial chambers of commerce and industry that so desire may come



together under a single chamber within the framework of master plans referred to in 2° of Article L. 711-8. They may be subsumed into the new territorial chamber or become delegations of the newly formed territorial chamber, in which case they no longer have the status of public establishment. In this case, they shall jointly determine the manner in which they wish to share and exercise the functions normally attributed to territorial chambers.

If chambers of commerce and industry are situated in the same department or in departments included in one and the same region, the new chamber resulting from their combination shall then be attached to the regional chamber of commerce and industry with territorial jurisdiction. If they are located in bordering departments relating to a number of regions, the new chamber resulting from their union shall be attached to the regional chamber of commerce and industry that they agree on or, failing agreement, to the region where the territorial chamber with the largest economic weighting, ascertained by economic survey the terms and conditions of which shall be determined by Conseil d'Etat decree.

#### **Article L. 711-2**

The territorial and departmental chambers of commerce and industry of Ile-de-France represent the interests of industry, commerce and services in their district in dealings with the public authorities and local stakeholders.

As provided for by the Town Planning Code, they shall be involved in drafting territorial organisation plans and local urban planning plans.

For commercial improvements, the chambers of commerce and industry may be delegated a pre-emptive right by the relevant municipalities or public authorities for intercommunal<sup>99</sup> cooperation.

#### **Article L. 711-3**

Within the guidelines given by the relevant regional chamber of commerce and industry, the territorial and departmental chambers of commerce and industry of Ile-de-France shall provide services to industrial, commercial and service companies in their area.

Their tasks shall include:

1° Setting up and managing business start-up centres and, with regard to the tasks relevant to them, shall therein carry out the tasks set out in Article 2 of Law No. 94-126 of 11 February 1994 on individual initiative and enterprise;

2° They may, where appropriate in accordance with the applicable sectorial plan, act as principal in any infrastructure or facility project or manage any service related to the performance of their tasks;

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<sup>99</sup> Communes are the smallest significant unit of democratic local government except in larger towns.

3° They may enter into contracts with the State, with territorial authorities or the public establishments thereof, where appropriate in accordance with the applicable sectorial plan, to manage any infrastructure, facilities or services, particularly transport services related to the performance of their tasks;

4° In conditions determined by Conseil d'Etat decree and in the event of a permanent delegation by the regional chambers of commerce and industry, they shall, within the scope of 5° of Article L. 711-8, proceed with the recruitment of civil servants under public law governed by service regulations as required to perform their operational tasks and shall manage their personal situation. They shall recruit and manage civil servants under private law and, where necessary, civil servants under public law as required to perform their industrial and commercial public services, particularly in terms of port and airport infrastructures.

They shall, in conditions determined by Conseil d'Etat decree, be provided with the budgetary and personnel resources necessary to perform their local tasks to manage these in an autonomous manner.

The activities mentioned in 1° to 4° of this Article shall require analytical accounting.

Subject to the application of Law No. 78-17 of 06 January 1978 on data protection, the territorial and departmental chambers of commerce and industry of Ile-de-France shall create and update economic databases of companies within their district as required to perform their tasks.

The information gathered by the territorial and departmental chambers of commerce and industry of Ile-de-France within the remit of their task as a business start-up centre shall only be stored and shared for the purposes of this task and to identify and contact the companies in their district. The territorial and departmental chambers of commerce and industry of Ile-de-France may share, free of charge or against payment, category-based lists of these companies with any interested party. This, however, shall not authorise them to share information on individual companies gathered in their capacity as a business start-up centre, either free of charge or against payment.

#### **Article L. 711-4**

Territorial chambers of commerce and industry and departmental chambers of commerce and industry of Ile-de-France may, either alone or in conjunction with other partners, within the scope of the sectorial plans mentioned in 3° of Article L. 711-8, set up and manage initial and continuing professional training establishments as provided by Articles L. 443-1 and L. 753-1 of the Educational Code for initial and continuing professional training, in compliance with the provisions of Part 6, Book III, Title V of the Labour Code as applicable to them.

## *Section 2: Regional chambers of commerce and industry*

### **Article L. 711-6**

A regional chamber of commerce and industry shall be created by decree in each region. The district of the regional chamber of commerce and industry is the region or, in Corsica, the jurisdiction of the territorial authority. Its head office shall be determined by decree, after consultation with the attached territorial and departmental chambers of Ile-de-France.

In regions with only one territorial chamber of commerce and industry, the same public establishment shall carry out the tasks allocated to regional chambers of commerce and industry and territorial chambers of commerce and industry. It shall be called a regional chamber of commerce and industry.

However, a regional chamber of commerce and industry encompassing two or more regions may be set up by decree. Its head office shall be determined by the decree establishing it with the consent of the territorial chambers of commerce and industry attached thereto.

### **Article L. 711-7**

Regional chamber of commerce and industry shall carry out within their district all tasks of the network of chambers of commerce and industry as provided for under Article L. 710-1.

Their tasks shall include:

1° Providing an opinion to the regional council on any business support scheme which the region intends to set up;

2° Participating in the drafting of the regional planning and territorial development plans;

3° Participating, in conditions set out by the Town Planning Code, in the drafting of territorial organisation plans where such plans outside the district of a territorial or departmental chamber of Ile-de-France;

4° Acting as principal in any infrastructure or facilities project, particularly transport projects, and managing any service related to the performance of their tasks; they may also enter into contracts with the State, the region, other territorial authorities in the regional district or their public establishments to carry out such projects. To this end, they shall recruit and manage civil servants under private law as required to perform their industrial and commercial public services.

The activities mentioned in 4° shall give rise to analytical accounting.

### **Article L. 711-8**

The regional chambers of commerce and industry shall provide a framework for and support the activities of the territorial and departmental chambers of Ile-de-France attached to them. They shall define a strategy

for the activity of the network in their district. Under conditions defined by decree, the regional chambers of commerce and industry shall carry out their activity using existing skills within the territorial chambers of commerce and industry or in the departmental chambers of commerce and industry of Ile-de-France in their district.

Their tasks shall include:

1° Voting by a majority of two thirds of the members present or represented on the strategy to be applied throughout their district and, each year, by a majority of the members present or represented, the budget required for its implementation;

2° Drafting, under conditions fixed by Conseil d'Etat decree, a master plan defining the number and district of territorial and departmental chambers of Ile-de-France in their district, taking due account of how territorial authorities are organised in terms of economic development and planning, and of the economic viability and usefulness of territorial chambers for their populations;

3° Adopting sectorial plans aimed at providing a framework for projects of territorial chambers of commerce and industry in areas of activity or facilities defined by decree;

4° Distributing the income from taxes of any nature allocated to them between territorial and departmental chambers of commerce and industry of Ile-de-France attached to them, in accordance with the sectorial plans, less their own portion, and transferring their contribution to the assembly of French chambers of commerce and industry, in conditions specified in a Conseil d'Etat decree;

5° In conditions determined by Conseil d'Etat decree, recruiting staff subject to public law including those subject to Law No. 52-1311 of 10 December 1952 on the mandatory establishment of regulations governing administrative staff of chambers of agriculture, chambers of commerce and trades, and making these available to attached territorial and departmental chambers of commerce and industry of Ile-de-France after consultation with their presidents and managing their position under such regulations. Expenditure on salaries to staff thus made available shall constitute mandatory expenditure for territorial chambers of commerce and industry and shall constitute revenue from the relevant regional chambers of commerce and industry;

6° Providing legal and auditing support functions to the territorial chambers attached to them, as well as administrative support in managing their human resources, accounting, communications and information systems, specified by a decree providing for the treatment of this charge in the distribution provided for under 4°;

7° Under conditions and within limits defined by decree, increasing the budget, beyond the budget voted, of a territorial and departmental chamber of commerce and industry of Ile-de-France attached to them to meet

exceptional expenditure or to deal with particular circumstances;

8° Awarding contracts or framework agreements on their own behalf or, within their district, on behalf of some or all of the chambers in the network. They may act as a central purchasing body as set out in the Public Procurement Code on behalf of territorial or departmental chambers in their district.

#### **Article L. 711-9**

The regional chambers of commerce and industry shall draw up a regional plan for professional training consistent with the regional development plan for professional training, to be further adapted within the territorial and departmental chambers of commerce and industry of Ile-de-France in order to take account of local requirements. They may, acting alone or in conjunction with other partners, set up and manage public establishments to provide initial and ongoing training in conditions provided by Articles L. 443-1 and L. 753-1 of the Educational Code for initial and continuing professional training, in compliance with the provisions of Part 6, Book III, Title V of the Labour Code as applicable to them, in accordance with competition law and subject to performing analytical accounting.

#### **Article L. 711-10**

I.- As an exception to Article L. 711-7, a regional chamber of commerce and industry may, as stipulated in an agreement, entrust the following tasks to a territorial or departmental chamber of commerce and industry of Ile-de-France attached to it:

1° Project management for any infrastructure or facilities project and the management of any service provided for under 4° of Article L. 711-7;

2° The administration of any initial or ongoing professional training establishment.

A regional chamber of commerce and industry may also, as stipulated in an agreement, entrust some of the support functions mentioned in 6° of Article L. 711-8 to a territorial or departmental chamber of commerce and industry of Ile-de-France.

II. - As stipulated in an agreement and where applicable in compliance with the applicable sectorial plan, a territorial or departmental chamber of commerce and industry may transfer a service, activity or facility it previously managed to the regional chamber of commerce and industry to which it is attached or to another territorial or departmental chamber of commerce and industry of Ile-de-France attached to the same chamber of commerce and industry.

III. - The agreements referred to in I and II provide for the transfer of goods, resources and intellectual property rights as required to perform the task or manage the facility entrusted or transferred and the corresponding

financial compensation.

The transfers referred to in the first paragraph of this III shall be exempt from duties and taxes.

*Section 3: The chamber of commerce and industry of the Paris-Ile-de-France region*

**Article L. 711-11**

A chamber of commerce and industry called "regional chamber of commerce and industry of Paris-Ile-de-France" is hereby set up, whose district corresponds to the entire Ile-de-France region.

The chambers of commerce and industry and delegations existing in the Ile-de-France region shall be attached to the chamber of commerce and industry of the Paris-Ile-de-France region as departmental chambers of commerce and industry of Ile-de-France without the legal status of public establishment.

However, as an exception to the provisions contained in the second paragraph, the chambers of commerce and industry of Seine-et-Marne and Essonne may decide to retain the legal status of public establishment in conditions defined by decree. In this case, they shall become territorial chambers of commerce and industry and shall exercise all the powers provided for under Articles L. 711-1 to L. 711-4.

**Article L. 711-12**

The members of the chamber of commerce and industry of the Paris-Ile-de-France region and the members of the departmental chambers of commerce and industry of Ile-de-France shall be elected respectively under the same conditions as the members of regional chambers of commerce and industry and the members of territorial chambers of commerce and industry.

**Article L. 711-13**

The presidents of departmental chambers of commerce and industry of Ile-de-France shall be members of the assembly of French chambers of commerce and industry. By law, they shall be members of the committee and vice-presidents of the chamber of commerce and industry of the Paris-Ile-de-France region.

**Article L. 711-14**

The chamber of commerce and industry of the Paris-Ile-de-France region shall exercise all the powers devolved to any regional chamber of commerce and industry.

Departmental chambers of commerce and industry of Ile-de-France shall

carry out local missions devolved to any territorial chamber of commerce and industry, in accordance with Articles L. 711-1 to L. 711-4, in compliance with the guidelines laid down by the general assembly of the chamber of commerce and industry of the Paris-Ile-de-France region.

#### *Section 4: The assembly of French chambers of commerce and industry*

##### **Article L. 711-15**

The assembly of French chambers of commerce and industry is the public establishment placed at the head of the network defined in Article L. 710-1, and authorised to represent the national interests of industry, commerce and services in dealings with the State, with the European Union and at international level.

Its governing body shall comprise the current presidents of the departmental chambers of commerce and industry of Ile-de-France, of the territorial chambers of commerce and industry, the chambers of overseas collectivities<sup>100</sup> governed by Article 74 of the Constitution and of New Caledonia, and the regional chambers of commerce and industry.

The funding of its operations, together with expenditure on projects with national significance involving the entire network of chambers of commerce and industry adopted by decision of the assembly of French chambers of commerce and industry shall constitute mandatory expenditure for the establishments in the network.

The arrangements for distributing this expenditure shall be determined by regulation.

##### **Article L. 711-16**

The assembly of French chambers of commerce and industry shall coordinate the entire network of chambers of commerce and industry.

Its tasks shall include:

1° Drafting the national strategy of the network of chambers of commerce and industry;

2° Adopting the intervention standards for establishments that are members of the network and ensuring that these standards are complied with;

3° Managing projects with national significance involving the network and entrusting, where appropriate, project management to another establishment in the network;

4° Providing technical, legal and financial support to territorial and regional chambers and to departmental chambers of Ile-de-France and support in institutional communications;

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<sup>100</sup> The generic term for local, regional or national government elected bodies.

5° Awarding contracts or framework agreements on their own behalf or on behalf of some or all of the chambers in the network. It may act as a central purchasing body as defined in the Public Procurement Code on behalf of some or all of the regional chambers, and the territorial and departmental chambers of Ile-de-France;

6° Defining and implementing the network's general policy for managing the staff of the chamber, negotiating and entering into national agreements on social matters applicable to chamber staff subject to approval in conditions determined by Conseil d'Etat decree where these have an impact on remuneration. It may set up a profit-sharing scheme and a voluntary savings scheme and pension plan scheme with defined contributions distributed between employer and employee;

7° Inspecting or carrying out audits on the operation of various chambers in the network, the conclusions of which shall be forwarded to the relevant authority under conditions set out by Conseil d'Etat decree;

8° Coordinating the network's initiatives with those of French chambers of commerce and industry located abroad; To this end, using economic data gathered from the various chambers in the network, it shall identify those companies with the best prospects for exports and shall consequently provide them with specific assistance to develop their activities abroad in partnership with the French Agency for International Business Development;

9° Setting up, at the request of chambers in the network, a mediation body to settle disputes arising between chambers prior to legal proceedings. This mediation function shall be provided free of charge.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE<sup>1</sup> AND THE ORGANISATION OF TRADE***

#### **TITLE I: CHAMBERS OF COMMERCE AND INDUSTRY**

##### **CHAPTER II: THE ADMINISTRATION OF ESTABLISHMENTS IN THE NETWORK OF CHAMBERS OF COMMERCE AND INDUSTRY**

##### **Article L. 712-1**

In each public establishment in the network, the general meeting of elected members shall determine the establishment's broad strategy and action programme. To this end, it shall deliberate on all matters relating to the object of the establishment, particularly the budget, the accounts and the internal regulations. It may delegate powers relating to its administration and current operations to other bodies in the establishment.



The president shall be the legal representative of the establishment. He shall be the authorizing officer and is responsible for its management. He shall chair the general meeting and other deliberative bodies. A Conseil d'Etat decree shall determine the conditions in which the provisions of Article 7 of Law No 84-834 of 13 September 1984 on the age limit in the civil service and the public sector apply to such presidents. The functions of treasurer shall be carried out by a member of the general meeting.

The assembly of the territorial chamber of commerce and industry shall elect its president from among its members elected to the regional chamber of commerce and industry. If the current president is elected president of the regional chamber of commerce and industry, he or she shall step down from the presidency of the territorial chamber.

The president of each territorial chamber of commerce and industry is by law Vice-president of the regional chamber to which it is attached.

The president elected by the assembly of French chambers of commerce and industry shall step down from a territorial chamber, a departmental chamber of Ile-de-France or a regional chamber.

The votes of the assembly of French chambers of commerce and industry shall be counted in conditions determined by Conseil d'Etat decree.

#### **Article L. 712-2**

Ordinary expenditure of the network shall be funded by means of charges of any kind allocated to the regional chambers of commerce and industry.

#### **Article L. 712-4**

A public establishment in the network of regional chambers of commerce and industry which has not voted to implement the master plan provided under Article L. 711-8 or whose relevant authority notes that it has not complied with the provisions laid down in the said master plan may not contract loans.

#### **Article L. 712-6**

The establishments in the network shall be bound to appoint at least one auditor and one deputy chosen from the list mentioned in Article L. 822-1, who shall perform their duties as provided for in the provisions of Books II and VIII, subject to their own regulations. The auditors, nominated in accordance with the provisions of the Public Procurement Code, shall be appointed by the general meeting on the proposal of the president. The conditions in which each establishment in the public network publishes and forwards to the supervisory authority a balance sheet, a profit and loss account and an annex shall be determined by regulations.

The penalties for which provision is made in Article L. 242-8 shall apply to

directors who fail to draw up a balance sheet, profit and loss account and annex every year.

#### **Article L. 712-7**

The relevant authority shall ensure the proper operation of the establishments in the network. It shall, by law, assist their deliberative bodies. Certain deliberations, particularly those mentioned in 1° of Article L. 711-8, shall be subject to its approval in conditions set out by regulation.

#### **Article L. 712-8**

Where the provisional budget of an establishment or the budget implemented during the past accounting period reveals a deficit not covered by available surpluses, where mandatory expenditure has not been entered in the budget or has not been authorised, or where serious malfunctions endangering the financial balance are identified, the relevant authority, after a procedure in which all the parties were heard, shall adopt the budget and may entrust the duties of treasurer to the departmental director of public finances.

#### **Article L. 712-9**

Any elected member of a public establishment in the network may be suspended or declared to have automatically resigned by the relevant authority, after a procedure in which all the parties were heard, in the event of serious negligence in the performance of his duties.

Where the circumstances compromise the operation of the establishment, the relevant authority may order the suspension of its bodies and appoint a provisional committee.

Where necessary, the bodies of the establishment may be dissolved by decision of the relevant authority.

#### **Article L. 712-10**

All establishments in the network shall be bound to provide protection for the president, the treasurer, the elected member acting as their deputy or who has been delegated by them or a former elected member who has stepped down from their duties, where the person in question is subject to criminal proceedings for actions that are not distinguishable from the performance of his duties.

This protection shall also be due in the event of violence, threats or contempt of which the same persons may be the victims during the performance or as a result of their duties and shall entail the obligation to make good any damage arising therefrom.

The establishment shall be subrogated to the rights of the victim in obtaining from the perpetrators of such offences the restitution of sums

paid to the elected member or former elected member in question.

#### **Article L. 712-11**

I. - The representative character of trade unions in establishments in the network of chambers of commerce and industry shall be determined according to the criteria set out in Article L. 2121-1 of the Labour Code, subject to the provisions of this Article on measuring membership.

II. - Only those trade unions that have achieved the membership level provided for under Article L. 2122-5 of the Labour Code may sit on the Joint National Committee of establishments in the network of chambers of commerce and industry set up pursuant to Article 2 of Law No. 52-1311 of 10 December 1952 on the mandatory establishment of the status of administrative staff in chambers of agriculture, chambers of commerce and chambers of trade, according to terms set out by regulation.

III. - Trade unions with a membership level provided for under Article L. 2122-1 of the Labour Code determined on the basis of results obtained in elections to the Joint Committee of the establishment shall be deemed representative in dealings with an establishment in the network of chambers of commerce and industry.

These elections shall take place on a single date determined by order of the minister responsible for trade.

#### **Article L. 712-12**

A Conseil d'Etat decree shall specify the conditions for applying this Chapter, in particular the operational administrative and financial regulations of establishments in the network and the measures for State supervision.

### **LEGISLATIVE PART**

#### ***BOOK VII: TRIBUNAUX DE COMMERCE<sup>1</sup> AND THE ORGANISATION OF TRADE***

##### **TITLE I: CHAMBERS OF COMMERCE AND INDUSTRY**

##### **CHAPTER 3: THE ELECTION OF MEMBERS OF TERRITORIAL CHAMBERS OF COMMERCE AND INDUSTRY, REGIONAL CHAMBERS OF COMMERCE AND INDUSTRY AND COMMERCIAL DELEGATES**

##### ***Section 1: The election of members of territorial and regional chambers of commerce and industry***

#### **Article L. 713-1**

I. - Members of territorial and regional chambers of commerce and industry are elected for five years.

A member of a chamber of commerce and industry or of a regional chamber of commerce and industry may not serve as president of that chamber for more than three terms of office, regardless of their effective duration.

For the election of members of territorial chambers of commerce and industry and regional chambers of commerce and industry, the voting constituency shall be the district of the territorial chamber of commerce and industry. Each elector, under the two aforementioned elections, shall vote in his category and, where applicable, his professional subcategory determined pursuant to Article L. 713-11.

II. - The following shall participate in the election of members of the chambers of commerce and industry:

1° Personally:

a) Traders<sup>101</sup> entered in the Commercial and Companies Register in the district of the chamber of commerce and industry, without prejudice, for partners in a société en nom collectif<sup>102</sup> or a société en commandite<sup>103</sup>, to the provisions of III of Article L. 713-2;

b) Company directors registered in the trades register<sup>104</sup> and the Commercial and Companies Register in the district;

c) The spouses of the persons indicated in a) or b) above who have declared, in the Commercial and Companies Register, that they are actively engaged in their spouse's business and have no other gainful employment;

d) Merchant marine captains in command of a vessel registered in France whose port of registry is situated in the district, inshore pilots working in a port situated in the district, aviation pilots domiciled in the district who command an aircraft registered in France;

2° Through a representative:

a) Commercial companies within the meaning of the second paragraph of Article L. 210-1, and public institutions of an industrial and commercial nature whose registered office is situated in the district;

b) By virtue of an establishment which is the subject of an additional entry or a secondary registration in the district, unless exempted therefrom by the

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<sup>101</sup> Translates "commerçant", a registered businessman carrying out commercial acts, generally including manufacturing and services but often excluding skilled trades and the professions. See the definitions in Book I, Title I and Title II, Chapter I.

<sup>102</sup> Commercial partnerships. These have legal personality, but some personal rights and duties of the partners survive incorporation, particularly in relation to their shares or "parts". See from Article L221-1 of this Code.

<sup>103</sup> A limited partnership. See this Code from Article L222-1 and L226-1 for the two types.

<sup>104</sup> The "trades register" here is used in a natural English sense for a register of those conducting a skilled trade or working as artisans. "Trader" throughout the Code is used differently to translate "commerçant" which has no exact English equivalent.

applicable laws and regulations, the natural persons referred to in a) and b) of 1° and the legal persons referred to in a) of the present 2°, regardless of the district in which those persons exercise their own voting rights;

c) Commercial companies whose registered office is situated outside France and which have an establishment in the district which is entered in the Commercial and Companies Register.

A member of a chamber of commerce and industry whose seat becomes vacant on whatsoever grounds except where his election has been cancelled, shall be replaced until the renewal of the regional chamber of commerce and industry by the person elected at the same time to this effect.

#### **Article L. 713-2**

I.- By virtue of their registered office and of all their establishments situated in the district of the chamber of commerce and industry, the natural or legal persons referred to in 1° and 2° of II of Article L. 713-1 shall have one additional representative, when they employ between ten and forty-nine employees in the district of the chamber of commerce and industry, and a second additional representative when they employ between fifty and ninety-nine employees in that same district.

In addition, they shall have:

1° One additional representative for each tranche of one hundred employees, from the one hundredth employee, when they employ between one hundred and nine hundred and ninety-nine employees in the district;

2° From the one thousandth employee, one additional representative for each tranche of two hundred and fifty employees when they employ over one thousand employees in the district.

II. - However, natural persons indicated in a) and b) of 1° of II of Article L. 713-1 whose spouse benefits from the provisions of c) of 1° of II of that same article shall not designate any additional representative if they employ fewer than fifty employees in the district of the chamber of commerce and industry.

III. - Sociétés en nom collectif<sup>105</sup> and sociétés en commandite<sup>106</sup> will designate a single representative for the members and the company by express deliberation, pursuant to the provisions of their constitution, without prejudice to the possibility of designating additional representatives pursuant to I above.

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<sup>105</sup> Commercial partnerships. These have legal personality, but some personal rights and duties of the partners survive incorporation, particularly in relation to their shares or "parts". See from Article L221-1 of this Code.

<sup>106</sup> A limited partnership. See this Code from Article L222-1 and L226-1 for the two types.

### **Article L. 713-3**

I. - The representatives referred to in Articles L. 713-1 and L. 713-2 must perform the functions of president and chief executive officer, president or member of the board of directors, chief executive, president or member of the executive board, president of the supervisory board, chief executive, president or member of the board of directors, or director of a public institution of an industrial and commercial nature, or, failing this, and in order to represent them as their proxy, functions which involve commercial, technical or administrative management responsibilities in the company or institution.

II. - In order to be able to take part in the vote, the personal electors referred to in 1° of II of Article L. 713-1 and the representatives of natural or legal persons referred to in 2° of II of the same article must:

1° Meet the conditions stipulated in Article L. 2 of the electoral laws, with the exception of nationality;

2° Not come under the prohibition referred to in Article L. 6 of the electoral laws;

3° Not have been declared in the previous fifteen years personally bankrupt or subject to prohibitory or forfeiture measures as provided for under Book VI of this Code, under Law No. 85-98 of 25 January 1985 on company restructuring or liquidation or Law 67-563 of 13 July 1967 on the settlement or liquidation of assets, personal disqualification and criminal bankruptcies, calculated from the date the ruling pronouncing them becomes final;

4° Not be subject to a prohibition, under the terms provided for in Article 131-27 of the Penal Code, on engaging in a commercial or industrial occupation, or on directing, administering, managing or controlling a commercial or industrial business or a commercial company, in any capacity whatsoever, either directly or indirectly, and either on their own behalf or on that of others;

5° Not have had sentences, forfeitures or sanctions imposed on them under legislations in force in foreign countries equivalent to those referred to in 2°, 3° and 4°.

### **Article L. 713-4**

I. - The following may become members of a territorial chamber of commerce and industry and a regional chamber of commerce and industry, subject to being aged over eighteen years and meeting the conditions stipulated in II of Article L. 713-3:

1° Those voting personally referred to in 1° of II of Article L. 713-1 who are entered in the electoral register of the relevant constituency and, for the electors referred to in a), b) and c) of the same 1°, able to show that they

have had an entry in the Commercial and Companies Register for at least two years;

2° The electors registered as representatives, referred to in 2° of II of Article L. 713-1 and Article L. 713-2, who are entered in the electoral register of the district and can show that the company that they represent has been conducting its business for at least two years.

II. - Any member of a territorial chamber of commerce and industry and a regional chamber of commerce and industry who no longer meets the conditions of eligibility laid down in I above shall tender his resignation to the Prefect. Failing this, the Prefect shall automatically declare that member's resignation.

A break in trading of less than six months' duration does not entail resignation, however, save for the cases referred to in 2°, 3°, 4° and 5° of II of Article L. 713-3.

#### **Article L. 713-5**

I. - In the event of a chamber of commerce and industry being dissolved, it shall be renewed within six months.

If such dissolution is pronounced less than one year before a general renewal, however, no renewal shall take place.

II.- When the number of members of a chamber of commerce and industry falls below one half of the initial number, the Prefect shall record that fact in a decree and shall organise new elections for all the seats within six months.

If that situation is recorded less than one year before a general renewal, however, no such renewal takes place.

III.- The members elected pursuant to the present article shall remain in post for the unexpired portion of the initial holder's term of office.

#### *Section 2: Elections of commercial delegates*

#### **Article L. 713-6**

Commercial delegates are elected for five years in the district of each chamber of commerce and industry.

No commercial delegates is elected, however, in a district or part thereof situated within the jurisdiction of a court competent to hear commercial cases which does not have any elected judges.

#### **Article L. 713-7**

The following participate in the election of commercial delegates:

1° Personally:

a) Traders entered in the Commercial and Companies Register in the district of the chamber of commerce and industry, without prejudice to the

provisions of III of Article L. 713-2 for members who are commercial partners and managing partners;

b) Company directors registered in the trades register and the Commercial and Companies Register in the constituency;

c) The spouses of the persons indicated in a) or b) above who have declared, in the Commercial and Companies Register, that they are actively engaged in their spouse's business and have no other gainful employment;

d) Master mariners or merchant marine captains in command of a vessel registered in France whose port of registry is situated in the district, inshore pilots working in a port situated in the district, aviation pilots domiciled in the district who command an aircraft registered in France;

e) Sitting members of the Tribunaux de Commerce, and former members of such courts having requested an entry in the electoral register;

2° By the intermediary of a representative:

a) Companies of a commercial nature within the meaning of Article L. 210-1, and public institutions of an industrial and commercial nature whose registered office is situated in the district;

b) By virtue of an establishment which is the subject of an additional entry or a secondary registration in the district, unless exempted therefrom by the applicable laws and regulations, the natural persons referred to in a) and b) of 1° and the legal persons referred to in a) of the present 2°, regardless of the district in which those persons exercise their own voting rights;

c) Commercial companies whose registered office is situated outside France and which have an establishment in the district and which are entered in the Commercial and Companies Register.

3° Executives who, being employed in the district by the voters referred to in 1° or 2°, will perform functions which involve commercial, technical or administrative management responsibilities in the company or institution.

#### **Article L. 713-8**

The representatives referred to in 2° of Article L. 713-7 must perform the functions of president and managing director, president or member of the board of directors, chief executive, president or member of the executive board, or president of the supervisory board of a company, or chief executive, president or member of the board of directors, or administrator of a public institution of an industrial and commercial nature, or, failing this, and in order to represent them as their proxy, functions which involve commercial, technical or administrative management responsibilities in the company or institution.

#### **Article L. 713-9**

Those voting personally and the executives referred to in 1° and 3° of



Article L. 713-7 and the representatives of the natural or legal persons referred to in 2° of that same article shall be citizens of a European Community member state or a European Economic Area member state.

They must, moreover:

1° Meet the conditions stipulated in Article L. 2 of the electoral laws without prejudice to the provisions of the first paragraph above;

2° Not have been the perpetrator of acts having given rise to a criminal conviction for dishonourable conduct, lack of integrity or an offence against public decency;

3° Not have been declared personally bankrupt or subject to prohibitory or forfeiture measures as provided for under Book VI of this Code, under Law No. 85-98 of 25 January 1985 on company restructuring or liquidation or Law 67-563 of 13 July 1967 on the settlement or liquidation of assets, personal disqualification and criminal bankruptcies in the previous fifteen years, calculated from the date the ruling pronouncing them becomes final;

4° Not be subject to a prohibition, under the terms provided for in Article 131-27 of the Penal Code, on engaging in a commercial or industrial occupation, or on directing, administering, managing or controlling a commercial or industrial business or a commercial company, in any capacity whatsoever, either directly or indirectly, and either on their own behalf or on that of others;

5° Not have had sentences, forfeitures or sanctions imposed on them under legislation in force in European Community member states or European Economic Area member states equivalent to those referred to in 2°, 3° and 4°.

#### **Article L. 713-10**

Persons belonging to the electoral college as defined in Article L. 713-7 are eligible for the functions of commercial delegate.

#### *Section 3: Common provisions*

#### **Article L. 713-11**

The electors of commercial delegates and of members of the chambers of commerce and industry are distributed in each administrative district between three professional categories corresponding respectively to the commercial, industrial and service sectors.

Within those three categories, the electors may be distributed into professional sub-categories defined on the basis of the size of the company.

Where the second paragraph is applied, the regional chamber of commerce and industry and the territorial chambers of commerce and industry attached thereto shall define common subcategories under the

authority of the regional chamber of commerce and industry.

#### **Article L. 713-12**

I. - The number of commercial delegate seats, which shall not be below sixty or above six hundred, is determined in relation to the size of the district's consular electoral body, the number of elected members of the chamber of commerce and industry and the number of Tribunaux de Commerce in that chamber's district.

II. - The number of seats of a territorial chamber of commerce and industry is twenty-four to sixty, as determined in a Conseil d'Etat decree.

III. - The number of seats of a regional chamber of commerce and industry is set from thirty to one hundred, as determined in a Conseil d'Etat decree.

Each territorial or departmental chamber of commerce and industry of Ile-de-France is represented within the regional chamber of commerce and industry or the chamber of commerce and industry of the Paris-Ile-de-France region, in proportion to its economic weighting. No territorial chamber of commerce and industry may occupy more than 40% of the seats in a regional chamber of commerce and industry. Where the number of territorial chambers of commerce and industry included in the district of the regional chamber of commerce and industry equals two, these provisions shall not apply. The elected members of a territorial chamber of commerce and industry encompassing two regions, who represent it at regional level, may be present in each of the regional assemblies in proportion to the representations of the various geographic components of that territorial chamber of commerce and industry.

#### **Article L. 713-13**

The distribution of the seats between professional categories and subcategories shall be made in proportion to the tax bases of the companies, the number of companies and the number of staff they employ.

No professional category may have representation above half the number of seats.

#### **Article L. 713-14**

Electoral lists shall be drawn up in conditions laid down by a Conseil d'Etat decree by a committee presided by the judge responsible for overseeing the Commercial and Companies Register and shall be subject to the conditions of the first paragraph of Article L. 25 and Articles L. 27, L. 34 and L. 35 of the electoral laws.

#### **Article L. 713-15**

In elections of members of the territorial and regional chambers of

commerce and industry, each elector shall have as many votes as he has entitlements to vote pursuant to Article L. 713-1.

In elections of commercial delegates, each elector shall have only one vote.

The right to vote in elections of members of the territorial and regional chambers of commerce and industry and in elections of commercial delegates shall be exercised by correspondence or by e-voting.

#### **Article L. 713-16**

Commercial delegates and members of the regional and territorial chambers of commerce and industry shall be elected by a single-ballot plurinominal election. If several candidates obtain the same number of votes, the oldest shall be declared the winner.

Members of regional and territorial chambers of commerce and industry and of departmental chambers of Ile-de-France shall be elected on the same day, as determined in a Conseil d'Etat decree.

Members elected to the regional chamber of commerce and industry and their deputies shall also be members of the territorial chamber of the district where they were appointed. The loss or waiver of an individual's membership of one of these two establishments shall simultaneously entail the loss of membership of the other.

#### **Article L. 713-17**

The procedures for electing commercial delegates and members of territorial and regional chambers of commerce and industry shall be organised on the same day by the administrative authority and, under its supervision, by the territorial and regional chambers of commerce and industry. They are subject to the provisions of Articles L. 49, L. 50 and L. 58 to L. 67 of the electoral laws. Violation of the said provisions shall incur the penalties referred to in Articles L. 86 to L. 117-1 of those same laws.

A committee presided by the Prefect or his representative is responsible for ensuring the lawfulness of the ballot and for announcing the results.

Appeals against elections for commercial delegates and members of the territorial and regional chambers of commerce and industry shall be brought before the administrative court in the same way as for municipal elections.

#### **Article L. 713-18**

A Conseil d'Etat decree shall determine the methods of application of the provisions of Articles L. 713-1 to L. 713-14.

Inter alia, the said decree shall determine how the seats of commercial delegates and members of a territorial or regional chamber of commerce and industry are distributed between the professional categories and

subcategories.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE II: TRIBUNAUX DE COMMERCE**

##### **CHAPTER I: INSTITUTING THE JURISDICTION OF THE COURTS**

###### **Article L. 721-1**

The Tribunaux de Commerce are courts of first instance, comprising elected judges and a registrar. Their competencies are determined by this Code and by specific codes and legislation.

Tribunaux de Commerce are subject to the provisions, common to all courts, of Book I of the Code of Judicial Organisation.

###### **Article L. 721-2**

In districts with no Tribunal de Commerce, the Tribunal de Grande Instance hears proceedings that are the purview of Tribunaux de Commerce.

###### **Article L. 721-3**

The Tribunaux de Commerce hear:

1° Disputes relating to commitments between traders, credit institutions or between the foregoing;

2° Those relating to commercial companies;

3° Those relating to commercial acts between all persons<sup>107</sup>.

However, parties are free to agree, at the time of contracting, to submit the above-mentioned disputes to arbitration.

###### **Article L. 721-3-1**

The Tribunaux de Commerce shall hear, within the limits of their subject matter jurisdiction, applications formulated pursuant to Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

###### **Article L. 721-4**

Tribunaux de Commerce shall hear disputes involving promissory notes

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<sup>107</sup> Traders and non-traders.

bearing the signatures of both traders and non-traders.

However, it must refer cases to the Tribunal de Grande Instance<sup>108</sup> if required by the respondent where promissory notes bear only the signatures of non-traders and do not involve commercial, traffic, exchange banking or brokerage transactions.

#### **Article L. 721-5**

As an exception to 2° of Article L. 721-3 and subject to the competence of the disciplinary courts, notwithstanding any provision to the contrary, the civil courts shall have sole competence to hear legal proceedings in which one of the parties is a company formed in accordance with Law No. 90-1258 of 31 December 1990 relating to professional practices having a specific legislative or regulatory status or a protected designation and disputes between partners in such practices.

However, the partners may agree, in the constitution, to submit to arbitrators disputes which may occur between them arising from their activity.

#### **Article L. 721-6**

Proceedings that do not come under the competence of Tribunaux de Commerce are those that are brought against an owner, farmer or vine grower, for the sale of produce issuing from their crops, and proceedings brought against a trader for the payment of produce and merchandise purchased for their own individual use.

Nevertheless, notes subscribed by a trader shall be deemed to have been subscribed for his business.

#### **Article L. 721-7**

The Presiding Judge of the Tribunal de Commerce may hear applications for protective measures, concurrently with the enforcement judge, where they are intended to protect a claim which falls within the competence of the Tribunal de Commerce and are submitted prior to any trial where these relate to:

1° Movable and immovable property in the cases and conditions provided by the Code of Civil and Judicial Execution Procedures;

2° Vessels in the cases and conditions provided by Articles L. 5114-20 and L. 5114-29 of the Transport Code;

3° Aircrafts in the cases and conditions provided by the Code of Civil Aviation;

4° Inland waterway vessels with loads equal to or higher than twenty tons

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<sup>108</sup> The first instance general court, also administering specialist, small claims and some criminal cases.

in the cases and conditions provided by the Code of Public Waterways and Inland Waterways.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE II: TRIBUNAUX DE COMMERCE**

##### **CHAPTER II: ORGANISATION AND OPERATION**

###### ***Section 1: Organisation and operation of the Tribunaux de Commerce***

###### **Article L. 722-1**

Unless there are provisions providing for a single judge, rulings of the Tribunaux de Commerce shall be made by a panel of judges.

###### **Article L. 722-2**

Where the Tribunal de Commerce rules in procedures for judicial safeguarding, or restructuring, or for liquidation proceedings, judicial administration or liquidation of assets, the formation of the court shall include, subject to the application of the provisions of Article L. 722-15, a majority of judges having exercised judicial functions for over two years.

###### **Article L. 722-3**

The formation of the court shall be presided over by the Presiding Judge of the Tribunal de Commerce or by a Judge of that Court having exercised judicial functions for at least three years, subject to the application of the provisions of Article L. 722-15.

###### **Article L. 722-3-1**

The Presiding Judge of the Tribunal de Commerce shall hear, within the limits of its subject matter jurisdiction, applications formulated pursuant to Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

###### **Article L. 722-4**

Where a Tribunal de Commerce cannot be formed or cannot rule, the

Cour d'Appel<sup>109</sup>, at the request of the State Prosecutor, where the provisions of Articles L. 722-13 and L. 722-15 have not been applied, shall designate the Tribunal de Grande Instance situated within the jurisdiction of the Cour d'Appel responsible for hearing matters coming under the remit of the Tribunaux de Commerce and those subsequently referred to it. Where the referral arises from the impossibility of complying with the requirements of Article L. 722-2, the Tribunal de Grande Instance shall hear only cases relating to procedures for safeguarding, judicial restructuring and liquidation proceedings.

The Registrar of the Tribunal de Commerce shall not be divested and shall continue to exercise his functions within the court to which a case is referred.

#### **Article L. 722-5**

Where the reasons for the referral have ceased to apply, the Cour d'Appel, shall, at the request of the State Prosecutor, set the date from which the Tribunal de Commerce may again hear matters coming under its competence. On this date, the matters shall be transferred as is to the Tribunal de Commerce.

The court from which a case is referred shall, however, remain competent for mediation matters and, in the case of substantive rulings, shall rule on matters other than safeguarding, judicial restructuring and liquidation, judicial administration and liquidation of assets.

#### *Section 2: The term of office of judges of the Tribunaux de Commerce*

#### **Article L. 722-6**

Subject to the provisions relating to additional elections as provided for in the second paragraph of Article L. 723-11, judges of the Tribunaux de Commerce shall be elected for two years at their first election. At the end of their first term of office, they may be re-elected for subsequent terms of four years to the same court or another Tribunal de Commerce, within the limit of the maximum number of terms of office as set out in Article L. 723-7.

Where the term of office of judges of the Tribunaux de Commerce expires prior to the start of the term of office of their successors, they shall remain in office until such time as their successors take up office; this extension may not exceed a period of three months.

#### **Article L. 722-7**

Before taking up office, judges of the Tribunaux de Commerce shall swear an oath.

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<sup>109</sup> Court of Appeal.

The oath is as follows:

I do hereby solemnly swear that I will carry out my duties faithfully, that I will keep deliberations strictly confidential and that I will behave at all times as a dignified and loyal member of the judiciary.

This oath shall be heard by the Cour d'Appel where the Tribunal de Commerce is established at the seat of the Cour d'Appel, and, in other cases, by the Tribunal de Grande Instance within whose jurisdiction the Tribunal de Commerce has its seat.

#### **Article L. 722-8**

The functions of a Tribunal de Commerce judge shall cease as a result of:

- 1° The expiry of his term of office, subject to the provisions of the second paragraph of Article L. 722-6 and the third paragraph of Article L. 722-11;
- 2° The abolition of the court;
- 3° Resignation;
- 4° Forfeiture.

#### **Article L. 722-9**

Where a procedure for safeguarding, judicial restructuring or liquidation is initiated against a Tribunal de Commerce judge, the functions of the interested party shall cease from the date of issue of the commencement order and he shall be deemed to have resigned.

These same provisions shall apply to a Tribunal de Commerce judge having one of the capacities referred to in the first paragraph of Article L. 713-3, where the company or public establishment to which he belongs is subject to a safeguarding, judicial restructuring or liquidation procedure.

#### **Article L. 722-10**

Where a Tribunal de Grande Instance has been designated under the conditions set out in Article L. 722-4, the term of office of a divested Tribunal de Commerce judge shall not be suspended during the divestment period.

#### **Article L. 722-11**

The Presiding Judge of the Tribunal de Commerce shall be chosen from among the court judges who have exercised functions in a Tribunal de Commerce for at least six years, subject to the provisions of Article L. 722-13.

The Presiding Judge shall be elected for four years by secret ballot by a general meeting of Tribunal de Commerce presided over by the outgoing Presiding Judge or, failing this, by the eldest judge. Elections shall take place by absolute majority in the first two ballots and by relative majority in



the third ballot. Where votes are equally divided in the third ballot, the candidate with the most length of service in judicial functions shall be declared elected. In the event of equal length of service, the eldest shall be declared elected.

The Presiding Judge shall remain in office until his successor takes up office. This extension may not exceed a period of three months.

#### **Article L. 722-12**

Where, on whatever grounds, the functions of the Presiding Judge of the Tribunal de Commerce cease during his term of office, a new Presiding Judge shall be elected within three months for the remaining term of office of his predecessor.

In the event of incapacity, the Presiding Judge shall be replaced in his functions by a judge appointed by the former. Failing such appointment or in the event of incapacity on the part of the appointed judge, the Presiding Judge shall be replaced by the judge with the most length of service in judicial functions.

#### **Article L. 722-13**

Where no candidate fulfils the condition of length of service required to be the Presiding Judge of the Tribunal de Commerce, the First President of the Cour d'Appel, may, at the request of the State Prosecutor, rule that the required length of service is not mandatory.

#### **Article L. 722-14**

Subject to the application of the provisions of Article L. 722-15, only those who have exercised judicial functions in a Tribunal de Commerce for at least two years may be appointed to the functions of a supervisory judge in the conditions set out in Book VI.

At the start of each judicial year, the Presiding Judge of the Tribunal de Commerce shall draw up, having regard to the opinion of the general meeting of the court, a list of judges who may exercise the functions of a supervisory judge.

#### **Article L. 722-15**

Where no Tribunal de Commerce judge has the required length of service to rule in matters of safeguarding, judicial restructuring or liquidation, judicial administration or liquidation of assets, in accordance with the provisions of Article L. 722-2, either to preside over a formation of the court in the conditions set out in Article L. 722-3, or to fulfil the functions of a supervisory judge in the conditions set out in Article L. 722-14, the First President of the Cour d'Appel, at the request of the State Prosecutor, may rule that the required length of service is not mandatory.

## **Article L. 722-16**

The term of office of judges elected to the Tribunal de Commerce is unpaid.

# **LEGISLATIVE PART**

## **BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE**

### **TITLE II: TRIBUNAUX DE COMMERCE**

#### **CHAPTER 3: ELECTION OF JUDGES OF THE TRIBUNAUX DE COMMERCE**

##### *Section 1: Electorate*

### **Article L. 723-1**

The Tribunal de Commerce judges shall be elected within the jurisdiction by a college comprising:

- 1° Commercial delegates elected within the jurisdiction;
- 2° Tribunal de Commerce judges, and former members of such courts having requested an entry in the electoral register.

### **Article L. 723-2**

The persons mentioned in Article L. 723-1 may take part in an electoral college only where:

- 1° They have not been stripped of their functions;
- 2° They have not received a criminal conviction for dishonourable conduct, lack of integrity or an offence against public decency;
- 3° They have not, in the previous fifteen years, calculated from the date the ruling pronouncing them becomes final, been declared personally bankrupt or subject to prohibitory or forfeiture measures as provided for under Book VI of this Code, under Law No. 85-98 of 25 January 1985 on company restructuring or liquidation or Law 67-563 of 13 July 1967 on the settlement or liquidation of assets, personal disqualification and criminal bankruptcies;
- 4° They are not subject to a prohibition, under the terms provided for in Article 131-27 of the Penal Code, on engaging in a commercial or industrial occupation, or on directing, administering, managing or controlling a commercial or industrial business or a commercial company, in any capacity whatsoever, either directly or indirectly, and either on their own behalf or on that of others;

Commercial delegates shall be appointed as provided for in Articles L.

713-6 to L. 713-18.

### **Article L. 723-3**

The electoral register for elections to Tribunaux de Commerce shall be drawn up by a committee presided by the judge responsible for overseeing the Commercial and Companies Register.

Where a new Tribunal de Commerce is set up, the First President of the Cour d'Appel shall appoint a judge to act as president.

The provisions of the first paragraph of Article L. 25 and Articles L. 27, L. 34 and L. 35 of the electoral laws shall apply in the event of a dispute relating to the electoral register.

### *Section 2: Eligibility*

### **Article L. 723-4**

Persons aged thirty years and over shall be eligible for the duties of a Tribunal de Commerce judge who also:

1° Are listed on the electoral register pursuant to Article L. 713-7 within the jurisdiction of the Tribunal de Commerce or within the jurisdiction of neighbouring Tribunaux de Commerce;

2° Meet the condition of nationality set out in Article L. 2 of the electoral laws;

3° Are not subject to any procedure for safeguarding or judicial restructuring or liquidation proceedings;

4° Persons who, in the case mentioned in 1° or 2° of Article L. 713-7, do not belong to a company or public establishment that is the subject of a procedure for safeguarding or judicial restructuring or liquidation proceedings;

5° And can prove either that they have been registered with the Commercial and Companies Register for at least five years or that they have exercised for a total cumulative period of five years one of the capacities set out in Article L. 713-8 or one of the occupations listed in d of 1° of Article L. 713-7.

### **Article L. 723-5**

Any person who has been stripped of their functions as a Tribunal de Commerce judge shall not be eligible for this function for a period of ten years.

### **Article L. 723-6**

Any person who has resigned as a Tribunal de Commerce judge during the course of a disciplinary procedure initiated against him may be declared ineligible for a period of ten years by the National Disciplinary Commission.

#### **Article L. 723-7**

Tribunal de Commerce judges elected for four successive terms of office to the same Tribunal de Commerce are no longer eligible in that court for one year.

However, after four successive terms of office as member or presiding judge, the outgoing Presiding Judge may be re-elected for a new term of office as a member of the same Tribunal de Commerce.

At the end of this term of office, he is no longer eligible for any office for one year.

#### **Article L. 723-8**

A Tribunal de Commerce judge may not be simultaneously a member of an employment tribunal or a judge in another Tribunal de Commerce.

#### *Section 3: Ballots and electoral operations*

#### **Article L. 723-9**

Each elector shall have only one vote within the jurisdiction of the same Tribunal de Commerce.

Voting rights may be exercised by correspondence or by e-voting.

#### **Article L. 723-10**

Tribunal de Commerce judges shall be elected in two rounds via a plurinominal ballot.

Candidates having received votes at least equal to a majority of the votes cast and at least one quarter of the electors registered are elected during the first ballot. If no candidate is elected or if seats remain to be filled, candidates shall be elected by a second-round majority of the votes cast. If several candidates obtain the same number of votes during the second round, the oldest shall be declared elected.

#### **Article L. 723-11**

Elections shall take place every year in each Tribunal de Commerce where there are seats to be filled on whatever grounds.

If, during the year, the number of vacancies exceeds the number of members by more than one third, the Prefect may decide to hold supplementary elections. In this case, the terms of office of the elected judges shall expire at the end of the judicial year.

#### **Article L. 723-12**

The provisions of Articles L. 49, L. 50, L. 58 to L. 67 and L. 86 to L. 117 of the electoral laws shall apply to electoral operations organised in order to

appoint Tribunal de Commerce judges.

#### **Article L. 723-13**

A committee presided by a judge appointed by the First President of the Cour d'Appel shall be responsible for ensuring that the ballot is properly conducted and for announcing the results.

#### **Article L. 723-14**

A Conseil d'Etat decree shall determine the terms for applying this Chapter.

### **LEGISLATIVE PART**

#### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE II: TRIBUNAUX DE COMMERCE**

##### **CHAPTER 4: DISCIPLINING OF JUDGES OF THE TRIBUNAUX DE COMMERCE**

#### **Article L. 724-1**

Any failure on the part of a Tribunal de Commerce judge to uphold the integrity, honour, dignity and duties of his office shall constitute a disciplinary offence.

#### **Article L. 724-2**

Disciplinary powers shall be exercised by a National Disciplinary Commission chaired by a Presiding Judge of the Cour de Cassation<sup>110</sup>, appointed by the First President of the Cour de Cassation and shall include:

1° A member of the Conseil d'Etat appointed by the vice-president of the Conseil d'Etat;

2° Two senior judges of the Cours d'Appel appointed by the Presiding Judge of the Cour de Cassation from a list drawn up by the presiding judges of the courts of appeal, each of them appointing a senior judicial official of the seat of his Cour d'Appel after consulting with the general meeting of senior judicial officials of the seat of the Cour d'Appel;

3° Four Tribunal de Commerce judges elected by all presiding judges of the Tribunaux de Commerce.

An equal number of deputies shall be elected under the same conditions.

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<sup>110</sup> France's highest court for civil and commercial law, unless this concerns constitutional matters.

The members of the National Disciplinary Commission shall be appointed for four years.

#### **Article L. 724-3**

After the interested party is interviewed by the presiding judge of the court of which he is a member, the case may be referred to the National Disciplinary Commission by the Minister for Justice.

This Commission may reprimand the judge or strip him of his functions.

#### **Article L. 724-4**

On the proposal of the Minister for Justice, the president of the National Disciplinary Commission may suspend a Tribunal de Commerce judge for a period that may not exceed six months, where facts have been established against the interested party, after being interviewed by the Presiding Judge of the court of which he is a member, likely to lead to a disciplinary penalty. The suspension may be renewed once by the National Disciplinary Commission for a period that may not exceed six months. If the Tribunal de Commerce judge is the subject of criminal proceedings, the suspension may be ordered by the president of the National Disciplinary Commission until such time as the criminal decision becomes final.

#### **Article L. 724-5**

The National Disciplinary Commission may only deliberate if at least four of its members, including the president, are present.

Where the votes are equally divided, the president shall have the casting vote.

#### **Article L. 724-6**

The decisions of the National Disciplinary Commission and those of its president shall give reasons for their decision. They may only be appealed to the Cour de Cassation.

#### **Article L. 724-7**

Regardless of the decisions which may be taken pursuant to Articles L. 724-3 and L. 724-4, where it becomes apparent, subsequent to his election, that a Tribunal de Commerce judge has, before or after his appointment, been the subject of a conviction, loss of rights or incapacity as referred to in Article L. 723-2, he shall, by operation of law, be stripped of his functions.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE III. SPECIFIC COMMERCIAL JURISDICTIONS**

##### **CHAPTER I: PROVISIONS APPLICABLE TO THE DEPARTMENTS OF BAS-RHIN, HAUT-RHIN AND MOSELLE**

###### **Article L. 731-1**

Commercial chambers of the Tribunal de Grande Instance shall be set up in the departments of Bas-Rhin, Haut-Rhin and Moselle.

###### **Article L. 731-2**

The competence of the commercial chamber shall be that of the Tribunaux de Commerce, with the exception of matters coming under the competence of the Tribunal d'Instance<sup>111</sup> pursuant to the provisions of Book II, Title II, Chapter III of the Code of Judicial Organisation.

###### **Article L. 731-3**

The commercial chamber shall comprise one member of the Tribunal de Grande Instance, the president, two elected expert assessors and a registrar.

The expert assessors shall be elected as set out in Articles L. 723-1 to L. 723-14.

###### **Article L. 731-4**

The remaining provisions of Book VII, Title II on Tribunaux de Commerce shall apply to commercial chambers, with the exception of Articles L. 721-1, L. 721-2, L. 722-3, L. 722-11 to L. 722-13 and the second paragraph of Article L. 723-7.

However, as an exception to the provisions of Article L. 722-14, the functions of examining magistrates may be exercised by a sitting judge in the conditions set out in the second paragraph of Article L. 215-1 of the Code of Judicial Organisation.

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<sup>111</sup> A general small claims court.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE III. SPECIFIC COMMERCIAL JURISDICTIONS**

##### **CHAPTER 2: PROVISIONS APPLICABLE TO OVERSEAS DEPARTMENTS AND REGIONS**

###### **Article L. 732-1**

Joint Tribunaux de Commerce shall be set up in overseas departments and regions.

###### **Article L. 732-2**

The competence of joint Tribunaux de Commerce shall be determined by this Code and specific legislation.

###### **Article L. 732-3**

Joint Tribunaux de Commerce are courts of first instance comprising the Presiding Judge of the Tribunal de Grande Instance, the president, elected judges, subject to the provisions of Article L. 732-7, and a registrar. The judges shall be elected as set out in Articles L. 723-1 to L. 723-13.

Registry services of the joint Tribunaux de Commerce, the list of which shall be determined by Conseil d'Etat decree, shall be provided by a commercial court registrar.

###### **Article L. 732-4**

In districts with no joint Tribunal de Commerce, the Tribunal de Grande Instance hears proceedings that are within the purview of joint Tribunaux de Commerce.

###### **Article L. 732-5**

Unless there are provisions providing for a single judge, rulings of the joint Tribunaux de Commerce shall be made by a panel of judges including, in addition to the Presiding Judge, three judges elected or appointed as set out in Article L. 732-7.

In the event of the votes being equally divided, the president shall have the casting vote.



#### **Article L. 732-6**

The provisions of Book VII, Title II on Tribunaux de Commerce shall apply to joint Tribunaux de Commerce, with the exception of Articles L. 721-1, L. 722-1, L. 722-3, L. 722-11 to L. 722-13 and the second paragraph of Article L. 723-7.

#### **Article L. 732-7**

The Commission provided for under Article L. 723-13 shall attach a supplementary list to the list of candidates declared elected, which list shall include the name, capacity and domicile of candidates not elected, detailing the number of votes they obtained. After consulting with the Presiding Judge of the joint Tribunal de Commerce, the First President of the Cour d'Appel shall draw up, from this supplementary list, a list of no more than fifteen persons residing in the town and capable of supplementing the joint Tribunal de Commerce.

If, during the year, the number of judges proves insufficient during a hearing, the Presiding Judge of the joint Tribunal de Commerce shall draw lots in open session between all the names on the list drawn up by the Presiding Judge.

**PERSONS WHOSE NAME HAS BEEN DRAWN BY LOTS SHALL  
SWEAR AN OATH BEFORE THE PRESIDING JUDGE OF THE JOINT  
TRIBUNAL DE COMMERCE.LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE IV: REGISTRY OF THE TRIBUNAL DE COMMERCE**

##### **CHAPTER I: INSTITUTION AND TASKS**

#### **Article L. 741-1**

The registrars of Tribunaux de Commerce are public and ministerial officials.

#### **Article L. 741-2**

The profession of Tribunal de Commerce registrar is represented in dealings with the public authorities by a National Council of Tribunaux de Commerce registrars with legal personality and tasked with ensuring the defence of its collective interests.

The National Council may, before all courts, exercise all rights reserved

to civil parties in relation to facts directly or indirectly harming the collective interest of the profession.

The electoral and operational formalities of the National Council shall be determined in a Conseil d'Etat decree.

The National Council shall set its own budget.

It may provide funding for services of collective interest in areas determined by decree.

To this end, the National Council shall collect contributions paid annually by each holder of the office of Tribunal de Commerce registrar. The amount of this contribution shall be determined using a sliding scale fixed by decree after consultation with the National Council, according to the activity of the office and, where applicable, the number of members.

The income from this contribution may not exceed a percentage determined by the National Council up to the limit of 2% of total income excluding taxes recorded by all offices for the previous year.

Failing payment of this contribution within one month of formal notice being served, the National Council shall issue to the person liable a deed deemed equivalent to a decision as defined in 6° of Article 3 of Law 91-650 of 09 July 1991 reforming civil execution procedures.

The National Council may draw up national rules regarding the practices of the profession, to be submitted to the Minister for Justice for approval.

The National Council of Tribunal de Commerce Registrars is also tasked with keeping the file provided for under Article L. 128-1.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE IV: REGISTRY OF THE TRIBUNAL DE COMMERCE**

##### **CHAPTER II: CONDITIONS OF ACCESS TO THE PROFESSION AND TO OTHER JUDICIAL AND LEGAL PROFESSIONS**

###### **Article L. 742-1**

The rules of access to the profession of Tribunal de Commerce registrar shall be determined by Conseil d'Etat decree.

###### **Article L. 742-2**

The rules shall allow Tribunal de Commerce registrars to access other judicial and legal professions and shall be determined by Conseil d'Etat decree.

## **LEGISLATIVE PART**

### **BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE**

#### **TITLE IV: REGISTRY OF THE TRIBUNAL DE COMMERCE**

##### **CHAPTER 3: CONDITIONS OF PERFORMANCE**

###### *Section 1: Inspection and discipline*

###### **Subsection 1: Inspection**

###### **Article L. 743-1**

Tribunal de Commerce registrars are subject, in their professional activity, to inspections under the authority of the Minister for Justice, in conditions laid down by a Conseil d'Etat decree. During such inspections, they are bound to provide all useful information and documentation and may not invoke professional confidentiality.

###### **Subsection 2: Discipline**

###### **Article L. 743-2**

Any failure on the part of a Tribunal de Commerce registrar to uphold the integrity, honour, dignity and duties of his office shall constitute a disciplinary offence.

The acceptance of the resignation of a registrar shall not constitute an obstacle to the pronouncing of a disciplinary penalty, if the facts alleged were committed in the performance of his professional duties.

###### **Article L. 743-3**

The disciplinary penalties are:

1° A reminder;

2° A warning;

3° A reprimand;

4° A temporary ban;

5° Dismissal or revoking of honorary membership.

The penalties referred to in 1° to 4° may be accompanied by the additional penalty of temporary ineligibility for membership of the National Council of Tribunal de Commerce Registrars. The maximum period of this additional penalty is five years for the penalties referred to in 1° to 3° and ten years from the end of the prohibitory measure referred to in 4°.

###### **Article L. 743-4**

Disciplinary action against a Tribunal de Commerce registrar shall be exercised either before the disciplinary committee of the National Council of Tribunal de Commerce Registrars or before the Tribunal de Grande Instance in whose jurisdiction the Tribunal de Commerce has its seat or, if the registrar holds office in more than one registry, before the Tribunal de Grande Instance designated by the First President of the Cour d'Appel in conditions set out in this Chapter.

Disciplinary action shall lapse after ten years.

#### **Article L. 743-5**

The disciplinary committee of the National Council of Tribunal de Commerce Registrars shall include five members appointed by and from within the National Council; five deputies shall be appointed in the same conditions. It shall elect its president.

The president of the National Council may not be a member of the disciplinary committee.

The disciplinary committee of the National Council may pronounce only one of the penalties referred to in 1° to 3° of Article L. 743-3.

#### **Article L. 743-6**

Disciplinary action shall be exercised by the State Prosecutor. It may also be exercised by the president of the National Council of Tribunal de Commerce Registrars. In this case, the State Prosecutor shall be notified, and the latter may summon the Registrar before the Tribunal de Grande Instance ruling on disciplinary matters. The summons shall be notified to the president of the disciplinary committee of the National Council.

The disciplinary committee of the National Council shall cease to have jurisdiction as and from this notification made by the State Prosecutor.

#### **Article L. 743-7**

A Tribunal de Commerce registrar against whom criminal or disciplinary proceedings are brought may be temporarily suspended from practising by the Tribunal de Grande Instance at the request of the State Prosecutor.

In urgent cases, temporary suspension may be imposed by the Tribunal de Grande Instance even before criminal or disciplinary proceedings commence.

The Tribunal de Grande Instance may end a temporary suspension at the request of the State Prosecutor or the registrar.

The suspension shall cease by operation of law as soon as the criminal or disciplinary proceedings lapse. It shall also cease by operation of law in the case envisaged in the second paragraph, if no criminal or disciplinary proceedings are brought within one month of its being imposed.

#### **Article L. 743-8**

The decisions of the disciplinary committee of the National Council of Tribunal de Commerce Registrars may be referred to the Paris Cour d'Appel by the State Prosecutor with competence to exercise disciplinary action, by the president of the National Council where the proceedings have been instituted at his initiative, or by the registrar.

The decisions of the Tribunal de Grande Instance ruling in disciplinary matters may be referred to the Cour d'Appel with territorial jurisdiction by the State Prosecutor, by the president of the National Council of Tribunal de Commerce Registrars where the proceedings have been instituted at his initiative, or by the registrar.

#### **Article L. 743-9**

Registrars who have been suspended, barred or dismissed shall cease to perform all professional acts. Any act carried out regardless of this prohibition may be declared null and void by the Tribunal de Grande Instance at the request of any interested party or the State Prosecutor. The decision shall be binding on all parties.

Any infringement of the provisions of the first paragraph shall incur the penalties referred to in Article 433-17 of the Penal Code.

#### **Article L. 743-10**

The Tribunal de Grande Instance pronouncing the suspension, barring or dismissal shall appoint one or more interim managers.

#### **Article L. 743-11**

A Conseil d'Etat decree shall fix the conditions for applying this Chapter.

#### *Section 2: Conditions of performance*

#### **Article L. 743-12**

Tribunal de Commerce registrars may practice their profession in an individual capacity, as employees of a natural or legal person holding the office of Tribunal de Commerce registrar, in the form of non-commercial professional partnerships, or in the form of independent professional practices or as provided for by Law No. 90-1258 of 31 December 1990 on professional practices with a statutory or regulatory status or a protected designation. They may also be members of an economic interest group or a European economic interest group or partners in an undisclosed partnership governed by Title II of Law No. 90-1258 of 31 December 1990 on professional practices with a specific legislative or regulatory status or a protected designation.

#### **Article L. 743-12-1**

A natural person holding the office of Tribunal de Commerce registrar may not employ more than one Tribunal de Commerce registrar. A legal person holding the office of Tribunal de Commerce registrar may not employ a higher number of Tribunal de Commerce registrars than the number of partner Tribunal de Commerce registrars practising their profession therein.

Under no circumstances may the contract of employment of a Tribunal de Commerce registrar breach the ethical rules governing the profession of Tribunal de Commerce registrar. Notwithstanding any clause to the contrary in the contract of employment, a salaried Tribunal de Commerce registrar may refuse to carry out a task entrusted to him by his employer where such task is contrary to his conscience or likely to undermine his independence.

A Conseil d'Etat decree shall set out the terms of application of this Article, and specifically the rules applicable for settling disputes arising from the performance of a contract of employment after mediation by the president of the National Council of Tribunal de Commerce Registrars, disputes relating to the dismissal of a salaried Tribunal de Commerce registrar and the conditions in which the duties of a public official and salaried Tribunal de Commerce registrar may be terminated.

#### *Section 3: Fee structure for Tribunal de Commerce registrars*

##### **Article L. 743-13**

The fees payable to Tribunal de Commerce registrars shall be determined by Conseil d'Etat decree.

#### *Section 4: Accounting*

##### **Article L. 743-14**

Sums held by Tribunal de Commerce registrars on behalf of third parties and coming under the categories determined by Conseil d'Etat decree shall be deposited in an account specifically opened for that purpose with the Caisse des Dépôts et Consignations. The same decree shall determine the conditions for depositing funds.

#### *Section 5: Ongoing professional training*

##### **Article L. 743-15**

Ongoing professional training is mandatory for Tribunal de Commerce registrars currently in office.

A Conseil d'Etat decree shall determine the nature and duration of

activities likely to be validated under mandatory ongoing professional training. The National Council of Tribunal de Commerce Registrars shall determine the terms according to which it shall be carried out.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE IV: REGISTRY OF THE TRIBUNAL DE COMMERCE**

##### **CHAPTER 4: PROVISIONS APPLICABLE TO OVERSEAS DEPARTMENTS AND REGIONS**

###### **Article L. 744-1**

As an exception to Article L. 743-4, disciplinary action against a Tribunal de Commerce registrar providing registry services to a joint Tribunal de Commerce shall be exercised either before the disciplinary committee of the National Council of Tribunal de Commerce Registrars or before the Tribunal de Grande Instance of Paris.

###### **Article L. 744-2**

Concerning the application of Article L. 743-7 to Tribunal de Commerce registrars providing registry services to a joint Tribunal de Commerce, the words:

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE V: COMMERCIAL PLANNING**

###### **Article L. 750-1**

New business ventures, expansion, relocation of existing businesses and business sector changes by commercial and craft companies must be compatible with the requirements of regional development and environmental protection, as well as town planning matters. In particular, they must help to sustain business in rural and mountainous areas and restore the balance in built-up areas by developing trade in town centres and in urban regeneration zones.

Within the framework of fair competition, they must also contribute to the refurbishment of commercial amenities and to the adaptation of these to developing consumption patterns and marketing techniques, to enhancing the shopping experience of consumers and to improving the working conditions of employees.

#### **Article L. 750-1-1**

I. - Pursuant to the guidelines set out in Article L. 750-1, the Government shall ensure the development of competition in the commercial sector through the refurbishment of local shops, by providing the assistance set out in Article 4 of Law No. 89-1008 of 31 December 1989 on the development of commercial and craft businesses and on the improvement of their economic, legal and employment environment, including in the case of exceptional circumstances likely to seriously harm the fabric of commercial life.

Measures eligible for this assistance shall be aimed at encouraging the creation, maintenance, refurbishment, upgrading or transfer of local shops to strengthen sedentary and itinerant trade, particularly in rural areas, mountainous areas, covered and open-air markets and in priority areas for urban development. They are also aimed at facilitating a return to normal business for local shops after the completion of public works reducing customer access to these shops.

The intervention fund for services, crafts and retail trade shall pay out financial subsidies to ensure the implementation of the preceding paragraphs. In conditions set out in a Conseil d'Etat decree, it shall pay interest on loans contracted by municipalities to acquire, pursuant to Article L. 214-1 of the Town Planning Code, craft and other businesses, commercial leases and leases of land for the purposes of commercial development. It shall in particular finance surveys required to draw up specifications to enable municipalities to undertake urban regeneration projects under the best conditions to revitalise the town centre, train business ombudsmen and make the necessary investments to improve the access of disabled persons to shops. Loans from the intervention fund for services, crafts and retail trade may be used to finance projects lasting more than three years.

II.- The resources of the intervention fund for services, crafts and retail consist, up to a ceiling of 100 million Euros, of a 15% fraction of the tax instituted by Article 3 of Law No. 72-657 of 13 July 1972 introducing measures to support certain categories of older traders and craftsmen.



# **LEGISLATIVE PART**

## **BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE**

### **TITLE V: COMMERCIAL PLANNING**

#### **CHAPTER I: COMMISSIONS FOR COMMERCIAL PLANNING**

##### *Section 1: Departmental Commissions for Commercial Planning*

#### **Article L. 751-1**

A Departmental Commission for Commercial Planning shall decide on the applications for authorisation submitted to it by virtue of the provisions of Articles L. 752-1, L. 752-3 and L. 752-15.

This commission shall also be competent, in the specific composition set out in IV of Article L. 751-2, to decide on cinema planning projects submitted to it by virtue of Articles L. 212-7 and L. 212-8 of the Cinema and Moving Image Code.

#### **Article L. 751-2**

I.- The Departmental Commission for Commercial Planning shall be chaired by the Prefect.

II. - In departments other than Paris it shall consist of:

1° The following five elected persons:

- a) The mayor of the municipality in which the site is located;
- b) The president of the public authority for intercommunal cooperation responsible for spatial planning and development to which the municipality in which the site is located belongs or, where there is none, the general councillor of the canton in which the site is located;
- c) The mayor of the most densely populated municipality in the district other than the municipality in which the site is located; with the exception of the departments of Hauts-de-Seine, Seine-Saint-Denis, Val-de-Marne and the municipalities of Essonne, Val-d'Oise, Yvelines and Seine-et-Marne, which belong to Greater Paris, if the municipality in which the site is located belongs to a city comprising at least five municipalities, the mayor of the most densely populated municipality shall be chosen from the mayors of the municipalities of the said city.
- d) The president of the General Departmental Council or his representative;
- e) The president of the joint association or public authority for

intercommunal cooperation responsible for the territorial organisation plan to which the municipality in which the site is located belongs or his representative or, failing this, a deputy mayor in the municipality in which the site is located.

Where one of the elected persons holds several of the offices referred to above, the Prefect shall appoint to replace him one or more mayors of municipalities situated in the relevant customer catchment area;

2° Three persons meeting professional requirements in terms of consumer protection, sustainable development and spatial planning.

Where the customer catchment area of the project exceeds the boundaries of the department, the Prefect shall supplement the composition of the Commission by appointing at least one elected person and one person meeting professional requirements in each other relevant department.

To assist it in its decision-making, the Commission shall hear any person whose opinion is of interest.

III. – In Paris it shall consist of:

1° The following five elected persons:

a) The Mayor of Paris or his representative;

b) The mayor of the arrondissement<sup>112</sup> in which the site is located or his representative;

c) A district councillor appointed by the Paris council;

d) A deputy to the Mayor of Paris;

e) A regional councillor appointed by the Paris council;

2° Three persons meeting professional requirements in terms of consumer protection, sustainable development and spatial planning.

To assist it in its decision-making, the Commission shall hear any person whose opinion is of interest.

IV. - Where it meets to examine cinema planning projects, the Commission shall include, from amongst those meeting professional requirements designated by the Prefect, one expert proposed by the president of the Centre National du Cinéma et de l'Image Animée<sup>113</sup> and selected from a list drawn up by him.

### **Article L. 751-3**

Every member of the Departmental Commission for Commercial Planning shall notify the Prefect of their financial interests and business functions.

Members of the Departmental Commission may not vote on projects in which they have a direct personal interest or in which they represent or have represented one of the parties.

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<sup>112</sup> An administrative division of Paris.

<sup>113</sup> The National Centre of Cinematography and the Moving Image.

#### **Article L. 751-4**

Members of the committee shall be appointed and shall serve in office as stipulated by Conseil d'Etat decree.

#### *Section 2: National Commission for Commercial Planning*

#### **Article L. 751-5**

The National Commission for Commercial Planning shall consist of eight members appointed by decree for one non-renewable term of office of six years on the proposal of the Minister for Trade. Half the Commission shall be reappointed every three years.

#### **Article L. 751-6**

I.- The National Commission for Commercial Planning shall consist of:

1° A member of the Conseil d'Etat appointed by the Vice-president of the Conseil d'Etat, who shall act as president;

2° A member of the Cour des Comptes<sup>114</sup> appointed by the First President of the Cour des Comptes;

3° A member of the tax inspectorate appointed by the chief tax inspector;

4° A general inspector appointed by the Vice-president of the General Council for the Environment and Sustainable Development;

5° Four persons appointed for their knowledge of distribution, consumer affairs, town planning sustainable development, spatial planning or employment, to be appointed (one each) by the president of the National Assembly, the president of the Senate, the minister responsible for business and the minister responsible for the Town Planning and the environment.

II. - Where decisions of departmental commissions ruling on cinema planning projects are appealed to the National Commission, the member referred to in 4° of I shall be replaced by a member of the corps of general inspectors of the ministry responsible for culture; the person referred to in 5° of I appointed by the minister responsible for business is replaced by a person competent in film distribution appointed by the minister responsible for culture. In addition, the Commission shall be supplemented by a qualified person appointed by the minister responsible for culture on the proposal of the President of the Centre National du Cinéma et de l'Image Animée. A deputy shall be appointed in the same conditions.

#### **Article L. 751-7**

All Commission members shall notify the president of their financial interests and business functions.

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<sup>114</sup> The national Auditing Court.

Members of the National Commission may not vote on projects in which they have a direct personal interest or if they represent or have represented one of the interested parties.

#### **Article L. 751-8**

The members and president of the National Commission shall be appointed and shall serve as stipulated by Conseil d'Etat decree.

#### *Section 3:*

#### *Commercial Infrastructure Observatories*

#### **Article L. 751-9**

The Commercial Infrastructure Observatory shall collate the elements required to achieve an understanding of the territory in commercial terms, within the guidelines defined in Article L. 750-1.

It shall make this data available to local authorities and their groupings, which shall draw up a commercial development plan.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE V: COMMERCIAL PLANNING**

#### **CHAPTER II: BUSINESS LICENCES**

#### *Section 1: Projects which require licences*

#### **Article L. 752-1**

I.- A business licence shall be required for projects to:

1° Open a retail outlet with a sales surface of over 1,000 square metres in a new or converted building;

2° Extend the sales surface of a retail outlet which has already reached the 1,000 square metre threshold or will exceed it once the project has been completed, whereby an extension shall be understood to mean any covered or exposed, fixed or movable space not governed by Article L. 310-2;

3° Any change of activity of an outlet with a sales surface of over 2,000 square metres. This threshold shall be reduced to 1,000 square metres where the new business of the outlet is mainly food;

4° Open a shopping centre, as defined in Article L. 752-3, with a sales surface of over 1,000 square metres;

5° Extend a shopping centre which has already reached the threshold of 1,000 square metres or which will exceed this threshold once the project has been completed;

6° Re-open a retail outlet with a sales surface of over 1,000 square metres to the public on premises which have not been used for three years commencing, where the retailer has been subject to judicial restructuring proceedings, on the date on which the owner regained full and complete possession of the premises.

II. - The plans set out in Book I, Title II, Chapter II of the Town Planning Code may define commercial planning zones.

These zones are defined in consideration of the requirements of spatial planning, environmental protection and town planning quality specific to certain parts of the territory covered by the plan. Their delimitation may not be based on an analysis of the existing commercial offering or on an assessment of the impact of new commercial projects on the latter.

The definition of zones shall be listed in a commercial planning document included in the planning scheme for territorial organisation after deliberations by the public establishment as provided for under Articles L. 122-4 and L. 122-4-1 of the Town Planning Code. On penalty of invalidity, this commercial planning document must be the subject of a government inquiry within one year from the deliberation adopting it.

Where there is no planning scheme for territorial organisation, the competent public establishment may, for drafting purposes, adopt a provisional commercial planning document before 1 July 2009, under the terms set out in the preceding paragraph. This provisional document shall be valid for two years. Where the territorial organisation plan is approved within this period, it shall become definitive.

In the Ile-de-France region, in overseas regions and in Corsica, where there is no territorial organisation plan, a commercial planning document may be included in the local urban development plan.

This commercial planning document shall be forwarded to the Prefect upon its adoption.

#### **Article L. 752-2**

I.- No business permit shall be required to allow the grouping together of sales surfaces of no more than 2,500 square metres, or 1,000 square metres without the creation of new sales areas, if the new activity is mainly food and in neighbouring outlets .

II. - Pharmacies, garages and car and motorcycle showrooms shall not be required to have a business licence as provided for by Article L. 752-1.

III. - Retail food and other markets set up in ancillary to public property allocated for railway stations in town centres with a maximum surface area

of 2,500 metres and the creation of which is determined by the municipal council, as well as shops accessible only to travellers with tickets and located within airports shall not require a business licence, irrespective of whether or not they are covered.

#### **Article L. 752-3**

I. - Outlets on the same site which:

1° were designed during the same development project, irrespective of whether it was completed in one or more stages;

2° have arrangements allowing the same customers to access various establishments;

3° have certain operating elements which are jointly managed, mainly by creating collective services or using joint standard practices or advertising;

4° are linked by a common legal structure directly controlled by at least one partner exercising an influence on it as defined in Article L. 233-16 or with a joint de jure or de facto director, shall be deemed to form part of the same shopping centre, irrespective of whether or not they are housed in separate buildings or owned or operated by the same person.

II. - However, the provisions of this Article shall not apply to joint development areas created in a town centre under Article L. 311-1 of the Town Planning Code.

#### **Article L. 752-3-1**

Cinema planning projects shall not be subject to examination by the Commission but only on condition that they indicate the person who is to hold the operating licence issued pursuant to Article L. 212-2 of the Cinema and Moving Image Code.

#### **Article L. 752-4**

In municipalities with a population of less than 20,000, the mayor or the president of the public authority for intercommunal cooperation with competence in town planning matters, to whom an application for planning permission for commercial premises with a surface area of between 300 and 1,000 square metres is submitted, may suggest that the municipal council or the governing body of this authority should refer the application to the Departmental Commission for Commercial Planning so that it may rule on whether the project complies with the criteria set out in Article L. 752-6.

In these municipalities, where an application for planning permission for commercial premises is submitted to the mayor or president of the public establishment with competence in town planning matters referred to in the preceding paragraph, he shall notify this application to the president of the public authority for intercommunal cooperation or of the joint association

referred to in Articles L. 122-4 and L. 122-4-1 of the Town Planning Code of the territory where the proposed site is located. This latter may propose that the governing body should refer the matter to the Departmental Commission for Commercial Planning so that it may rule on whether the project complies with the criteria set out in Article L. 752-6.

Deliberations of the municipal council or the governing body of the public authority for intercommunal cooperation shall be reasoned. They shall be forwarded to the applicant within three days.

Where the Departmental Commission for Commercial Planning or the National Commission for Commercial Planning, as applicable, issues an unfavourable opinion, planning permission may not be granted.

The Departmental Commission for Commercial Planning shall decide on the application within one month.

Where the opinion is negative, the developer may refer the case to the National Commission for Commercial Planning, which shall rule within one month. Where the National Commission does not react within this period, this shall be deemed to be a confirmation of the opinion of the Departmental Commission.

#### **Article L. 752-5**

In the event of abuse of a dominant position or a state of economic dependence on the part of a company or group of companies operating one or more retail outlets, the mayor may ask the Competition Authority to proceed with the orders and financial penalties specified in Article L. 464-2.

#### *Section 2: Decisions of the Departmental Commission*

#### **Article L. 752-6**

When making a decision on a business licence as referred to in Article L. 752-1, the Departmental Commission for Commercial Planning shall rule on the effects of the project in terms of spatial planning, sustainable development and consumer protection. The assessment criteria are as follows:

1° In terms of spatial planning:

- a) The effect on urban, rural and mountain life;
- b) The effect of the project on transport flows;
- c) The effects of the procedures set out in Articles L. 303-1 of the Construction and Housing Code and L. 123-11 of the Town Planning Code;

2° In terms of sustainable development:

- a) The environmental quality of the project;
- b) Its integration into public transport networks.

#### **Article L. 752-6-1**

In collectivities coming under Article 73 of the Constitution and the overseas collectivities of Saint-Barthélemy, Saint-Martin and Saint-Pierre-et-Miquelon, and in compliance with Article 349 of the Treaty on the Functioning of the European Union, the Commission shall take account of the economic power enjoyed in the zone by the company applying for a business licence. If its market share, calculated in terms of surface area, is likely to exceed 50% of the customer catchment area after the operation, the Commission may consult the Competition Authority.

#### **Article L. 752-7**

Where it rules on the licence provided under Articles L. 212-7 and L. 212-8 of the Cinema and Moving Image Code, the Commission shall rule on the basis of the criteria set out in Article L. 212-9 of that Code.

#### **Article L. 752-12**

Applications for licences shall be processed by the decentralized government services.

#### **Article L. 752-14**

I.- The Departmental Commission for Commercial Planning shall vote on projects by an absolute majority of members present.

The minutes shall record how each member voted.

The Prefect, who chairs the Departmental Commission, shall not take part in the vote.

Applications for cinema planning projects shall be granted on the basis of spectator numbers.

Cinema planning licences may not be assigned or transferred until such time as the cinema has started to operate.

II. - The Departmental Commission for Commercial Planning shall make a decision within two months of a referral.

The licence shall be deemed to have been granted on expiration of this deadline.

Commission members shall be given at least ten days' notice of applications before making a decision on them.

This decision shall be notified to the mayor and the applicant within ten days. It shall also be notified to the Cinema Ombudsman where it relates to cinema planning.

#### **Article L. 752-15**

A business licence shall be issued prior to the granting of any planning



permission required or before the project is carried out, if no planning permission is required.

The licence shall be granted per square metre of sales surface.

A new application shall be made if the type of business or sales area is substantially modified during the course of processing or construction. The same shall apply if the shop sign(s) designated by the applicant are modified.

The required prior approval once obtained in order to open new retail outlets shall be neither assignable nor transferable.

### *Section 3: Appeals against the decisions of the Departmental Commission*

#### **Article L. 752-17**

At the initiative of the Prefect, the mayor of the municipality in which the site is located, the president of the public authority for intercommunal cooperation referred to in Article L. 751-2 II 1° (b), the president of the establishment referred to in 1° (e) of the same Article or the president of the joint association referred to in that same (e) and/or of any person having an interest in this, the decision of the Departmental Commission for Commercial Planning may, within a period of one month, be appealed to the National Commission for Commercial Planning. The National Commission for Commercial Planning shall make a decision within four months of such referral.

Appeals must be referred to the National Commission prior to judicial proceedings, on pain of automatic inadmissibility.

The Cinema Ombudsman shall also have a right of appeal where the Departmental Commission makes a decision on cinema planning.

#### **Article L. 752-18**

Planning permission shall not be granted, building work shall not commence and no new application shall be filed for the same property with the Departmental Commission for Commercial Planning before the deadline for appeal expires or, in the event of an appeal, before the appeal decision is returned by the National Commission.

#### **Article L. 752-19**

The mayor of the municipality in which the site is located and who sits on the Departmental Commission against whose decision an appeal has been filed shall be heard by the National Commission if he so requests.

A government representative appointed by the minister responsible for trade or by the minister responsible for culture shall take part in Commission meetings where the Commission decides on cinema planning and shall be given a copy of the files.

#### **Article L. 752-20**

Where votes are equally divided, the president of the Commission shall have the casting vote.

#### **Article L. 752-21**

If the application for a licence is rejected on substantive grounds by the aforementioned National Commission, no new application may be filed by the same applicant, for the same project or for the same land for a period of one year from the date of the ruling by the National Commission.

#### **Article L. 752-22**

The Commissions shall authorise or reject projects in their entirety.

Where licences granted by Commissions ruling on cinema planning matters are based on the draft programme submitted by the applicant, this draft programme shall be the subject of a contracted programme commitment pursuant to Article L. 212-19 of the Cinema and Moving Image Code.

#### **Article L. 752-23**

Officials authorised to investigate and identify breaches of Articles L. 752-1 to L. 752-3 pursuant to Article 9 of Law No. 89-1008 of 31 December 1989 on the development of commercial and craft businesses and on the improvement of their economic, legal and employment environment, who identify the unlawful operation of a sales surface under this Title, shall draw up a report and forward this to the Prefect of the Department where the shop is located.

The Prefect may give formal notice to the operator concerned to bring its commercial premises back into compliance with the business licence granted by the relevant Commission for Commercial Planning within one month. Without prejudice to the application of criminal sanctions, he may, failing this, order the closure to the public within fifteen days of the sales surfaces illicitly operated until such time as the breach has been remedied. These measures shall be accompanied by a coercive progressive fine of 150 Euros per square metre of surface operated unlawfully.

Failure to execute the measures ordered by the Prefect and provided for in the second paragraph shall be punishable by a fine of 15,000 Euros.

The terms of application of this Article shall be determined in a Conseil d'Etat decree.

#### **Article L. 752-24**

A Conseil d'Etat decree shall determine the conditions for applying this Chapter.

#### **Article L. 752-25**

All contracts valued higher than a threshold defined by decree and concluded by public or private persons for the purpose of a project authorised under this Title shall be notified by each contracting party to the Prefect and the Chambre Régionale des Comptes<sup>115</sup>, as stipulated by decree, within two years of the completion of this project. This obligation shall also apply to contracts which predate the licence or, failing this, to the planning permission governing the control or development of the land on which the licensed establishments are located.

It shall apply to all types of contract, including contracts making provision for assignments free of charge, services in kind and intangible considerations.

The said notification shall be effected within two months of signature of the contract or, if the contract predates the licence or, failing this, the planning permission, within two months of the licence.

Any infringement of the provisions of this Article shall be punished by a fine of 75,000 Euros.

#### *Section 4: Inspection by the Competition Authority in the case of a dominant market position*

#### **Article L. 752-26**

In the event of abuse of a dominant market position or a state of economic dependence on the part of a company or group of companies operating one or more retail outlets, the Competition Authority may proceed with the orders and financial penalties specified in Article L. 464-2.

If the orders and financial penalties imposed have not had the effect of ending the abuse of a dominant position or the state of economic dependence, the Competition Authority may, by a decision giving reasons, after hearing the observations of the company or group of companies concerned, require that it should modify, supplement or cancel, within a specified period, all agreements and all acts by which the concentration of economic power allowing the abuse has been carried out. It may, under the same conditions, require that it should proceed with the disposal of assets, should such disposal constitute the sole means of ensuring effective competition in the customer catchment area under consideration.

#### **Article L. 752-27**

In collectivities coming under Article 73 of the Constitution and in the overseas collectivities of Saint-Barthélemy, Saint-Martin and Saint-Pierre-et-Miquelon, if a dominant position is held by a company or group of

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<sup>115</sup> The regional chamber of the Auditing Court.

companies operating one or more retail outlets, giving rise to concerns about competition due to high prices or margins compared to the averages usually noted in the relevant economic sector, the Competition Authority may, in view of the particular constraints of these territories arising notably from their geographical and economic characteristics, make its concerns known to the company or group of companies concerned, which may within two months suggest commitments in conditions provided for this purpose in Article L. 464-2.

If the company or group of companies does not suggest any commitments or if the commitments it suggests do not seem likely to the Competition Authority to put an end to its competition concerns, the Authority may, by a decision giving reasons, and after hearing the observations of the company or group of companies concerned and following appearance before the board, require them to modify, supplement or cancel, within a given period that shall not exceed two months, all agreements and all acts by which the concentration of economic power allowing the practices observed in matters of pricing and margins was established. It may, under the same conditions, enjoin them to proceed with the disposal of assets, should such disposal constitute the sole means of ensuring effective competition. The Competition Authority may penalise the non-execution of these orders in the conditions set out in Article L. 464-2.

Within the framework of the procedures defined in the first two paragraphs of this Article, the Competition Authority may require communication of any information under the terms set out in Articles L. 450-3, L. 450-7 and L. 450-8 and may hear any interested third party.

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE VI: PUBLIC INTEREST MARKETS AND COMMERCIAL EVENTS**

##### **CHAPTER I: NATIONAL INTEREST MARKETS**

##### **Article L. 761-1**

National interest markets are public market management facilities offering wholesalers and producers collective public services adapted to the characteristics of certain agricultural and food produce.

They meet the objectives of spatial planning, improvement of environmental quality and food safety.

Access to these markets is restricted to producers and traders.

The classification of an agricultural produce and foodstuffs market as a

national-interest market, or the creation of such a market, is pronounced by decree on a proposal from regional councils.

Such markets may be established on publicly-owned land, or in the private domain of one or more public-law corporations, or on real property belonging to private bodies.

The declassification of a national-interest market may be pronounced by decree of the minister responsible for trade and the minister responsible for agriculture on a proposal from the Regional Council if the market's activities no longer permit performance of the missions specified in the first paragraph or to the general organisation pursuant to the provisions of Article L. 761-10.

#### **Article L. 761-2**

The list of the national-interest markets which the State intends to develop and manage is determined by decree.

Other national-interest markets are developed and managed on behalf of the State by the municipalities of the territory in which they are established, or by groups of interested municipalities, or through the designation of a public or private legal entity. In the latter case, the legal entity shall be designated after the market has been opened to competition in the manner determined in Article L. 1411-1 of the General Code of Local Government.

The said municipalities, or groups of municipalities, may nevertheless confer this power to designate on the region or, in Corsica, on the territorial authority of Corsica.

#### **Article L. 761-3**

The licence fees collected from permit holders and any other contributions to its operating costs made by its users shall be established by the market manager and approved by the Prefect.

The market manager shall submit an interim profit-and-loss statement showing how all the market's established or foreseeable social, financial and public-health obligations are to be met.

If the market's financial statements show or point to a serious discrepancy, the ministers in charge may, having informed the manager and, where applicable, the public bodies which guaranteed its borrowings, automatically increase the existing licence fees, generate new income, reduce expenditure and, in general, take any measure conducive to restoring balance.

#### **Article L. 761-4**

A protective perimeter<sup>116</sup> may be placed around a national-interest

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<sup>116</sup> See Article L. 761-5.

market by decree.

This decree shall determine the establishment of the national-interest market.

Early removal of some or all of the perimeter, extension of the market's facilities or its transfer within the perimeter may be determined by a decision of the relevant administrative authority.

#### **Article L. 761-5**

Within the perimeter referred to in Article L. 761-4, projects to establish or extend premises or complexes of premises to be used for sales other than retail sales of products the list of which shall be defined by order of the ministers in charge, in a sales surface dedicated to such products of over 1,000 square metres shall be subject to approval by the administrative authority in the conditions defined in Article L. 761-7.

The authorisation provided for in the first paragraph shall be automatic where the market does not have the necessary surface area to enable the planned establishment or extension.

The authorisation system provided for by this Article shall not apply to producers and groups of producers in respect of products deriving from business operations located within the protective perimeter.

No later than 31 December 2012, an assessment by the Organisation of national interest markets, focusing in particular on the implementation and effectiveness of the protective perimeters with regard to the aims pursued, shall be submitted to Parliament by the competent administrative authority in order to ascertain whether this system should be maintained or changed from 1 January 2013. The drafting of this assessment shall in particular involve the relevant public establishments and interprofessional organisations.

The regulations implementing this article shall be determined in a Conseil d'Etat decree.

#### **Article L. 761-6**

Where the protective perimeter of a national interest market encompasses a port, the authorisation system provided under the first paragraph of Article L. 761-5 shall not apply to facilities located within the port area and housing port activities where these facilities are solely aimed at products imported into this port or exported from it by sea.

#### **Article L. 761-7**

The relevant administrative authority shall rule on authorization of applications submitted to it pursuant to Article L. 761-5, taking into consideration the effects of the project in terms of spatial planning and sustainable development.

#### **Article L. 761-8**

Infringements of the provisions of Articles L. 761-5 and L. 761-7 and of the provisions introduced pursuant to those articles shall be established and prosecuted as provided for in Articles L. 450-1, L. 450-2 and L. 450-3 and shall incur a fine of 15,000 Euros. Articles L. 470-1 and L. 470-4 shall apply.

#### **Article L. 761-9**

The right to privately occupy a plot held by a trader established in a national-interest market may be included in any pledge<sup>117</sup> of that trader's assets.

#### **Article L. 761-10**

The legislation and regulations relating to the organisation and functioning of markets for agricultural produce and foodstuffs shall not apply to national-interest markets.

The general organisation of national-interest markets shall be determined by Conseil d'Etat decree.

Boundary changes to, and relocation of, national-interest markets without a protective perimeter shall be unrestricted.

#### **Article L. 761-11**

The Prefect shall exercise policing powers within the boundaries of a national-interest market. Within the protective perimeter, he shall ensure that the legislation and regulations governing the market are applied and shall report any breaches thereof to the State Prosecutor. Where a market with a protective perimeter is spread across several departments, the aforementioned powers shall be exercised by the Prefect designated by the Minister for the Interior.

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<sup>117</sup> "Nantissement": See the Civil Code, Article 2355, sometimes to be translated as "pledge of incorporeal moveables".

## **LEGISLATIVE PART**

### ***BOOK VII: TRIBUNAUX DE COMMERCE AND THE ORGANISATION OF TRADE***

#### **TITLE VI: PUBLIC INTEREST MARKETS AND COMMERCIAL EVENTS**

##### **CHAPTER II: COMMERCIAL EVENTS**

###### **Article L. 762-1**

An exhibition park is a permanent, enclosed and independent real-property complex with appropriate facilities and equipment which hosts temporary commercial or other events for all or part of the year. It does not require the licence referred to in Article L. 752-1.

Exhibition parks are registered with the relevant administrative authority. The programme of commercial events which it hosts each year is the subject of a prior declaration made to the relevant administrative authority.

###### **Article L. 762-2**

A trade show is a commercial event devoted to the promotion of a series of commercial activities to invited visitors only. It may be free of charge or subject to an entry fee. The only goods offered for sale on site are intended for the purchaser's personal use and their value cannot exceed a ceiling determined by decree.

All trade shows shall be the subject of a prior declaration made to the relevant administrative authority.

###### **Article L. 762-3**

The implementing provisions of this Chapter shall be determined in a Conseil d'Etat decree.

## **LEGISLATIVE PART**

### ***BOOK VIII: CERTAIN REGULATED PROFESSIONS***

#### **TITLE I: COURT-APPOINTED ADMINISTRATORS, COURT-APPOINTED RECEIVERS AND EXPERTS IN CORPORATE ANALYSIS**

##### **CHAPTER I: COURT-APPOINTED ADMINISTRATORS**

Section 1: Mission, conditions of access and performance and



incompatibilities

#### Subsection 1: Missions

##### **Article L. 811-1**

Court-appointed administrators are natural persons or legal entities appointed by a court to administer the property of others or to perform auxiliary or supervisory functions in regard to the management of such property.

They are personally responsible for the tasks entrusted to them. When the proper course of the proceedings so requires, however, and when expressly authorised by the presiding judge, they may entrust some of those tasks to third parties, while retaining responsibility for such tasks.

When court-appointed administrators entrust to third parties tasks forming part of the assignment entrusted to them by the court, they shall compensate them from the remuneration they receive.

#### Subsection 2: Conditions of access to the profession

##### **Article L. 811-2**

Only those whose name appears in a register drawn up by a national committee created for that purpose may be appointed by a court to perform such functions, without prejudice to the provisions specific to certain matters, including those relating to minors and protected adults, or the occasional missions which may be entrusted to members of the judicial and legal professions in civil proceedings.

In any event, the court may, after seeking the advice of the State Prosecutor, appoint as an administrator, a natural person who can furnish proof of experience or qualifications particularly relevant to the nature of the case and who meets the conditions laid down in points 1° to 4° of Article L. 811-5.

The court's decision shall be expressly and specifically based on the said experience or specific qualification.

The persons referred to in the previous paragraph must not, during the previous five years, for whatever reason, either directly or indirectly, have received any reward or payment from the natural person or legal entity against whom an administration, assistance or supervisory measure is sought, from a person who controls that legal entity or a company controlled by it within the meaning of II and III of Article L. 233-16, or have acted as an advisor to the natural person or legal entity concerned or have been in any way dependent on it. They must, moreover, have no interest in the assignment entrusted to them and must not be a former director or court-appointed receiver whose name has been removed from the registers pursuant to Articles L. 811-6, L. 811-12 and L. 812-4. They are required to

perform the duties entrusted to them in accordance with the professional obligations imposed on duly registered court-appointed administrators. They shall not perform their function as court-appointed administrator on a regular basis.

Upon assuming their functions, persons appointed pursuant to the second paragraph must give a sworn statement to the effect that they meet the conditions determined in 1° to 4° of Article L. 811-5, that they fulfil the obligations enumerated in the previous paragraph and that they are not under any prohibition to act pursuant to the penultimate paragraph of Article L. 814-10.

When the court appoints a legal entity, it shall designate one or more natural persons from the entity to represent it in regard to the performance of the assignment entrusted to it by the court.

#### **Article L. 811-3**

The national register is divided into sections corresponding to the jurisdiction of each Cour d'Appel.

#### **Article L. 811-4**

The composition of the national committee referred to in Article L. 811-2 is as follows:

- a judge of the Cour de Cassation, acting as president, appointed by the presiding judge of the Cour de Cassation;
- an officer of the Cour des Comptes<sup>118</sup> appointed by the president of the Cour des Comptes;
- a member of the Inspectorate of Public Finances appointed by the Minister for the Economy and for Finance;
- an appeal court judge appointed by the presiding judge of the Cour de Cassation<sup>119</sup>;
- a judge from a commercial court of first instance appointed by the presiding judge of the Cour de Cassation;
- two professors or lecturers of law, economics or management appointed by the Minister for the Universities;
- a representative of the Conseil d'Etat, appointed by the vice-president of the Conseil d'Etat;
- two persons qualified in an economic or social discipline appointed by the Minister of Justice;
- When examining a case in application of Article L. 811-6 or sitting as a disciplinary body, the commission shall include in addition three court-appointed administrators registered on the list, elected by their peers under

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<sup>118</sup> The national Auditing Court.

<sup>119</sup> France's highest court for civil and commercial law, unless this concerns constitutional matters.

the conditions determined by a Conseil d'Etat decree.

In the event of a tied vote, the president has a casting vote.

The president and the members of the committee, and their deputies (equal in number and chosen from the same categories), are appointed for a three-year term of office, renewable once.

A judge from the Public Prosecutor's Office and his deputy are appointed to act as the Government's representative on the national committee and to examine, inter alia, the applications for admission.

The committee's operating costs are met by the State.

#### **Article L. 811-5**

All persons registered by the committee must:

1° Be French nationals or citizens of a European Community member state or a European Economic Area member state;

2° Not have been the perpetrator of acts or responsible for omissions giving rise to a criminal conviction for dishonourable conduct or lack of integrity;

3° Not have been the perpetrator of acts or responsible for omissions of the same kind giving rise to a disciplinary or administrative sanction, dismissal, striking off, removal from office, withdrawal of approval or withdrawal of authorisation;

4° Not have been declared personally bankrupt or made subject to one of the prohibition or forfeiture measures provided for in Chapter V of Title II of Book VI of the present code, Title VI of Act No. 85-98 of 25 January 1985 relating to judicial receivership and liquidation of companies or, under the scheme which preceded that law, Title II of Act No 67-563 of 13 July 1967 relating to judicial settlement, judicial liquidation, personal bankruptcy and other forms of bankruptcy;

5° Have passed the entrance examination for the professional development programme, completed that programme and passed the insolvency administration aptitude test.

Only persons who hold diplomas or other qualifications determined by decree may take the entrance examination for the professional development programme.

Notwithstanding the foregoing, persons who meet the conditions of competence and professional experience laid down in a Conseil d'Etat decree are exempted from the entrance examination for the professional development programme. The committee may, moreover, exempt such persons, as provided for in a Conseil d'Etat decree, from part of the professional development programme and from all or part of the receivership aptitude examination.

Registered legal entities may only exercise the functions of a court-appointed administrator through a member who is himself registered.

Persons who can show that they have acquired a qualification which

enables them to act as a court-appointed administrator in a European Community member state other than France or a European Economic Area member state are exempted from the diploma, training course and professional examination conditions laid down in the sixth and seventh paragraphs, on condition of their having taken a test to verify their knowledge as provided for in a Conseil d'Etat decree. A list of the candidates eligible to take the examination is drawn up by the committee.

### Subsection 3: Conditions of performance

#### **Article L. 811-6**

The National Commission, on its own initiative or at the request of the Minister of Justice, the president of the National Council of Court-appointed Administrators and Court-appointed Receivers, the government representative or the State Prosecutor in whose jurisdiction the court-appointed administrator is established, may, by a reasoned decision and after instructing the parties concerned to present their observations, delete from the list referred to in Article L. 811-2, court-appointed administrators who, on account of their physical or mental state, are unable to perform their functions in the normal way, or court-appointed administrators who have demonstrated inability to properly carry out their functions.

Deregistration shall not prevent disciplinary proceedings from being brought against such court-appointed administrators if offences were committed in the performance of their duties.

#### **Article L. 811-7**

Court-appointed administrators may create civil-law professional partnerships governed by Act No. 66-879 of 29 November 1966 relating to non-commercial professional partnerships in order to practise their profession collectively. They may also practise their profession through independent professional firms as provided for in Act No. 90-1258 of 31 December 1990 relating to independent professional practices having a specific legislative or regulatory status or a protected designation. They may also be members of an economic interest group or a European economic interest group or partners in an undisclosed partnership governed by Title II of Act No. 90-1258 of 31 December 1990 relating to professional practices having a specific legislative or regulatory status or a protected designation.

#### **Article L. 811-8**

Cases being dealt with by a court-appointed administrator who relinquishes his functions, whatever the reason, are distributed among the other administrators by the court within three months of him ceasing his

functions.

In the interest of the proper administration of justice, however, the court may authorise the former administrator to continue to deal with one or more pending cases unless he was forced to abandon his functions on account of deregistration. Such a court-appointed administrator remains bound by the provisions of Articles L. 811-10 to L. 811-16, L. 814-1 and L. 814-5.

#### **Article L. 811-9**

Registered persons are free to practise their profession throughout France.

#### Subsection 4: Incompatibilities

#### **Article L. 811-10**

The status of listed court-appointed administrator is incompatible with the practice of any other profession, save that of legal counsel

It is, moreover, incompatible with:

1° Any business of a commercial nature, whether conducted directly or through an intermediary.

2° The status of partner in a société en nom collectif<sup>120</sup>, of a limited partner in a société en commandite simple or shareholder in a société en commandite par actions, of manager of société à responsabilité limitée, of president of the board of directors, of member of the executive board, of general manager or assistant general manager of a société anonyme, of president or chief executive of a société par actions simplifiée, of member of the supervisory board or board of directors of a commercial company, and of manager of a partnership for non-commercial purposes<sup>121</sup>, unless the corporate mission of those companies is the practising of the profession of court-appointed administrator or the acquisition of premises for that purpose. Moreover, a court-appointed administrator may perform management duties within a non-commercial partnership whose sole purpose is the administration of family interests.

The status of listed court-appointed administrator does not preclude consultancy activities in disciplines in which the individual in question is qualified, nor the conducting of the ad hoc administration and conciliation missions provided for in Articles L. 611-3 and L. 611-6 of the present Code and in Article L. 351-4 of the Rural and Maritime Fisheries Code, or those of plan performance supervisor, of amicable administrator or liquidator, of court-appointed expert or of amicable or court-appointed receiver. Such activities and such missions, with the exception of the missions of ad hoc receiver, mediator and plan performance supervisor, shall only be

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<sup>120</sup> For all the company types in this paragraph see Book II, Title II of this Code.

<sup>121</sup> A non-commercial partnership. See Code Civil, Articles 1845 to 1870-1.

conducted on a subsidiary basis.

With the exception of the fourth paragraph, the conditions of the present Article are applicable to listed legal entities.

## *Section 2: Monitoring, inspection and discipline*

### Subsection 1: Monitoring and inspection

#### **Article L. 811-11**

Court-appointed administrators are placed under the supervision of the Public Prosecutor's Office. Their professional activities are subject to inspections by the public authority during which they are required to provide all relevant information and documents without being able to object on the grounds of professional secrecy.

The organisation and terms of such inspections are determined in a Conseil d'Etat decree.

In connection with the supervision entrusted to the National Council referred to in Article L. 814-2, court-appointed administrators are required, without being able to object on the grounds of professional secrecy, to comply with any request for pertinent information or documents made by the inspectors.

The auditor of the court-appointed administrator undergoing an inspection is required, without being able to object on the grounds of professional secrecy, to comply with the inspectors' requests for any information gathered or any document drawn up in the performance of his duties.

The Caisse des Dépôts et Consignations is required, without being able to object on the grounds of professional secrecy, to comply with the inspectors' requests and those of the National Council referred to in Article L. 814-2, concerning the supervision for which it is responsible, for any information or document relating to the movements of funds in the accounts opened in its books in the name of each receiver and the sums deposited therein by virtue of the assignments to which the inspection relates.

Court-appointed administrators shall draw up, at the end of each fiscal year, a financial statement that they shall disclose to the National Council of Court-appointed administrators and court-appointed receivers, no later than within six months of the end of the fiscal year. The content of this financial statement, defined by decree, shall be adapted depending on whether the administrator keeps accounts on a cash basis or commitment basis.

#### **Article L. 811-11-1**

Court-appointed administrators are required to designate an auditor to verify their special accounts and thus provide permanent auditing of all funds, bills, securities and other items belonging to others of which the

court-appointed administrators are sole holders by virtue of powers received in performance of their functions.

Such auditing also covers bank accounts or post office accounts opened by an administrator in the names of debtors against whom proceedings are brought under Title II of Book VI and which operate under the sole signature of the receiver or his duly empowered representatives.

For auditing purposes, the auditors may also have access to the general accounts of the practice and the cases entrusted to the administrator and, notwithstanding any contrary provision, request from the latter or from any third-party holders of funds any information relevant to their auditing assignment.

#### **Article L. 811-11-2**

As stipulated in a Conseil d'Etat decree, the auditors shall inform the authorities entrusted with supervision of the inspections and audits of court-appointed administrators of their findings and call attention to any anomalies or irregularities which have come to their notice in the performance of their assignment.

#### **Article L. 811-11-3**

The statutory auditor of the debtor subject to safeguard, reorganisation or judicial liquidation proceedings may not avail himself of professional confidentiality rules to avoid meeting the requests of the administrator's statutory auditor for information or documents concerning the operation, from the moment the administrator is appointed, regarding bank or Post Office accounts opened in the debtor's name.

#### **Subsection 2: Discipline**

#### **Article L. 811-12 A**

Any breach of the laws and regulations, any violation of professional ethics, and any failure of integrity or honour, even relating to facts unconnected with professional practice, will result in disciplinary proceedings being brought against the court-appointed administrator responsible.

#### **Article L. 811-12**

The disciplinary action is brought by the Minister of Justice, the Government Prosecutor of the Cour d'Appel in whose jurisdiction the acts or omissions were committed, the government representative or the president of the National Council of Court-Appointed Administrators and Court-Appointed Receivers. Acceptance of a registered court-appointed administrator's resignation shall not impede the disciplinary proceedings if

the facts alleged were committed while he was in practice.

I. - The National Registration Committee sits as a disciplinary committee. The government representative performs the duties of the Public Prosecutor's Office for this purpose. It may impose the following disciplinary penalties:

1° A warning;

2° A reprimand;

3° A prohibition on practising for a period not exceeding three years;

4° Removal from the court-appointed receivers' register.

II. - A warning or reprimand may be accompanied, for a period of one year, by supervisory measures determined by the committee which impose special obligations on the receiver. Such obligations may also be imposed by the committee when a temporarily barred receiver resumes his duties.

III. - When it imposes a disciplinary penalty, the committee may decide, in view of the seriousness of the acts or omissions, to require the receiver to pay some or all of the costs incurred through having an auditor or an expert present at the audits or inspections which enabled the facts of those acts or omissions to be determined.

#### **Article L. 811-13**

Any administrator against whom criminal or disciplinary proceedings are brought may be temporarily suspended from practising by the Tribunal de Grande Instance having jurisdiction at the place where he is established.

In urgent cases, temporary suspension may be imposed even before criminal or disciplinary proceedings commence if inspections or verifications have revealed that the sums received by the court-appointed administrator in his professional capacity are at risk.

The court may end a temporary suspension at any time if so requested by the government representative or the court-appointed administrator.

The suspension ceases automatically in the event of the criminal or disciplinary proceedings lapsing. It also ceases automatically, in the case envisaged in the second paragraph, if no criminal or disciplinary proceedings are brought within one month of its imposition.

#### **Article L. 811-14**

Disciplinary action shall be time-barred after ten years have lapsed with effect from the commission of the acts or omissions, or where these are related to professional operations, with effect from the completion of the task in performance of which the facts were committed.

If the court-appointed administrator is the perpetrator of acts and omissions that led to a criminal sentence, the action shall be time-barred after two years from when the sentence became final.



#### **Article L. 811-15**

A barred, deregistered or suspended court-appointed administrator shall cease any professional act.

Any act carried out regardless of this prohibition may be declared null and void by the court sitting in chambers at the request of any interested party or the Public Prosecutor's Office. The decision is binding on all parties.

Any violation of the foregoing provisions shall incur the penalties imposed for usurpation of functions by Article 433-17 of the Penal Code.

#### **Article L. 811-16**

No person may claim court-appointed administrator status beyond the engagement entrusted to him by virtue of the second paragraph of Article L. 811-2 or the second paragraph of Article L. 811-8 unless his name appears in a register of court-appointed administrators.

Any violation of this provision shall incur the penalties imposed for usurpation of functions by Article 433-17 of the Penal Code.

The same penalties shall apply to anyone who uses a designation similar to that of "court-appointed administrator" which could create a misunderstanding in the public perception.

### **LEGISLATIVE PART**

#### ***BOOK VIII: CERTAIN REGULATED PROFESSIONS***

#### **TITLE I: COURT-APPOINTED ADMINISTRATORS, COURT-APPOINTED RECEIVERS AND EXPERTS IN CORPORATE ANALYSIS**

##### **CHAPTER II: COURT-APPOINTED RECEIVERS**

Section 1: Tasks, conditions of access and performance and incompatibilities

##### **Subsection 1: Missions**

#### **Article L. 812-1**

Court-appointed receivers are natural persons or legal entities appointed by a court decision to represent the creditors and liquidate a business as provided for in Title II of Book VI.

They are personally responsible for the tasks entrusted to them. When the proper course of the proceedings so requires, however, and when expressly authorised by the presiding judge, they may entrust some of those tasks to third parties, while retaining responsibility for such tasks.

When court-appointed receivers entrust to third parties tasks forming part

of the assignment entrusted to them by the court, they shall compensate them from the remuneration they receive pursuant to the decree provided for in Article L. 663-2.

## Subsection 2: Conditions of access to the profession

### **Article L. 812-2**

I. - Only those whose name appears in a register drawn up by a national committee created for that purpose may be appointed by a court to perform the functions of a court-appointed receiver.

II.- However, the court may, after seeking the advice of the State Prosecutor, appoint as receiver a natural person who can furnish proof of experience or qualifications particularly relevant to the nature of the case and who meets the conditions laid down in points 1° to 4° of Article L. 812-3. The court's decision shall be specifically based on the said experience or specific qualification.

The persons referred to in the previous paragraph must not, during the previous five years, for whatever reason, either directly or indirectly, have received any reward or payment from the natural person or legal entity who is the subject of court-ordered receivership or judicial liquidation proceedings, from a person who controls such a legal entity or a company controlled by it within the meaning of II and III of Article L. 233-16, or have acted as an advisor to the natural person or legal entity concerned or have been in any way dependent on it. They must, moreover, have no interest in the assignment entrusted to them and must not be a former court-appointed administrator or receiver whose name has been removed from the registers pursuant to Articles L. 811-6, L. 811-12, L. 812-4 and L. 812-9. They are required to perform the duties entrusted to them in accordance with the professional obligations imposed on duly registered court-appointed receivers.

They shall not act as court-appointed receivers on a regular basis.

Upon assuming their functions, persons appointed pursuant to the first paragraph of this Title II must give a sworn statement to the effect that they meet the conditions determined in 1° to 4° of Article L. 812-3, that they fulfil the obligations enumerated in the previous paragraph and that they are not under any prohibition so to act pursuant to the penultimate paragraph of Article L. 814-10.

III. - When the court appoints a legal entity, it designates one or more natural persons from this entity to represent it in regard to the performance of the assignment entrusted to it by the said court.

### **Article L. 812-2-1**

The register referred to in Article L. 812-2 is divided into sections

corresponding to the jurisdiction of each Cour d'Appel.

#### **Article L. 812-2-2**

The composition of the national committee referred to in Article L. 812-2 is as follows:

- a judge of the Cour de Cassation, acting as president, appointed by the presiding judge of the Cour de Cassation;
- an officer of the Cour des Comptes appointed by the president of the Cour des Comptes;
- a member of the Inspectorate of Public Finances appointed by the minister responsible for the economy and for finance;
- an appeal court judge appointed by the presiding judge of the Cour de Cassation;
- a first instance commercial court judge appointed by the first president of the Cour de Cassation;
- two professors or lecturers of law, economics or management appointed by the Minister for the Universities;
- a representative of the Conseil d'Etat, appointed by the vice-president of the Conseil d'Etat;
- two persons qualified in an economic or social discipline appointed by the Minister of Justice;
- where examining a case in application of Article L. 812-4 or sitting as a disciplinary body, the commission shall include in addition three court-appointed receivers registered on the list, elected by their peers under the conditions determined by a Conseil d'Etat decree.

In the event of a tied vote, the president has a casting vote.

The president and the members of the committee, and their deputies (equal in number and chosen from the same categories), are appointed for a three-year term of office, renewable once.

A judge from the Public Prosecutor's Office and his deputy are appointed to act as the Government's representative on the national committee and to examine, inter alia, the applications for admission.

The committee's operating costs are met by the State.

#### **Article L. 812-3**

All persons registered by the committee must:

- 1° Be French nationals or citizens of a European Community member state or a European Economic Area member state;
- 2° Not have been the perpetrator of acts or omissions giving rise to a criminal conviction for dishonourable conduct or lack of integrity;
- 3° Not have been the perpetrator of acts of the same kind giving rise to a disciplinary or administrative sanction, dismissal, striking off, removal from office, withdrawal of approval or withdrawal of authorisation;

4° Not have been declared personally bankrupt or made subject to one of the prohibition or forfeiture measures provided for in Chapter V of Title II of Book VI of the present code, Title VI of the aforementioned Act No. 85-98 of 25 January 1985 or, under the scheme which preceded that law, Title II of the aforementioned Act No. 67-563 of 13 July 1967;

5° Have passed the entrance examination for the professional development programme, completed that programme and passed the receivership aptitude test.

Only persons who hold diplomas or other qualifications determined by decree may take the entrance examination for the professional development programme.

Notwithstanding the foregoing, persons who meet the competence and professional experience conditions laid down in a Conseil d'Etat decree are exempted from the entrance examination for the professional development programme. The committee may, moreover, exempt such persons, as provided for in a Conseil d'Etat decree, from part of the professional development programme and from all or part of the receivership aptitude examination.

Registered legal entities may only exercise receivership functions through a member who is himself registered.

Persons who can show that they have acquired a qualification which enables them to act as a court-appointed receiver in a European Community member state other than France or a European Economic Area member state are exempted from the diploma, training course and professional examination conditions laid down in the sixth and seventh paragraphs, on the condition that they have taken an examination to verify their knowledge as provided for in a Conseil d'Etat decree. A list of the candidates eligible to take the examination is drawn up by the committee.

### Subsection 3: Conditions of performance

#### **Article L. 812-4**

The national committee, on its own initiative or at the request of the Minister of Justice, the president of the National Council of Court-Appointed Administrators and Receivers, the government representative or the State Prosecutor in whose jurisdiction the court-appointed receiver is established, may, through a reasoned decision and after instructing the parties concerned to present their observations, delete from the list referred to in Article L. 812-2 court-appointed receivers who, on account of their physical or mental state, are unable to perform their functions in the normal way, or court-appointed receivers who have demonstrated their inability to properly carry out their functions.

Deregistration shall not prevent disciplinary proceedings from being brought against the court-appointed receiver if the offences were

committed in the performance of his duties.

#### **Article L. 812-5**

Court-appointed receivers may create civil-law professional partnerships governed by Act No. 66-879 of 29 November 1966 relating to non-commercial professional partnerships in order to practise their profession collectively. They may also practise their profession through independent professional firms as provided for in Act No. 90-1258 of 31 December 1990 relating to independent professional practices having a specific legislative or regulatory status or a protected designation. They may also be members of an economic interest group or a European economic interest group or partners in an undisclosed partnership governed by Title II of Act No. 90-1258 of 31 December 1990 relating to professional practices having a specific legislative or regulatory status or a protected designation.

#### **Article L. 812-6**

Cases being dealt with by a court-appointed receiver who relinquishes his functions, whatever the reason, are distributed among the other receivers by the court within three months after he ceases his functions.

In the interest of the proper administration of justice, however, the court may authorise the former receiver to continue to deal with one or more pending cases unless he was forced to abandon his functions on account of deregistration. Such a receiver remains bound by the provisions of Articles L. 812-8 to L. 812-10, L. 814-1 and L. 814-5.

#### **Article L. 812-7**

Registered persons are free to practise their profession throughout France.

#### **Subsection 4: Incompatibilities**

#### **Article L. 812-8**

Registered court-appointed receiver status is incompatible with the practising of any other profession.

It is, moreover, incompatible with:

1° Any business of a commercial nature, whether conducted directly or through an intermediary.

2° The status of partner in a société en nom collectif<sup>122</sup>, of a limited partner in a société en commandite simple or shareholder in a société en commandite par actions, of manager of société à responsabilité limitée, of president of the board of directors, of member of the executive board, of

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<sup>122</sup> For all the company types in this paragraph, see Book II, Title II of this Code.

general manager or assistant general manager of a société anonyme, of president or chief executive of a société par actions simplifiée, of member of the supervisory board or board of directors of a commercial company, and of manager of a partnership for non-commercial purposes<sup>123</sup>, unless the corporate mission of those companies is the practising of the profession of court-appointed receiver or the acquisition of premises for that purpose. A receiver may also be the managing partner of a civil partnership having as its sole objective the management of family interests.

Registered court-appointed receiver status does not preclude engagement in consultancy activities in matters pertaining to qualification of the person concerned or performance of the duties of ad hoc receiver or mediator provided for in Articles L. 611-3 and L. 611-6 of the present code and Article L. 351-4 of the Rural and Maritime Fisheries Code, plan performance supervisor or non-court administrator, either of a voluntary arrangement with creditors of a natural or legal person, or as legal expert and as amicable or court-appointed trustee. Such activities and such missions, with the exception of ad hoc receiver, mediator and plan performance supervisor, shall only be conducted on a subsidiary basis. The same person may not carry out the functions of mediator then court-appointed receiver in succession before the expiration of a period of one year for the same business.

With the exception of the fourth paragraph, the conditions of the present Article are applicable to listed legal entities.

## *Section 2: Monitoring, inspection and discipline*

### **Article L. 812-9**

The provisions relating to the supervision, inspection and discipline of court-appointed receivers set forth in Articles L. 811-11 to L. 811-15 apply to court-appointed receivers.

The national registration committee sits as a disciplinary committee. The government representative performs the duties of the Public Prosecutor's Office for this purpose.

### **Article L. 812-10**

No person may claim court-appointed receiver status beyond the assignment entrusted to him by virtue of the first paragraph of II of Article L. 812-2 and the second paragraph of Article L. 812-6 unless his name appears in a register of court-appointed receivers.

Any violation of this provision shall incur the penalties imposed for the offence of usurpation of functions by Article 433-17 of the Penal Code.

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<sup>123</sup> A non-commercial partnership. See Code Civil, Articles 1845 to 1870-1.

The same penalties shall apply to anyone who uses a designation similar to that of "court-appointed receiver" which could create a misunderstanding in the public perception.

## **LEGISLATIVE PART**

### ***BOOK VIII: CERTAIN REGULATED PROFESSIONS***

#### **TITLE I: COURT-APPOINTED ADMINISTRATORS, COURT-APPOINTED RECEIVERS AND EXPERTS IN CORPORATE ANALYSIS**

##### **CHAPTER III: EXPERTS IN CORPORATE ANALYSIS**

###### **Article L. 813-1**

Experts in corporate analysis are appointed by the courts to draw up a report on the economic and financial situation of a company in the context of conciliation proceedings or safeguarding proceedings or judicial restructuring<sup>124</sup> proceedings, or to assist the drawing up of such a report pertaining to safeguarding proceedings or judicial restructuring proceedings.

Such experts must not, during the previous five years, for whatever reason, either directly or indirectly, have received any reward or payment from the natural person or legal entity against whom an administration, assistance or supervisory measure is sought or from a person who controls that legal entity, nor must they have been in any way dependent on it. They must, moreover, have no interest in the assignment entrusted to them.

Upon assuming their functions, the experts thus designated must give a sworn statement to the effect that they will fulfil the obligations enumerated in the previous paragraph.

Such experts may be chosen from relevant specialist experts listed in the registers compiled for the information of judges pursuant to article 2 of Act No. 71-498 of 29 June 1971 concerning court-appointed experts.

Each Cour d'Appel shall register experts in this specialism pursuant to the provisions of Article 2 of Act No. 71-498 of 29 June 1971 relating to court-appointed experts.

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<sup>124</sup> "Redressement judiciaire", an insolvency process intended to rescue, see Book VI of this Code, from Article L. 631-1.

# LEGISLATIVE PART

## BOOK VIII: CERTAIN REGULATED PROFESSIONS

### TITLE I: COURT-APPOINTED ADMINISTRATORS, COURT-APPOINTED RECEIVERS AND EXPERTS IN CORPORATE ANALYSIS

#### CHAPTER IV: COMMON PROVISIONS

##### *Section 1: Appeals against decisions of registration committees and representation before the public authorities*

##### Subsection 1: Appeals against decisions of registration committees

#### **Article L. 814-1**

Appeals against the decisions made in regard to registration, withdrawal and discipline by the national committees are brought before the Paris Cour d'Appel.

Such appeals have suspensive effect.

##### Subsection 2: Representation of the professions before the public authorities

#### **Article L. 814-2**

The professions of court-appointed administrator and court-appointed receiver are represented in dealings with the public authorities by a National Council of Court-Appointed Administrators and Court-Appointed Receivers, a public interest institution with legal personality which is responsible for protecting the collective interests of those professions. The National Council can exercise all the rights before the courts reserved to a civil party relating to the facts that directly or indirectly affect the collective interest of the two professions. Furthermore, it is incumbent on the National Council to ensure that the court receivers comply with their obligations, organise their professional training, make sure that they comply with their obligation to maintain and improve their knowledge and supervise their studies.

At the latest on 1 January 2014, the national council shall set up, under its responsibility, an electronic portal offering secure electronic communication in connection with the activities of the two professions. This portal will allow, under the conditions set by a Conseil d'Etat decree, taken after obtaining the opinion of the National Commission on Data Protection and Liberties, sending and receiving records of proceedings by the court-



appointed administrators and receivers and the persons appointed in application of paragraph two of Article L. 811-2 or the first paragraph of II of Article L. 812-2.

The national council shall report on the accomplishment of these tasks in a report that it shall address every year to the Minister of Justice.

The electoral and operational formalities of the national council, which has two electoral colleges of equal numbers representing the court-appointed administrators and the court-appointed receivers respectively, are determined in a Conseil d'Etat decree.

*Section 2: Guarantee of the representation of businesses, professional civil liability and remuneration.*

Subsection 1: Guarantee of the representation of businesses and professional civil liability.

**Article L. 814-3**

A fund having legal personality and managed by its contributors is established to guarantee repayment of the funds, bills or securities received or managed by each registered court-appointed administrator and each registered court-appointed receiver relative to the transactions they carry out as a result of their remit. Two public prosecutors are designated to perform the government representative's functions in relation to the fund, one as the incumbent and the other as his deputy.

Membership of this fund is compulsory for each registered court-appointed administrator and each registered court-appointed receiver.

The fund's resources consist of the proceeds of a special annual subscription paid by each registered court-appointed administrator and each registered court-appointed receiver.

The subscriptions paid by the court-appointed administrators and the court-appointed receivers are applied to guaranteeing registered court-appointed administrators and court-appointed receivers only.

In the event of the fund's resources proving insufficient to meet its obligations, it shall issue a supplementary call for funds to the registered professionals.

The fund's guarantee applies without the benefit of discussion provided for in Article 2298 of the Civil Code being invoked against the creditors and upon simple proof of the due and payable nature of the debt and non-representation of the funds by the registered court-appointed administrator or court-appointed receiver.

The fund is required to take out insurance against the risks it incurs through application of the present code.

Appeals against the fund's decisions are brought before the Tribunal de Grande Instance of Paris.

#### **Article L. 814-4**

Each registered court-appointed administrator and each registered court-appointed receiver must be able to show that he has taken out insurance through the guarantee fund. This insurance covers the financial consequences of the civil liability incurred by court-appointed administrators and court-appointed receivers through acts of negligence or misconduct committed by them or their employees in the performance of their duties.

#### **Article L. 814-5**

An unregistered court-appointed administrator, designated as provided for in the second paragraph of Article L. 811-2, and an unregistered court-appointed receiver, designated as provided for in the first paragraph of II of Article L. 812-2, must prove, upon accepting his assignment, that he has a guarantee covering reimbursement of the funds, bills or securities, and also, when necessary, an insurance contract underwritten by the guarantee fund. This insurance covers the financial consequences of the civil liability incurred by that court-appointed administrator or court-appointed receiver through acts of negligence or misconduct committed by him or his employees in the performance of their duties.

#### *Section 3: Sundry provisions*

#### **Article L. 814-8**

When a registered court-appointed administrator or court-appointed receiver instructed by a court to carry out the tasks referred to in Book VI in regard to a company has already acted as a consultant to that company or carried out the tasks referred to in the penultimate paragraphs of Articles L. 811-10 and L. 812-8 therein, he shall inform the court of the nature and scale of such involvement during the previous five years.

Failure to comply with the provisions of the previous paragraph shall result in disciplinary proceedings.

#### **Article L. 814-9**

Registered court-appointed administrators and court-appointed receivers are required to undergo continuous training which enables them to maintain and improve their knowledge. This training is organised by the National Council referred to in Article L. 814-2.

#### **Article L. 814-10**

Unregistered court-appointed administrators and court-appointed receivers instructed as provided for in the second paragraph of Article L.

811-2 or the first paragraph of II of Article L. 812-2 are placed under the supervision of the Public Prosecutor's Office and their professional activities are subject to inspections by the public authority during which they are required to provide all relevant information and documents without being able to object on the grounds of professional secrecy.

The auditors of unregistered court-appointed administrators or receivers undergoing an inspection are required, without being able to object on the grounds of professional secrecy, to comply with the inspectors' requests for any information gathered or document drawn up in the performance of their duties.

In the event of such court-appointed professionals being accused of an act constituting an offence, violation or infraction referred to in Article L. 811-12 A, the State Prosecutor may ask the Tribunal de Grande Instance to ban them from acting as court-appointed administrators or receivers.

Prohibition measures imposed pursuant to the previous paragraph are notified to the Minister of Justice for onward transmission to the chief public prosecutors.

#### **Article L. 814-11**

Any sum held by a court-appointed administrator or a court-appointed receiver by virtue of an amicable remit is paid in to a deposit account with the Caisse des Dépôts et Consignations upon receipt, barring any express decision of the principal to designate another financial institution. In the event of a delay, the court-appointed administrator or court-appointed receiver shall pay interest at the legal rate plus five points on any sum he has failed to deposit.

#### **Article L. 814-12**

Any court-appointed administrator or receiver registered in the lists who, in the exercise of his functions, acquires knowledge of a crime or an offence shall be required to immediately notify the State Prosecutor and transmit to the judge all information, minutes and deeds related thereto.

#### **Article L. 814-13**

A decree shall determine the list of the procedural deeds sent or received by the court-appointed administrators, the court-appointed receivers and the people appointed in application of the second paragraph of Article L. 811-2 or the first paragraph of II of Article L. 812-2 that may be communicated electronically.

The court-appointed administrators and the court-appointed receivers shall use electronic media to communicate if the third-party addressees or senders of the deeds have explicitly requested or agreed to the use of such media. To this end, they shall use the portal placed at their disposal by the

National Council in application of Article L. 814-2. A Conseil d'Etat decree, taken after opinion from the National Commission on Data Protection and Liberties, shall set the terms for applying this paragraph.

## **LEGISLATIVE PART**

### ***BOOK VIII: CERTAIN REGULATED PROFESSIONS***

#### **TITLE II: STATUTORY AUDITORS<sup>125</sup>**

##### **PRELIMINARY CHAPTER: GENERAL PROVISIONS**

###### **Article L. 820-1**

Notwithstanding any provision to the contrary, the provisions of this Title shall apply to statutory auditors appointed among all the persons and entities regardless of the nature of the certification specified in their duties. These provisions also apply to these persons and entities, subject to their specific rules, regardless of their legal status.

For the application of this Title, the term: "entity" refers to the funds mentioned in Articles L. 214-8, L. 214-43 of the Monetary and Financial Code.

###### **Article L. 820-2**

No person may claim the status of a statutory auditor if they do not meet the conditions set out in the provisions of this title.

###### **Article L. 820-3**

Prior to his appointment, the auditor shall inform in writing the entity whose accounts he proposes to audit if he is a member of a national or international network which is not solely devoted to the statutory auditing of accounts and whose members have a common financial interest. If applicable, the auditor shall also inform the entity of the total amount of fees received by that network for services that are not directly related to the auditing engagement which were provided by that network to an entity controlled by or which controls, within the meaning of I and II of Article L. 233-3, the entity whose accounts the said auditor is proposing to audit. This information shall be included in the documents provided to shareholders pursuant to Article L. 225-108.

After annual updating by the auditor, that information must be made

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<sup>125</sup> "Commissaires aux comptes" a specialist subset of auditors generally, often simply translated as "auditors" in this Code.

available to the partners and shareholders and, in the case of associations, to the members and donors, at the registered office of the entity whose accounts he audits.

The information regarding the amount of the fees paid to each auditor must be available to the partners and shareholders and, in the case of associations, to the members and donors, at the controlled entity's registered office.

#### **Article L. 820-3-1**

The decisions of the body mentioned in the first paragraph of Article L. 823-1 taken in the absence of duly-appointed statutory auditors or on the basis of the report of the appointed auditors or who have remained in function contrary to the provisions of the present title or to other provisions applicable to the person or the entity in question shall be void.

The application for a declaration of annulment of these shall be extinguished if these deliberations are expressly confirmed by the competent body on the report of the duly-appointed statutory auditors.

#### **Article L. 820-4**

Notwithstanding any provision to the contrary:

1° A penalty of two years' imprisonment and a fine of 30,000 Euros will be imposed on any executive of a legal entity required to have an auditor who fails to organise such an appointment. The same penalty and fine shall apply to any executive or legal entity who fails to invite their statutory auditor to any shareholders' meeting;

2° A penalty of five years' imprisonment and a fine of 75,000 Euros will be imposed on the executives of a legal entity or any person in the service of a legal entity required to have an auditor who obstructs the auditing or verification of the accounts by the auditors or other experts appointed pursuant to Articles L. 223-37 and L. 225-231, or who refuses to provide them, there and then, with all the items relevant to their engagement and, in particular, any contracts, books, accounting documents and minute books.

#### **Article L. 820-5**

A penalty of one year imprisonment and a fine of 15,000 Euros will be imposed on any person who:

1° Uses the designation "auditor", or any similar designation which might be confused with it, who is not duly registered as prescribed in paragraph I of Article L. 822-1, and has not taken an oath in the manner stipulated in Article L. 822-10;

2° Illegally practises as an auditor in breach of the provisions of paragraph I of Article L. 822-1 and Article L. 822-10 or those of any

temporary ban or suspension.

Articles 226-13 and 226-14 of the Penal Code, relating to the professional duty of confidentiality, are applicable to auditors.

#### **Article L. 820-6**

A penalty of six months' imprisonment and a fine of 7,500 Euros will be imposed on any person who, either on his own account, or as a partner in an auditing firm, accepts, performs or retains the functions of an auditor notwithstanding legal incompatibilities.

#### **Article L. 820-7**

A penalty of five years' imprisonment and a fine of 75,000 Euros will be imposed on any person engaged in the duties of a statutory auditor, who gives or confirms false information regarding a legal entity's position or who fails to disclose any criminal facts he is aware of to the State Prosecutor.

## **LEGISLATIVE PART**

### ***BOOK VIII: CERTAIN REGULATED PROFESSIONS***

#### **TITLE II: STATUTORY AUDITORS<sup>8</sup>**

##### **CHAPTER I: ORGANISATION AND MONITORING OF THE PROFESSION**

#### **Article L. 821-1**

An independent public authority endowed with a legal personality, known as the High Council for the Audit Profession has been created by the Minister of Justice, with the following mission:

- to provide supervision for the profession with the support of the National Company of Auditors instituted by Article L. 821-6;
- to ensure respect for professional ethics and the independence of auditors.

Consistent with this mission, the High Council for the Audit Profession performs the following tasks, among others:

- to identify and promote good professional practices;
- to give an opinion on the rules of professional practice drafted by the National Company of Auditors prior to their approval via an order of the Minister of Justice;
- to effect registration of auditors in its capacity as an appeals authority for decisions of the regional commissions referred to in Article L. 822-2;
- to deal with disciplinary issues relating to auditors in its capacity as an appeals authority for decisions of the regional chambers referred to in

Article L. 822-6;

- to define the framework and the guidelines for the periodic controls specified in Article L. 821-7 (b) that it implements directly, either by delegating this exercise practice to the National Company of Auditors and to the regional companies, or which are performed by the National Company and the regional companies, according to the terms set out in Article L. 821-9;

- to supervise the controls set out in Article L. 821-7 (b) and (c) and issue recommendations in the context of their monitoring;

- to supervise the proper performance of the controls set out in Article L. 821-7 (b) and where they are performed at its request, in compliance with point (c) of the same article;

- establish relations with the authorities of other States exercising similar functions.

The duties defined in the tenth and eleventh paragraphs of this article are exercised under the conditions set by a Conseil d'Etat decree guaranteeing the independence of the functions of auditing and of discipline.

#### **Article L. 821-2**

The opinion referred to in paragraph six of Article L. 821-1 shall be received by the Minister of Justice after consultation with the Financial Markets Authority and the Prudential Control Authority whenever it pertains to their specific areas of responsibility.

#### **Article L. 821-3**

The composition of the High Council for the Audit Profession is as follows:

1° Three judges, one of whom is or was an official of the Cour de Cassation, as president, a second judicial officer, and a senior official at the Cour des Comptes;

2° The president of the Financial Markets Authority or his representative, the chief executive officer of the Treasury or his or her representative and a university professor specialised in law, economics or finance;

3° Three persons qualified in economics and finance; two of whom are chosen for their expertise in the fields of public offerings of securities and companies whose financial securities are traded on a regulated market; the third is chosen for his expertise in the field of small and medium-sized enterprises, commercial private-law corporations or associations;

4° Three auditors, two of whom have experience in auditing the accounts of persons or entities which launch public offerings or appeal for public donations.

The president shall exercise his functions on a full-time basis. In the event of temporary incapacity, he shall be replaced by the second judicial

officer.

The decisions are taken on a majority of the votes cast. In the event of a tied vote, the president has a casting vote.

The president and the members of the High Council for the Audit Profession are appointed by decree for renewable periods of six years. The composition of the High Council for the Audit Profession is renewed by half every three years.

The High Council for the Audit Profession forms specialised advisory committees from among its members to prepare its decisions and recommendations. Those committees may co-opt experts if necessary.

#### **Article L. 821-3-1**

The staff of the High Council for the Audit Profession comprises public servants seconded or transferred under the conditions set by Conseil d'Etat decree, public for contractual agents and private law employees.

Such individuals are subject to a professional duty of confidentiality in the exercise of their missions.

The professional duty of confidentiality cannot be enforced against the High Council and its services in the performance of their duties, except by lawyers and other judicial professions.

#### **Article L. 821-4**

The Minister of Justice appoints a government representative to the High Council for the Audit Profession. He sits on the Council in an advisory capacity. The government representative does not participate in deliberations relating to disciplinary matters. In regard to other matters, he may request a second deliberation under terms and conditions determined in a Conseil d'Etat decree.

#### **Article L. 821-5**

I. - The High Council for the Audit Profession is financially independent. It defines its own budget based on a proposal from the secretary general. The High Council is not subject to the financial control exercised within State administrations.

II. - The High Council receives revenues from contributions and levies mentioned in III and IV, and in Article L. 821-6-1.

III. - The individuals registered on the list in Article L. 822-1 are subject to an annual contribution set at 10 Euros.

IV. - A fixed fee is set for each accounts certification report signed by the individuals listed in the Article L. 822-1 register, which shall be fixed at an amount of:

1,000 Euros for certification reports signed in the context of engagements carried out with persons or entities admitted to trading on a regulated



market;

500 Euros for certification reports signed in the context of engagements carried out with persons or entities whose financial securities are offered to the public on a multilateral trading platform other than a regulated market;

20 Euros for the other certification reports.

V. - The levies and contributions mentioned in III and IV are collected by the National Company of Auditors in the same forms as the contribution mentioned in Article L. 821-6 and repaid to the High Council before 31 March of each year. The implementing provisions of this paragraph V are determined in a Conseil d'Etat decree.

VI. - The real property assets belonging to the High Council are subject to the provisions of the General Code Regulating Ownership by Public Bodies and applicable to the State's public institutions.

VII. - A Conseil d'Etat decree sets the accounting regime of the High Council, as well as the regime for financial indemnity of its members, its president, its secretary general and its deputy secretary general.

#### **Article L. 821-5-1**

For the purposes mentioned in the last paragraph of Article L. 821-1, the High Council for the Audit Profession must communicate the information or documents that it holds or that it collects to the authorities of the Member States of the European Community exercising similar functions, at their request,.

It may ask the Minister of Justice to arrange an inspection, in accordance with the provisions of Article L. 821-8, or to arrange with the supervisory bodies mentioned in Article L. 821-9 the audit operations that it determines, in order to respond to the requests for assistance from the authorities mentioned in the first paragraph.

Where one of these authorities so request, the Minister of Justice may authorise the agents of this authority to be present at the audit operations mentioned in the second paragraph.

A Conseil d'Etat decree shall determine the conditions under which this article shall apply.

#### **Article L. 821-5-2**

For the purposes mentioned in the penultimate paragraph of Article L. 821-1, the High Council for the Audit Profession may disclose information or documents that it holds or collects to the authorities of non-member EU States exercising similar functions to its own subject to reciprocity and on condition that the authority concerned is subject to professional duties of confidentiality with the same guarantees as in France.

It may, subject to the same exceptions and conditions, ask the Minister of Justice to arrange an inspection, in accordance with the provisions of

Article L. 821-8, or arrange for the audit operations that it determines by the controllers mentioned in Article L. 821-9, in order to respond to the requests for assistance from the authorities mentioned in the first paragraph.

A Conseil d'Etat decree determines the conditions for applying this article, especially the procedures for the cooperation of the High Council with these authorities and the conditions under which these procedures are specified by the agreements entered into by the High Council with these authorities.

#### **Article L. 821-5-3**

For the purposes mentioned in the two previous paragraphs, the High Council is exempted from the application of the provisions of Law No. 68-678 of 26 July 1968 regarding the disclosure of economic, commercial, industrial, financial or technical documents and information to foreign natural persons or legal entities.

#### **Article L. 821-6**

A National Company of Auditors, a public corporation with legal personality instituted under the aegis of the Minister of Justice and directed to the public benefit, is tasked with representing the auditing profession in its dealings with the public authorities.

It contributes to the promotion of good practice in the profession, the supervision thereof and the protection of the honour and independence of its members.

A regional company of auditors with legal personality shall be created under the jurisdiction of the Cour d'Appel in each region.

However, the Minister of Justice may carry out mergers of the interested regional companies on the proposal of the National Company and after consultation by the latter of.

The resources of the National Company and the regional companies are provided mainly through an annual subscription collected from the auditors.

#### **Article L. 821-6-1**

A contribution to the costs of the National Company of Auditors shall be created at a rate, determined by decree, which shall be higher than or equal to 0.65% and less than or equal to 1% of the total amount of the fees invoiced in the previous year by its members in the exercise of their accounts auditing functions for persons or entities whose financial securities are admitted to trading on a regulated market or who make an appeal to public donations, social security bodes mentioned in L. 114-8 of the Social Security Code, credit institutions, businesses governed by the Insurance Code, provident institutions governed by title III of Book IX of the

Social Security Code, mutual insurance companies or unions of mutual insurance companies governed by Book II of the Code on Mutuality.

This contribution falls due, and is ordered and recovered according to the procedure set out for receipts by the State's administrative institutions.

The contribution is paid to the High Council, on the basis of 50% of the amount before 30 April of each year, and the balance due on 30 September of the same year.

The present Article's implementing provisions are determined in a Conseil d'Etat decree.

#### **Article L. 821-7**

While practising their profession, auditors are subject to:

- a) The inspections referred to in Article L. 821-8;
- b) Periodic checks organised on the basis of parameters defined by the High Council;
- c) Occasional checks decided by the National Company or the Regional Companies or carried out at the request of the High Council.

The persons participating in the checks and inspections mentioned in this article are bound by a professional duty of confidentiality.

#### **Article L. 821-8**

The Minister of Justice may launch immediate inspections and request the assistance of the Financial Markets Authority, the National Company of Auditors, and the Prudential Control Authority.

The Financial Markets Authority may launch any inspection of an auditor of a person whose financial securities are admitted to trading on a regulated market or offered to the public on a multilateral trading platform that is subject to the legislative and regulatory provisions aimed at protecting investors against insider trading, price fixing and the circulation of false information or a collective investment body and, to this end, to request the assistance of the National Company of Auditors and if necessary, the persons and authorities listed in 2° of Article L. 621-9-2 of the Monetary and Financial Code. Neither the president of the Financial Markets Authority nor his representative shall sit on the High Council while any disciplinary proceedings resulting from such an inspection are in progress.

#### **Article L. 821-9**

The checks specified in b of Article L. 821-7 are carried out, under the conditions and according to the procedures defined by the High Council for the Audit Profession, by the inspectors who do not exercise auditing functions or by the National Company of Auditors or the regional companies. The High Council inspectors and their director are employed

under the conditions set out in Article L. 821-3-1.

Where these checking operations are related to the auditors appointed to the persons whose financial securities are admitted to trading on a regulated market or offered to the public on a multilateral trading system that is subject to the legislative or regulatory provisions aimed at protecting investors against insider trading, price fixing and the circulation of false information or collective investment bodies, they shall be carried out with the assistance of the Financial Markets Authority.

The checks specified in c of Article L. 821-7 shall be made by the National Company or the regional companies, at their initiative or at the request of the High Council.

#### **Article L. 821-10**

When particularly serious facts come to light which would justify criminal or disciplinary penalties, the Minister of Justice may pronounce the temporary suspension of an auditor (natural person), from the inception of proceedings, when the urgent nature and the public interest warrant it, and where the person concerned has had an opportunity to present his observations. The president of the Financial Markets Authority and the president of the National Company of Auditors may refer the matter to him.

The Minister of Justice may end the temporary suspension at his own discretion at any time at the request of the person concerned or of the authorities referred to in the first paragraph.

The temporary suspension ceases automatically and immediately upon closure of the criminal and disciplinary procedures.

#### **Article L. 821-11**

The implementing provisions for Articles L. 821-3 and L. 821-6 to L. 821-10 are determined by a Conseil d'Etat decree.

#### **Article L. 821-12**

Auditors are requested to provide all the information and documents requested of them when inspections and checks are carried out, without being able to invoke their professional duty of confidentiality.

#### **Article L. 821-12-1**

Where they notice facts likely to be linked to money laundering and terrorism financing, the persons carrying out the checks and inspections specified in Articles L. 821-7 and L. 821-8 shall inform the government service mentioned in Article L. 561-23 of the Monetary and Financial Code.

#### **Article L. 821-13**

The auditors must perform their engagement in accordance with the international audit standards adopted by the European Commission under the conditions defined by directive 2006/43/EC of 17 May 2006.

In the absence of international audit standards adopted by the Commission, they shall comply with the professional practice standards prepared by the National Company of Auditors and approved by the Minister of Justice, after seeking the opinion of the High Council for the Audit Profession.

Where an international audit standard has been adopted by the European Commission under the conditions defined in the previous paragraph, the Minister of Justice, may as of right, after seeking the opinion of the National Company of Auditors and the High Council for the Audit Profession, or at the proposal of the National Company and after seeking the opinion of the High Council, impose due diligence or additional procedures or, exceptionally, discard certain elements of the standard in order to take account of the specific features of French law. The complementary procedures and due diligence shall be disclosed to the European Commission and to the other Member States prior to the publication. Where it discards certain elements of an international standard, the Minister of Justice shall inform the European Commission and the other Member States, by specifying the reasons for its decision, at least six months prior to the publication of the instrument making such decision or, where these specific features already exist at the time of the adoption of the international standard by the European Commission, at least three months from the publication in the Official Journal of the European Communities.

# LEGISLATIVE PART

## BOOK VIII: CERTAIN REGULATED PROFESSIONS

### TITLE II: STATUTORY AUDITORS<sup>8</sup>

#### CHAPTER II: THE STATUS OF AUDITORS

##### *Section 1: Registration and discipline*

##### Subsection 1: Registration

##### **Article L. 822-1**

No person shall practice as an auditor without prior registration in a register established for that purpose.

##### **Article L. 822-1-1**

No person shall register on the list of statutory auditors if they do not meet the conditions below:

1° He or she must be French, a national of a European Community member State, of a State party to the European Economic Area or another foreign State where that State allows French nationals to exercise statutory audit remits;

2° He or she must not have been the perpetrator of acts or omissions giving rise to a criminal conviction for dishonourable conduct or lack of integrity;

3° He or she must not have been the perpetrator of acts or omissions giving rise to his or her striking off the register for disciplinary reasons.

4° He or she must not have been declared personally bankrupt or made subject to one of the prohibition or forfeiture measures provided for in Book VI;

5° He or she must have passed a professional vocational programme, considered satisfactory, for a period set by regulation, with a person certified by a member State of the European Community to practise statutory auditing;

6° He or she must have passed the competence tests for the statutory auditors' competence certificate or be a holder of a public accountancy diploma.

The conditions for completing the vocational training specified in 5°, as well as the diplomas and training conditions required for sitting tests of competence for the statutory auditors' certificate mentioned in 6° shall be determined by a Conseil d'Etat decree.

### **Article L. 822-1-2**

As an exception to the provisions of Article L. 822-1-1, the persons who meet the conditions of skill and professional experience defined by Conseil d'Etat decree may be fully or partly exempted from the vocational training specified in 5° of the same article, based on a decision of the Minister of Justice.

Under the conditions determined by Conseil d'Etat decree, persons who can show that they have acquired in a European Community member state or in a State that allows French nationals to work as statutory auditors, sufficient qualification to work as statutory auditors, are exempted from the diploma, training course and professional examination conditions laid down in the fifth and sixth paragraphs of Article L. 822-1-1, provided that they take a competence test.

### **Article L. 822-1-3**

Except where they intervene with persons or entities which exclusively issue debt securities admitted to trading on a regulated market in France whose unit nominal value is at least equal to 50,000 Euros or for debt securities denominated in a currency other than the Euro, whose unit nominal value is equivalent to 50,000 Euros, at least on the issue date, the statutory auditors and certified statutory auditing firms in a non-member European Community State or in a non-party State to the European Economic Area agreement which certify the annual accounts or the consolidated accounts of persons or entities which do not have their registered office in a European Community member State or in another State party to the agreement on the European Economic Area but issuing securities admitted to trading on a regulated market in France shall register on the list specified in Article L. 822-1.

Subject to reciprocity, statutory auditors and statutory auditing firms certified in a State which is not a member of the European Community or European Economic Area who/benefit from an exemption delivered by order issued by the Minister of Justice may be exempted from the registration obligation.

The exemption from registration may be issued where:

a) The statutory auditors and statutory auditing firms certified by the competent authorities of a State for which the European Commission, on the basis of Article 46 of the directive 2006/43/EC of the European Parliament and the Council of 17 May 2006, has taken a decision through which it acknowledges that the equivalence requirement raised by this article has been met with respect to the public supervision system, quality assurance, inspection and penalties.

b) In the absence of a European Commission decision, the public supervision system, quality assurance, inspection and penalties of the

State in which the statutory auditors and statutory auditing firms are certified, must meet the requirements equivalent to those required by Articles L. 820-1 and after his system has been previously assessed by another member State and recognised as equivalent.

The statutory auditors and statutory auditing firms listed in the register specified in Article L. 822-1 in application of this article are subject to the provisions of chapter I and of section 1 of Chapter II of this Book, with respect to the engagements mentioned in the first paragraph.

The registration or exemption from registration are pre-requisites for the validity in France of certification reports signed by these professionals, without granting their holder the right to conduct statutory auditing engagements for persons or entities with registered offices located in France.

The present Article's implementing provisions are determined in a Conseil d'Etat decree.

#### **Article L. 822-2**

A regional registration commission is established at the seat of each Cour d'Appel.

The commission shall compile and revise the register mentioned in Article L. 822-1.

Each Regional Registration Commission is composed of:

- 1° A judge acting as president;
- 2° A senior official of the Chambre Régionale des Comptes;
- 3° A university professor specialising in law, economics or finance;
- 4° Two persons qualified in law, economics or finance;
- 5° A representative of the Minister for the Economy;
- 6° A member of the regional company of auditors.

The president and members of the regional registration commission, and their deputies, shall be appointed by a decree of the Minister of Justice for a renewable period of three years.

The decisions must be taken on a majority of the votes cast. In the event of a tied vote, the president has a casting vote.

Appeals against the decisions of the Regional Registration Commissions shall be brought before the High Council for the Audit Profession.

#### **Article L. 822-3**

Every auditor must go before the Court of Appeal within the jurisdiction of which he practices to swear to fulfil the duties of his profession with honour, probity and independence, and to respect, and impose respect for, the law.

#### **Article L. 822-4**

Any person registered pursuant to Article L. 822-1 who has not practised



as an auditor for three years is required to take a special continuing professional education training course before accepting an auditing mission.

#### **Article L. 822-5**

The implementing provisions of the present subsection are determined in a Conseil d'Etat decree.

#### **Subsection 2: Discipline**

#### **Article L. 822-6**

The Regional Registration Commission, sitting as a Regional Disciplinary Chamber, is competent to examine a disciplinary action brought against an auditor who is a member of a regional company, regardless of the place in which the misconduct with which he is charged is alleged to have taken place.

#### **Article L. 822-7**

Cases may be referred to the Regional Disciplinary Chamber by the Minister of Justice, the State Prosecutor, the president of the National Company of Auditors or the president of the regional company.

In addition to the persons determined in a Conseil d'Etat decree, the president of the Financial Markets Authority may refer cases pertaining to disciplinary action to the Government Prosecutor. When he has exercised that right, he is not entitled to sit on the disciplinary bench of the High Council hearing the same proceedings.

The decisions of the Regional Disciplinary Chamber are appealable before the High Council for the Audit Profession at the initiative of the authorities referred to in the present Article and the professional concerned.

A judge, appointed by the Minister of Justice attached to the local or central Public Prosecutors' Office, exercises the Public Prosecutor's functions for each regional chamber and the High Council in regard to disciplinary matters.

The present Article's implementing provisions are determined in a Conseil d'Etat decree.

#### **Article L. 822-8**

The disciplinary penalties are:

- 1° A warning;
- 2° A reprimand;
- 3° A temporary ban of up to five years;
- 4° Striking off the register.

Honorary titles may also be withdrawn.

A warning, a reprimand or a temporary ban may be accompanied by the additional penalty of disqualification from membership of professional bodies for a maximum of ten years.

A temporary ban may be pronounced with suspensive effect. The suspension of the penalty does not extend to any additional penalty imposed pursuant to the previous paragraph. If the auditor commits a breach or an offence which results in the application of a further disciplinary penalty within five years of the first penalty being imposed, this shall, barring a reasoned decision to the contrary, give rise to execution of the first penalty without any prospect of the second running concurrently.

When they impose a disciplinary penalty, the High Council and the regional chambers may decide to make the auditor liable for payment of some or all of the costs incurred in carrying out the inspections or verifications which enabled the penalised misconduct to be established.

## *Section 2: The Ethics and Independence of Auditors*

### **Article L. 822-9**

The auditing profession is practised by natural persons or by firms created by such persons in whatever form.

Three quarters of the voting rights of auditing firms must be held by auditors or auditing firms registered on the list specified in Article L. 822-1 or professionals duly certified in another European Community member State for the practice of statutory auditing. Where an auditing firm has an equity interest in another auditing firm, shareholders or partners who are not auditors cannot hold more than one quarter of the total voting rights of the two firms.

The duties of manager, president of the board of directors or executive board, president of the supervisory board and chief executive officer must be performed by the statutory auditors registered on the list specified in Article L. 822-1 or duly certified in another European Community member State for the practice of statutory auditing. At least three quarters of the members of management, governance, executive or supervisory bodies must be auditors or auditing firms registered on the list specified in Article L. 822-1 or professionals duly certified in another European Community member State for the practice of statutory auditing. The permanent representatives of auditing firms organised as partnerships or shareholders must be auditors or auditing firms registered on the list specified in Article L. 822-1 or professionals duly certified in another European Community member State for the practice of statutory auditing.

In registered auditing firms, the auditing functions must be performed, on behalf of the firm, by auditors who are partners, shareholders or executives of that firm who are natural persons. Such persons can only perform auditing functions for one auditing firm. The members of the board of

directors or of the supervisory board can be employees of the company without limitations based on their number or on the seniority of their employee status.

In the event of the death of an auditor who is a shareholder or a partner, his beneficiaries have two years in which to sell their shares to an auditor.

The admission of any new shareholder or member is subject to prior approval which, under the terms and conditions of the constitution, can be given either by a general meeting of shareholders or partners, or by the board of directors or the supervisory board or the management, as applicable.

Notwithstanding these provisions, the exercise of these functions may be performed concurrently within one auditing firm and a second auditing firm in which the first firm holds more than half of the share capital or if at least half of the partners of the two firms are common to both.

#### **Article L. 822-10**

The functions of an auditor are incompatible with:

- 1° Any activity or any act likely to jeopardise his independence;
- 2° Any paid employment; an auditor may nevertheless provide training associated with the practice of his profession or occupy a paid position in an auditing firm or an accounting firm;
- 3° Any commercial activity, whether conducted directly or through an intermediary.

#### **Article L. 822-11**

I. - The auditor shall not directly or indirectly take, receive or retain an interest in an entity whose accounts he audits, or in an entity which controls that entity or is controlled by it within the meaning of paragraphs I and II of Article L. 233-3.

Without prejudice to the provisions contained in this Book or in Book II, the Code of Ethics specified in L. 822-16 shall define the personal, financial and professional links, whether current to or prior to the statutory auditing engagement, which are incompatible with carrying out the latter. It specifies in particular the situations in which the statutory auditor's independence is affected, where he belongs to a multidisciplinary national or international network, in which the members have a common economic interest, through the supply of services to a person or entity controlled or which controls, within the meaning of I and II of Article L. 233-3, the person or entity whose accounts are certified by the said auditors. The Code of Ethics also specifies the limitations that must be applied to the holding of financial interests by the auditor's employees and associates in the companies whose accounts he audits.

II. - Auditors are prohibited from providing any advice or other service to

the person who entrusts them with the auditing of their accounts, or to the persons who control that person within the meaning of paragraphs I and II of that same Article, which is unrelated to the formalities having direct relevance to their auditing task as defined in the standards of professional practice referred to in the sixth paragraph of Article L. 821-1.

Where an auditor is affiliated to a national or international network whose members have a common economic interest and which is not exclusively involved in the legal auditing of accounts, he cannot audit the accounts of an entity which, by virtue of a contract entered into with that network or with a member of that network, benefits from a provision of services which are not directly linked to the auditor's mission according to the assessment made by the High Council for the Audit Profession pursuant to the third paragraph of Article 821-1.

#### **Article L. 822-12**

Individual auditors and the responsible members of an auditing firm who sign accounts cannot be appointed as directors or employees of a company they have audited until five years have elapsed since they last audited that company.

During that same period, they cannot perform those functions in a legal entity which controls or is controlled, within the meaning of paragraphs I and II of Article L. 233-3, by the company whose accounts they audited.

#### **Article L. 822-13**

Persons who have been directors or employees of a legal entity cannot be appointed as auditors of that legal entity until five years have elapsed since they were employed by that company.

During that same period, they cannot be appointed as auditors of legal entities which hold at least 10% of the capital of the legal entity in which they performed their functions, or which held at least 10% of the capital when those functions ceased.

The prohibitions provided for in the present Article for the persons referred to in the first paragraph are applicable to auditing firms in which the said persons are partners, shareholders or executives.

#### **Article L. 822-14**

The auditor, natural person and in auditing firms, the partner or member who signs accounts as well as, as appropriate, any other principal partner as defined in 16 of Article 2 of the 2006/43/EC directive of the European parliament and the Council, of 17 May 2006, concerning the statutory auditing of annual accounts and consolidated accounts and amending directives 78/660/EEC and 83/349/EEC and repealing Council directive 84/253/EEC, may not certify for more than six consecutive fiscal years, the

accounts of the persons and entities whose financial securities are accepted for trading on a regulated market.

They may not participate again in a statutory auditing engagement for the financial statements of these persons or entities prior to the expiry of a period of two years reckoned from the closing date of the sixth financial year certified by them.

This provision also applies to the persons and entities referred to in Article 612-1 and the associations referred to in Article L. 612-4, when such legal entities make appeals for public donations as defined in Article 3 of law No. 91-772 of 7 August 1991.

#### **Article L. 822-15**

Without prejudice to the provisions of Article L. 823-12 and the specific legislative provisions, the auditors and their employees and experts are bound by a professional duty of confidentiality in respect of all facts, actions and information of which they have knowledge on account of their functions. They are nevertheless released from their professional duty of confidentiality in regard to the presiding judge of the Tribunal de Commerce<sup>126</sup> or the Tribunal de Grande Instance when they apply the provisions of Chapter IV of Part III of Book II or Chapter II of Part I of Book VI.

When a legal entity draws up consolidated accounts, the consolidating legal entity's auditors and the auditors of the consolidated entities are, each in respect of the others, released from their professional duty of confidentiality. These provisions also apply when an entity draws up combined accounts.

The auditors performing an independent review or contributing to the internal quality control are bound by a professional duty of confidentiality

#### **Article L. 822-16**

A Conseil d'Etat decree shall approve a Code of Ethics for the profession, after seeking the opinion of the High Council for the Audit Profession and for the provisions applicable to auditors working for persons and entities whose financial securities are traded on a regulated market or offered to the public on a multilateral trading platform that is subject to the legislative or regulatory provisions of the Financial Markets Authority aimed at protecting investors against insider trading, price fixing and the dissemination of false information.

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<sup>126</sup> The first instance specialist commercial court.

### *Section 3: Civil liability*

#### **Article L. 822-17**

The auditors are responsible, with regard to the person, the entity or third parties for the harmful consequences of the errors and negligence committed by them while fulfilling their duties.

However, they shall not be held liable for facts reported or disclosed while carrying out their task.

They are not civilly liable for breaches committed by the managers and corporate officers, unless they failed to indicate such breaches in their report after gaining knowledge thereof to the general meeting or to the competent body mentioned in Article L. 823-1.

#### **Article L. 822-18**

The action for damages against the auditors shall be time barred in accordance with the conditions specified in Article L. 225-254.

## **LEGISLATIVE PART**

### ***BOOK VIII: CERTAIN REGULATED PROFESSIONS***

#### **TITLE II: STATUTORY AUDITORS**

##### **CHAPTER III: STATUTORY AUDITING**

#### ***Section 1: The appointment, withdrawal and dismissal of auditors***

##### **Article L. 823-1**

Except for in cases of appointment by the constitution, auditors are appointed by the ordinary general meeting in the legal entities which have such body or by the competent body carrying out a similar function according to the rules applicable to the other persons or entities.

One or more deputy auditors, called to replace the permanent auditors in case of refusal, incapacity, resignation or death are appointed under the same conditions.

The functions of deputy auditor called to replace the permanent auditor shall end on the date of the expiry of the term of office entrusted to the latter, unless the incapacity is merely temporary. In the last case, where the incapacity has ceased, the permanent auditor may resume his duties after the approval of the accounts by the general meeting or the competent body.

Where the auditor has checked, in the last two fiscal years, the contribution or merger operations of the company or the companies being audited within the meaning of I and II of Article 233-16, the draft resolution regarding his appointment shall mention this fact.

#### **Article L. 823-2**

The persons and entities required to publish the consolidated accounts shall appoint at least two auditors.

#### **Article L. 823-3**

The auditors shall be appointed for six fiscal years. Their duties expire after the deliberation of the general meeting or the competent body pronouncing on the accounts for the sixth fiscal year.

The auditor appointed to replace another shall remain in office until the expiry of the office of his predecessor.

The auditor whose engagement has expired, been cancelled, relieved of his duties, suspended, temporarily banned from exercising, struck off the register, omitted or resigned shall allow the auditor taking his place to access all the information and all the relevant documents concerning the person or the entity whose accounts are certified.

#### **Article L. 823-4**

If the assembly or competent body fails to appoint an auditor, any member of the assembly or competent body may take legal action to request the appointment of an auditor, the legal representative of the person or the entity duly called upon. The mandate thus granted shall end where it was awarded by the meeting or the competent body for the appointment of one or more auditors.

#### **Article L. 823-5**

Where an auditing firm is taken over by another auditing firm, the absorbing company continues the mandate awarded to the absorbed company until the latter's expiry date.

However, by exception to the provisions of Article L. 823-3, the general meeting or the competent body of the person or the controlled entity may, during its first post-absorption meeting, deliberate on maintaining the mandate, after hearing the auditors.

#### **Article L. 823-6**

One or more shareholders, members or partners representing at least 5% of the share capital, the works council, the Public Prosecutor's Office, or the Financial Markets Authority for the persons whose financial securities

are admitted to trading on a regulated market and the entities themselves may, within the time limits and conditions set by a Conseil d'Etat decree, petition the court for withdrawal of one or more statutory auditors on proven grounds.

The provisions of the previous paragraph are applicable, for persons other than commercial companies, at the request of one fifth of the members of the general assembly or other competent body.

If the petition is accepted, a new auditor is appointed by the court. He shall stay in office until the auditor appointed by the meeting or the competent body takes office.

#### **Article L. 823-7**

In case of a negligence or imposed incapacity, the auditors may, under conditions fixed by Conseil d'Etat decree, be removed from office before the normal expiry of their term, by a court order, at the request of the collegial body in charge of governance, the body in charge of management, of one or more shareholders, members or partners representing at least 5% of the share capital, the works council, the Public Prosecutor's Office or Financial Markets Authority on behalf of the persons whose financial securities are admitted to trading on a regulated market and entities.

The provisions of the previous paragraph are applicable, for persons other than commercial companies, at the request of one fifth of the members of the general assembly or other competent body.

#### **Article L. 823-8**

Where, at the expiry of the functions of an auditor, a proposal is made to the meeting or competent body not to renew his office, subject to the provisions of Article L. 822-14 and if he so requests, he must be heard by the meeting or competent body.

#### **Article L. 823-8-1**

The ordinary general meeting, in commercial companies with such an organisation, or the competent body exercising a similar function pursuant to the rules applicable, may, on the proposal of the management body in charge of administration or the body in charge of management, authorise the auditors to send directly to the court registry<sup>127</sup>, within the mandatory deadlines for the company, the reports that must be filed and the documents enclosed therewith, as well as the copy of the documents related to their acceptance of the engagement or their dismissal. The same procedures may be used to terminate the authorisation.

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<sup>127</sup> "Registre du commerce et des sociétés" or court registry the full name of which is often implicit in this Code.



## *Section 2: The role of the auditor*

### **Article L. 823-9**

The auditors must certify, with justification for their assessments, that the annual accounts are true and fair and give a faithful picture of the result of the operations for the financial year just ended as well as the financial position of the person's or the entity's assets and liabilities at the end of the said financial year.

Where a person or entity prepares consolidated accounts, the auditors must certify, with justification for their assessment, that the consolidated accounts are true and fair and give a faithful picture of the assets and liabilities, and the financial position as well as the results for the group composed of the persons and entities included in the consolidation.

Notwithstanding the provisions of Article 823-14, the certification of the consolidated accounts shall be delivered particularly after a review of the work of the auditors of persons and entities included in the consolidation or, if none, of the professionals in charge of checking the accounts of the said persons and entities.

### **Article L. 823-10**

The auditors are permanently responsible, without any interference in management, for checking the securities and the accounting documents of the person or the entity whose accounts they should certify and for verifying the compliance of its accounting regime with the rules in force.

They must also check the veracity of the annual accounts and the consistency with the annual accounts of the information given in the management report of the board of directors, executive board or any management body and in documents for shareholders or partners about the financial situation and the annual accounts. They must specifically certify the accuracy and veracity of the information on remuneration and fringe benefits of any kind paid to each corporate officer.

They must check, if necessary, the veracity and consistency with the consolidated accounts, of disclosures made in the report on the group's management

### **Article L. 823-11**

The auditors shall ensure that equality has been respected between shareholders, partners or members of the competent body.

### **Article L. 823-12**

The auditors shall report to the next general meeting or meeting of the competent body any irregularities and inaccuracies noted whilst performing their duties.

They must disclose to the State Prosecutor the criminal acts and omissions of which they have knowledge, without being held liable for such revelation

Notwithstanding the duty to reveal the criminal acts and omissions mentioned in the previous paragraph, they carry out the obligations regarding money laundering and terrorism financing defined in chapter I of title VI of Book V of the Monetary and Financial Code.

### *Section 3: Procedures for performing auditing duties*

#### **Article L. 823-12-1**

Auditors perform their duties in accordance with specific professional standards in sociétés en nom collectif, sociétés en commandite simple, sociétés à responsabilité limitée and sociétés par actions simplifiées<sup>128</sup> which do not exceed two of the thresholds below, set by Conseil d'Etat decree at the end of the corporate year,: the net total of assets in their balance sheet, the pre-tax amount of their revenues or the average number of their employees.

This standard is approved by order from the Minister of Justice.

#### **Article L. 823-13**

At any time of the year, the auditors, together or separately, shall carry out all verifications and checks that they deem timely and may request on-site disclosure of any document that they consider necessary for performing their task and especially any contracts, books, accounting documents and registers of minutes.

For performing their reviews, the auditors may, as their personal responsibility, seek assistance or representation by any experts or associates of their choice, whose names they shall communicate to the person or the entity for whom they are certifying the accounts. These experts or associates have the same investigative rights as the auditors.

#### **Article L. 823-14**

The enquiries set out in Article L. 823-13 may be made of both the person or the entity for which the auditors are asked to certify the accounts as well as enquiries made of the persons or entities controlling it or who are controlled by it within the meaning of Article L. 233-3.

They may also be made, for the application of the second paragraph of Article L. 823-9 of all the persons or entities included in the consolidation.

The auditors may also collect all information necessary for carrying out their assignment from third parties who have carried out tasks on behalf of

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<sup>128</sup> For all the company types in this paragraph, see Book II, Title II of this Code.

the person or the entity. However, this right to information cannot extend to the communication of exhibits, contracts and documents whatsoever held by third parties, unless they are authorised by court decision.

The professional duty of confidentiality cannot be enforced against auditors whilst they perform their duties, except by professional court officers.

#### **Article L. 823-15**

Where the person or the entity is required to appoint two auditors, they shall both jointly review the conditions and procedures used to prepare the accounts, according to the instructions specified by standards of professional conduct established in accordance with the paragraph six of Article L. 821-1.

Standards of professional conduct determine the principles for allocating the procedures for due diligence to be implemented by each of the auditors to complete their engagement.

#### **Article L. 823-16**

As necessary, the auditors shall bring to the attention of the management body in charge of administration or the body responsible for management and the supervisory body, as well as where applicable, a specialised committee acting under the exclusive and collective responsibility of these organs:

- 1° Their general working schedule followed as well as the various spot checks carried out;
- 2° The changes that it appears to them should be made to the accounts to be prepared or to other accounting documents, by making all useful observations on the methods of assessment used to prepare them;
- 3° The irregularities and inaccuracies that they may have discovered;
- 4° The conclusions to which the observations and rectifications above lead based on the results for the period compared to those of the previous period.

Where they intervene with persons or entities subject to the provisions of Article L. 823-19 or who have voluntarily created a specialised committee within the meaning of the said article, they shall examine in addition with the specialised committee mentioned in this article the risks weighing on their independence and safeguarding measures taken to minimise those risks. They shall bring to the attention of this committee any significant weaknesses in internal supervision, with respect to the procedures regarding the preparation and the treatment of the accounting and financial information, and report to this committee every year:

- a) A statement of independence;
- b) An update of the information mentioned in Article L. 820-3 detailing the

services supplied by the members of the network to which the auditors are affiliated as well as the services accomplished in respect of due diligence directly linked to the audit engagement (1).

#### **Article L. 823-16-1**

The auditors are released from their professional duty of confidentiality with respect to a public accountancy for a public organisation where they are responsible for certifying the accounts of the said organisation. The auditors shall send a copy of their certification reports for the accounts of public organisations using public accountancy regimes to that organization.

#### **Article L. 823-17**

The auditors shall be invited to all meetings of the board of directors or management and supervisory board, or of the governing or management body and the supervisory body which examines or prepares the annual or interim accounts, as well as to all the meetings of shareholders, members or partners or to all the meetings of the competent body mentioned in Article L. 823-1.

#### **Article L. 823-18**

The fees of auditors shall be borne by the person or the entity whose accounts they are responsible for certifying.

These fees shall be fixed according to the procedures determined by a Conseil d'Etat decree.

The regional chamber of discipline and, for appeals, the High Council for the Audit Profession are competent to review any dispute related to the remuneration of auditors.

#### **Article L. 823-19**

Within the persons and entities whose securities are admitted to trading on a regulated market, as well as in the credit institutions mentioned in Article L. 511-1 of the Monetary and Financial Code, insurance and reinsurance companies, mutual companies governed by Book II of the mutuality code and the provident institutions governed by title III of Book IX of the social security code, a specialised committee acting under the aegis, as the case may be, of the body in charge of the administration or the supervisory body shall ensure the monitoring of the questions relating to the preparation and control of accounting and financial information.

The membership of this committee shall be decided, as the case may be, by the body in charge of governance and supervision. The committee may include only members of the body in charge of the administration or supervision in the service of the company, excluding those carrying out managerial functions. At least one member of the committee must have

specific skills in the financial or accounting sector and be independent with respect to the criteria specified and made public by the body in charge of the administration or supervision.

Notwithstanding the competences of the bodies responsible for the administration, management and supervision, this committee is particularly responsible for monitoring:

- a) The elaboration of the financial reporting process;
- b) The efficiency of internal control and risk management systems;
- c) The statutory auditing of the annual accounts and, if applicable, the consolidated accounts by the auditors;
- d) The independence of the auditors.

The committee shall issue a recommendation concerning the auditors proposed for appointment by the general meeting or the body exercising a similar function.

It shall report regularly on the practice of its missions to the collegial body in charge of administration or to the supervisory body and immediately inform it of any difficulty encountered.

#### **Article L. 823-20**

The following are exempted from the obligations referred to in Article L. 823-19:

1° Persons and entities audited within the meaning of Article L. 233-16, where the person or entity controlling them is itself subject to the provisions of Article L. 823-19;

2° The collective investment undertakings mentioned in Article L. 214-1 of the Monetary and Financial Code;

3° The credit institutions whose securities are not admitted to trading on a regulated market and which have issued, continuously or repeatedly, only bonds, on condition that the total nominal amount of the said securities remains lower than 100 million Euros and that they did not publish a prospectus;

4° Persons and entities with a body fulfilling the functions of the specialised committee mentioned in Article L. 823-19, subject to the identification of the said body, which may be the body in charge of administration or the supervisory body, and provided its membership is publicly disclosed.

## **LÉGISLATIVE PART**

### ***BOOK IX. – PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IA: OBSERVATORY OF PRICE AND INCOME LEVELS OVERSEAS**

##### **Article L. 910-1 A**

In Guadeloupe, Guyana, Martinique, La Réunion, Mayotte and Saint-Pierre-et-Miquelon, an observatory of price and income levels shall be tasked with analysing the level and structure of prices and income and with providing public authorities with regular information on their trends.

Each observatory shall each year publish information on the level and structure of port transit costs.

The terms and conditions for appointing the president, for the composition and the operating conditions of each observatory shall be defined by decree.

## **LEGISLATIVE PART**

### ***BOOK IX. – PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: – SPÉCIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **Article L. 910-1**

The following Articles shall not apply to Saint-Pierre-et-Miquelon:

1° L. 125-3 and L. 126-1;

2° L. 225-245-1, L. 229-1 to L. 229-15, L. 238-6, L. 244-5 and L. 252-1 to L. 252-13;

3° L. 470-6;

4° L. 522-1 to L. 522-40 and L. 524-20;

5° L. 711-2 (second and last paragraph), L. 721-1, L. 721-2, L. 722-1 to L. 724-7, L. 741-1 to L. 743-11 and L. 750-1 to L. 761-11 as well as the provisions relating to regional chambers of commerce and industry in Book VII, Title I, Chapters I, II and III.

##### **Article L. 910-2**

The terms set out below shall be replaced as follows for the purpose of the application of this Code to Saint-Pierre-et-Miquelon:

1° "Tribunal de Grande Instance" or "Tribunal d'Instance" by "Tribunal de

Première Instance";

2° "Tribunal de Commerce"<sup>129</sup> or "lay commercial judge" by "Tribunal de Première Instance Statuant en Matière Commerciale"<sup>130</sup>;

3. "Department" or "arrondissement"<sup>131</sup> by "territorial authority".

4. "Bulletin Officiel des Annonces Civiles et Commerciales" by "Recueil des Actes Administratifs de la Collectivité Territoriale".

#### **Article L. 910-3**

References in the provisions of this Code applicable to Saint-Pierre-et-Miquelon to other Articles of this Code shall only refer to the Articles made applicable to the authority with the changes for which provision is made in the following chapters.

#### **Article L. 910-4**

Where no changes are made, references in the provisions of this Code applicable to Saint-Pierre-et-Miquelon, to provisions which do not apply to it shall be replaced by references to local provisions which serve the same purpose.

#### **Article L. 910-5**

Articles which refer to the European Community shall apply in accordance with the association decision for which provision is made in Article 136 of the Treaty establishing the European Community. References to the agreement on the European Economic Area shall not apply.

### **LEGISLATIVE PART**

#### ***BOOK IX. – PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: SPÉCIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER I: PROVISIONS ADAPTING BOOK I**

#### **Article L. 911-1**

In Article L. 122-1, the words:

"of the Prefect of the Department in which he envisages conducting his business initially" shall be replaced by the words:

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<sup>129</sup> The first instance specialist commercial court.

<sup>130</sup> Can be translated as First Instance Tribunal Ruling in Commercial Matters.

<sup>131</sup> Here, an administrative sub-division of a department.

"of the Prefect of the collectivity where the foreigner is required to conduct his business initially".

#### **Article L. 911-2**

The exemptions for which provision is made in Articles L. 123-25 to L. 123-27 shall apply to natural persons subject to a simplified taxation system under regulations in force in Saint-Pierre-et-Miquelon.

#### **Article L. 911-3**

In Article L. 133-7, the words:  
"customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.

#### **Article L. 911-4**

Registration with the Registrar of the Tribunal de Première Instance Statuant en Matière Commerciale<sup>132</sup> shall exempt deeds and declarations submitted to it in application of Article L. 141-5 from the need to be formally recorded.

#### **Article L. 911-5**

For the purpose of Articles L. 141-15, L. 143-7 and L. 145-28, a senior judicial official of the Tribunal de Première Instance may be delegated by the Presiding Judge.

#### **Article L. 911-6**

In Article L. 141-13, the words:  
"by Articles 638 and 653 of the General Tax Code" shall be replaced by the words:  
"by the provisions of local tax law".

#### **Article L. 911-7**

In Article L. 144-5, the words:  
"Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Code of Public Health" shall be replaced by the words:  
"the articles of the Code of Public Health applicable locally to hospitalization or confinement with or without the consent of the interested party".

#### **Article L. 911-8**

Article L. 145-2 shall be amended as follows:

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<sup>132</sup> The Court of First Instance Ruling on Commercial Matters. See Article L. 910-2.



I. - In 4°, the words:  
"by the State, departments, municipalities and public establishments"  
shall be replaced by the words:  
"by the State, territorial collectivities and public establishments";  
II. - In 6°, the words:  
"to the social security fund of the Maison des Artistes and recognised as the authors of graphic and plastic works as defined in Article 71 of Annex III of the General Tax Code" shall be replaced by the words:  
"to the local social security fund and recognised as the authors of graphic and plastic works as defined in the locally applicable tax code".

#### **Article L. 911-9**

For the purpose of Article L. 145-6, the words:  
"evacuation of the premises included in a sector or perimeter for which provision is made in Articles L. 313-4 and L. 313-4-2 of the Town Planning Code" shall be replaced by the words "evacuation of the premises for which provision is made in Article L. 145-18."

#### **Article L. 911-10**

In Article L. 145-13, the words:  
"Subject to the provisions of the Law of 28 May 1943 on the application to foreigners of legislation governing rental leases and farming leases" shall be deleted.

#### **Article L. 911-11**

The second paragraph of Article L. 145-18 shall read as follows:  
"The same shall apply for the purpose of restoring buildings involving repair, conservation, modernisation or demolition work which changes the living conditions of a complex of buildings so that the premises have to be evacuated. Such work may be decided and carried out in accordance with local regulations either by the public authorities with local jurisdiction or at the initiative of one or more property owners who may but are not required to have formed a property owners' association. In the latter case, this property owner or these property owners shall be specifically authorised under conditions determined by the State representative, who shall in particular specify the commitments required of property owners regarding the type and extent of the work. Buildings acquired by developers shall only be transferred by mutual agreement, once they have been restored, in accordance with the type specifications approved by the state representative."

#### **Article L. 911-12**

In Article L. 145-26, after the words:

"by the State, departments, municipalities" the following words shall be added: "the territorial collectivity".

#### **Article L. 911-13**

The first paragraph of Article L. 145-34 shall be worded as follows:

«Unless the factors which determine the rental value change significantly, the variation in the rent applicable upon renewal of the lease, provided that it is for no longer than nine years, shall not exceed the variation in a local quarterly construction cost index since the rent for the expired lease was originally set. The said index is calculated as determined in an order issued by the State representative. If there is no clause in the contract which stipulates the index's reference quarter, the variation in the local quarterly construction cost index indicated for that purpose in the aforementioned order shall be applied.»

#### **Article L. 911-14**

Article L. 145-35 shall be amended as follows:

I.- In paragraph 1, the word:

"departmental" shall be deleted;

II. - The final paragraph shall be worded as follows:

"The composition of the committee and the method of appointing the members and the rules of procedure thereof shall be decided by order of the State representative."

## **LÉGISLATIVE PART**

### ***BOOK IX. – PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: SPECIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER II. PROVISIONS ADAPTING BOOK II**

#### **Article L. 912-1**

In Articles L. 223-18, L. 225-36 and L. 225-65, the words:

"in the same department or an adjacent department" shall be replaced by the words: "in the collectivity".

#### **Article L. 912-1-1**

The words:

"Law No. 2005-882 of 02 August 2005 in favour of small and medium-sized businesses" and the words:

"the aforementioned Law No. 2005-882 of 02 August 2005" in the third

and fourth paragraphs of Article L. 223-30 shall be respectively replaced by the words: "Order No. 2008-697 of 11 July 2008 relating to the application in Saint-Pierre-et-Miquelon of Law No. 2005-882 of 02 August 2005 in favour of small and medium-sized businesses and reforming the interprofessional chamber of Saint-Pierre-et-Miquelon" and by the words: "the aforementioned Order No. 2008-697 of 11 July 2008."

#### **Article L. 912-2**

The final paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

#### **Article L. 912-3**

In Article L. 225-102, paragraph 2, the words: "and by the salaried employees of a workers' cooperative as defined in Law No 78-763 of 19 July 1978 on the status of workers' cooperatives" shall be deleted.

#### **Article L. 912-4**

In 5° of Article L. 225-115, the words: "payments made pursuant to 1° and 4° of Article 238 bis of the General Tax Code" shall be replaced by the words: "tax deductions under the provisions of the local tax code applicable to the total deductions from the taxable profits of companies which make payments for the benefit of works by public-interest bodies or approved societies or which make donations of works of art to the State".

#### **Article L. 912-6**

In Article L. 225-270 VI, the words: "the provisions of Article 94 A of the General Tax Code" shall be replaced by the words: "the provisions of the local tax code applicable to net capital gains from disposals against payment of securities and corporate rights".

#### **Article L. 912-7**

In Article L. 239-1, paragraph 5 (2°), the words: "by Article 208 D of the General Tax Code" shall be replaced by the words: "by the locally applicable General Tax Code".

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: - SPECIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER III. PROVISIONS ADAPTING BOOK III**

###### **Article L. 913-1**

Article L. 322-9 shall be worded as follows: "Sworn commodities brokers shall comply with the provisions of the local tax code applicable to public sales and auctions."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: – SPECIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER IV. PROVISIONS ADAPTING BOOK IV**

###### **Article L. 914-1**

In Article L. 442-2, paragraph 2, the word "any" shall be inserted before the words "turnover tax".

In Article L. 442-2, paragraph 2 and 3, the dates: "1 January 2006" and "1 January 2007" shall be respectively replaced by the dates: "1 January 2009" and "1 January 2010".

###### **Article L. 914-2**

Article L. 443-1 shall be amended as follows:

I.- In 3°, the words:

"by Article 403 of the General Tax Code" shall be replaced by the words:  
"by the provisions of the local tax code".

II.- 4° shall be worded as follows:

"4° Seventy-five days from delivery for purchases of alcoholic beverages liable for the circulation taxes for which provision is made in the local tax code".

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: – SPECIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER V: PROVISIONS ADAPTING BOOK V**

###### **Article L. 915-1**

The second paragraph of Article L. 511-62 shall read as follows:

"The withdrawal shall include the sums referred to in Articles L. 511-45 and L. 511-46, in addition to any brokerage fees or stamp duty for which provision is made in the local tax code."

###### **Article L. 915-2**

The first paragraph of Article L. 524-19 shall be worded as follows:

"The sum in duties to be collected by the Registrar of the Tribunal de Première Instance Statuant en Matière Commerciale<sup>133</sup> shall be set by decree."

###### **Article L. 915-3**

In the first paragraph of Article L. 525-2, the words "according to local regulations" shall be inserted after the words "the fixed duty".

###### **Article L. 915-4**

In Article L. 525-9 II, the words:

"the privilege referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words:

"the privilege<sup>134</sup> organised for the benefit of the social welfare fund of the territory".

###### **Article L. 915-5**

Article L. 525-18 shall be amended as follows:

I. - In 1°, the reference to Decree No. 53-968 of 30 September 1953 shall be replaced by a reference to Decree No. 55-639 of 20 May 1955.

II.- 2° shall be worded as follows: "Ocean-going ships."

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<sup>133</sup> Court of First Instance Ruling on Commercial Matters.

<sup>134</sup> A security conferring a preferential right to payment.

#### **Article L. 915-6**

In 4° of Article L. 526-7, the words:

"with the relevant chamber of agriculture" shall be replaced by the words:

"with the Register referred to in 3°."

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: – SPÉCIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER VI. PROVISIONS ADAPTING BOOK VI**

#### **Article L. 916-1**

4° of III of Article L. 643-11 is not applicable in Saint Pierre and Miquelon.

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: – SPECIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER VII. PROVISIONS ADAPTING BOOK VII**

#### **Article L. 917-2**

The chamber of agriculture, of commerce, of industry, of trades and of crafts shall recruit and manage staff subject to private law and staff subject to public law, including those subject to Law No. 52-1311 of 10 December 1952 on the mandatory establishment of regulations governing administrative staff of chambers of agriculture, chambers of commerce and trades.

#### **Article L. 917-3**

The meeting of the chamber of agriculture, of commerce, of industry, of trades and of crafts shall elect a president from among its members.

#### **Article L. 917-4**

For the purpose of Article L. 712-2, the words:

"of the network shall be funded by means of charges of any kind

allocated to the regional chambers of commerce and industry" shall be replaced by the words:

"of the chamber of agriculture, of commerce, of industry, of trades and of crafts as specified in the provisions of the tax code applicable locally."

#### **Article L. 917-5**

For the purpose of Article L. 712-7, the words:

", in particular those mentioned in 2° of Article L. 711-8" shall be deleted.

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE I: – SPÉCIFIC PROVISIONS FOR SAINT-PIERRE-ET-MIQUELON**

##### **CHAPTER VIII. PROVISIONS ADAPTING BOOK VIII**

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

#### **Article L. 920-1**

The following provisions shall not apply to the Department of Mayotte:

1° In Book II, Article L. 225-245-1, Chapter IX of Title II, Chapter IV bis of Title IV and Chapter II of Title V;

2° In Book IV, Article L. 470-6;

3° In Book VI, Articles L. 622-19 and L. 625-9;

4° In Book VII, Articles L. 712-2, L. 712-4 and the provisions relating to regional chambers of commerce and industry in Title I and Title V, with the exception of Article L. 750-1-1.

#### **Article L. 920-1-1**

Notaries and court huissiers organising and conducting voluntary sales of movables by public auction in Mayotte shall be deemed to meet the training conditions defined in Article L. 321-2, paragraph 2.

#### **Article L. 920-2**

The terms set out below shall be replaced as follows for the purpose of

the application of this Code to the authority:

- 1° Deleted;
- 2° Deleted;
- 3° "Conseil de Prud'hommes"<sup>135</sup> by "Tribunal du Travail"<sup>136</sup>;
- 4° "Territorial chamber of commerce and industry" by "Chamber of commerce and industry of Mayotte";
- 5° Deleted;
- 6° The "Bureau des Hypothèques"<sup>137</sup> by the "Service de la Conservation de la Propriété Immobilière"<sup>138</sup>.

#### **Article L. 920-4**

Where no changes are made, references in the provisions of this Code applicable to Mayotte to provisions which do not apply to it shall be replaced by references to local provisions which serve the same purpose.

#### **Article L. 920-5**

References in the provisions of this Code applicable to Mayotte to provisions of the Labour Code shall only apply there if there is a provision applicable locally which serves the same purpose.

#### **Article L. 920-7**

Articles which refer to the European Community shall apply in accordance with the association decision for which provision is made in Article 136 of the Treaty establishing the European Community. References to the agreement on the European Economic Area shall not apply.

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<sup>135</sup> "Conseil des prud'hommes", the French tribunal for employment disputes, composed of employee and employer judges.

<sup>136</sup> Can be translated as "Labour Tribunal".

<sup>137</sup> The Registry for the main type of land charge, the hypothec. See the Civil Code, Article 2323 and from Article 2393.

<sup>138</sup> Can be translated as the Department for the Conservation of Property.



# **LEGISLATIVE PART**

## ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

#### **CHAPTER I: PROVISIONS ADAPTING BOOK I**

##### **Article L. 921-2**

The exemptions for which provision is made in Articles L. 123-25 to L. 123-27 shall apply to natural persons subject to a simplified taxation system under regulations in force in Mayotte.

##### **Article L. 921-4**

In Article L. 133-7, the words:  
"customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.

##### **Article L. 921-6**

In Article L. 141-13, the words:  
"by the declaration specified by Articles 638 and 653 of the General Tax Code" shall be replaced by the words:  
"by the declaration specified in conditions specified by the provisions of the tax code applicable locally".

##### **Article L. 921-8**

In 6° of Article L. 145-2, the words:  
"to the social security fund of the Maison des Artistes and recognised as the authors of graphic and plastic works as defined in Article 71 of Annex III of the General Tax Code" shall be replaced by the words:  
"to the social security fund of Mayotte and recognised as the authors of graphic and plastic works as defined in the locally applicable tax code".

##### **Article L. 921-10**

In Article L. 145-13, the words "subject to the provisions of the Law of 28 May 1943 on the application to foreigners of legislation governing rental leases and farming leases" shall be deleted.

#### **Article L. 921-11**

The second paragraph of Article L. 145-18 shall read as follows:

"The same shall apply for the purpose of restoring buildings involving repair, conservation, modernisation or demolition work which changes the living conditions of a complex of buildings so that the premises have to be evacuated. Such work may be decided and carried out in accordance with local regulation either by the public authorities with local jurisdiction or at the initiative of one or more property owners who may but are not required to have formed a property owners' association. In the latter case, this property owner or these property owners shall be specifically authorised under conditions determined by the State representative, who shall in particular specify the commitments required of property owners regarding the type and extent of the work. Buildings acquired by developers shall only be transferred by mutual agreement, once they have been restored, in accordance with the type specifications approved by the state representative."

#### **Article L. 921-13**

The first paragraph of Article L. 145-34 shall be worded as follows:

«Unless the factors which determine the rental value change significantly, the variation in the rent applicable upon renewal of the lease, provided that it is for no longer than nine years, shall not exceed the variation in a local quarterly construction cost index since the rent for the expired lease was originally set. The said index is calculated as determined in an order issued by the State representative. If there is no clause in the contract which stipulates the index's reference quarter, the variation in the local quarterly construction cost index indicated for that purpose in the aforementioned order shall be applied."

#### **Article L. 921-14**

The final paragraph of Article L. 145-35 shall be worded as follows:

"The composition of the committee and the method of appointing the members and the rules of procedure thereof shall be decided by order of the State representative."

# **LEGISLATIVE PART**

## ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

#### **CHAPTER II. PROVISIONS ADAPTING BOOK II**

##### **Article L. 922-1**

In Articles L. 225-177, L. 225-179 and L. 233-11, the words:  
"the publication date of Law No. 2001-420 of 15 May 2001" shall be replaced by the words:  
"the publication date of Ordinance No. 2004-604 of 24 June 2004 reforming the rules governing transferable securities issued by commercial companies and the extension to overseas of the provisions which amended the commercial legislation."

##### **Article L. 922-4**

In 5° of Article L. 225-115, the words:  
"payments made pursuant to 1° and 4° of Article 238 bis of the General Tax Code" shall be replaced by the words:  
"tax deductions specified by the provisions of local tax law applicable to total deductions from the taxable profit of companies which make payments to works by bodies of general interest or authorised companies or donations of works of art to the State."

##### **Article L. 922-7**

In Article L. 225-270 VI, the words:  
"the provisions of Article 94 A of the General Tax Code" shall be replaced by the words:  
"the provisions of the local tax code applicable to net capital gains from disposals against payment of securities and corporate rights."

##### **Article L. 922-8**

The final paragraph of Article L. 228-36 shall be deleted.

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

##### **CHAPTER III. PROVISIONS ADAPTING BOOK III**

###### **Article L. 923-2**

Article L. 322-9 shall be worded as follows:

"Sworn commodities brokers shall comply with the provisions of the local tax code applicable to public sales and auctions."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

##### **CHAPTER IV. PROVISIONS ADAPTING BOOK IV**

###### **Article L. 924-3**

The last paragraph of I of Article L. 441-2 shall be replaced by four paragraphs worded as follows:

"The cessation of advertising which does not comply with the provisions of paragraph 1 may be ordered by the investigating judge or by the court to which the proceedings are referred, whether at the request of the Office of the Public Prosecutor or of their own motion. The measure thus taken shall be enforceable notwithstanding any appeal.

The measure may be lifted by the court which ordered it or to which the case is referred. It shall become ineffective if a judgement of dismissal or acquittal is returned.

Rulings on applications for the lifting of orders may be appealed to the Chamber of Appeal of Mamoudzou, depending on whether they were made by an investigating judge or the court to which the proceedings were referred.

The Chamber of Appeal of Mamoudzou shall rule within ten days of receiving the evidence."

#### **Article L. 924-4**

In Article L. 442-2, paragraph 2, the word "any" shall be inserted before the words "turnover tax".

#### **Article L. 924-5**

The last paragraph of Article L. 442-3 shall be replaced by four paragraphs worded as follows:

"The cessation of advertising may be ordered by the investigating judge or by the court to which the proceedings are referred, whether at the request of the Office of the Public Prosecutor or on their own motion. The measure thus taken shall be enforceable notwithstanding any appeal.

The measure may be lifted by the court which ordered it or to which the case is referred. It shall become ineffective if a judgement of dismissal or acquittal is returned.

Rulings on applications for the lifting of orders may be appealed against before the Chamber of Appeal of Mamoudzou.

The Chamber of Appeal of Mamoudzou shall rule within ten days of receiving the evidence." «

#### **Article L. 924-6**

Article L. 443-1 shall be amended as follows:

I.- In 3°, the words:

"by Article 403 of the General Tax Code" shall be replaced by the words:

"by the provisions of the locally applicable tax code";

II.- 4° shall be worded as follows:

"4° Seventy-five days from delivery for purchases of alcoholic beverages liable for the circulation taxes for which provision is made in the tax code applicable locally".

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

##### **CHAPTER V: PROVISIONS ADAPTING BOOK V**

#### **Article L. 925-1**

The second paragraph of Article L. 511-62 shall read as follows:

"The withdrawal shall include the sums referred to in Articles L. 511-45 and L. 511-46, in addition to any brokerage fees or stamp duty for which

provision is made in the local tax code."

#### **Article L. 925-4**

In the first paragraph of Article L. 525-2, the words "according to local regulations" shall be inserted after the words "the fixed duty."

#### **Article L. 925-5**

In Article L. 525-9 II, the words:  
"the privilege<sup>139</sup> referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words:  
"the privilege organised for the benefit of the social welfare fund of Mayotte."

#### **Article L. 925-6**

In 1°, of Article 525-18, the reference to Decree No. 53-968 of 30 September 1953 shall be replaced by a reference to Decree No. 55-639 of 20 May 1955.

#### **Article L. 925-7**

In 4° of Article L. 526-7, the words:  
"with the relevant chamber of agriculture" shall be replaced by the words:  
"with the register of agriculture, fishing and fish farming of Mayotte held by the chamber of agriculture, fishing and fish farming."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

##### **CHAPTER VI. PROVISIONS ADAPTING BOOK VI**

#### **Article L. 926-1**

In Article L. 625-2, the words:  
"referred to in Article L. 432-7 of the Labour Code" shall be replaced by the words:  
"with respect to information of a confidential nature and data per se."

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<sup>139</sup> A security conferring a preferential right to payment.

#### **Article L. 926-2**

For the purpose of Article L. 622-24, the agencies referred to in Article L. 351-21 of the Labour Code shall be local agencies in charge of the service responsible for paying unemployment benefit and recovering contributions.

#### **Article L. 926-3**

For the purpose of Articles L. 622-24, L. 622-26, L. 625-4, L. 626-5, L. 626-20, L. 631-18, L. 641-14 and L. 662-4, the institutions referred to in Article L. 143-11-4 of the Labour Code shall be local institutions in charge of implementing the insurance system against the risk of non-payment of salaries in the event of an order for judicial restructuring or liquidation.

#### **Article L. 926-4**

For the purpose of Article L. 611-7, L. 626-6 and L. 643-3, the institutions governed by Book IX of the Social Security Code shall be the local additional or supplementary pension or welfare funds for which provision is made in legislation relating to social security and protection systems in the territory.

#### **Article L. 926-6**

In Article L. 642-1, the obligation imposed upon the court to take account of the provisions of Article L. 331-3 1°, 2°, 3° and 4° of the Rural and Maritime Fisheries Code shall be extended to include the following requirements:

To observe the order of priority established between setting-up young farmers and expanding agricultural holdings, taking account of the economic and social benefits of maintaining the independence of the holding to which the application refers;

To take account, where holdings are extended or merged, of the possibility of installing on a viable holding, the location of the land in question in relation to the seat of the applicant's or applicants' holding, the surface area of the property to which the application refers and the surface areas already developed by the applicant(s) and by the tenant;

To take account of the applicant's or applicants' personal status: age, marital and professional status, and, where applicable, the personal status of the tenant and the number and type of jobs affected;

To take account of the division of land into plots on the holdings in question, either in relation to the registered office of the holding or to prevent changes of occupancy from affecting improvements obtained with the help of public funds. «

**Article L. 926-7**

4° of III of Article L. 643-11 shall not apply.

**LEGISLATIVE PART**

***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

**TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF  
MAYOTTE**

**CHAPTER VII. PROVISIONS ADAPTING BOOK VII**

**Article L. 927-1**

For application in Mayotte:

1° Article L. 711-2, paragraph 2 shall be worded as follows:

"The chamber of commerce and industry of Mayotte is involved in drafting the sustainable development plan and local urban planning plans";

2° In Article L. 711-4, the words:

"within the scope of the sectorial plans mentioned in 3° of Article L. 711-8" and the words:

"as provided by Articles L. 443-1 and L. 753-1 of the Educational Code" shall be deleted;

3° In Article L. 712-7, the words:

", in particular those mentioned in 1° of Article L. 711-8" shall be deleted.

**Article L. 927-2**

The chamber of commerce and industry of Mayotte shall recruit and manage staff subject to private law and staff subject to public law, including those subject to Law No. 52-1311 of 10 December 1952 on the mandatory establishment of regulations governing administrative staff of chambers of agriculture, chambers of commerce and trades.

**Article L. 927-3**

The meeting of the chamber of commerce and industry of Mayotte shall elect its president from among its members.



## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE II: SPECIFIC PROVISIONS FOR THE DEPARTMENT OF MAYOTTE**

##### **CHAPTER VIII. PROVISIONS ADAPTING BOOK VIII**

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **Article L. 930-1**

Without prejudice to the adaptations referred to in the following Chapters, the following provisions of the present code are applicable in New Caledonia:

1° Book I, with the exception of Articles L. 123-1-1, L. 123-29 to L. 123-31, L. 124-1 to L. 126-1, L. 131-1 to L. 131-6, L. 131-9, L. 134-1 to L. 135-3, L. 145-34 to L. 145-36, L. 145-38 and L. 145-39;

2° Book II, with the exception of Articles L. 225-245-1, L. 229-1 to L. 229-15, L. 238-6, L. 244-5 and L. 252-1 to L. 252-13;

3° Book III, with the exception of Articles L. 310-4, L. 321-1 to L. 321-38, L. 322-7 and L. 322-10;

4° Book IV, with the exception of Articles L. 410-10 to L. 450-1, L. 450-5 to L. 450-6, L. 461-1 to L. 464-9, L. 470-2 to L. 470-4, and L. 470-6 to L. 470-8;

5° Book V, with the exception of Articles L. 522-1 to L. 522-40, L. 524-12, L. 524-20 and L. 524-21;

6° Book VI, with the exception of Articles L. 622-19, L. 625-9 and L. 670-1 to L. 670-8;

7° Book VII, Title II, with the exception of Articles L. 722-3, L. 722-11 to L. 722-13, Article L. 723-6, Article L. 723-7, paragraph 2, Article L. 723-10, paragraph 2 and Article L. 723-11;

8° Book VIII, Title II.

##### **Article L. 930-2**

The terms set out below shall be replaced as follows for the purpose of

the application of this Code in the territory:

1° "Tribunal de Grande Instance"<sup>140</sup> or "Tribunal d'Instance"<sup>141</sup> by "Tribunal de Première Instance"<sup>142</sup>;

2° "Tribunal de Commerce" or "lay commercial judge" by "joint Tribunal de Commerce";

3° "Conseil de Prud'hommes"<sup>143</sup> by "Tribunal du Travail."<sup>144</sup>

4° "Bulletin Officiel des Annonces Civiles et Commerciales" by "Journal Officiel de la Nouvelle-Calédonie";

5° "Department" or "arrondissement" by "New Caledonia" or "province";

6° "Prefect" or "sub-prefect" by "state representative in New Caledonia";

7° The "Bureau des Hypothèques"<sup>145</sup> by the "Service de la Conservation de la Propriété Immobilière."<sup>146</sup>

#### **Article L. 930-3**

References in the provisions of this Code applicable to New Caledonia to other Articles of this Code shall only refer to the Articles made applicable to New Caledonia with the changes for which provision is made in the following chapters.

#### **Article L. 930-4**

Where no changes are made, references made to the provisions of this Code applicable to New Caledonia to provisions which do not apply to it shall be replaced by references to local provisions which serve the same purpose.

#### **Article L. 930-5**

References made to the provisions of this Code applicable to New Caledonia to provisions of the Labour Code shall only apply there if there is a provision applicable locally which serves the same purpose.

#### **Article L. 930-6**

References to registration in the trades register shall be replaced by references to registration in accordance with regulations applicable in New Caledonia.

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<sup>140</sup> The first instance general court, also administering specialist, small claims and some criminal cases.

<sup>141</sup> The small-claims court of first instance.

<sup>142</sup> Can be translated as Court of First Instance.

<sup>143</sup> The French Employment Tribunal.

<sup>144</sup> Can be translated as "Labour Tribunal".

<sup>145</sup> The Registry for the main type of land charge, the hypothec. See the Civil Code, Article 2323 and from Article 2993.

<sup>146</sup> Can be translated as the Department for the Conservation of Property.

#### **Article L. 930-7**

Articles which refer to the European Community shall apply in accordance with the association decision for which provision is made in Article 136 of the Treaty establishing the European Community. References to the agreement on the European Economic Area shall not apply.

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **CHAPTER I: PROVISIONS ADAPTING BOOK I**

#### **Article L. 931-1**

In Article L. 122-1, the words:  
"the prefect of the department in which the foreigner is to conduct his business" shall be replaced by the words:  
"the relevant authority of New Caledonia".

#### **Article L. 931-1-1**

In Article L. 123-11-3, the references to the Consumer Code and to the Labour Code shall be replaced by references to the locally applicable provisions having the same purpose.

#### **Article L. 931-1-2**

For its application in New Caledonia, Article L. 123-11-6 shall be worded as follows:

Art. L.123-11-6 - Customs officials are authorised to investigate and record infringements of the provisions of articles of the present subsection and the regulations implementing these.

To this end, they shall act in accordance with the rules for investigating and recording offences as set out in the Customs Code. Offences shall be recorded in reports which shall be taken as proof until evidence to the contrary is provided and transmitted directly to the Public Prosecutors' Office.

#### **Article L. 931-2**

The exemptions for which provision is made in Articles L. 123-25 to L. 123-27 shall apply to natural persons subject to a simplified taxation

system under regulations in force in New Caledonia.

#### **Article L. 931-3**

In Article L. 131-11, the second sentence is deleted.

#### **Article L. 931-4**

For the purpose of Article L. 133-6:

1° The words:

"those which result from the provisions of Article 1269 of the Code of Civil Procedure" shall be replaced by the words:

"claims for accounts to be revised and for proceeds to be settled which are presented with a view to adjustment in the event of error, omission or inaccurate presentation";

2° The provisions of the final paragraph shall apply in the event of transportation effected on behalf of New Caledonia.

#### **Article L. 931-5**

In Article L. 133-7, the words:

"customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.

#### **Article L. 931-6**

For the purpose of Articles L. 141-15, L. 143-7, L. 144-1 to L. 144-13 and L. 145-28, a judge of the Tribunal de Première Instance may be delegated by the Presiding Judge.

#### **Article L. 931-7**

In Article L. 141-13, the words:

"by Articles 638 and 653 of the General Tax Code" shall be replaced by the words:

"by the provisions of the tax code applicable in New Caledonia on verbal declarations of changes".

#### **Article L. 931-8**

In Article L. 144-5, the words:

"Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Code of Public Health" shall be replaced by the words:

"the articles of the Code of Public Health applicable locally in New Caledonia and relating to hospitalisation or confinement with or without the consent of the interested party."

#### **Article L. 931-9**

Article L. 144-11 shall be worded as follows:

"Art. L. 144-11

- Where, under local regulations, the real estate management contract contains a clause for rent variation, a rent review may be demanded in accordance with the terms of a decision by the local authority with jurisdiction, notwithstanding any agreement to the contrary if when the said clause is applied, the rent rises or falls by more than one quarter in relation to the previous price set in the contract or by the courts."

#### **Article L. 931-10**

Article L. 144-12 shall be worded as follows:

"Art. L. 144-12

- If the parties are unable to reach an amicable agreement on the rent review, proceedings shall be instituted and heard in accordance with the provisions governing price reviews for residential leases on buildings or commercial or industrial leases on premises.

The judge shall take account of all the factors to be assessed and shall adjust the range of the rent variation to the fair rental value on the day of notification.

The judge shall take account of all the factors to be assessed and shall adjust the range of the rent variation to the fair rental value on the day of notification. The new price shall apply as of the said date, unless the parties agree on an earlier or later date before or during the proceedings."

#### **Article L. 931-11**

For the purpose of Article L. 145-2, New Caledonia shall be considered a territorial collectivity and in 6° the words:

"to the social security fund of the Maison des Artistes and recognised as the authors of graphic and plastic works as defined in Article 71 of Annex III of the General Tax Code" shall be replaced by the words:

"to the local social security fund and recognised as the authors of graphic and plastic works as defined in the locally applicable tax code of New Caledonia."

#### **Article L. 931-12**

For the purpose of Article L. 145-6, the words:

"evacuation of the premises included in a sector or perimeter for which provision is made in Articles L. 313-4 and L. 313-4-2 of the Town Planning Code" shall be replaced by the words "evacuation of the premises for which provision is made in Article L. 145-18."

#### **Article L. 931-13**

In Article L. 145-13, the words:

"Subject to the provisions of the Law of 28 May 1943 on the application to foreigners of legislation governing rental leases and farming leases" shall be deleted.

#### **Article L. 931-14**

The second paragraph of Article L. 145-18 shall read as follows:

"The same shall apply for the purpose of restoring buildings involving repair, conservation, modernisation or demolition work which changes the living conditions of a complex of buildings so that the premises have to be evacuated. Such work may be decided and carried out in accordance with local regulations either by the public authorities with local jurisdiction or at the initiative of one or more property owners who may but are not required to have formed a property owners' association. In the latter case, this property owner or these property owners shall be specifically authorised under conditions determined by the local relevant authority, who shall in particular specify the commitments required of property owners regarding the type and extent of the work. Buildings acquired by developers shall only be transferred by mutual agreement, once they have been restored, in accordance with the type specifications approved by the said authorities."

#### **Article L. 931-15**

For the purpose of Article L. 145-26, New Caledonia shall be considered a territorial collectivity.

#### **Article L. 931-16**

Article L. 145-37 shall be worded as follows:

"Art. L. 145-37

- The rent for leases on buildings or premises governed by this chapter may be revised at the request of either party, irrespective of whether or not the lease has been renewed, on the terms for which provision is made in decisions by the relevant authority of New Caledonia."

#### **Article L. 931-17**

Article L. 145-43 shall be worded as follows:

"Art. L. 145-43

- Traders or artisans who are tenants of premises on which their business is located and who have been accepted on a conversion or further training scheme in accordance with the provisions of the Labour Code applicable in New Caledonia shall be released from the obligation to run the business during the said training scheme."

#### **Article L. 931-18**

The third paragraph of Article L. 145-47 shall be deleted.

#### **Article L. 931-19**

In Article L. 145-56, the words  
"and procedure" shall be deleted.

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **CHAPTER II. PROVISIONS ADAPTING BOOK II**

#### **Article L. 932-6**

In Articles L. 225-177, L. 225-179 and L. 233-11, the words:  
"the publication date of Law No. 2001-420 of 15 May 2001 relating to the new economic regulations" shall be replaced by the words:  
"the publication date of Order No. 2004-604 of 24 June 2004 reforming the rules governing transferable securities issued by commercial companies and the extension overseas of the provisions which amended the commercial legislation."

#### **Article L. 932-7**

In Articles L. 223-18, L. 225-36 and L. 225-65, the words:  
"in the same department or an adjacent department" shall be replaced by the words:  
"in New Caledonia."

#### **Article L. 932-8**

The final paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

#### **Article L. 932-10**

Article L. 225-115 5° shall be worded as follows:  
"5° Total deductions, as certified by the auditors, from the taxable profit of companies which make payments to works by bodies of general interest or authorised companies or to donations of works of art to the state or to New Caledonia in accordance with the provisions of tax legislation applicable in New Caledonia and the list of registered sponsoring and patronage

shares."

#### **Article L. 932-11**

In Articles L. 225-105, L. 823-6 and L. 225-231, the words "or, where there is none, the staff delegates" shall be inserted after the words "the works council".

#### **Article L. 932-12**

In Articles L. 225-231, L. 232-3, L. 232-4, L. 234-1 and L. 234-2, the words "or, where there is none, the staff delegates" shall be inserted after the words "works council".

#### **Article L. 932-14**

In Article L. 225-270 (VI), the words:  
"the provisions of Article 94 A of the General Tax Code" shall be replaced by the words  
"the provisions of the local tax code applicable in New Caledonia and relating to net capital gains from disposals against payment of securities and corporate rights."

#### **Article L. 932-15**

The final paragraph of Article L. 228-36 shall be deleted.

#### **Article L. 932-16**

In Article L. 233-24, the words:  
"or of Article 97 VII" shall be deleted.

#### **Article L. 932-17**

The second paragraph of Article L. 251-7 shall be deleted.

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **CHAPTER III. PROVISIONS ADAPTING BOOK III**

#### **Article L. 933-1**

The second and third paragraphs of Article L. 310-1 shall be deleted.



#### **Article L. 933-2**

The second paragraph of Article L. 310-2 I and the whole of II of that same article shall be deleted.

#### **Article L. 933-3**

The second paragraph of Article L. 310-3 I shall be deleted.

#### **Article L. 933-4**

Article L. 310-5 1°, 2° and 3° shall be deleted.

#### **Article L. 933-5**

In Article L. 322-1, the words:

"with Article 53 of Act no 91-650 of 9 July 1991 relating to the reform of Civil Execution Procedures and with Article 945 of the Code of Civil Procedure" shall be replaced by the words:

"with the provisions of civil procedure applicable in New Caledonia and relating to a succession".

#### **Article L. 933-6**

Article L. 322-11 shall be worded as follows:

"Art. L. 322-11

- Disputes relating to sales effected in application of local decisions governing voluntary sales, auctions and wholesale sales of goods by sworn brokers shall be brought before the joint Tribunal de Commerce."

#### **Article L. 933-7**

Article L. 322-15 shall be worded as follows:

"Art. L. 322-15

- Where necessary, it shall be incumbent upon the court or the judge authorising or ordering the sale pursuant to the preceding Article to appoint a class of public official other than a sworn broker to proceed therewith."

#### **Article L. 933-8**

Article L. 322-16 shall be worded as follows:

"Art. L. 322-16

- The provisions of Article L. 322-11 shall apply to the sales referred to in Articles L. 322-14 and L. 322-15."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **CHAPTER IV. PROVISIONS ADAPTING BOOK IV**

###### **Article L. 934-1**

For the purpose of Article L. 450-4:

1° In the first paragraph, the words "the European Commission, the minister responsible for the economy or the general rapporteur of the Competition Authority acting on the proposal of the rapporteur" shall be replaced by the words "the relevant authority of New Caledonia";

2° In the second paragraph, the words "of Book IV of this Code" shall be replaced by the words:

"applicable in New Caledonia in matters of pricing freedom and competition";

3° In the seventh paragraph, the words:

"that of the administration of the Directorate General for Competition, Consumer Affairs and the Prevention of Fraud, or that of the Competition Authority" shall be replaced by the words

"or that of the relevant authority of New Caledonia.";

4° In the eighth paragraph, the words:

"and, where applicable, the agents and other persons appointed by the European Commission" shall be deleted;

5° In the eleventh paragraph, the words:

"of the Competition Authority" shall be replaced by the words:

"of the relevant authority in New Caledonia";

6° In the twelfth paragraph, the words:

"and not later than the date of notification of the claims referred to in Article L. 463-2" shall be deleted.

###### **Article L. 934-2**

For the purpose of Article L. 450-8, the words:

"referred to in Article L. 450-1 of the Labour Code" shall be replaced by the words:

"sworn."

###### **Article L. 934-3**

For its application in New Caledonia, Article L. 470-4-1 shall be worded

as follows:

"Art. L. 470-4-1

- The deed by which the State Prosecutor consents to the proposed transaction issued by the administrative authority in charge of pricing and competition shall have the effect of interrupting the period of prescription<sup>147</sup> applicable to public actions.

Public actions shall lapse where the perpetrator of the offence has executed within the period specified the obligations arising for him from the acceptance of the transaction."

#### **Article L. 934-4**

For the purpose of Article L. 470-5, the words:

"the Minister for the Economy" shall be replaced by the words:

"the relevant authority in New Caledonia."

#### **Article L. 934-5**

For the purpose of Articles L. 450-3, L. 450-4, L. 450-7, L. 450-8, L. 470-4-2 and L. 470-4-3 in New Caledonia, the words:

"the agents referred to in Article L. 450-1" shall be replaced by the words:

"the sworn agents of New Caledonia referred to in Article 86 of Law No. 99-209 of 19 March 1999 on New Caledonia intervening in matters listed in 19° and 20° of Article 22 of that same law."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **CHAPTER V: PROVISIONS ADAPTING BOOK V**

#### **Article L. 935-1**

In Article L. 511-55, the word "striking off" shall be deleted.

#### **Article L. 935-2**

Article L. 511-60 shall be worded as follows:

"Art. L. 511-60

- The method of application of the provisions of this subsection, with the exception of the amount owed in remuneration to notaries public or sheriff's officers who have filed protests for the various formalities for which they are

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<sup>147</sup> The period for "prescription extinctive", or the limitation period applicable to legal actions.

responsible, shall be determined by Conseil d'Etat decree."

#### **Article L. 935-3**

In Article L. 511-61, the words:

"territorial authorities" shall be replaced by the words:

"municipalities, provinces or New Caledonia".

#### **Article L. 935-4**

The second paragraph of Article L. 511-62 shall read as follows:

"The withdrawal shall include the sums referred to in Articles L. 511-45 and L. 511-46, in addition to any brokerage fees or stamp duty for which provision is made in the tax code applicable to New Caledonia."

#### **Article L. 935-5**

In Articles L. 523-8, and L. 524-6, the words:

"Articles 1426 to 1429 of the Code of Civil Procedure" shall be replaced by the words:

"provisions of civil procedure applicable locally to offers of payment and consignations."

#### **Article L. 935-6**

The first paragraph of Article L. 524-19 shall be worded as follows:

"The duty to be collected by the Registrar of the joint Tribunal de Commerce shall be set by decree."

#### **Article L. 935-7**

In the first paragraph of Article L. 525-2, the words "according to regulations in force in New Caledonia" shall be inserted after the words "the fixed duty."

#### **Article L. 935-8**

In Article L. 525-9 II, the words:

"the privilege<sup>148</sup> referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words:

"the privilege organised for the benefit of the social welfare fund of the territory."

#### **Article L. 935-9**

Article L. 525-18 shall be amended as follows:

I. - In 1°, the reference to Decree No. 53-968 of 30 September 1953 shall

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<sup>148</sup> A security conferring a preferential right to payment.

be replaced by a reference to Decree No. 55-639 of 20 May 1955.

II.- 2° shall be worded as follows:

2° "Ocean-going ships and inland waterway boats."

#### **Article L. 935-10**

In 4° of Article L. 526-7, the words:

"with the relevant chamber of agriculture" shall be replaced by the words:

"with the Register referred to in 3°."

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **CHAPTER VI. PROVISIONS ADAPTING BOOK VI**

#### **Article L. 936-1**

The application measures for which provision is made in Articles L. 621-4, L. 625-1, L. 626-3, L. 626-6, L. 626-14 and L. 626-16 shall be laid down by the relevant authority in New Caledonia.

#### **Article L. 936-2**

Article L. 611-1 shall be amended as follows:

In the first paragraph, the order of the state representative in the region shall be replaced by a decision by the government of New Caledonia.

#### **Article L. 936-3**

For the purpose of Article L. 612-1, auditors and their deputies shall be selected and shall perform their duties in accordance with local regulations.

#### **Article L. 936-4**

The third paragraph of Article L. 612-1 shall be deleted.

#### **Article L. 936-6**

In Article L. 625-2, the words:

"referred to in Article L. 432-7 of the Labour Code" shall be replaced by the words:

"with respect to information of a confidential nature and data per se."

#### **Article L. 936-7**

For the purpose of Article L. 622-24, the agencies referred to in Article L. 351-21 of the Labour Code shall be agencies in New Caledonia in charge of the service responsible for paying unemployment benefit and recovering contributions.

#### **Article L. 936-8**

For the purpose of Articles L. 622-24, L. 622-26, L. 625-4, L. 626-5, L. 626-20, L. 631-18 L. 641-14 and L. 662-4, the institutions referred to in Article L. 143-11-4 of the Labour Code shall be institutions in New Caledonia in charge of implementing the insurance system against the risk of non-payment of salaries in the event of judicial restructuring or liquidation proceedings.

#### **Article L. 936-9**

For the purpose of Article L. 611-7, L. 626-6 and L. 643-3, the institutions governed by Book IX of the Social Security Code shall be the local additional or supplementary pension or welfare funds for which provision is made in legislation applicable in New Caledonia relating to social security and protection systems.

#### **Article L. 936-11**

In Article L. 642-1, the obligation imposed upon the court to take account of the provisions of Article L. 331-3 1°, 2°, 3° and 4° of the Rural and Maritime Fisheries Code shall be extended to include the following requirements:

To observe the order of priority established between setting-up young farmers and expanding agricultural holdings, taking account of the economic and social benefits of maintaining the independence of the holding to which the application refers;

To take account, where holdings are extended or merged, of the possibility of installing on a viable holding, the location of the land in question in relation to the seat of the applicant's or applicants' holding, the surface area of the property to which the application refers and the surface areas already developed by the applicant(s) and by the tenant; ; To take account of the applicant's or applicants' personal status: age, marital and professional status, and, where applicable, the personal status of the tenant and the number and type of salaried jobs affected;

To take account of the division of land into plots on the holdings in question, either in relation to the registered office of the holding or to prevent changes of occupancy from affecting improvements obtained with the help of public funds.”

## **Article L. 936-12**

4° of III of Article L. 643-11 shall not apply.

# **LEGISLATIVE PART**

## ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

#### **CHAPTER VII. PROVISIONS ADAPTING BOOK VII**

## **Article L. 937-1**

The first paragraph of Article L. 721-1 shall be worded as follows:

"A joint Tribunal de Commerce will comprise the Presiding Judge of the Court of First Instance, the President, elected judges, subject to the provisions of Article L. 937-13, and a registrar. This court shall exercise all the powers devolved on the mainland to the Tribunal de Commerce."

## **Article L. 937-2**

Article L. 722-1 shall be worded as follows:

"Art. L. 722-1

- Unless there are rules providing for a single judge, decisions of the joint Tribunaux de Commerce shall be made by a panel of judges including, in addition to the Presiding Judge, three judges elected or appointed as set out in Article L. 937-13.

Where votes are equally divided, the president shall have the casting vote."

## **Article L. 937-3**

The first paragraph of Article L. 722-9 shall be worded as follows:

"Judges of joint Tribunaux de Commerce shall be elected for four years. They may be re-elected."

## **Article L. 937-4**

Article L. 723-1 shall be worded as follows:

"Art. L. 723-1

- I. - The Tribunal de Commerce judges shall be elected within the jurisdiction of each court by a panel comprising:

1° Those voting personally:

a) Traders registered in the Commercial and Companies Register of New Caledonia, without prejudice, for members who are commercial partners

and managing partners, to the provisions of IV of this Article;

b) Company directors registered in New Caledonia in accordance with the regulations applicable in the territory and with the Commercial and Companies Register;

c) The spouses of the persons indicated in a) or b) above who have declared, in the Commercial and Companies Register, that they are actively engaged in their spouse's business and have no other gainful employment;

d) Master mariners or merchant marine captains in command of a vessel registered in France whose port of registry is situated in the district, inshore pilots working in a port situated in the district constituency, aviation pilots domiciled in the district who command an aircraft registered in France;

e) Sitting members of the joint Tribunaux de Commerce, and former members of such courts having requested an entry in the electoral register;

2° Voters registered in their capacity as representatives:

a) Companies of a commercial nature within the meaning of Article L. 210-1, and public establishments of an industrial and commercial nature whose registered office is situated in the district;

b) By virtue of an establishment which is the subject of an additional entry or a secondary registration in the district, the natural persons referred to in a) and b) of 1° and the legal persons referred to in a) of the present 2°, regardless of the district in which those persons exercise their own voting rights, unless exempted therefrom by the applicable laws and regulations;

c) Commercial companies whose registered office is situated outside France and which have an establishment in the district which is entered in the Commercial and Companies Register.

3° Executives who, being employed in the district by voters referred to in 1° or 2°, perform functions which involve commercial, technical or administrative management responsibilities in the company or institution.

II. - By virtue of their registered office and all their establishments situated in the district, the natural persons or legal entities referred to in 1° and 2° of I have:

1° One additional representative, where they employ between ten and forty-nine employees in the district;

2° Two additional representatives, where they employ between fifty and one hundred and ninety-nine employees in the district;

3° Three additional representatives, where they employ between two hundred and four hundred and ninety-nine employees in the district;

4° Four additional representatives, where they employ between five hundred and one thousand nine hundred and ninety-nine employees in the district;

5° Five additional representatives, where they employ two thousand or more employees in the district.

III. - However, natural persons indicated in a) and b) of 1° of I whose



spouse benefits from the provisions of c) of 1° of that same paragraph shall not designate any additional representative if they employ fewer than fifty employees in the district.

IV. - Sociétés en nom collectif<sup>149</sup> and sociétés en commandite<sup>150</sup> shall designate a single representative for the members and the company by express deliberation, pursuant to the provisions of their articles of association, without prejudice to the possibility of designating additional representatives pursuant to II above.

#### **Article L. 937-5**

Article L. 723-2 shall be worded as follows:

"Art. L. 723-2

- I. - The representatives referred to in Article L. 723-1 applicable in

New Caledonia must perform the functions of president and managing director, president or member of the board of directors, chief executive, president or member of the executive board, or president of the supervisory board of a company, or chief executive, president or member of the board of directors, or administrator of a public institution of an industrial and commercial nature, or, failing this, and in order to represent them as their proxy, functions which involve commercial, technical or administrative management responsibilities in the company or institution.

II. - Those voting personally as referred to in 1° of I of that same Article and the representatives of the natural or legal persons referred to in 2° of I of that same Article must be citizens of a European Community member state.

They must, moreover, in order to vote:

1° Meet the conditions stipulated in Article L. 2 of the electoral laws, with the exception of nationality;

2° Not come under the prohibition referred to in Article L. 6 of the electoral laws;

3° Not have been declared in the previous fifteen years, calculated from the date the decision pronouncing them becomes final, personally bankrupt or subject to prohibitory or forfeiture measures as provided for under Book VI of this Code, under Law No. 85-98 of 25 January 1985 on company restructuring or liquidation or Law 67-563 of 13 July 1967 on the settlement or liquidation of assets, personal disqualification and criminal bankruptcies;

4° Not be subject to a prohibition, under the terms provided for in Article 131-27 of the Penal Code, on engaging in a commercial or industrial occupation, or on directing, administering, managing or controlling a

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<sup>149</sup> Commercial partnerships. These have legal personality, but some personal rights and duties of the partners survive incorporation, particularly in relation to their shares or "parts". See from Article L221-1 of this Code.

<sup>150</sup> A limited partnership. See this Code from Article L222-1 and L226-1 for the two types.

commercial or industrial business or a commercial company, in any capacity whatsoever, either directly or indirectly, and either on their own behalf or on that of others;

5° Not have had sentences, forfeitures or sanctions imposed on them under legislation in force in European Community member states equivalent to those referred to in 2°, 3° and 4°."

#### **Article L. 937-6**

For the purpose of Article L. 723-3, the words:

"the judge responsible for overseeing the Commercial and Companies Register.

Where a new Tribunal de Commerce is set up, the First President of the Cour d'Appel<sup>151</sup> shall appoint a judge to act as president" shall be replaced by the words: "a civil-law judge appointed by the First President of the Cour d'Appel."

#### **Article L. 937-7**

Article L. 723-4 shall be worded as follows:

"Art. L. 723-4

- Subject to the provisions of Article L. 937-9, persons aged thirty years and over, who are listed on the electoral register pursuant to Article L. 937-6 and who can prove either that they have been registered with the Commercial and Companies Register in New Caledonia for at least five years or that they have exercised one of the capacities set out in I of Article 723-2 applicable in New Caledonia over the same period shall be eligible for the duties of a Tribunal de Commerce judge."

#### **Article L. 937-8**

Article L. 723-5 shall be worded as follows:

"Art. L. 723-5

- Any candidate who is subject to a safeguarding procedure, to judicial restructuring or liquidation proceedings shall not be eligible for the functions of a Tribunal de Commerce judge.

The same provision shall apply to any candidate having one of the capacities referred to in I of Article L. 723-2 applicable in New Caledonia, where the company or public establishment to which he belongs is subject to a safeguarding, judicial restructuring or liquidation procedure.

#### **Article L. 937-9**

The first paragraph of Article L. 723-7 shall be worded as follows:

"After twelve years of continuous judicial duties in the same joint Tribunal

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<sup>151</sup> Court of Appeal.

de Commerce, Tribunal de Commerce judges are no longer eligible in that court for one year."

#### **Article L. 937-10**

For the purpose of Article L. 723-8, the words:

"member of a Conseil de Prud'hommes" shall be replaced by the words:

"assessing expert of a Tribunal de Travail."

#### **Article L. 937-11**

For the purpose of Article L. 723-9, the words: "by correspondence or by e-voting shall be replaced by the words: "by proxy or by correspondence as determined in a Conseil d'Etat decree. Each voter may have only one proxy."

#### **Article L. 937-12**

For the purpose of Article L. 723-10, paragraph 1, the words:

"two ballots" shall be replaced by the words:

"one ballot" and the following sentence shall be added to the end of the paragraph:

"If several candidates obtain the same number of votes, the eldest shall be declared the winner."

#### **Article L. 937-13**

For the purpose of Book VII, Title II, Chapter III, Section 3, the following provisions are added:

"I.- The Commission provided for under Article L. 723-13 shall attach a supplementary list to the list of candidates declared elected, which list shall include the name, capacity and domicile of candidates not elected. These candidates shall be classified in decreasing order of the number of votes obtained. Where they have equal numbers of votes, they shall be classified in decreasing order of their age.

Candidates appearing on the additional list drawn up pursuant to the first paragraph of this Article shall replace judges whose seat becomes vacant, on whatever grounds. They shall be appointed, according to the order of the additional list, by the Presiding Judge of the joint Tribunal de Commerce. Before taking up office, they shall swear an oath under the same conditions as provided for judges of joint Tribunaux de Commerce.

II. - Where vacancies cannot be filled pursuant to I and where the number of vacancies exceeds one third of court members, additional elections shall be held.

The same applies in the case of an increase in the members of a joint Tribunal de Commerce.

However, there is no need to hold elections within the twelve months

preceding a general election.

III. - The term of office of judges appointed or elected pursuant to I and II shall end at the same time as the other judges of joint Tribunaux de Commerce."

## **PARTIE LÉGISLATIVE**

### ***BOOK IX. – PROVISIONS RELATING TO OVERSEAS***

#### **TITLE III. PROVISIONS APPLICABLE IN NEW CALEDONIA**

##### **CHAPTER VIII. PROVISIONS ADAPTING BOOK VIII**

###### **Article L. 938-1**

For the application of Articles L. 822-2 to L. 822-7 in New-Caledonia, the terms enumerated below shall be replaced as follows:

1° "Regional Registration Commission" by "Territorial Registration Commission";

2° "Chambre Régionale des Comptes"<sup>152</sup> by "Territorial Chambre des Comptes";

3° "Regional Disciplinary Chamber" by "Territorial Disciplinary Chamber."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

###### **Article L. 940-1**

Without prejudice to the adaptations referred to in the following Chapters, the following provisions of the present Code shall apply in the territory of French Polynesia:

1° Book I, with the exception of Articles L. 124-1 to L. 126-1, L. 145-34 to L. 145-36, L. 145-38 and L. 145-39;

2° Book II, with the exception of Articles L. 225-219 to L. 225-223 and L. 252-1 to L. 252-13;

3° Book III, with the exception of Articles L. 310-4, L. 321-1 to L. 321-38, L. 322-7 and L. 322-10;

4° Book V, with the exception of Articles L. 522-1 to L. 522-40, L. 524-12,

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<sup>152</sup> The regional chambers of the Cour des Comptes, the national Auditing Court.

L. 524-20 and L. 524-21;

5° Book VI, with the exception of Articles L. 621-38, L. 621-132 and L. 628-1 to L. 628-8;

6° Book VII, Title II, with the exception of Articles L. 722-3, L. 722-11 to L. 722-13, Article L. 723-6, Article L. 723-7, paragraph 2, Article L. 723-10, paragraph 2 and Article L. 723-11;

The foregoing provisions, with the exception of those contained in 6° and in Article L. 610-1 are those in force on the publication date of Organic Statute<sup>153</sup> No. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia. They may be amended only as provided for in Article 11 of the said Law.

#### **Article L. 940-2**

The terms set out below shall be replaced as follows for the purpose of the application of this Code in French Polynesia:

1° "Tribunal de Grande Instance" or "Tribunal d'Instance" by "Tribunal de Première Instance";

2° "Tribunal de Commerce" or "lay commercial judge" by "joint Tribunal de Commerce";

3° "Conseil de Prud'hommes"<sup>154</sup> by "Tribunal du Travail."<sup>155</sup>

4° "Bulletin Officiel des Annonces Civiles et Commerciales" by "Journal Officiel de la Polynésie Française";

5° "Department" or "arrondissement" by "territory of French Polynesia";

6° "Prefect" or "sub-prefect" by "state representative in the territory."

#### **Article L. 940-3**

References in the provisions of this Code applicable to French Polynesia to other Articles of this Code shall only refer to the Articles made applicable to French Polynesia with the changes for which provision is made in the following chapters.

#### **Article L. 940-4**

Where no changes are made, references in the provisions of this Code applicable to French Polynesia to provisions which do not apply to it shall be replaced by references to local provisions which serve the same purpose.

#### **Article L. 940-5**

References in the provisions of this Code applicable to French Polynesia

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<sup>153</sup> A "loi organique" which has a special status as affecting the institutions of the State.

<sup>154</sup> The French employment tribunal.

<sup>155</sup> Can be translated as Labour Tribunal.

to provisions of the Labour Code shall only apply there if there is a provision applicable locally which serves the same purpose.

#### **Article L. 940-6**

References to provisions of a regulatory nature by the provisions of the present Code which are applicable in French Polynesia shall be replaced by references to deliberations of the competent authority in French Polynesia, without prejudice to the provisions of the following Chapters.

#### **Article L. 940-7**

References to registration in the trades register<sup>156</sup> shall be replaced by references to registration in accordance with regulations applicable in French Polynesia.

#### **Article L. 940-8**

Articles which refer to the European Community shall apply in accordance with the association decision for which provision is made in Article 136 of the Treaty establishing the European Community. References to the agreement on the European Economic Area shall not apply.

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

##### **CHAPTER I: PROVISIONS ADAPTING BOOK I**

#### **Article L. 941-1**

By way of exception from Article L. 940-6, the reference to provisions of a regulatory nature referred to in Article L. 143-23 shall be maintained with regard to the Institut National de la Propriété Industrielle<sup>157</sup>.

#### **Article L. 941-2**

In Article L. 122-1, the words:

"the prefect of the department in which the foreigner is to conduct his

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<sup>156</sup> The "trades register" here is used in a natural English sense for a register of those conducting a skilled trade or working as artisans. However, "trader" throughout the Code is used differently to translate "commerçant" which has no exact English equivalent.

<sup>157</sup> Could be translated as The National Institute for Intellectual Property for Industry.

business" shall be replaced by the words:  
"the council of ministers of French Polynesia."

#### **Article L. 941-2-1**

For the purpose of its application in French Polynesia, the following paragraph shall be added to Article L. 123-11-5 of the Commercial Code:

Customs officials are authorised to investigate and record infringements of the provisions of articles of this Chapter and the regulations implementing these made by persons or organisations exercising the activity of providing business addresses as defined under local regulations.

To this end, they shall act in accordance with the rules for investigating and recording offences as set out in the Customs Code.

Offences shall be recorded in reports which shall be taken as proof until evidence to the contrary is provided and transmitted directly to the Public Prosecutors' Office.

#### **Article L. 941-3**

The exemptions for which provision is made in Articles L. 123-25 to L. 123-27 shall apply to natural persons subject to a simplified taxation system under regulations in force in French Polynesia.

#### **Article L. 941-4**

For the purpose of Article L. 133-6:

I.- The words:

"those which derive from the provisions of Article 1269 of the Code of Civil Procedure" shall be replaced by the words: "claims for accounts to be revised and proceeds to be settled which are presented with a view to adjustment in the event of error, omission or inaccurate presentation."

II. II.- The provisions of the final paragraph shall apply in the event of transportation effected on behalf of French Polynesia.

#### **Article L. 941-5**

In Article L. 133-7, the words:

"customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.

#### **Article L. 941-6**

For the purpose of Articles L. 141-15, L. 143-7, L. 144-1 to L. 144-13 and L. 145-28, a judge of the court of first instance may be delegated by the Presiding Judge.

#### **Article L. 941-7**

In Article L. 141-13, the words:  
"by Articles 638 and 653 of the General Tax Code" shall be replaced by  
the words:  
"by the provisions of the local tax code applicable in French Polynesia."

#### **Article L. 941-8**

In Article L. 144-5, the words:  
"Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Code of Public  
Health" shall be replaced by the words:  
"the articles of the Code of Public Health applicable locally to  
hospitalization or confinement with or without the consent of the interested  
party."

#### **Article L. 941-9**

Article L. 144-11 shall be worded as follows:  
"Art. L. 144-11  
- Where, under local regulations, the contract for delegation of  
management contains a rent variation clause, a rent review may be  
requested, in accordance with the terms of a decision of the Assembly of  
French Polynesia, notwithstanding any agreement to the contrary, if, when  
the said clause is applied, the rent rises or falls by more than one quarter in  
relation to the previous price set in the contract or by the courts."

#### **Article L. 941-10**

Article L. 144-12 shall be worded as follows:  
"Art. L. 144-12  
- If the parties are unable to reach an amicable agreement on the rent  
review, proceedings shall be instituted and heard in accordance with the  
provisions governing price reviews for residential leases on buildings or  
commercial or industrial leases on premises.  
The judge shall take account of all the factors to be assessed and shall  
adjust the range of the rent variation to the fair rental value on the day of  
notification.  
The judge shall take account of all the factors to be assessed and shall  
adjust the range of the rent variation to the fair rental value on the day of  
notification. The new price shall apply as of the said date, unless the  
parties agree on an earlier or later date before or during the proceedings."  
«



#### **Article L. 941-11**

Article L. 145-2 shall be amended as follows:

I. - In 4°, the words:

"by the State, departments, municipalities and public establishments" shall be replaced by the words:

"by the State, territorial collectivities and public establishments";

II. II. - In 6°, the words:

"to the social security fund of the Maison des Artistes and recognised as the authors of graphic and plastic works as defined in Article 71 of Annex III of the General Tax Code" shall be replaced by the words:

"to the local social security fund and recognised as the authors of graphic and plastic works as defined in the local tax code."

#### **Article L. 941-12**

For the purpose of Article L. 145-6, the words:

"evacuation of the premises included in a sector or perimeter for which provision is made in Articles L. 313-4 and L. 313-4-2 of the Town Planning Code" shall be replaced by the words "evacuation of the premises for which provision is made in Article L. 145-18."

#### **Article L. 941-13**

In Article L. 145-13, the words:

"Subject to the provisions of the Law of 28 May 1943 on the application to foreigners of legislation governing rental leases and farming leases" shall be deleted.

#### **Article L. 941-14**

The second paragraph of Article L. 145-18 shall read as follows:

"The same shall apply for the purpose of restoring buildings involving repair, conservation, modernisation or demolition work which changes the living conditions of a complex of buildings so that the premises have to be evacuated.

Such work may be decided and carried out in accordance with local regulations either by the public authorities with local jurisdiction or at the initiative of one or more property owners who may but are not required to have formed a property owners' association. In the latter case, this property owner or these property owners shall be specifically authorised under conditions determined by the local relevant authority, who shall in particular specify the commitments required of owners regarding the type and extent of the work. Buildings acquired by developers shall only be transferred by mutual agreement, once they have been restored, in accordance with the type specifications approved by the said authorities."

#### **Article L. 941-15**

In Article L. 145-26, the words:  
"departments" shall be replaced by the words:  
"French Polynesia."

#### **Article L. 941-16**

Article L. 145-37 shall be worded as follows:  
"Art. L. 145-37

- The rent for leases on buildings or premises governed by this Chapter may be revised at the request of either party, irrespective of whether or not the lease has been renewed, on the terms for which provision is made in decisions of the assembly of French Polynesia."

#### **Article L. 941-17**

Article L. 145-43 shall be worded as follows:  
"Art. L. 145-43

"- Traders or artisans who are tenants of premises on which their business is located and who have been accepted on a conversion or further training scheme in accordance with the provisions of the Labour Code applicable in French Polynesia shall be released from the obligation to run the business during the said training scheme."

#### **Article L. 941-18**

The third paragraph of Article L. 145-47 shall be deleted.

#### **Article L. 941-19**

In Article L. 145-56, the words  
"and procedure" shall be deleted.

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

##### **CHAPTER II. PROVISIONS ADAPTING BOOK II**

#### **Article L. 942-1**

By way of exception from Article L. 940-6, the references to decrees referred to in Articles L. 225-35 and L. 225-68 shall be maintained.

#### **Article L. 942-2**

For the purpose of Book II, company auditors and their deputies shall be selected and shall perform their duties in accordance with regulations in force in French Polynesia.

#### **Article L. 942-3**

Article L. 225-21 III 4° and 5° shall be deleted:

#### **Article L. 942-4**

In Articles L. 225-25 and L. 225-72, the reference to Articles 20 and 21 of Law No 88-1201 of 23 December 1988 on organisations for collective investment in transferable securities creating joint private debt funds shall be deleted.

#### **Article L. 942-5**

In Articles L. 225-36, and L. 225-65, the words:  
"in the same department or an adjacent department" shall be replaced by the words:  
"in French Polynesia."

#### **Article L. 942-6**

The final paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

#### **Article L. 942-7**

Article 225-67 IV 4° and Article L. 225-77 III 4° shall be deleted.

#### **Article L. 942-8**

Article L. 225-115 5° shall be worded as follows:  
"5° Total deductions, as certified by the auditors, from the taxable profits of companies which make payments to works by general-interest bodies or authorised companies or to donations of works of art to the state or to French Polynesia in accordance with the provisions of tax legislation applicable in French Polynesia and the list of registered sponsoring and patronage shares."

#### **Article L. 942-9**

In Article L. 823-6, the words "or, where there is none, the staff delegates" shall be inserted after the words "works council."

#### **Article L. 942-10**

In Articles L. 225-231, L. 232-3, L. 232-4, L. 234-1 and L. 234-2, the words "or, where there is none, the staff delegates" shall be inserted after the words "works council".

#### **Article L. 942-11**

The second paragraph of Article L. 823-18 shall be deleted.

#### **Article L. 942-12**

In Article L. 225-270 (VI), the words:  
"the provisions of Article 94 A of the General Tax Code" shall be replaced by the words:  
"the provisions of the local tax code relating to net capital gains from disposals against payment of securities and corporate rights."

#### **Article L. 942-13**

The final paragraph of Article L. 228-36 shall be deleted.

#### **Article L. 942-14**

In Article L. 233-24, the words:  
"or of Article 97 VII" shall be deleted.

#### **Article L. 942-15**

The second paragraph of Article L. 251-7 shall be deleted.

### **LEGISLATIVE PART**

#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

##### **CHAPTER III. PROVISIONS ADAPTING BOOK III**

#### **Article L. 943-1**

The second and third paragraphs of Article L. 310-1 shall be deleted.

#### **Article L. 943-2**

The second paragraph of Article L. 310-2 I and the whole of II of that same article shall be deleted.

#### **Article L. 943-3**

The second paragraph of Article L. 310-3 I shall be deleted.

#### **Article L. 943-4**

Article L. 310-5 1°, 2° and 3° shall be deleted.

#### **Article L. 943-5**

In Article L. 322-1, the words:

"with Article 53 of Act no 91-650 of 9 July 1991 relating to the reform of Civil Execution Procedures and with Article 945 of the Code of Civil Procedure" shall be replaced by the words:

"with the provisions of civil procedure applicable locally and relating to the sale of personal property deriving from a succession".

#### **Article L. 943-6**

Article L. 322-11 shall be worded as follows:

"Art. L. 322-11

- Disputes relating to sales effected in application of local decisions governing voluntary sales, auctions and wholesale sales of goods by sworn brokers shall be brought before the joint Tribunal de Commerce."

#### **Article L. 943-7**

Article L. 322-15 shall be worded as follows:

"Art. L. 322-15

- Where necessary, it shall be incumbent upon the court or the judge authorising or ordering the sale pursuant to the preceding Article to appoint a type of public official other than a sworn broker to proceed therewith."

#### **Article L. 943-8**

Article L. 322-16 shall be worded as follows:

"Art. L. 322-16

- The provisions of Article L. 322-11 shall apply to the sales referred to in Articles L. 322-14 and L. 322-15."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

##### **CHAPTER IV. PROVISIONS ADAPTING BOOK IV**

###### **Article L. 941-2-1**

For the purpose of its application in French Polynesia, the following paragraph shall be added to Article L. 123-11-5 of the Commercial Code:

Customs officials are authorised to investigate and record infringements of the provisions of articles of this Chapter and the regulations implementing these made by persons or organisations exercising the activity of providing business addresses as defined under local regulations.

To this end, they shall act in accordance with the rules for investigating and recording offences as set out in the Customs Code.

Offences shall be recorded in reports which shall be taken as proof until evidence to the contrary is provided and transmitted directly to the Public Prosecutors' Office.

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

##### **CHAPTER V: PROVISIONS ADAPTING BOOK V**

###### **Article L. 945-1**

By way of exception from Article L. 940-6, the references to provisions of a regulatory nature referred to in Articles L. 523-14 and L. 524-19 shall be maintained.

###### **Article L. 945-2**

In Article L. 511-55, the word "striking off" shall be deleted.

###### **Article L. 945-3**

Article L. 511-60 shall be worded as follows:

"Art. L. 511-60

- The method of application of the provisions of this Subsection shall be determined by decree of the relevant territorial authority."

#### **Article L. 945-4**

In Article L. 511-61, the words:

"territorial authorities" shall be replaced by the words:

"or municipalities of French Polynesia."

#### **Article L. 945-5**

The second paragraph of Article L. 511-62 shall read as follows:

"The withdrawal shall include the sums referred to in Articles L. 511-45 and L. 511-46, in addition to any brokerage fees or stamp duty for which provision is made in the legislation applicable in French Polynesia."

#### **Article L. 945-6**

In Articles L. 523-8, and L. 524-6, the words:

"Articles 1426 to 1429 of the Code of Civil Procedure" shall be replaced by the words:

"provisions of civil procedure applicable locally to offers of payment and to payments into court."

#### **Article L. 945-7**

In the first paragraph of Article L. 525-2, the words "according to regulations in force in French Polynesia" shall be inserted after the words "the fixed duty."

#### **Article L. 945-8**

In Article L. 525-9 II, the words:

"the privilege<sup>158</sup> referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words:

"the privilege organised for the benefit of the social welfare fund of the territory".

#### **Article L. 945-9**

Article L. 525-18 shall be amended as follows:

I. - In 1°, the reference to Decree No. 53-968 of 30 September 1953 shall be replaced by a reference to Decree No. 55-639 of 20 May 1955.

II.- 2° shall be worded as follows:

2° "Ocean-going ships and inland waterway boats."

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<sup>158</sup> A security conferring a preferential right to payment.

# **LEGISLATIVE PART**

## ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

#### **CHAPTER VI. PROVISIONS ADAPTING BOOK VI**

##### **Article L. 946-1**

By way of exception from Article L. 940-6, the reference to provisions of a regulatory nature referred to in Article L. 621-2 shall be maintained.

##### **Article L. 946-2**

Article L. 611-1 shall be amended as follows:

"I - In the first paragraph, the order of the state representative in the region shall be replaced by a decision by the government of French Polynesia.

II.- In paragraph 4, the words: "mainly in application of Articles 5, 48 and 66 of Law No. 82-213 of 2 March 1982 (amended) on the rights and liberties of municipalities, departments and regions" shall be deleted.

##### **Article L. 946-3**

For the purpose of Article L. 612-1, auditors and their deputies shall be selected and shall perform their duties in accordance with local regulations.

##### **Article L. 946-4**

The third paragraph of Article L. 612-1 shall be deleted.

##### **Article L. 946-5**

In Article L. 612-2, the words "or, where there is none, the staff delegates" shall be inserted after the words "the works council."

##### **Article L. 946-6**

In Article L. 621-2, the words:

"in each department" shall be replaced by the words:

"in French Polynesia."

##### **Article L. 946-7**

In Article L. 625-2, the words:

"referred to in Article L. 432-7 of the Labour Code" shall be replaced by the words:



"with respect to information of a confidential nature and data per se."

#### **Article L. 946-8**

For the purpose of Article L. 622-24, the agencies referred to in Article L. 351-21 of the Labour Code shall be local agencies in charge of the service responsible for paying unemployment benefit and recovering contributions.

#### **Article L. 946-9**

For the purpose of Articles L. 622-24, L. 626-20, L. 625-3 L. 625-4 and L. 662-4, the institutions referred to in Article L. 143-11-4 of the Labour Code shall be territorial institutions in charge of implementing the insurance system against the risk of non-payment of salaries in the event of judicial restructuring or liquidation proceedings.

#### **Article L. 946-10**

For the purpose of Article L. 621-60, the institutions governed by Book IX of the Social Security Code shall be the local additional or supplementary pension or welfare funds for which provision is made in legislation relating to social security and protection systems in the territory.

#### **Article L. 946-11**

In Article L. 626-14, the reference to Article 28 of Decree No. 55-22 of 4 January 1955 reforming real estate publicity shall be replaced by a reference to local provisions governing the publicity of property rights other than privileges<sup>159</sup> and hypothecs<sup>160</sup>.

#### **Article L. 946-12**

In Article L. 621-84, the obligation imposed upon the court to take account of the provisions of Article L. 331-7 1°, 2°, 3° and 4° of the Rural and Maritime Fisheries Code shall be extended to include the following requirements:

To observe the order of priority established between setting-up young farmers and expanding agricultural holdings, taking account of the economic and social benefits of maintaining the independence of the holding to which the application refers;

To take account, where holdings are extended or merged, of the possibility of installing on a viable holding, of the location of the land in question in relation to the registered office of the applicant's or applicants' holding, of the surface area of the property to which the application refers and of the surface areas already developed by the applicant(s) and by the

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<sup>159</sup> A security conferring a preferential right to payment.

<sup>160</sup> The main type of land charge. See the Civil Code, Article 2323 and from Article 2393.

tenant;

To take account of the applicant's or applicants' personal status: age, marital and professional status, and, where applicable, the personal status of the tenant and the number and type of jobs affected;

To take account of the division of land into plots on the holdings in question, either in relation to the registered office of the holding or to prevent changes of occupancy from affecting improvements obtained with the help of public funds. «

#### **Article L. 946-13**

The first paragraph of Article L. 622-2 shall be supplemented by a sentence worded as follows:

"One or more liquidators may be appointed in the same way to assist him."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

##### **CHAPTER VII. PROVISIONS ADAPTING BOOK VII**

#### **Article L. 947-1**

The first paragraph of Article L. 721-1 shall be worded as follows:

"A joint Tribunal de Commerce will comprise the Presiding Judge of the Court of First Instance, the President, elected judges, subject to the provisions of Article L. 947-13, and a registrar. This court shall exercise all the powers devolved on the mainland to the Tribunal de Commerce."

#### **Article L. 947-2**

Article L. 722-1 shall be worded as follows:

"Art. L. 722-1

- Unless there are rules providing for a single judge, decisions of the Tribunaux de Commerce shall be made by a panel of judges including, in addition to the Presiding Judge, three judges elected or appointed as set out in Article L. 947-13.

Where votes are equally divided, the president shall have the casting vote."

#### **Article L. 947-3**

The first paragraph of Article L. 722-7 shall be worded as follows:

"Judges of joint Tribunaux de Commerce shall be elected for four years. They may be re-elected."

#### **Article L. 947-4**

Article L. 723-1 shall be worded as follows:

"Art. L. 723-1

- I. - The Tribunal de Commerce judges shall be elected within the jurisdiction of each court by a panel comprising:

1° Those voting personally:

a) Traders registered in the Commercial and Companies Register of French Polynesia, without prejudice, for members who are commercial partners and managing partners, to the provisions of IV of this Article;

b) Company directors registered in French Polynesia in accordance with the regulations applicable in the territory and with the Commercial and Companies Register;

c) The spouses of the persons indicated in a) or b) above who have declared, in the Commercial and Companies Register, that they are actively engaged in their spouse's business and have no other gainful employment;

d) Master mariners or merchant marine captains in command of a vessel registered in France whose port of registry is situated in the district, inshore pilots working in a port situated in the district, aviation pilots domiciled in the district who command an aircraft registered in France;

e) Sitting members of the joint Tribunaux de Commerce, and former members of such courts having requested an entry in the electoral register;

2° Voters registered as representatives:

a) Companies of a commercial nature within the meaning of Article L. 210-1, and public establishments of an industrial and commercial nature whose registered office is situated in the district;

b) By virtue of an establishment which is the subject of an additional entry or a secondary registration in the district, the natural persons referred to in a) and b) of 1° and the legal persons referred to in a) of the present 2°, regardless of the district in which those persons exercise their own voting rights, unless exempted therefrom by the applicable laws and regulations;

c) Commercial companies whose registered office is situated outside France and which have an establishment in the district which is entered in the Commercial and Companies Register.

3° Executives who, being employed in the district by voters referred to in 1° or 2°, perform functions which involve commercial, technical or administrative management responsibilities in the company or institution.

II.- By virtue of their registered office and all their establishments situated in the district, the natural persons or legal entities referred to in 1° and 2° of I have:

1° One additional representative, where they employ between ten and

forty-nine employees in the district;

2° Two additional representatives, where they employ between fifty and one hundred and ninety-nine employees in the district;

3° Three additional representatives, where they employ between two hundred and four hundred and ninety-nine employees in the district;

4° Four additional representatives, where they employ between five hundred and one thousand nine hundred and ninety-nine employees in the district;

5° Five additional representatives, where they employ two thousand or more employees in the district.

III.- However, natural persons indicated in a) and b) of 1° of I whose spouse benefits from the provisions of c) of 1° of that same paragraph shall not designate any additional representative if they employ fewer than fifty employees in the district.

IV.- Partnerships and partnerships limited by shares designate a single representative for the members and the company by express deliberation, pursuant to the provisions of their articles of association, without prejudice to the possibility of designating additional representatives pursuant to II above.

#### **Article L. 947-5**

Article L. 723-2 shall be worded as follows:

"Art. L. 723-2

I. - The representatives referred to in Article L. 723-1 applicable in French Polynesia must perform the functions of president and managing director, president or member of the board of directors, chief executive, president or member of the executive board, president of the supervisory board, chief executive, president or member of the board of directors, or director of a public institution of an industrial and commercial nature, or, failing this, and in order to represent them as their proxy, functions which involve commercial, technical or administrative management responsibilities in the company or institution.

II. - Those voting personally as referred to in I of that same Article and the representatives of the natural or legal persons referred to in 2° of I of that same Article must be citizens of a European Community member state.

They must, moreover, in order to vote:

1° Meet the conditions stipulated in Article L. 2 of the electoral laws, with the exception of nationality;

2° Not come under the prohibition referred to in Article L. 6 of the electoral laws;

3° Not have been declared personally bankrupt or made subject to a prohibitory measure or forfeiture order as provided for in Book VI of the present Code as applicable in accordance with the last paragraph of Article L. 940-1 or in Law No. 85-98 of 25 January 1985 relating to the judicial

restructuring or liquidation of companies or in Law No. 67-563 of 13 July 1967 relating to judicial settlement, liquidation, personal bankruptcy and other forms of bankruptcy, or a prohibitory measure on conducting commercial business;

4° Not have had sentences, forfeitures or sanctions imposed on them under legislations in force in European Community member states equivalent to those referred to in 2°, 3° and 4°."

#### **Article L. 947-6**

For the purpose of Article L. 723-3, the words:

"the judge responsible for overseeing the Commercial and Companies Register.

Where a new Tribunal de Commerce is set up, the First President of the Cour d'Appel shall appoint a judge to act as president" shall be replaced by the words: "a judge appointed by the First President of the Cour d'Appel."

#### **Article L. 947-7**

Article L. 723-4 shall be worded as follows:

"Art. L. 723-4

- Subject to the provisions of Article L. 947-9, persons aged thirty years and over, who are listed on the electoral register pursuant to Article L. 947-6 and who can prove either that they have been registered with the Commercial and companies register in French Polynesia for at least five years or that they have exercised one of the capacities set out in I of Article 723-2 as applicable in French Polynesia over the same period shall be eligible for the duties of a Tribunal de Commerce judge."

#### **Article L. 947-8**

Article L. 723-5 shall be worded as follows:

"Art. L. 723-5

- Any candidate who is subject to judicial restructuring or liquidation proceedings shall not be eligible for the functions of a Tribunal de Commerce judge.

The same provision shall apply to any candidate having one of the capacities referred to in I of Article L. 723-2 as applicable in French Polynesia, where the company or public establishment to which he belongs is subject to a judicial restructuring or liquidation procedure."

#### **Article L. 947-9**

The first paragraph of Article L. 723-7 shall be worded as follows:

"After twelve years of continuous judicial duties in the same joint Tribunal de Commerce, Tribunal de Commerce judges are no longer eligible in that court for one year."

#### **Article L. 947-10**

For the purpose of Article L. 723-8, the words:

"member of a Conseil de Prud'hommes" shall be replaced by the words:

"assessing expert of a Tribunal de Travail."

#### **Article L. 947-11**

For the purpose of Article L. 723-9, the words: "by correspondence or by e-voting." shall be replaced by the words: "by proxy or by correspondence as determined in a Conseil d'Etat decree. Each voter may have only one proxy."

#### **Article L. 947-12**

For the purpose of Article L. 723-10, paragraph 1, the words:

"two ballots" shall be replaced by the words:

"one ballot", and the following sentence shall be added to the end of the article:

"If several candidates obtain the same number of votes, the eldest shall be declared the winner."

#### **Article L. 947-13**

For the purpose of Book VII, Title II, Chapter III, Section 3, the following provisions are added:

I.- The Commission provided for under Article L. 723-13 shall attach a supplementary list to the list of candidates declared elected, which list shall include the name, capacity and domicile of candidates not elected. These candidates shall be classified in decreasing order of the number of votes obtained. Where they have equal numbers of votes, they shall be classified in decreasing order of their age.

Candidates appearing on the additional list drawn up pursuant to the first paragraph of this Article shall replace judges whose seat becomes vacant, on whatever grounds. They shall be appointed, according to the order of the additional list, by the Presiding Judge of the joint Tribunal de Commerce.

Before taking up office, they shall swear an oath under the same conditions as provided for judges of joint Tribunaux de Commerce.

II.- Where vacancies cannot be filled pursuant to I and where the number of vacancies exceeds one third of court members, additional elections shall be held. The same applies in the case of an increase in the members of a joint Tribunal de Commerce.

However, there is no need to hold elections within the twelve months preceding a general election.

III.- The term of office of judges appointed or elected pursuant to I and II shall end at the same time as the other judges of joint Tribunaux de

Commerce."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE IV. PROVISIONS APPLICABLE IN FRENCH POLYNESIA**

##### **CHAPTER VIII. PROVISIONS ADAPTING BOOK VIII**

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE V: PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

##### **Article L. 950-1**

Without prejudice to the adaptations referred to in the following Chapters, the following provisions of the present code are applicable in the Wallis and Futuna Islands:

- 1° Book I, with the exception of Articles L. 123-1-1, L. 123-29 to L. 123-31, L. 124-1 to L. 126-1 and L. 135-1 to L. 135-3;
- 2° Book II, with the exception of Articles L. 225-245-1, L. 229-1 to L. 229-15, L. 238-6, L. 244-5 and L. 252-1 to L. 252-13;
- 3° Book III, with the exception of Articles L. 321-1 to L. 321-38;
- 4° Book IV, with the exception of Articles L. 441-1, L. 442-1 and L. 470-6;
- 5° Book V, with the exception of Articles L. 522-1 to L. 522-40, L. 524-12, L. 524-20 and L. 524-21;
- 6° Book VI, with the exception of Articles L. 622-19, L. 625-9, L. 653-10 and L. 670-1 to L. 670-8;
- 7° Book VII, Title I, with the exception of Articles L. 711-5, L. 711-9 and L. 721-3 to L. 721-6;
- 8° Book VIII, with the exception of Articles L. 812-1 to L. 813-1.

##### **Article L. 950-2**

For application of the present Code in the Wallis and Futuna Islands, the terms enumerated below shall be replaced as follows:

- 1° "Tribunal de Grande Instance" or "Tribunal d'Instance" by "Tribunal de Première Instance";
- 2° "Tribunal de Commerce" or "lay commercial judge" by "Tribunal de

Première Instance Statuant en Matière Commerciale"<sup>161</sup>;  
3° "Conseil de Prud'hommes"<sup>162</sup> by "Tribunal du Travail."  
4. "Bulletin Officiel des Annonces Civiles et Commerciales" by "Journal Officiel of the Territory";  
5° "Department" or "arrondissement" by "territory."  
6° "Prefect" or "sub-prefect" by "state representative in the territory."  
7° "Mayor" by "district leader."  
8° "Bureau des Hypothèques"<sup>163</sup> by "Registrar of the Tribunal de Première Instance."<sup>164</sup>

#### **Article L. 950-3**

References in the provisions of this Code applicable to the Wallis and Futuna Islands to other Articles of this Code shall only refer to the Articles made applicable to the Wallis and Futuna Islands with the changes for which provision is made in the following chapters.

#### **Article L. 950-4**

Where no changes are made, references in the provisions of this Code applicable to the Wallis and Futuna Islands to provisions which do not apply there shall be replaced by references to local provisions which serve the same purpose.

#### **Article L. 950-5**

References in the provisions of this Code applicable to the Wallis and Futuna Islands to provisions of the Labour Code shall only apply there if there is a provision applicable locally which serves the same purpose.

#### **Article L. 950-6**

References to registration in the trades register shall be replaced by references to registration in accordance with regulations applicable in the Wallis and Futuna Islands.

#### **Article L. 950-7**

Articles which refer to the European Community shall apply in accordance with the association decision for which provision is made in Article 136 of the Treaty establishing the European Community. References to the agreement on the European Economic Area shall not

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<sup>161</sup> Can be translated as Court of First Instance Ruling on Commercial Matters.

<sup>162</sup> The French Employment Tribunal.

<sup>163</sup> The Registry for the main type of land charge, the hypothec. See the Civil Code, Article 2323 and from Article 2393.

<sup>164</sup> Can be translated as the Court of First Instance.



apply.

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE V: PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

##### **CHAPTER I: PROVISIONS ADAPTING BOOK I**

###### **Article L. 951-1**

In Article L. 122-1, the words:  
"by the prefect of the department in which the foreigner is to conduct his business" shall be replaced by the words

"by the state representative in the territory if the foreigner is to conduct his business there".

###### **Article L. 951-1-1**

In Article L. 123-11-3, the references to the Consumer Code and to the Labour Code shall be replaced by references to the locally applicable provisions having the same purpose.

###### **Article L. 951-1-2**

For its application in the Wallis and Futuna Islands, Article L. 123-11-6 shall be worded as follows:

Art. L 123-11-6 - Customs officials are authorised to investigate and record infringements of the provisions of articles of the present Subsection and the regulations implementing these:

To this end, they shall act in accordance with the rules for investigating and recording offences as set out in the Customs Code. Offences shall be recorded in reports which shall be taken as proof until evidence to the contrary is provided and transmitted directly to the Public Prosecutors' Office.

###### **Article L. 951-2**

The exemptions for which provision is made in Articles L. 123-25 to L. 123-27 shall apply to natural persons subject to a simplified taxation system under local regulations.

#### **Article L. 951-3**

In Article L. 133-6, the words:

"those which result from the provisions of Article 1269 of the Code of Civil Procedure" shall be replaced by the words:

"claims for accounts to be revised and proceeds to be settled which are presented with a view to adjustment in the event of error, omission or inaccurate presentation."

#### **Article L. 951-4**

For the purpose of Articles L. 141-15, L. 143-7, L. 144-1 to L. 144-13 and L. 145-28, a judge of the court of first instance may be delegated by the Presiding Judge.

#### **Article L. 951-5**

In Article L. 141-13, the words:

"by Articles 638 and 653 of the General Tax Code" shall be replaced by the words:

"by the provisions of the tax code applicable locally";

#### **Article L. 951-6**

In Article L. 144-5, the words:

"Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Code of Public Health" shall be replaced by the words:

"the articles of the Code of Public Health applicable locally to hospitalization or confinement with or without the consent of the interested party."

#### **Article L. 951-7**

Article L. 145-2 shall be amended as follows:

I.- repealed;

II. - In 6°, the words:

"to the social security fund of the Maison des Artistes and recognised as the authors of graphic and plastic works as defined in Article 71 of Annex III of the General Tax Code" shall be replaced by the words:

"to the local social security fund and recognised as the authors of graphic and plastic works as defined in the local tax code."

#### **Article L. 951-8**

For the purpose of Article L. 145-6, the words:

"evacuation of the premises included in a sector or perimeter for which provision is made in Articles L. 313-4 and L. 313-4-2 of the Town Planning

Code" shall be replaced by the words "evacuation of the premises for which provision is made in Article L. 145-18."

#### **Article L. 951-9**

In Article L. 145-13, the words "subject to the provisions of the Law of 28 May 1943 on the application to foreigners of legislation governing rental leases and farming leases" shall be deleted.

#### **Article L. 951-10**

The second paragraph of Article L. 145-18 shall read as follows:

"The same shall apply for the purpose of restoring buildings involving repair, conservation, modernisation or demolition work which changes the living conditions of a complex of buildings so that the premises have to be evacuated. Such work may be decided and carried out in accordance with local regulation either by the public authorities with local jurisdiction or at the initiative of one or more property owners who may but are not required to have formed a property owners' association. In the latter case, this property owner or these property owners shall be specifically authorised under conditions determined by the State representative, who shall in particular specify the commitments required of owners regarding the type and extent of the work. Buildings acquired by developers shall only be transferred by mutual agreement, once they have been restored, in accordance with the type specifications approved by the state representative."

#### **Article L. 951-12**

The first paragraph of Article L. 145-34 shall be worded as follows:

"Unless the factors referred to in 1° to 4° of Article L. 145-33 change significantly, the variation in the rent applicable upon renewal of the lease, provided its term does not exceed nine years, shall not exceed the variation in a local quarterly construction cost index for the period since the initial rent for the expired lease was determined. The said index is calculated as determined in an order issued by the State representative. If there is no clause in the contract which stipulates the index's reference quarter, the variation in the local quarterly construction cost index indicated for that purpose in the aforementioned order shall be applied."

#### **Article L. 951-13**

Article L. 145-35 shall be amended as follows:

I.- In paragraph 1, the word:

"departmental" shall be deleted;

II. - the final paragraph shall be worded as follows:

"The composition of the committee and the method of appointing the

members and the rules of procedure thereof shall be decided by order of the State representative."

#### **Article L. 951-14**

Article L. 145-43 shall be worded as follows:

"Art. L. 145-43

"- Traders or artisans who are tenants of premises on which their business is located and who have been accepted on a conversion or further training scheme in accordance with the provisions of the Labour Code shall be released from the obligation to run the business during the said training scheme."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE V:**

#### **PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

##### **CHAPTER II. PROVISIONS ADAPTING BOOK II**

#### **Article L. 952-1**

In Articles L. 225-177, L. 225-179 and L. 233-11, the words:

"the publication date of Law No. 2001-420 of 15 May 2001 relating to the new economic regulations" shall be replaced by the words:

"the publication date of Order No. 2004-604 of 24 June 2004 reforming the rules governing transferable securities issued by commercial companies and the extension overseas of the provisions which amended the commercial legislation."

#### **Article L. 952-2**

In Articles L. 223-18, L. 225-36 and L. 225-65, the words:

"in the same department or an adjacent department" shall be replaced by the words:

"in the territory."

#### **Article L. 952-4**

In 5° of Article L. 225-115, the words:

"payments made pursuant to 1° and 4° of Article 238 bis of the General Tax Code" shall be replaced by the words:

"tax deductions specified by the provisions of local tax law relating to total deductions from the taxable profit of companies which make payments to works by bodies of general interest or authorised companies or donations of works of art to the State."

#### **Article L. 952-5**

In Articles L. 225-105, L. 823-6 and L. 225-231, the words:

"the works council" shall be replaced by the words "staff delegates."

#### **Article L. 952-6**

In Articles L. 225-231, L. 232-3, L. 232-4, L. 234-1 and L. 234-2, the words "staff delegates" shall be replaced by the words "works council."

#### **Article L. 952-7**

In Article L. 225-270 (VI), the words:

"the provisions of Article 94 A of the General Tax Code" shall be replaced by the words:

"the provisions of the local tax code relating to net capital gains from disposals against payment of securities and corporate rights."

#### **Article L. 952-8**

The final paragraph of Article L. 228-36 shall be deleted.

#### **Article L. 952-9**

In Article L. 233-24, the words:

"or of Article 97 VII" shall be deleted.

#### **Article L. 952-10**

The second paragraph of Article L. 251-7 shall be deleted.

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE V: PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

##### **CHAPTER III. PROVISIONS ADAPTING BOOK III**

#### **Article L. 953-1**

III of Article L. 310-2 and 6° of Article L. 310-5 shall be deleted.

#### **Article L. 953-2**

In Article L. 322-1, the words:

"with Article 53 of Act no 91-650 of 9 July 1991 relating to the reform of Civil Execution Procedures and with Article 945 of the Code of Civil Procedure" shall be replaced by the words:

"with the provisions of civil procedure applicable locally and relating to the sale of personal property deriving from a succession."

#### **Article L. 953-3**

Article L. 322-9 shall be worded as follows:

"Sworn commodities brokers shall comply with the provisions of the local tax code relating to public sales and auctions."

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#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE V: PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

##### **CHAPTER IV. PROVISIONS ADAPTING BOOK IV**

#### **Article L. 954-1**

In Article L. 430-2, paragraph 1, the word: "three" shall be replaced by the word: "two". The fourth and fifth paragraphs of that same Article shall be deleted.

#### **Article L. 954-2**

In Article L. 430-3, the last sentence of the first paragraph shall be deleted. In the third paragraph of that same Article, the words:

", or the total or partial referral of an operation of community-wide dimensions," shall be deleted.

#### **Article L. 954-3**

The last paragraph of Article L. 441-2 (I) shall be replaced by four paragraphs worded as follows:

"The cessation of advertising which does not comply with the provisions of paragraph 1 may be ordered by the investigating judge or by the court to which the proceedings are referred, whether at the request of the Office of the Public Prosecutor or of their own motion. The measure thus taken shall be enforceable notwithstanding any appeal.

The measure may be lifted by the court which ordered it or to which the case is referred. It shall become ineffective if a judgement of dismissal or acquittal is returned.

Rulings on applications for the lifting of orders may be appealed against before the appeal court.

The appeal court shall rule within ten days of receiving the evidence."

#### **Article L. 954-4**

In Article L. 442-2, paragraph 2, the word "any" shall be inserted before the words "turnover tax."

#### **Article L. 954-5**

The last paragraph of Article L. 442-3 shall be replaced by four paragraphs worded as follows:

"The cessation of advertising may be ordered by the investigating judge or by the court to which the proceedings are referred, whether at the request of the Office of the Public Prosecutor or on their own motion. The measure thus taken shall be enforceable notwithstanding any appeal.

The measure may be lifted by the court which ordered it or to which the case is referred. It shall become ineffective if a judgement of dismissal or acquittal is returned.

Rulings on applications for the lifting of orders may be appealed against before the appeal court.

The appeal court shall rule within ten days of receiving the evidence."

#### **Article L. 954-6**

In Article L. 442-7, the words:

"cooperatives for business or administration" shall be deleted.

#### **Article L. 954-7**

Article L. 443-1 shall be amended as follows:

I.- In 1°, the words:

"referred to in Articles L. 326-1 to L. 326-3 of the Rural and Maritime Fisheries Code" shall be replaced by the words:

"provided for by the dispositions of the local agricultural and maritime fishing laws";

II. - in 3°, the words

"by Article 403 of the General Tax Code" shall be replaced by the words:

"by the provisions of the locally applicable tax code"; III. – 4° shall be worded as follows: :

"4° Seventy-five days from delivery for purchases of alcoholic beverages liable for the circulation taxes for which provision is made in the local tax code."

# **LEGISLATIVE PART**

## ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

### **TITLE V:**

#### **PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

##### **CHAPTER V: PROVISIONS ADAPTING BOOK V**

###### **Article L. 955-1**

In Article L. 511-61, the words:

"territorial authorities" shall be replaced by the words:

"or the Wallis and Futuna Islands."

###### **Article L. 955-2**

The second paragraph of Article L. 511-62 shall read as follows:

"The withdrawal shall include the sums referred to in Articles L. 511-45 and L. 511-46, in addition to any brokerage fees or stamp duty for which provision is made in the tax code applicable in the Wallis and Futuna Islands."

###### **Article L. 955-3**

In Articles L. 523-8, and L. 524-6, the words:

"Articles 1426 to 1429 of the Code of Civil Procedure" shall be replaced by the words:

"provisions of civil procedure applicable locally to offers of payment and consignations."

###### **Article L. 955-4**

The first paragraph of Article L. 524-19 shall be worded as follows:

"The sum in duties to be collected by the Registrar of the Tribunal de Première Instance Statuant en Matière Commerciale shall be set by decree."

###### **Article L. 955-5**

In the first paragraph of Article L. 525-2, the words "according to regulations in force in the Wallis and Futuna Islands" shall be inserted after the words "the fixed duty."



#### **Article L. 955-6**

In Article L. 525-9 II, the words:  
"the privilege<sup>165</sup> referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words:  
"the privilege organised for the benefit of the social welfare fund of the territory."

#### **Article L. 955-7**

Article L. 525-18 shall be amended as follows:  
I. - In 1°, the reference to Decree No. 53-968 of 30 September 1953 shall be replaced by a reference to Decree No. 55-639 of 20 May 1955.  
II.- 2° shall be worded as follows:  
2° "Ocean-going ships and inland waterway boats."

#### **Article L. 955-8**

In 4° of Article L. 526-7, the words:  
"with the relevant chamber of agriculture" shall be replaced by the words:  
"with the Register referred to in 3°."

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#### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

##### **TITLE V:**

##### **PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

###### **CHAPTER VI. PROVISIONS ADAPTING BOOK I**

#### **Article L. 956-1**

The application measures for which provision is made in Articles L. 621-4, L. 625-1, L. 626-3, L. 626-5 to L. 626-7, L. 626-14 and L. 626-16 shall be decided by the territorial assembly.

#### **Article L. 956-2**

In Article L. 625-2, the words:  
"referred to in Article L. 432-7 of the Labour Code" shall be replaced by the words:

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<sup>165</sup> A security conferring a preferential right to payment.

"with respect to information of a confidential nature and data per se."

#### **Article L. 956-3**

For the purpose of Article L. 622-24, the agencies referred to in Article L. 351-21 of the Labour Code shall be local agencies in charge of the service responsible for paying unemployment benefit and recovering contributions.

#### **Article L. 956-4**

For the purpose of Articles L. 622-24, L. 622-26, L. 625-4, L. 626-5, L. 626-20, L. 631-18, L. 641-14 and L. 662-4, the institutions referred to in Article L. 143-11-4 of the Labour Code shall be local institutions in charge of implementing the insurance system against the risk of non-payment of salaries in the event of order for judicial restructuring or liquidation.

#### **Article L. 956-5**

For the purpose of Article L. 611-7, L. 626-6 and L. 643-3, the institutions governed by Book IX of the Social Security Code shall be the local additional or supplementary pension or welfare funds for which provision is made in legislation relating to social security and protection systems in the Wallis and Futuna Islands.

#### **Article L. 956-7**

In Article L. 642-2, the obligation imposed upon the court to take account of the provisions of Article L. 331-3 1°, 2°, 3° and 4° of the Rural and Maritime Fisheries Code shall be extended to include the following requirements:

To observe the order of priority established between setting-up young farmers and expanding agricultural holdings, taking account of the economic and social benefits of maintaining the independence of the holding to which the application refers;

To take account, where holdings are extended or merged, of the possibility of installing on a viable holding, the location of the land in question in relation to the seat of the applicant's or applicants' holding, the surface area of the property to which the application refers and the surface areas already developed by the applicant(s) and by the tenant;

To take account of the applicant's or applicants' personal status: age, marital and professional status, and, where applicable, the personal status of the tenant and the number and type of salaried jobs affected;

To take account of the division of land into plots on the holdings in question, either in relation to the seat of the holding or to prevent changes of tenure from affecting improvements obtained with the help of public funds.

**Article L. 956-9**

4° of III of Article L. 643-11 shall not apply.

**LEGISLATIVE PART**

***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

**TITLE V:**

**PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

**CHAPTER VII. PROVISIONS ADAPTING BOOK VII**

**Article L. 957-1**

In Articles L. 711-2, and L. 711-4, the word:  
"Government" shall be replaced by the words:  
"State representative in the territory."

**Article L. 957-2**

In Article L. 711-6, paragraph 3, the words:  
"or the municipality" shall be replaced by the words:  
"or the territory."

**Article L. 957-3**

In Article L. 712-1, the words:  
"by means of a tax in addition to the business tax" shall be replaced by  
the words:  
"as set out in the provisions of the local tax code applicable in the Wallis  
and Futuna Islands."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE V:**

#### **PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS**

##### **CHAPTER VIII. PROVISIONS ADAPTING BOOK VIII**

##### **Article L. 958-1**

Articles L. 814-1 to L. 814-5 and L. 814-8 to L. 814-13 shall apply insofar as they concern court-appointed receivers.

##### **Article L. 958-2**

For the application of Articles L. 822-2 to L. 822-7 in the Wallis and Futuna Islands, the terms enumerated below are replaced as follows:

1° "Regional Registration Commission" by "Territorial Registration Commission";

2° "Chambre Régionale des Comptes"<sup>166</sup> by "Chambre Territoriale des Comptes of New Caledonia";

3° "Regional Disciplinary Chamber" by "Territorial Disciplinary Chamber."

## **LEGISLATIVE PART**

### ***BOOK IX: PROVISIONS RELATING TO OVERSEAS***

#### **TITLE VI:**

#### **MISCELLANEOUS PROVISIONS APPLICABLE IN SAINT-BARTHÉLEMY AND SAINT-MARTIN**

##### **Article L. 960-1**

For the application of Article L. 526-7 4° in Saint-Barthélemy and Saint-Martin, the words:

"with the relevant chamber of agriculture" shall be replaced by the words:

"with the Register referred to in 3°."

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<sup>166</sup> The regional chamber of the national Auditing Court.