



COMMERCIAL CODE

With the participation of Louis VOGEL, Professor at the University of Paris II and, for the Book VI on Businesses in difficulty, of Françoise PEROCHON, Professor at the University of Montpellier I

BOOK I

Commerce in general

Articles L110-1 to
L146-4

TITLE I

The commercial act

Articles L110-1 to
L110-4

Article L110-1

The law provides that commercial instruments are:

1° All purchases of chattels in order to resell this, either in kind or after having worked and developed this;

2° All purchases of real property in order to resell this, unless the purchaser has acted in order to construct one or more buildings and to sell these en bloc or site-by-site;

3° All intermediate operations for the purchase, subscription or sale of buildings, business or shares of property companies;

4° All chattels rental undertakings;

5° All manufacturing, commission and land or water transport undertakings;

6° All supply, agency, business office, auction house and public entertainment undertakings; 7°

All exchange, banking or brokerage operations;

8° All public banking operations;

9° All obligations between dealers, merchants and bankers;

10° Bills of exchange between all persons.

Article L110-2

The law also deems commercial instruments to be:

1° All construction undertakings and all purchases, sales and resales of ships for inland and foreign-going navigation;

2° All sea shipments;

3° All purchases and sales of ship's tackle, apparatus and foodstuffs; 4°

All chartering or chartering and bottomry loans;

5° All insurances and other contracts relating to maritime trade;

6° All agreements and conventions on crew wages and rents;

7° All engagements of seamen for the service of commercial ships.

Article L110-3

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

Article L110-4

I.- Obligations deriving from trade between traders or between traders and non-traders shall be prescribed after ten years unless they are subject to special shorter periods of prescription.

II.- All claims for payment shall be prescribed:

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

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

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

III.- Claims for payment of the wages of officers, seamen and other crewmembers shall be prescribed after five years in accordance with Article 2277 of the Civil Code.

TITLE II

Traders

Articles L121-1 to
L128-6

CHAPTER I

Definition and status

Articles L121-1 to
L121-3



SECTION I

Capacity of trader

Articles L121-1 to
L121-3

Article L121-1

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

Article L121-2

Minors, even when declared of full age and capacity, may not be traders.

Article L121-3

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

SECTION II

Spouses of craftspeople and traders working in the family-owned undertaking

CHAPTER II

Foreign traders

Articles L122-1 to
L122-4

Article L122-1

(Order No. 2004-279 of 25 March 2004 Art. 1 1 Official Journal of 27 March 2004)

A foreign national shall not be engaged in a commercial, industrial or handicraft occupation in France in a manner which requires his registration or inclusion in the register of companies or the trade register without the prior consent of the Prefect of the Department in which he envisages conducting his business initially.

Article L122-2

Any breach of the requirements of Article L.122-1 and of those in the implementing decree specified in Article L.122-4 shall be punished by a prison sentence of six months and a fine of 25 000 F. In cases of recidivism, the penalties shall be doubled. The court may also order the closure of the establishment.

Article L122-3

(Order No. 2004-279 of 25 March 2004 Art. 1 2 Official Journal of 27 March 2004)

I. - The provisions of Articles L. 122-1 and L. 122-2 do not apply to the citizens of a European Community member state, a European Economic Area member state or a member state of the Organisation for Economic Cooperation and Development acting on their own behalf or on behalf of either another citizen of such a State or a company incorporated pursuant to the legislation of such a State and having its registered office, its principal administrative establishment or its principal place of business in such a State.

II. - However, when a foreign national or a company referred to in I creates an agency, a branch or a subsidiary on French soil or provides services there, the benefit of I shall be granted only if:

1. The foreign national is established in a European Community member state, a European Economic Area member state or a member state of the Organisation for Economic Cooperation and Development;

2. The company, if it has only its registered office in the European Community, a European Economic Area member state or a member state of the Organisation for Economic Cooperation and Development, conducts a business which has an effective and continuous link with the economy of such a State.

Article L122-4

A Conseil d'Etat decree shall fix the conditions for implementing this chapter.

CHAPTER III

General obligations of traders

Articles L123-1 to
L123-28

SECTION I

Commercial and companies register

Articles L123-1 to
L123-11

Subsection 1

Persons required to register

Articles L123-1 to
L123-5-1

Article L123-1



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 capacity 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 have a legal personality in accordance with Article 1842 of the Civil Code or with Article L.251-4;

3° Commercial companies whose registered office 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 whose registration is specified by the acts and regulations;

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

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

Article L123-2

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 L123-3

If a trader who is a natural person fails to request registration by the specified deadline, the judge hearing the case shall, either automatically or at the request of the procureur de la République or any person proving that they have an interest in this, make an order requiring the trader to request registration.

In accordance with the same conditions, the judge may order any person registered in the commercial and companies register, who has not requested these by the specified deadlines, to make the additional entries or corrections which must be made in the register, to make the entries or corrections needed in the event of incorrect or incomplete declarations or to deregister.

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

Article L123-4

(Law No 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)
(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

If any person ordered to request a registration, a supplementary or amending entry, or a striking-off in the trade register should fail to comply with that requirement without an excuse deemed to be valid within two weeks of the date on which the order made by the judge entrusted with supervision of the list directing him to complete one of those formalities becoming final, a fine of €3,750 euros shall be imposed on that person.

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

The court orders that the registration, the notations or the striking-off that must be recorded in the companies register be entered therein within a specified timeframe, at the request of the person concerned.

Article L123-5

The act of giving, in bad faith, incorrect or incomplete information with a view to registration, removal of the registration or additional entries or corrections in the commercial and companies register shall be punished by a fine of 30 000 F and a prison sentence of six months.

The provisions of the second and third paragraphs of Article L.123-4 shall apply in the cases specified in this article.

Article L123-5-1

(inserted by Act No 420 of 15 May 2001, Article 123 II, Official Gazette of 16 May 2001)

At the request of any interested party or the procureur de la République, the president of the court, ruling in interlocutory proceedings, may enjoin, subject to a penalty, the manager 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 president 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

Articles L123-6 to



Article L123-6

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

Article L123-7

The registration of a natural person shall involve the presumption of the capacity 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 know that the liable person is not a trader.

Article L123-8

The person obliged to register who has not requested this by the expiration of a period of fifteen days from the start of their activity may not rely on, until registration, the capacity of trader with regard to both third parties and public

administrations. 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 this, particularly in the form of real estate management, may not plead the cessation of their commercial activity in order to avoid claims for damages to which they shall be subject due to the obligations contracted by their successors in the operation of the business until the day when the corresponding additional entry or removal of the registration has been carried out.

Article L123-9

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

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 which personally knew about these acts or instruments may not, however, rely on these.

Article L123-9-1

(inserted by Law No. 2003-721 of 1 August 2003 Article 2 (I) Official Gazette of 5 August 2003)

The court registrar or the body referred to in the last paragraph of Article 2 of Law No. 94-126 of 11 February 1994 relating to individual initiative and enterprise shall deliver a receipt, free of charge, for 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. The said receipt allows the necessary formalities to be completed with the public bodies and the private bodies entrusted with rendering a public service, under the personal responsibility of the natural person having tradesman status or who is acting on behalf of the company being formed. It bears the legend: "Registration pending".

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

Subsection 3

Place of domicile of registered persons

Articles L123-10 to
L123-11

Article L123-10

(inserted by Law No. 2003-721 of 1 August 2003 Article 6 (I) (1) Official Gazette of 5 August 2003)

Natural persons applying for registration in the companies register or the trade register must declare their business address and substantiate possession thereof.

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 does not give rise to any change of use or to application of the commercial lease regulations.

NB: Law No. 2003-721 of 1 August 2003 Article 6 II: These provisions apply to businesses listed in the companies register or the trade register on the date of promulgation of Law No. 2003-721 of 1 August 2003.



Article L123-11

(Law No 2003-721 of 1 August 2003 Article 6 (I) (2) Official Gazette of 5 August 2003)

Any legal entity applying for registration in the companies register must substantiate possession of the premises which will house its registered office, alone or with others, or, if the registered office is to be located abroad, the agency, branch or representation established on French soil.

A company is allowed to have its registered address in premises occupied by several businesses under the conditions determined in a Conseil d'Etat decree. That decree also stipulates the equipment or services that are required to justify the reality of the registered office of the company domiciled there.

NB: Law No. 2003-721 of 1 August 2003 Article 6 II: These provisions apply to businesses registered in the companies register or the trade register on the date of promulgation of Law No. 2003-721 of 1 August 2003.

SECTION II

Accounts of traders

Articles L123-12 to
L123-28

Subsection 1

Financial liabilities applicable to all traders

Articles L123-12 to
L123-24

Article L123-12

All natural or legal persons with the capacity of trader shall enter in their accounts the movements affecting the

assets of their undertaking. These movements shall be recorded chronologically.

These persons must check, by means of a stocktake at least once every twelve months, the existence and value of the assets and liabilities of the undertaking.

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

Article L123-13

The balance sheet shall describe individually the assets and liabilities of the undertaking and shall clearly show the equity capital.

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, according to the difference after deducting the depreciation and provisions, the profit or loss for the financial year. The income and expenditure, classed by category, shall be presented in the form of either tables or lists.

The amount of the undertaking's commitments in terms of pensions, supplemental pensions, compensation and allowances due to retirement or similar advantages of its staff members or partners and its managing agents shall be indicated in the annex. In addition, undertakings 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 L123-14

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

When 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 undertaking.

Article L123-15

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 undertaking. 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 classification of the elements of the balance sheet and profit and loss account, the elements forming the equity capital and the texts to be included in the annex shall be fixed by decree.



Article L123-16

Traders, whether natural or legal persons, may, in accordance with the conditions fixed by a decree, adopt a simplified presentation of their annual accounts when 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 L123-17

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.

Article L123-18

On its date of entry into the capital assets, property acquired for money consideration 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 stocktake 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 stocktake value at the end of the financial year, whether or not the depreciation is final.

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

The asset appreciation noted between the stocktake 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 L123-19

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 L123-20

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 in the absence or insufficiency of any 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 L123-21

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 stocktake, when its completion is certain and when it is possible, using the projected accounting documents, to value the overall profit of the transaction with sufficient safety.

Article L123-22

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The accounting documents are expressed in euros and drafted in the French language.

The accounting documents and supporting documentation are kept for ten years.

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

Article L123-23

Duly kept accounts may be accepted in 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 communication of accounting documents may be ordered in the courts only in cases of succession, joint ownership and partition of a company and in the event of administrative order or court-ordered winding-up.

Article L123-24



(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)
All traders are required to open a current account with a bank or the post office.

Subsection 2

Financial liabilities applicable to certain traders who are natural persons

Articles L123-25 to
L123-28

Article L123-25

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

Article L123-26

As an exception to the provisions of the second paragraph of Article L.123-13, natural persons placed voluntarily or ipso jure 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 L123-27

As an exception to the provisions of the third paragraph of Article L.123-18, natural persons placed voluntarily or ipso jure under the effective simplified taxation system may carry out a simplified valuation of the stocks and work in

process according to a method fixed by decree.

Article L123-28

As an exception to the provisions of Articles L.123-12 to L.123-23, natural persons subject to the taxation system for micro-undertakings may not be required to prepare annual accounts. They must, in accordance with the conditions fixed by decree, record on a day-by-day basis the accounts received and the expenses paid and they must produce an end-of-year statement of the accounts received and expenses paid, the financial debts, the fixed assets and the stocks valued in a simplified manner.

However, when their annual turnover does not exceed an amount of 120 000 F, natural persons registered in the commercial and companies register may keep only one book chronologically recording the amount and origin of the income which they receive due to their professional activity. A decree shall fix the conditions in accordance with which this book shall be kept.

CHAPTER IV

Cooperative associations of retailers

Articles L124-1 to
L124-16

Article L124-1

(Act No. 2001-420 of 15 May 2001 Art. 64 I, II and III Official Journal of 16 May 2001)
(Order No. 2004-274 of 25 March 2004 Art. 1 Official Journal of 27 March 2004)

Through the collective efforts of their members, retail cooperative societies 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 by, inter alia, establishing and maintaining stocks of all kinds of goods, by building, purchasing, or leasing and managing private shops and warehouses, and by carrying out in their own premises or those of their members any appropriate works, conversions or modernisation;
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 Part;
3. Within the framework of the legislative provisions relating to financial activities, to facilitate 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, contrary to the provisions of Article L. 144-3, leasing-management rights are granted to a member within two months and which, under pain of the penalties laid down in the second and third paragraphs of Article L. 124-15, must be re-conveyed within a maximum period of seven years;
6. Drawing up and implementing a common commercial policy designed to ensure the development and permanence of its members by any means, including:
 - the establishment of an appropriate legal framework;
 - 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 retail businesses.

Article L124-2

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 L124-3

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 Act No 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 L124-4

(Order No. 2004-274 of 25 March 2004 Art. 2 Official Journal of 27 March 2004)

Without prejudice to application of the provisions of Article 3 bis of Act 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 retail societies. The same applies to the cooperative companies governed by the present Chapter, as well as companies which are registered in both the trade register and the register of companies. The cooperatives governed by the present Chapter may admit to membership natural persons or legal entities 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 retail society may benefit directly from that society's services.

Article L124-5

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 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 L124-7

The articles of association may specify that cooperative associations of retailers shall be combined in accordance with the conditions specified in Article 3a 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 L124-8

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 articles of association 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 articles of association authorise 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 L124-9

(Order No. 2004-274 of 25 March 2004 Art. 4 Official Journal of 27 March 2004)

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 articles of association.

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

Article L124-10

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 rule 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 L124-11

(Order No. 2004-274 of 25 March 2004 Art. 5 Official Journal of 27 March 2004)

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

The said 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 L124-12

The routine shareholders' meeting may, by ruling in accordance with the quorum and majority conditions of the special shareholders' 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 allotment of shares resulting from this increase in capital shall be identical to those which they would have to the distribution of the refunds.

Article 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 L124-14

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 Minister for Economic and Financial Affairs, adopted following an 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 division between the members of the net surplus of assets shall occur ipso jure when the cooperative association carries out the activities referred to in 2° of Article L.124-1.

Article L124-15

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 public limited company, limited liability company, economic interest group or European economic interest group.

If a group of retailers is formed in breach of the provisions of the previous paragraph, this shall be punished by a fine of 60 000 F.

The court may also order the cessation of the operations of the body in question and, if applicable, the confiscation of the commodities purchased and the closure of the premises used.

Article L124-16

Cooperative associations of retailers for joint purchasing and their unions formed in accordance with Act No 1070 of 2 August 1949 shall be regarded as meeting the provisions of this chapter without needing to amend their articles of association.

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

CHAPTER V

Collective shops of independent traders

Articles L125-1 to
L125-19

SECTION I

Formation of the collective shop

Articles L125-1 to
L125-9

Article L125-1

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 undertaking registered in the trades register without giving up ownership of this, thus creating a collective shop of independent traders.

Article L125-2

The persons referred to in Article L.125-1 shall form, in the form of an economic interest group, public limited company 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 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 L125-3

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 837 of 28 September 1967.

Article L125-4

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 articles of association and shall benefit from common services.

The formation agreement or articles of association may allot 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 allotted.

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

Article L125-5

When a business or an undertaking 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 allotted to its owner. The shares in the group, company or association shall not represent the value of the business or undertaking. Any contributions other than in cash are also prohibited.



Article L125-6

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

The transfer within the collective shop of a pre-existing business or undertaking may occur only with the agreement of the lessee-manager.

Article L125-7

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 said shop, comply with the publication formalities specified in Articles L.141-21 and L.141-22.

If the preferred creditor or charge has not notified any objection by filing this 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 securities 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 L125-8

The formation agreement or articles of association shall, in order to be valid, and under the joint 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 L125-9

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 interlocutory proceedings, request the appointment of a representative specially entrusted with convening the meeting in order to rule 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 demanding the redemption of their shares in accordance with the conditions specified in Articles L.125-17 and L.125-18.

SECTION II

Administration of the collective shop

Articles L125-10 to
L125-11

Article L125-10

Internal regulations shall be annexed to the formation agreement or articles of association, as applicable.

The formation agreement or articles of association, and the internal regulations, may be amended only by the meeting, or the general meeting, as applicable, ruling by an absolute majority in number of the members of the group, company or association or, if the formation agreement or articles of association specify 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.152-2. However, notwithstanding the provisions of Book II, the articles of association of a public limited company 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 L125-11

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 development of competing activities and the determination of the annexed 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 decor 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 III

Approval and exclusion

Articles L125-12 to
L125-18



Article L125-12

The formation agreement or articles of association, as applicable, may subordinate any assignment of shares to the approval of the transferee 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 articles of association, 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 L125-13

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 L125-14

The formation agreement or articles of association, 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.

In the event of administrative order or winding-up proceedings of the owner, this clause may not be invoked if the conclusion of a real estate management contract is authorised by the court in accordance with the provisions of Title II of Book VI.

Article L125-15

The administrative body of the collective shop may send a warning to any member who, personally or through the persons to whom the latter has entrusted the operation of his business or undertaking, breaches the internal regulations.

In the event of real estate 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 the exclusion of the interested party.

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

Article L125-16

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 a request for acknowledgement of receipt, 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 an exclusion decision motivated by the non-use of spaces or by the non-payment of charges.

Article L125-17

In the event of exclusion, departure or death accompanied by the refusal of approval of the transferee 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 undertaking registered in the trades register. The new allottee of the space or, failing this, the group, company or association, as applicable, shall reimburse thereto the value of their shares plus, where applicable, the asset appreciation which may have resulted from their developments 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 that refusing to approve the transferee or successors is taken. In the event of disagreement, this shall be determined on the date of these decisions by an expert appointed by an order of the president of the Tribunal de grande instance ruling in interlocutory 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 president of the Tribunal de grande instance ruling in interlocutory proceedings.

Article L125-18

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

In the cases referred to in the first paragraph of Article L. 125-17, the group or the company can only proceed with the installation of a new beneficiary if it has paid the former holder of the shares or, if he is deceased, his assigns, the sums referred to in the said Article L. 125-17, or, failing that, a consideration determined by the presiding judge of the district court ruling on a summary basis.

However, such prior payment is not required when a guarantee 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, designated if necessary by an order made on a summary basis.

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

SECTION IV
Dissolution

Article L125-19

Article L125-19

Unless a clause in the formation agreement or articles of association specifies otherwise, the administrative order or winding-up proceedings of one of the members shall not lead ipso jure to the dissolution of the economic interest group.

CHAPTER VI

Mutual guarantee schemes

Article L126-1

Article L126-1

The rules 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 Act of 13 March 1917.

CHAPTER VII

The business-plan support contract for the creation or takeover of a business activity Articles L127-1 to L127-7

Article L127-1

(inserted by Law No. 2003-721 of 1 August 2003 Article 20 Official Gazette of 5 August 2003)

The support provided for a business plan to create or take over a business activity is defined in a contract through which, using the means available to it, a legal entity 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 entity and a manager who is the sole partner of another legal entity.

Article L127-2

(inserted by Law No. 2003-721 of 1 August 2003 Article 20 Official Gazette of 5 August 2003)

The business-plan support contract is 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 commitments of the contracting parties are stipulated in the contract. It also determines the conditions under which the person benefiting therefrom can make commitments to third parties in relation to the planned business activity.

The contract is entered into in writing, otherwise it is null and void.

Article L127-3

(inserted by Law No. 2003-721 of 1 August 2003 Article 20 Official Gazette of 5 August 2003)

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

The provision of those means and any costs thereby incurred by the legal entity providing the support pursuant to the contract shall be posted to its balance sheet.

Article L127-4

(inserted by Law No. 2003-721 of 1 August 2003 Article 20 Official Gazette of 5 August 2003)

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.

Before any registration is effected, the commitments made to third parties by the beneficiary while the support and preparation programme was ongoing are, in regard to those third parties, assumed by the mentor. After registration, the supporting legal entity 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 L127-5

(inserted by Law No. 2003-721 of 1 August 2003 Article 20 Official Gazette of 5 August 2003)

The business-plan support contract for the creation or takeover of a business activity cannot have as its object or its effect infringement of the provisions of Articles L. 125-1, L. 125-2, 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 supervisory function.

Article L127-6

(inserted by Law No. 2003-721 of 1 August 2003 Article 20 Official Gazette of 5 August 2003)

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

The supporting legal entity is liable in regard to 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 the registration, the supporting legal entity guarantees the liability assumed under the support contract, provided that the beneficiary complied with the terms and conditions of the contract through to its expiry.

Article L127-7

(inserted by Law No. 2003-721 of 1 August 2003 Article 20 Official Gazette of 5 August 2003)

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 are determined in a Conseil d'Etat decree.



CHAPTER VIII

Concerning Incapacity to Practice a Commercial or Industrial Profession

Articles L128-1 to
L128-6

Article L128-1

(inserted by Order No. 2005-428 of 6 May 2005 Art. 1 Official Journal of 7 May 2005)

No person shall, either directly or indirectly, for his own account or on behalf of another, engage in a commercial or industrial occupation, direct, administer, manage or control a commercial or industrial venture or a commercial company, in whatever capacity, if he has been the subject of a final judgement within the previous ten years:

- 1 For a crime; or
 - 2 Has been sentenced to at least three months' imprisonment without suspension for:
 - a) An offence covered by Part I of Book III of the Penal Code or an offence covered by special laws punished with the penalties imposed for fraud and breach of trust;
 - b) Handling stolen goods or an offence treated as handling stolen goods or similar thereto referred to in section 2 of Chapter I of Part II of Book III of the Penal Code;
 - c) Money laundering;
 - d) Bribery or accepting or soliciting bribes, influence peddling, misappropriation and fraudulent conversion of property;
 - e) Forgery, falsification of securities or other fiduciary instruments issued by the public authorities, falsification of marks of authority;
 - f) Participation in an association of criminals;
 - g) Drug trafficking;
 - h) Procuring or an offence covered by sections 2 and 2 bis of Chapter V of Part II of Book II of the Penal Code;
 - i) An offence covered by Section 3 of Chapter V of Part II of Book II of the Penal Code;
 - j) A violation of the commercial companies legislation covered by Part IV of Book II of the present code;
 - k) Bankruptcy;
 - l) Making loans at usurious rates of interest;
 - m) An offence envisaged by the Act of 21 May 1836 prohibiting lotteries, or the Act of 15 June 1907 regulating gaming in clubs and the casinos of seaside resorts, thermal spas and health resorts, or Act No. 83-628 of 12 July 1983 relating to games of chance;
 - n) An offence against the laws and regulations relating to foreign financial dealings;
 - o) Tax fraud;
 - p) 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;
 - q) An offence referred to in Articles L. 324-9, L. 324-10 and L. 362-3 of the Labour Code; 3
- Dismissal from functions as a public official or law official.

Article L128-2

(inserted by Order No. 2005-428 of 6 May 2005 Art. 1 Official Journal of 7 May 2005)

Persons engaged in an activity referred to in Article L. 128-1 who are convicted of an offence covered by that same article must cease their activity within three months of the date on which the court's decision giving rise to incapacity to conduct that business became final.

Article L128-3

(inserted by Order No. 2005-428 of 6 May 2005 Art. 1 Official Journal of 7 May 2005)

In the event of a final judgement being pronounced by a foreign court for an offence which, under French law, constitutes a crime or an offence referred to in Article L. 128-1, the criminal court of the convicted person's domicile shall declare, at the request of the public prosecutor and after verifying the correctness and legality of the conviction and having duly heard the person concerned in closed session, that there are grounds for applying the incapacity referred to in Article L. 128-1.

The said incapacity also applies to any non-reinstated person who is the subject of a disqualification order issued by a foreign court which is enforceable in France. The application for an enforcement order may, in this specific case only, be entered by the public prosecutor before the Tribunal de grande instance of the convicted person's domicile.

Article L128-4

(inserted by Order No. 2005-428 of 6 May 2005 Art. 1 Official Journal of 7 May 2005)

The court which ordered the dismissal referred to in 3 of Article L. 128-1 may, at the request of the public official or law official dismissed, either lift the incapacity referred to in the aforementioned Article, or reduce its term.

Article L128-5

(inserted by Order No. 2005-428 of 6 May 2005 Art. 1 Official Journal of 7 May 2005)



Whoever contravenes the incapacities provided for in Articles L. 128-1, L. 128-2 and L. 128-3 shall incur the penalties laid down in Article 313-1 of the Penal Code.

Persons guilty of the offence referred to in the previous paragraph may also incur the additional penalty of confiscation of goods or assets as provided for in Article 131-21 of the Penal Code.

Article L128-6

(inserted by Order No. 2005-428 of 6 May 2005 Art. 1 Official Journal of 7 May 2005)

The provisions of the present chapter shall not impede application of the rules specific to the practising of certain professions.

They apply to persons who act as commercial representatives.

TITLE III

Brokers, agents on commission, carriers and commercial agents

Articles L131-1 to
L134-17

CHAPTER I

Brokers

Articles L131-1 to
L131-11

Article L131-1

There are commodities brokers, shipbrokers, and land and water transport brokers.

Article L131-3

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

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 broking. They cannot combine their functions with those of the commodity brokers or shipping brokers designated in Article L. 131-1.

Article L131-5

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

Article L131-11

If a broker is entrusted with a brokerage operation for a deal in which he has a personal interest and does not notify this to the parties for whom he shall act as intermediary, this shall be punished by a fine of 25 000 F, without prejudice to the claim by the parties for damages. If he is registered in the list of brokers, drawn up in accordance with the regulations, he shall be removed from this and may not be registered in this again.

CHAPTER II

Agents on commission

Articles L132-1 to
L132-9

SECTION I

Agents on commission in general

Articles L132-1 to
L132-2

Article L132-1

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 L132-2

Agents on commission 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 commission claims against their principals, even those created during prior operations.

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

SECTION II

Agents on commission for transport

Articles L132-3 to
L132-9



Article L132-3

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 L132-4

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 L132-5

They shall act as guarantor for the average or loss of commodities and bills unless there is a stipulation to the contrary in the bill of lading or in a case of force majeure.

Article L132-6

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

Article L132-7

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

Article L132-8

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

Article L132-9

I.- The bill of lading must be dated.

II.- It must specify:

1° The nature and weight or the 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 commission agent 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 commission agent.

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 commission agent into a numbered and initialled register without any gaps.

CHAPTER III

Carriers

Articles L133-1 to
L133-7

Article L133-1

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

The carrier shall act as guarantor for the average 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 L133-2

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

Article L133-3

The receipt of the transported items shall extinguish any claim against the carrier for average 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 the reasoned protest.

If, within the period specified above, an expert report request 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 L133-4

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 president of the Tribunal de commerce or, failing this, by the president 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 an ordinary registered letter or by telegram, all parties liable to be involved in the case, in particular the consignor, recipient, carrier and commission agent. 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 transport 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 allot the product of the sale to those of the parties which advanced these expenses.

Article L133-5

The provisions contained in this chapter shall be common to both road and river carriers.

Article L133-6

Claims for average, loss or delay, to which the shipping agreement may give rise against the carrier, shall be prescribed 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 commission agent and the consignor or recipient, and those which result from the provisions of Article 1269 of the New Code of Civil Procedure, shall be prescribed after one year.

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

The period for bringing any action for a remedy shall be one month. This prescription 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 L133-7

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 operations for which their principals, the consignors or the recipients remain in debt to them, insofar as the owner of the commodities over which the preferential right is exercised is involved in these operations.

The transport claims covered by the preferential right shall involve the transport expenses properly speaking, the supplementary remuneration payable for the additional services and tying-up of 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 and the interest.

CHAPTER IV

Commercial agents

Articles L134-1 to
L134-17

Article L134-1

Commercial agents are agents who, as independent professionals not linked by contracts for services, shall be permanently entrusted with negotiating and possibly concluding sale, purchase, rental or service provision contracts for and on behalf of producers, industrialists, 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 special acts shall not come under the provisions of this chapter.

Article L134-2



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 L134-3

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

Article L134-4

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 loyalty and a reciprocal duty of information.

Commercial agents must perform their mandate in a professional manner. Principals shall make sure that the commercial agents are able to perform their mandate.

Article L134-5

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 the usual practice in the sector of activity covered by their mandate 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 which takes account of all the elements involved in the operation.

Article L134-6

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 L134-7

For any commercial transactions concluded after the agency contract ceases, commercial agents shall be entitled to the commission when 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 when, 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 L134-8

Commercial agents shall not be entitled to the commission specified in Article L.134-6 if this is due, 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 L134-9

The commission shall be acquired 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 acquired at the latest when the third party has carried out its part of the transaction or should have carried this out if the principal has carried out its own part. It shall be paid at the latest on the last day of the month following the quarter in which it was acquired.

Article L134-10

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 L134-11

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



When the agency contract is an open contract, each party may end this by giving prior notice. The provisions of this article shall apply to the term contract converted into an open contract. In this case, the calculation of the duration of the prior notice 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. In the absence of agreement to the contrary, 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 force majeure.

Article L134-12

If their relationship with their principal ceases, commercial agents shall be entitled to an indemnity for the loss suffered.

Commercial agents shall lose the right to this compensation if they have not notified the principal, within one year of the cessation of the contract, that they intend to use 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 L134-13

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° In accordance with an agreement with the principal, the commercial agent cedes to a third party the rights and obligations held under the agency contract.

Article L134-14

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

This clause must be established 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 L134-15

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

Article L134-16

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 to be unwritten.

Article L134-17

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

TITLE IV

The business

Articles L141-1 to
L146-4

CHAPTER I

Sale of the business

Articles L141-1 to
L141-22

SECTION I



Sale contract

Articles L141-1 to
L141-4

Article L141-1

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 seller shall be obliged to indicate:

1° The name of the previous seller, 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° The turnover made by the seller during each of the last three years of operation or since the acquisition of the business if the seller has operated this for less than three years;

4° The trading profits 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 sale contract being declared void.

Article L141-3

The seller 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 seller if they are aware of the inaccuracy of the information provided.

Article L141-4

The claim 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 II

Preferential right of the seller

Articles L141-5 to
L141-22

Article L141-5

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

This right shall cover only the elements of the business listed in the sale and in the entry in the register and, in the absence of precise specification, only the trade name and commercial 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 seller 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 L141-6

The entry in the register must be made, in order to be valid, within a fortnight of the date of the sale contract. It shall take preference over any entry in the register made in the same period by the purchaser. It shall be binding on the creditors of the purchaser subject to an administrative order or winding-up proceedings and on the latter's estate accepted without liability to debts beyond the assets descended.

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, to solely the elements forming part of the sale.

Article L141-7

In the event of the court-ordered or amicable rescission of the sale, the seller 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 seller shall be responsible for the price of the goods and equipment existing at the time when the latter takes back possession, according to the estimate which shall be 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 security for the registered creditors and, failing this, the unsecured creditors.

Article L141-8

The seller 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 judgment may be made only when a month has passed since this notification.

Article L141-9

The seller who has stipulated during the sale that, in the absence of payment within the agreed term, the sale shall be rescinded ipso jure, 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 L141-10

When the sale of a business at public auction is applied for, either at the request of an court-appointed receiver or a legal agent for the winding-up of undertakings or by court order at the request of any other legal successor, the applicant shall notify this to the previous sellers, 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 L141-11

(Act No. 2005-845 of 26 July 2005 Art. 1 I Official Journal of 27 July 2005 effective 1 January 2006)

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

Article L141-12

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

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 auction, must be published within two weeks of being effected, at the acquirer's behest, in a periodical authorised to carry official notices available in the district or department in which the business operates and, within two weeks of such publication, must appear in the Official Gazette of Civil and Commercial Announcements.

Article L141-13

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 below fixed for objections and an election of domicile in the jurisdiction of the court.

Article L141-14

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

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 debt is due or not, may lodge an appeal against the payment of the price at the elected domicile via a simple extrajudicial document. The appeal, if it is not to be declared null and void, must state the amount and cause of the debt and contain an election of domicile in the jurisdiction where the business is located. The lessor cannot lodge an appeal 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 timeframe.

Article L141-15

In the event of an objection to the payment of the price, the seller may, at any stage after the expiration of the ten-day period, submit an urgent application to the president of the Tribunal de grande instance in order to obtain authorisation to receive the proceeds despite the objection, provided that the seller pays to the Consignments office, or to a third party appointed for this purpose, a sufficient sum, fixed by the judge ruling on the urgent application, in order to



possibly meet the causes of the objection where the seller is recognised or judged to be in debt. The deposit thus ordered shall be specifically assigned, by the third-party holder, to guarantee the claims to secure 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 seller, if any. When the urgent order is enforced, the purchaser shall be discharged and the effects of the objection shall be assigned to the third-party holder.

The judge ruling on the urgent application shall grant the authorisation requested only if this is justified by a formal declaration from the purchaser involved in the case, made 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 said order, if any.

Article L141-16

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 seller may submit an urgent application to the president of the Tribunal de grande instance in order to obtain authorisation to receive the proceeds, despite the objection.

Article L141-17

The purchaser who pays the seller 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 L141-18

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 L141-19

(Act No. 2005-845 of 26 July 2005 Art. 161 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

During the twenty days following publication in the Official Bulletin of Civil and Commercial Notices referred to in Article L. 141-12, an authenticated copy or an original of the contract 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 contract 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 Official Bulletin of Civil and Commercial Notices 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 price asked 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 liquidator, 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 officer 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 the said 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 buyer 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 notation inserted in the articles and conditions. The effect of the said objections shall be applied to the sale price.

Article L141-20

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 where this may be due, to cover all the objections made thereto together with the registrations affecting the business and the assignments notified thereto.

Article L141-21

Except where this results from a merger or division 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 a business made to a company being formed or already in existence must be brought to the attention of the third parties in accordance with the conditions specified by Articles L.141-12 to L.141-18 by an advertisement in the legal notices newspapers and in the official gazette of civil and commercial notices.

However, if following the application of the acts and regulations in force on the publication of company documents, the information specified by these articles is already contained in the issue of the legal notices newspaper 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 indication of the registry of the Tribunal de commerce where creditors of the contributor must declare their claims.

Article L141-22

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 Tribunal de commerce covering the business location of their capacity of creditor and the sum due thereto. The clerk shall issue thereto a receipt for this declaration.

If the partners or one of them fails 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 liability declared and justified within the above period.

In the event of a contribution of a business by one company to another company, in particular following a merger or division, 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.

CHAPTER II

Charge on the business

Articles L142-1 to
L142-5

Article L142-1

Charges may be taken on a business without conditions and formalities other than those specified by this chapter and Chapter II below.

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

Article L142-2

The charge subject to the provisions of this chapter may cover the following items only as forming part of a business: style and real estate management, leasing rights, clientele and custom, 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, as shall it, of the charge constituted.

Unless otherwise stated explicitly and precisely in the instrument creating it, the charge shall cover only the style and trademark, leasing rights, clientele and custom.

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

Article L142-3

The contract of charge shall be ascertained by a notarised document or by a duly registered unattested document.

The preferential charge resulting from the contract of charge shall be constituted by the simple fact of entry in a public register held at the registry of the Tribunal de commerce within the judicial area in which the business is operated.

The same formality must be completed at the registry of the Tribunal de commerce within the judicial area in which each of the branches of the business included in the charge is situated.

Article L142-4

(Act No. 2005-845 of 26 July 2005 Art. 1 I Official Journal of 27 July 2005 effective 1 January 2006)

Registration must take place, under pain of becoming null and void, within fifteen days of the date of the memorandum and articles of association.

In the event of court-ordered receivership or liquidation proceedings, Articles L632-1 to L632-4 shall apply to pledges of business assets.

Article L142-5

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.

CHAPTER III



Provisions common to the sale and charge of the business

Articles L143-1 to
L143-23

SECTION I

Use of the security and redemption of registered claims

Articles L143-1 to
L143-15

Article L143-1

In the event of assignment of the business, all registered charges shall become due ipso jure 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 give it.

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 headquarters of the business annotated in the margin of the existing entry in the register and, if the business has been transferred to another judicial area, have the original registration and its date carried over into the register of the court of this judicial area, 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 the debts owed to them due.

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 Tribunal de commerce for termination of the term made pursuant to the previous two subparagraphs shall be subject to the rules of procedure decreed in subparagraph four of Article L. 143-4.

Article L143-2

An owner seeking to cancel 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 judgment may be given only after one month has passed since the notification.

An amicable termination of the lease may not become definitive until one month after the notification of it which has been given to secured creditors at the elected domiciles.

Article L143-3

Any creditor pursuing distraint proceedings and any debtor against whom or which they are brought may apply to the Tribunal de commerce within the judicial area in which the business operates for the sale of the distrained business with its associated equipment and goods.

At the request of a plaintiff creditor, the Tribunal de commerce shall order that, in the absence of payment within the deadline allowed to the debtor, the sale of the business shall take place at the request of the said 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 Tribunal de commerce shall fix the deadline within which the sale of the business must take place at the request of the said creditor in accordance with the formalities specified in Article L. 143-6, and it shall order that, in the absence of the debtor having carried out the sale within the said deadline, the distraint proceedings shall be resumed and continued on the last steps.

Article L143-4

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

When useful, special advertising shall be regulated by the judgment or, by default, by order of the presiding judge of the Tribunal de commerce given on application.

The latter may, by judgment 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.

The Tribunal de commerce shall decree within two weeks of the first hearing by judgment not liable to stay of execution, enforceable at a moment's notice. An appeal against the judgment shall be a stay. 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 L143-5

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 charge one week after an official demand for payment made to the creditor and to a third-party holder, if applicable, has remained unprofitable.

The demand must be brought before the Tribunal de commerce within the judicial area of which the business is



operated, which shall rule as stated in Article L. 143-4.

Article L143-6

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 communication of the terms and conditions, to supply their statements and observations and to attend the sale by auction if they so desire.

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 are instigated, an election of domicile within the area in which the Tribunal de commerce within the judicial area of which the business is operated, the various element constituting the said 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 Tribunal de commerce within the judicial area of which 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 receive legal advertisements 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 L143-7

If required, the presiding judge of the Tribunal de grande instance within the judicial area of which the business is operated shall rule on the grounds for nullity of the sale procedure prior to adjudication and on the expenses within the judicial area of which the business is operated. Objections to these grounds must be made at least one week prior to the sale in order to be valid. Subparagraph four of Article L. 143-4 shall apply to the order made by the presiding judge.

Article L143-8

If the Tribunal de commerce before which a petition is brought for payment of a debt attached to the operation of a business gives judgment 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 subparagraphs one and two of Article L. 143-4 and shall fix the deadline after which the sale may be proceeded with if payment is not made.

The provisions of subparagraph four of Article L. 143-4 and Articles L. 143-6 and L. 143-7 shall apply to the sale as ordered by the Tribunal de commerce.

Article L143-9

Should the purchaser 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 the vendor himself, herself or itself, for the difference between their price and that of the resale by auction without reserve, although not being entitled to lay claim to any surplus that may arise.

Article L143-10

The separate sale of one or more components of a business with charges registered against it, whether by distress or by virtue of the provisions of this chapter, may not be carried out until 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 serve a writ on the interested parties before the Tribunal de commerce within the judicial area of which the business is operated, applying for all the components of the business to be sold at the request of the plaintiff or 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 obliges the adjudicator to take them according to experts' statements.

A price breakdown must be given for those components of the business against which no preferential charges are registered.

Article L143-11

No higher bid will be allowed when the sale has taken place in accordance with the terms and conditions 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 L143-12

The preferential rights of the vendor and a registered creditor shall follow the business in whichever hands it may pass.



If the sale of the business has not been carried out by public auctions in accordance with the Articles specified in Article L. 143-11, a purchaser wishing to protect him, her or itself against proceedings by secured creditors must serve notifications to all the secured creditors, before the proceedings or within two weeks in order to be valid, in accordance with the terms and conditions specified by decree.

Article L143-13

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 bid up 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 Tribunal de commerce 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 L143-14

With effect from notification of the higher bid, a purchaser having taken possession of the business shall be no

longer be entitled to administer and may no longer undertake any acts of administration. However, at any time during the proceedings they may apply to the Tribunal de commerce or to a judge sitting in chambers, according to the case, for the appointment of another administrator. 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 tender, 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 subparagraph three of Article L. 143-10.

In the absence of auction, the higher bidder creditor shall be declared the purchaser.

Article L143-15

The purchaser 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 purchaser.

In addition to their purchase price, they shall be obliged to reimburse to the dispossessed purchaser the expenses and genuine expenses of their contract, of notifications, of registration and of publication specified in Articles L. 141-6 to L. 141-18 and, to whom it may concern, 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 II

Registration and removal of the registration formalities

Articles L143-16 to
L143-20

Article L143-16

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

Article L143-17

In addition to the registration formalities specified in Article L. 143-16, sales and assignments of businesses including trademarks and trademarks, industrial drawings or designs, charges on businesses which include patents or licences, brands or drawings or designs, must be registered with the National Industrial Rights Institute, on production of the certificate of registration issued by the clerk of the Tribunal de commerce, 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 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 onwards of the intellectual property code.



Article L143-18

If the title resulting from the registered preferential right is negotiable, negotiation by endorsement shall imply the assignment of the preferential right.

Article L143-19

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 L143-20

(Law No 2003-721 of 1 August 2003 Article 3 Official Gazette of 5 August 2003)

Registrations are deleted either with the consent of the duly entitled interested parties or by virtue of a *res judicata* judgment.

Without a judgment, total or partial deletion cannot be effected by the registrar unless a duly registered notarially recorded or private instrument is lodged with the court through which the debtor or his properly subrogated transferee consents to the deletion and substantiates his rights.

Total or partial deletion of the registration made at the National Industrial Property Institute is effected upon production of the certificate of deletion issued by the registrar of the commercial court.

SECTION III

Intermediaries and distribution of the price

Articles L143-21 to
L143-23

Article L143-21

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 deed of sale.

On expiration of this deadline, the first to act may appeal to a judge sitting in chambers at the competent court of the

place of election of domicile, which shall order either deposit with the Deposit and Consignment Office or the appointment of a trustee charged with the distribution of the proceeds of the sale of the business.

Article L143-22

If the confiscation of a business is ordered by a criminal jurisdiction in application of Articles 225-16, 225-19 and 225-22 of the penal code and 706-39 of the penal proceedings code, the State must offer the confiscated business for sale in accordance with the terms and conditions specified by this title within a deadline of one year in the absence of an exceptional extension of this deadline 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.

Guarantees registered after the date of the statement of instigation of proceedings for any of the offences referred to in subparagraph one shall *ipso jure* be null and void in the absence of a court order to the contrary.

The administrative authority may, at any time, demand the determination of the rent at a rate corresponding to the rental value of the premises.

If the owner of the confiscated business is simultaneously 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 L143-23

A Conseil d'Etat decree shall determine the executory measures for Chapters I and II above and this chapter, in particular the fees to be allocated to the clerks of tribunaux de commerce, the terms and conditions under which registrations, cancellations and the issuing of statements and negative certificates concerning sales, assignments and charges relating to the business which include patents and licences, trademarks and trademarks, industrial drawings and industrial designs are carried out at the National Industrial Rights Institute.

It shall also determine the duties to be collected by the Conservatoire des Arts et Métiers (Museum and college of higher technology for training students in the application of science to industry) for the service of the National Industrial Rights Institute on registrations and statements of priority, subrogation and cancellation, statements of registration and certificates that none exist.

CHAPTER IV

Real estate management

Articles L144-1 to

**Article L144-1**

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 L144-2

The tenant manager shall be classified as a merchant. They shall be subject to all the obligations which arise therefrom.

If the business is a craft establishment, the tenant manager shall be registered in the craft directory and shall be subject to all the obligations which arise therefrom..

Article L144-3

(Order No. 2004-274 of 25 March 2004 Art. 10 I Official Journal of 27 March 2004)

Natural persons or legal entities who/which grant leasing-management rights must have operated the business or handicraft establishment placed under leasing-management for at least two years.

Article L144-4

The period stated in Article L. 144-3 may be done away with or reduced by order of the presiding judge of the Tribunal de grande instance given on ordinary application by the interested party, after having consulted the public ministry, in particular when the interested party can prove that they are unable to operate their business personally or through the intermediary of agents.

Article L144-5

(Order No. 2004-274 of 25 March 2004 Art. 10 II Official Journal of 27 March 2004)

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 hospitalised on account of mental illness as provided for in Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Public Health Code, 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 craftsman, 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 Planning Code;
7. A spouse who is the recipient of a business or a handicraft establishment following the dissolution of a marriage, when the said spouse has participated in its exploitation for at least two years prior to the dissolution of the marriage contract or the division;
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 L144-6

At the date of the real estate management, the debts owed by the lessor of the business relating to the operation of the business may be declared due immediately by the Tribunal de commerce where the business is located, if it considers that the real estate management endangers their recovery.

In order not to be out of time, the proceedings must be started within a deadline of three months from the date of publication of the management contract in a newspaper authorised to receive legal advertisements.

Article L144-7

Until publication of the real estate management contract and for a period of six months with effect from this publication, the lessor of the business shall be jointly liable with the tenant manager for debts entered into by the latter during the operation of the business.

Article L144-8

The provisions of Articles L. 144-3, L. 144-4 and L. 144-7 shall not apply to real estate management contracts 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 the said contracts by the authority having given them their mandate and that they have complied with the specified publication measures.



Article L144-9

Termination of the real estate management shall render immediately due all debts relating to the operation of the business or the craft establishment entered into by the tenant manager during the period of management.

Article L144-10

Any real estate management contract 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 subparagraph 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 L444-11

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 of 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 confirmation of delivery or by extra-judicial means.

In the absence of amicable agreement, proceedings shall be instigated and judged in accordance with the provisions laid down for matters of the revision of prices of leases of immovable properties or for premises used for commercial or industrial purposes.

The judge must, while taking into consideration all the relevant factors, adjust the scope of the escalator clause to the fair rental value on the date of notification. The new price shall apply with effect from this same unless the parties have agreed upon an earlier or more recent date before or during the proceedings.

Article L144-13

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 one of Act No 66455 of 2 July 1966 relating to undertakings carrying out leasing.

The provisions of Article L. 144-9 shall not apply if the tenant manager having leased a business or a craft establishment by means of a leasing contract exercises the purchase option.

CHAPTER V

Commercial lease

Articles L145-1 to
L145-60

SECTION I

Scope

Articles L145-1 to
L145-3

Article L145-1

I.- The provisions of this chapter shall apply to leases of immovable properties or for premises in which the business is operated irrespective of whether this business is owned by a merchant or a manufacturer registered in the commercial and companies register or to a head of an undertaking registered in the craft directory, whether trading or not, and also:

1. To leases for premises or immovable properties accessory to the operation of a business when their loss would be likely to compromise the operation of the business and 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 associated 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 a real estate management in application of 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 craft directory.

Article L145-3



The provisions of this chapter shall not apply to long leases with the exception of matters relating to 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, subject to the period of renewal granted to their subtenants not having the effect of extending occupation of the premises beyond the expiration date of the long lease.

SECTION II Term

Articles L145-4 to
L145-7

Article L145-4

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 of 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 and L. 145-24 in order to build, rebuild, raise the height of the existing real property or to carry out the works prescribed or authorised within the framework of an real property restoration operation.

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 of Article L. 145-9.

The provisions of the preceding subparagraph shall apply to the sole member of a one-man 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 L145-5

When the lessee enters the premises, the parties may depart from the provisions of this chapter on condition that the lease is agreed for a term of 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.

The same shall apply in the event of explicit 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 subparagraphs shall not apply if the lease is of a seasonal nature.

Article L145-6

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. 313-3 and L. 313-4 of the town planning code and authorised or prescribed within the conditions specified in the said 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 L145-7

A tenant whose lease is assigned shall be entitled to a dipossession compensation which includes compensation for the prejudicial consequences of temporary loss of enjoyment taking into account, if applicable, of the provisional installation carried out at the lessor's expense and reimbursement of their normal expenses of removal and

reinstallation.

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 within the forms specified in Article L. 145-19.

The price and accessory terms and conditions of the lease may be amended at the request of the first to act.

SECTION III Renewal

Articles L145-8 to
L145-13

Article L145-8



The right to renewal of a lease may be invoked only by the owner of the business 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 renewal 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 customary term following this request.

Article L145-9

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 a notice given in accordance with custom and practice in respect of premises and at least six months in advance.

In the absence of notice, a written lease shall continue by tacit renewal beyond the term stated in the contract, in conformity with Article 1738 of the civil code and subject to the reserves specified by the preceding subparagraph. Beyond the term of nine years, a lease with a period conditional upon an event, the occurrence of which will authorise the lessor to demand its cancellation shall terminate only by virtue of notice given six months in advance and for a customary term. 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 subparagraph 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 lessee 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 in order not to be out of time.

Article L145-10

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 renewal.

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 subparagraph 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 means giving notice of refusal to renew the lease must state that a lessee wishing either to dispute the refusal to renew the lease or demand payment of compensation for eviction must refer the matter to the court before expiration of a deadline of two years with effect from the date on which notice of the refusal to renew was served.

Article L145-11

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 demand made subsequently in accordance with the terms and conditions defined by Conseil d'Etat decree.

Article L145-12

The term of the renewed lease shall be nine years in the absence of agreement between the parties on a longer term. The provisions of subparagraphs 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 renewal, 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 means.

Article L145-13

Subject to the provisions of the Act 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 merchants, manufacturers and persons registered in the crafts directory 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 subparagraph shall not apply to citizens of Member States of the European Community or of Member States of the European Economic Area.

SECTION IV

Refusal of renewal

Articles L145-14 to
L145-30

Article L145-14

A lessor may refuse the renewal of a lease. However, except in cases of the exceptions specified in Articles L. 145-17 onwards, the lessor must pay the evicted tenant compensation for eviction equal to the prejudice 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 in the event of the owner providing proof that the prejudice is lower.

Article L145-15

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, subparagraph one of Article L. 145-42 and Articles L. 145-47 to L. 145-54 shall be null and void.

Article L145-16

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 undertaking 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 Article L. 236-22, the company resulting from the merger or the company receiving the contribution shall, notwithstanding any condition 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 guaranty obligation 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 guaranties it may deem sufficient.

Article L145-17

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 breach committed by the lessee may be invoked only if it has been continued or renewed 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 subparagraph;

2. If proof is provided that the building must be totally or partially demolished due to being acknowledged by the administrative authority as 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 beneficiary, 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 L145-18

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 evicted tenant of the compensation 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. 313-3 and L. 313-4 of the town planning code and authorised or prescribed within the conditions specified in the said articles.

However, the lessor may avoid payment of this compensation by offering the evicted 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 enjoyment 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 subparagraph 3 and specify the new terms and conditions of rental in the document refusing to renew the lease or the notice. Within a deadline of three months, the tenant must either communicate their acceptance by extra-judicial means 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 L145-19

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; in order to be valid, 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 deadline 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 subparagraph. On expiration of this deadline, the owner may dispose of the premises.

An owner failing to comply with the provisions of the preceding subparagraphs shall be liable, on demand by their tenant, to pay damages to this latter.

Article L145-20

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 these latter.

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 L145-21

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 prejudice suffered up to a maximum of three years' rent.

Article L145-22

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, members of their family of ascending or descending order, 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 enjoyment 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 for money consideration, 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 liable 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 beneficiary 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, in the absence of which the evicted tenant shall be entitled to compensation for eviction in proportion to the size of the premises taken over.

Article L145-23

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The provisions of Article L. 145-22 do 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 previous paragraph does not apply to citizens of a Member State of the European Community or of a State which is a party to the Agreement on the European Economic Area.

Article L145-24

The right to renewal shall not be demurrable 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 Article L. 145-1 (2).

Irrespective of the circumstances, this right of takeover may be exercised only in respect of the part of the land



essential for the building. Should its effect be to cause the mandatory cessation of the commercial, industrial or craft operation, the provisions of Article L. 145-18 shall apply.

Article L145-25

An owner or principal tenant being simultaneously the lessor of the premises and the vendor of the business operated there and having received 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 L145-26

The renewal of leases concerning immovable properties owned by the State, departments, municipalities and public establishments may not be refused without the joint ownership being obliged to pay the compensation for eviction specified Article L. 145-14, even if its refusal is justified for public purposes.

Article L145-27

Should it be proved that a lessor has exercised the rights conferred upon them by Articles L. 145-17 onwards 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 prejudice suffered.

Article L145-28

No tenant entitled to claim compensation for eviction may be forced to vacate the premises before having received it. 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 subparagraph, in the single case specified in subparagraph 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 Conseil d'Etat decree in application of Article L. 145-56.

Article L145-29

In the event of eviction, the premises must be handed back to the lessor in time for the first day of the term of occupation following the expiration of the deadline of two weeks with effect from payment of the compensation into the hands of the tenant themselves or, potentially, of a receiver. In the absence of agreement between the parties, the receiver shall be appointed by the judgment ordering payment of the compensation or, by default, by ordinary order on 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 L145-30

In the event of failure to hand over the keys on the date specified and after formal notice, the receiver shall withhold 1% per day of lateness 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 of repentance, 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 summons to pay by extra-judicial means which, in order to be valid, must reproduce this subparagraph.

SECTION V

Sub-leasing

Articles L145-31 to

L145-32

Article L145-31

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 document.

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 Conseil d'Etat decree 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



confirmation of delivery. Within two weeks of receipt of this notice, the owner must give notice of whether they intend to be a party to the document. Should the lessor refuse or fail to reply despite the authorisation specified in subparagraph one, they shall be disregarded.

Article L145-32

A subtenant may request the renewal of their lease from the primary tenant within the measure 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 VI

Rent

Articles L145-33 to
L145-40

Article L145-33

(Act No. 2001-1168 of 11 December 2001 Art. 33 V Official Journal of 12 December 2001)

The amount of the rent payable under the renewed or revised leases corresponds to their rental value.

Failing agreement thereon, the said 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 The local commerciality factors;
- 5 The prices commonly applied in the vicinity.

A Conseil d'Etat Decree determines the relative weightings of these elements.

Article L145-34

(Act No. 2001-1168 of 11 December 2001 Art. 33 VI Official Journal of 12 December 2001)

Barring any substantial change in the elements indicated in 1 to 4 of Article L145-33, the rate of change applied to the rent payable upon entry into force of a renewed lease, if the term thereof does not exceed nine years, cannot exceed the variation in the quarterly national Construction Cost Index published by the Institut national de la statistique and des études économiques since the date on which the initial rent for the expired lease was determined. Failing any contractual clause specifying the reference quarter for the said index, the variation in the quarterly national Construction Cost Index calculated over the nine-year period preceding the most recently published index 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 renewal, the term of the lease exceeds twelve years.

Article L145-35

Disputes arising from the application of Article L. 145-34 shall be submitted to a departmental conciliation committee composed of an equal number of lessors and tenants and of qualified persons. The committee shall endeavour to conciliate 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 give a verdict 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 L145-36

The factors to be used in determining the prices of leases of land, premises built with a view to single occupation and premises exclusive for office use shall be laid down by Conseil d'Etat decree.

Article L145-37

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 reserves specified in Articles L. 145-38 and L. 145-39 and under the conditions laid down by Conseil d'Etat decree.

Article L145-38

(Act No. 2001-1168 of 11 December 2001 Art. 26 Official Journal of 12 December 2001)



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 L145-33, and failing production of proof of a material change in the local commerciality factors which has of itself given rise to a variation of more than 10% of the rental value, the rent increase or decrease following a triennial review shall not exceed the variation in the quarterly Construction Cost Index 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 L145-39

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 L145-40

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 Bank of France for advances against securities for amounts in excess of that corresponding to the price of the rent for more than two terms.

SECTION VII

Cancellation

Articles L145-41 to
L145-46

Article L145-41

Any clause inserted in a lease providing for cancellation ipso jure shall not take effect until after a summons to pay has remained unprofitable for one month. In order to be valid, the summons 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 cancellation clauses if the cancellation is not determined or pronounced by a court order having acquired the status of judgment *res judicata*. The cancellation clause shall not take effect if the tenant discharges themselves in accordance with the conditions determined by the court.

Article L145-42

Ipsa jure cancellation clauses 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 L145-43

Merchants and persons registered in the craft directory 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 so-called promotional training course benefiting from the authorisation specified in Article L. 961-3 of the said code shall be exempted from the obligation to operate during the term of their training course.

Article L145-44

Should the merchant 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 ipso jure and without compensation on expiration of a deadline of three months with effect from the date that this is notified to the lessor.

Article L145-45

An administrative order and winding-up proceedings shall not cause the ipso jure termination 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 provision to the contrary shall be deemed to be null and void.

Article L145-46

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 VIII
Non-specialisation

Articles L145-47 to
L145-55

Article L145-47

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 in order to avoid 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 make an order in accordance in particular with the trend in commercial custom and practice.

At the time of the first three-year revision following the notification referred to in the preceding subparagraph, by derogation from the provisions of Article L. 145-38, the 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 L145-48

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 delivery 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 L145-49

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. These latter 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. In order to avoid being out of time, these must give notice of their attitude within one month of this notification.

In the absence of the lessor having given notice of 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 L145-50

A change of activity may justify the payment by the tenant of compensation equal to the amount of the prejudice 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 L145-51

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 professions or the industrial and trade 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 whose exercise 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 sole member of a one-man limited liability company or a majority shareholder manager since at least two years of a limited liability company when they are the leaseholder.



Article L145-52

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 pour the fixing of the prices of revised leases. In other cases, the matter shall be referred to the court.

Article L145-53

Refusal of the conversion 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 subparagraph 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 may be held responsible for failure of execution. They may also be ordered by a court to pay the tenant compensation equal to the prejudice suffered by this latter.

Article L145-54

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 within the framework of a property renovation or restoration transaction decided upon less than three years after the request specified in subparagraph 1 of the said article.

Article L145-55

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 judgment res judicata by notifying the lessor by extra-judicial means and, in this event, shall bear all the expenses of the proceedings.

SECTION IX Procedure

Articles L145-56 to
L145-60

Article L145-56

The rules of competence and procedure for dispute relating to a lease shall be laid down by Conseil d'Etat decree.

Article L145-57

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 a deadline of 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 demonstrating 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 this sending, the order or judgment fixing the price or the terms and conditions of the new lease shall be deemed to constitute the lease.

Article L145-58

Until the expiration of a deadline of two weeks with effect from the date on which the decision has become a judgment res judicata, the owner may decline to pay the compensation subject to being liable to bear the expenses of the proceedings and to agree 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 L145-59

The owner's decision to refuse renewal of the lease in application of the last subparagraph of Article L. 145-57 or to decline to pay the compensation in accordance with the conditions specified in the last subparagraph of Article L. 145-58 shall be irrevocable.

Article L145-60



All proceedings exercised by virtue of this chapter shall be time-barred after two years have elapsed.

CHAPTER VI
Nominee Managers

Articles L146-1 to
L146-4

Article L146-1

(inserted by Act No. 2005-882 of 2 August 2005 Art. 19 Official Journal of 3 August 2005)

Natural persons or legal entities who 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 nominee manager is registered in the trade and companies register and, if applicable, the trade register. The contract is referred to in the said registers and details thereof are published in a journal authorised to publish legal notices.

The provisions of the present chapter do not apply to professions governed by Chapter II of Part VIII of Book VII of the Labour Code.

Article L146-2

(inserted by Act No. 2005-882 of 2 August 2005 Art. 19 Official Journal of 3 August 2005)

The principal provides 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 L146-3

(inserted by Act No. 2005-882 of 2 August 2005 Art. 19 Official Journal of 3 August 2005)

A framework agreement entered into by the principal and the nominee managers to whom he is contractually bound, or their representatives, determines, inter alia, the amount of the guaranteed minimum commission payable under all nominee-management contracts entered into by the said principal. The said minimum commission takes account of the size of the establishment and its operational facilities.

Failing agreement thereon, the Minister for Small and Medium-Sized Businesses determines the amount of the minimum commission.

Article L146-4

(inserted by Act No. 2005-882 of 2 August 2005 Art. 19 Official Journal of 3 August 2005)

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, or the guaranteed minimum commission referred to in Article L146-3, earned during the six months preceding termination of the contract, or during the term of the contract if it is shorter than six months.

BOOK II

Commercial companies and economic interest groups

Articles L210-1 to
L252-13

TITLE I

Preliminary provisions

Articles L210-1 to
L210-9

Article L210-1

The commercial nature of a company shall be determined by its form or by its objects.



General partnerships, limited partnerships, limited liability companies and joint-stock companies are trading companies by virtue of their form, irrespective of their objects.

Article L210-2

The form, duration, 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 memorandum and articles of association.

Article L210-3

Companies whose registered office is located on French territory shall be subject to French law.

Third parties may avail themselves of the registered office, but this shall not be demurrable with respect to them by the company if its real office is located in another place.

Article L210-4

The mandatory publication formalities at the time of formation of the company and in the event of subsequent deeds and deliberations shall be laid down by Conseil d'Etat decree.

Article L210-5

The transactions of limited liability companies and joint-stock companies occurring prior to the sixteenth day of publication in the Official Gazette of civil and commercial advertisements of deeds and indications subject to this publication shall not be demurrable in respect of third parties able to prove that it had been impossible for them to have become acquainted therewith

Should there be any discrepancy in the publication of deeds and indications relating to limited liability companies and joint-stock companies between the text filed with the commercial and companies register and the text published in the Official Gazette of civil and commercial advertisements, this latter shall not be demurrable with respect to third parties; however, they may avail themselves of it unless the company is able to prove that they have been acquainted with the text filed with the commercial and companies register.

Article L210-6

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 personality. The same shall apply with respect to extension.

Persons who have acted in the name of a company in formation before it has acquired enjoyment of legal personality shall be held jointly and indefinitely liable for the acts thus accomplished unless the company, after having been formed and registered in due form, takes over its obligations thus entered into. These obligations shall then be deemed to have been entered into from the start by the company.

Article L210-7

A company shall be registered after the clerk of the competent court has verified the due form of its formation in accordance with the conditions laid down by the legislative and regulatory provisions relating to the commercial and companies register.

If the memorandum and articles of association do not contain all the statements required by law and the regulations or if a formality laid down by these 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 for an order to be made that the formation must be regularised or a fine imposed. The ministère public is competent to act in respect of the same ends.

The provisions of the preceding subparagraphs shall apply in the event of amendment of the memorandum and articles of association. The proceedings specified in subparagraph 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 memorandum and articles of association.

Article L210-8

The founders of the company and the initial members of its management, administration, executive and monitoring bodies shall be jointly liable for any prejudice caused by an error in any obligatory statement in the memorandum and articles of association 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 subparagraph shall apply in the event of amendment of the memorandum and articles of association, and of 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, according to the case, of the formalities referred to in subparagraph four of Article L. 210-7.

Article L210-9

Neither the company nor third parties may, in order to avoid their obligations, 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 withdrawals from office of the persons referred to above while these have not been published in due form.

TITLE II

Provisions specific to various commercial companies

Articles L221-1 to
L229-15

CHAPTER I

General partnerships

Articles L221-1 to
L221-17

Article L221-1

The partners in a partnership shall all be deemed to be merchants and shall have unlimited joint 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 notice to pay by extra-judicial means.

Article L221-2

A general partnership 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" (general partnership).

Article L221-3

All the partners shall be managers unless otherwise specified in the memorandum and articles of association, 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 personality 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 joint liability of the legal personality which they manage.

Article L221-4

In dealings between partners and in the absence of limitation of their powers by the memorandum and articles of association, the manager may perform all acts of management in the interests of the partnership.

In the event of there being more than one manager, each shall hold separately the powers specified in the preceding subparagraph, except that each shall have the right to object to any transaction prior to its conclusion.

Article L221-5

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 subparagraph. An objection formulated by one manager to the acts of another manager shall not be effective with respect to third parties unless it is proved that they were aware thereof.

Clauses of the memorandum and articles of association limiting the powers of the managers resulting from this article shall not be demurrable with respect to third parties.

Article L221-6

Decisions which exceed the powers accorded to the managers shall be taken by unanimous agreement of the partners. However, the memorandum and articles of association may specify that certain decisions shall be taken by a specified majority.

The memorandum and articles of association may also specify that decisions shall be taken by means of consultation by exchange of letters if a general meeting is not requested by one of the partners.

Article L221-7

(Order No. 2004-1382 of 20 December 2004 Art. 6 Official Journal of 22 December 2004)

The management report, inventory and annual accounts drawn up by the chief executive are 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 text of the proposed 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 which violates the provisions of the present paragraph and its implementing decree may be declared void.

Any clause contrary to the provisions of the present article and its implementing decree is deemed not to exist.

The third to sixth paragraphs of Article L. 225-100 and Article L. 225-100-1 apply to the management report when all the shares are held by persons having one of the following forms: public limited company, partnership limited by shares,



limited liability company.

NB: Order 2004-1382 2004-12-20 Art. 12: The provisions of the present order shall apply with effect from the first financial year commenced on or after 1 January 2005.

Article L221-8

Partners who are not managers shall have the right to obtain, twice per year, communication of the partnership's books and documents and to ask written questions on the company's management, which written replies must be given.

Article L221-9

The partners may appoint one or more auditors within the terms specified in Article L. 221-6.

At least 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 an 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.

Article L221-10

(Law No 2003-706 of 1 August 2003 Article 112 Official Gazette of 2 August 2003)

I. - The auditors, who must be chosen from the list referred to in Article L. 225-219, are appointed for a term of six financial years.

II. and III. - Paragraphs repealed.

IV. - Resolutions passed when the auditors have not been properly appointed, or based on a report from auditors who were appointed or retained contrary to the provisions of the present Article are null and void. The nullity is extinguished if the said resolutions are expressly confirmed by a general meeting on the basis of a report from properly appointed auditors.

Article L221-11

The provisions relating to the powers, the incompatibilities referred to in Article L. 225-222, the functions, the obligations, the liability, the substitution, the challenging, the dismissal and the remuneration of auditors of public companies shall apply to general partnerships, subject to the specific rules applicable to these latter.

The auditor shall be advised of shareholders' meetings and consultations no later than at the same time as its partners. They shall have access to shareholders' meetings.

The documents referred to in subparagraph 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 L221-12

If all the partners are managers or if one or more managers chosen among the partners are designated in the memorandum and articles of association, the dismissal of one of them from their office may be decided only by unanimous agreement of the other partners. It shall cause the dissolution of the partnership unless its continuation is specified in the memorandum and articles of association or if the other partners decide upon it by unanimous agreement. The dismissed manager may then decide to withdraw from the partnership and demand the repayment of their 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 null and void.

If one or more of the partners are managers and are not designated in the memorandum and articles of association, each of them may be dismissed from their office subject to the conditions specified in the memorandum and articles of association or, in the absence thereof, by a decision taken by unanimous agreement of the other partners, whether managers or not.

A manager who is not a partner may be dismissed conditions subject to the conditions specified in the memorandum and articles of association or, in the absence thereof, by a decision taken by unanimous agreement of the partners.

Should the dismissal be decided without due cause, it may give rise to damages.

Article L221-13

The 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 null and void.

Article L221-14

The assignment of shares must be determined in writing. It shall be rendered demurrable with respect to third parties 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 demurrable with respect to third parties until after these formalities have been accomplished and, moreover, after publication in the commercial and companies register.



Article L221-15

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 with the exception of specifying 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 memorandum and articles of association or, 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 subparagraph three above, the beneficiaries of the specification shall be obliged to pay 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 of or more of the partner's heirs are unemancipated minors, these latter shall be liable for the debts of the partnership only up to the power of the deceased partner's estate. 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 partner. In the absence thereof, it shall be dissolved.

Article L221-16

(Act No. 2005-845 of 26 July 2005 Art. 162 I Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 memorandum and articles of association 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 is deemed unwritten.

Article L221-17

By derogation from the provisions of Articles L. 221-2 and L. 222-3, general partnerships 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 judicial courts.

CHAPTER II

Limited partnerships

Articles L222-1 to
L222-12

Article L222-1

Managing partners shall have the statute of general partners.

Limited partners shall be liable for the debts of the partnership only in respect of the amount of their contribution. This may not be a contribution in the form of services.

Article L222-2

The provisions relating to general partnerships shall apply to limited partnerships, subject to the rules specified in this chapter.

Article L222-3

A limited partnership 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 commandite simple" (limited partnership).

Article L222-4

The memorandum and articles of association of the partnership must contain the following indications:

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 dividends and in the residual.

Article L222-5

Decisions shall be taken in accordance with the conditions specified in the memorandum and articles of association. 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 L222-6

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 subparagraph, the limited partner shall be held jointly liable 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 jointly liable for all obligations of the partnership or for some only.

Article L222-7

Limited partners shall have the right to obtain, twice per year, communication of the partnership's books and documents and to ask written questions on the company's management, which written replies must be given.

Article L222-8

I. - Shares may be assigned only with the consent of all the partners.

II. - However, the memorandum and articles of association 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 their shares to a limited partner or to a third party outside the partnership subject to the conditions specified in 2. above.

Article L222-9

The partners may not change the nationality of the partnership other than by unanimous agreement. All other amendments of the memorandum and articles of association 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 decreeing more onerous majority conditions shall be deemed null and void.

Article L222-10

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 unemancipated minors. Should the deceased partner have been the sole active partner and if their heirs are all unemancipated minors, 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. In the absence thereof, the partnership shall be dissolved ipso jure on expiration of this deadline.

Article L222-11

If an order is made for the administrative order or winding-up proceedings in respect of one of the active partners, or if an order prohibiting the exercise of a commercial profession or if an incapacity order is made in respect of one of the active partners, the partnership shall be dissolved unless it has one or more other active partners, its continuation is specified in its memorandum and articles of association or if the partners so decide by unanimous agreement. In this event, the provisions of subparagraph two of Article L-221-16 shall apply.

Article L222-12

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The provisions of Article L. 221-17 are applicable to limited partnerships.

CHAPTER III

Limited liability companies

Articles L223-2 to
L223-43

Article L223-2

(Order No 2000-916 of 19 September 2000 Article 4 and Annex II Official Gazette of 22 September 2000 in force on 1 January 2002)

(Law No 2003-721 of 1 August 2003 Article 1 (I) Official Gazette of 5 August 2003)



The amount of the company's capital is determined by the memorandum and articles of association. It is divided into equal capital shares.

Article L223-3

(Order No. 2004-274 of 25 March 2004 Art. 11 Official Journal of 27 March 2004)

The number of members of a limited liability company shall not exceed one hundred. If such a company comes to have more than one hundred members, it shall be dissolved after a period of one year has elapsed unless the number of members has become equal to or lower than one hundred, or the company has been converted, during that period.

Article L223-4

Should all the shares in a limited liability company be gathered together in the ownership of one shareholder, the provisions of Article 1844-5 of the civil code relating to court-ordered dissolution shall not apply.

Article L223-5

A limited liability company may not have another limited liability company comprising only one person as its sole member.

In the event of infringement of the provisions of the preceding subparagraph, any interested party may apply for the dissolution of irregularly constituted companies. If the irregularity results from the gathering together in the ownership of one shareholder of all the shares in a limited liability having more than one member, the application for dissolution may not be made less than one year after the gathering together of the shares. Irrespective of the circumstances, a court

may grant a maximum deadline of six months to regularise the situation and may not order the dissolution if compliance has taken place on the date on which the court gives judgment on the merits of the case.

Article L223-6

All the members must be parties to the deed of formation of the company, either in person or via a proxy on production of a special authorisation.

Article L223-7

(Act No 2001-420 of 15 May 2001 Article 1241 Official Gazette of 16 May 2001)

The total number of shares created must be subscribed 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 cash must be paid. The balance may be paid in one or more payments at the managing member's discretion, within a deadline which may not exceed five years with effect from registration of the company in the commercial and companies register. However, the registered capital must be paid in full before any new shares may be subscribed in cash for the transaction to be valid.

If applicable, the memorandum and articles of association 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 memorandum and articles of association.

Funds arising from the payment of shares must be deposited within the conditions and deadlines specified by Conseil d'Etat decree.

Article L223-8

(Order No. 2004-274 of 25 March 2004 Art. 15 Official Journal of 27 March 2004)

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 register of companies.

If the company is not incorporated within six months of the first deposit of funds, or if it is not entered in the register of companies within that same period, the contributors may individually institute legal proceedings seeking 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, new funds must be deposited.

Article L223-9

(Order No 2000-916 of 19 September 2000 Article 4 and Annex II Official Gazette of 22 September 2000 in force on 1 January 2002)

The memorandum and articles of association must contain a valuation of each contribution in kind. This shall be made in the light of a report annexed to the memorandum and articles of association and drawn up by and under the responsibility of an auditor of the formation proceedings appointed by unanimous decision of the future members or, in the absence thereof, by a court order applied for by the proceeding future partner.

However, the future members may decide by unanimous decision that the use of an auditor of the formation proceedings shall not be mandatory if no contribution in kind exceeds a value of 7 500 euros and if the total value of all the contributions in kind not subject to valuation by an auditor of the formation proceedings does not exceed half the capital.

If the company is formed by only one person, the auditor of the formation proceedings shall be appointed by the



sole member. However, the use of an auditor of the formation proceedings shall not be mandatory if the conditions specified in the preceding subparagraph are complied with.

If there is no auditor of the formation proceedings or if the stated value is different from that suggested by the auditor of the formation proceedings, the members shall be jointly liable for five years with respect to third parties for the value attributed to contributions in kind at the time of formation of the company.

Article L223-10

Initial managers and members to whom nullity of the company is attributable shall be jointly liable with respect to the other members and third parties for the prejudice resulting from cancellation. Proceedings shall be time-barred by the deadline specified in subparagraph one of Article L. 235-13.

Article L223-11

(Order No. 2004-274 of 25 March 2004 Art. 12 Official Journal of 27 March 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XV Official Journal of 10 December 2004)

A limited liability company which 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 without making a public offering.

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 envisaged 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.

Under pain of the guarantee being declared null and void, a limited liability company 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 L223-12

The shares may not be represented by negotiable securities.

Article L223-13

(Order No. 2004-274 of 25 March 2004 Art. 13 Official Journal of 27 March 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XV Official Journal of 10 December 2004)

The shares are freely transferable through succession or in the event of liquidation of community of property between spouses and are freely assignable between spouses and between ascendants and descendants.

The articles of association 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 apply. If none of the solutions envisaged in those paragraphs is arrived at within the time allowed, approval is deemed to have been granted.

The articles of association 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 articles of association or, if the said articles so permit, in the last will and testament.

In the cases envisaged in the present 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 L223-14

(Act No. 2003-721 of 1 August 2003 Art. 1 III Official Journal of 5 August 2003)

(Order No. 2004-274 of 25 March 2004 Art. 14 Official Journal of 27 March 2004)

The shares may only be transferred 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 articles of association stipulate a greater majority.

If the company has more than one member, the transfer proposal is 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 the present paragraph, consent for the transfer is deemed to have been given.

If the company has refused to consent to the transfer, the members are 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 transferor waives his right to transfer his shares. The valuation fees are borne by the company. If the



chief executive so requests, this time limit may be extended by a court decision, which extension shall not exceed six months.

With the transferring member's consent, the company may also decide, 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. The sums owed bear interest at the legal rate applicable to commercial transactions.

If, upon expiry of the time allowed, none of the solutions envisaged in the third and fourth paragraphs above has been arrived at, the member proceed with the transfer 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 transferring 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 the present article is deemed not to exist.

Article L223-15

Should the company have given its consent to a proposal to take a charge on shares subject to the conditions specified in subparagraphs one and two of Article L. 223-14, this consent shall imply consent to the transferee in the event of the forced sale of the charged shares in accordance with the provisions of subparagraph 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 L223-16

Shares may be freely assigned between members.

Should the memorandum and articles of association contain a clause limiting transferability, the provisions of Article L. 223-14 shall apply. However, in this event the memorandum and articles of association may reduce the majority or shorten the deadline specified in the said article.

Article L223-17

The assignment of shares shall be subject to the provisions of Article L. 221-14.

Article L223- 19

The manager or the auditor if one is appointed shall submit to the shareholders' 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 shareholders' meeting shall rule 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, the agreements entered into by a manager who is not a member shall be subject to the prior approval of the shareholders' meeting.

By derogation from the provisions of subparagraph one, if a company enters into an agreement with its sole member, this shall simply be entered in the register of decisions.

Agreements not approved shall, nevertheless, remain effective subject to the contracting manager and, if applicable, member being jointly or severally liable, 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 limited liability company.

Article L223-20

The provisions of Article L. 223-19 shall not apply to agreements relating to ordinary transactions conducted under normal conditions.

Article L223-21

Managers and members other than legal personality shall be prohibited from contracting loans from the company irrespective of their form, from arranging for it to grant them a loan account or other borrowing whatsoever, or to arrange for the company to stand surety for them or act as their guarantor in respect of their obligations to third parties. Any such arrangement shall be null and void. This prohibition shall apply to the legal agents of members that are legal personalities.

The prohibition shall apply to the spouse and relatives in the ascending and descending line of the persons referred to in the preceding subparagraph, 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 L223-22

Managers shall be jointly or severally liable, according to the circumstances, to the company or to third parties for



breaches of the legislative or regulatory provisions applicable to limited liability companies, for breaches of the memorandum and articles of association, and for their errors of management.

Should more than one manager have cooperated in the same circumstances, the court shall determine the contributory share of each in the reparations.

In addition to proceedings for reparation of prejudice suffered personally, the members may instigate civil liability proceedings against the managers, either individually or as a group subject to the conditions laid down by Conseil d'Etat decree. The plaintiffs shall be authorised to pursue reparation for the entirety of the prejudice suffered by the company to which, if applicable, damages may be granted.

Any clause in the memorandum and articles of association having the effect of subordinating the exercise of civil proceedings to prior notice to or authorisation of the shareholders' meeting, or which contains a waiver of the exercise of these proceedings shall be deemed null and void.

No decision by the shareholders' meeting may have the effect of extinguishing civil liability proceedings against the managers for errors committed in the performance of their office.

Article L223-23

The liability proceedings 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 disassembled, from its disclosure. However, proceedings shall be time-barred after ten years if the act is classified as criminal.

Article L223-24

In the event of an administrative order or winding-up proceedings being instigated in application of 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 L223-25

(Order No. 2004-274 of 25 March 2004 Art. 17 Official Journal of 27 March 2004)

The chief executive may be dismissed by a decision of the members as provided for in Article L. 223-29, unless the articles of association stipulate a larger majority. If dismissal is decided upon without good cause, it may give rise to damages.

The chief executive may also be dismissed by the courts on good grounds, at the request of any member.

Contrary to the first paragraph, the chief executive of a limited liability company 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 L223-26

(Order No. 2004-1382 of 20 December 2004 Art. 5 Official Journal of 22 December 2004)

The management report, the inventory and the annual accounts established by the chief executive are subject to approval by the meeting of members within six months of the close of the financial year.

To that end, the documents referred to in the previous paragraph, the text of the proposed 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 which violates the provisions of the present paragraph and its implementing decree may be declared void.

After dispatch of the communication referred to in the previous paragraph, any member is entitled to submit written questions which the chief executive must reply to at the meeting.

As provided for in a Conseil d'Etat decree, the members may at any time have sight of the company documents determined by the said decree pertaining to the previous three financial years.

Any clause contrary to the provisions of the present article and its implementing decree is deemed not to exist.

The third to sixth paragraphs of Article L. 225-100 and Article L. 225-100-1 apply to the management report. Where applicable, Article L. 225-100-2 applies to the consolidated management report.

NB: Order 2004-1382 2004-12-20 Art. 12: The provisions of the present order shall apply with effect from the first financial year commenced on or after 1 January 2005.

Article L223-27

(Act No. 2003-7 of 3 January 2003 Art. 50 II Official Journal of 4 January 2003)

(Order No. 2004-274 of 25 March 2004 Art. 18 Official Journal of 27 March 2004)

The decisions are taken at a meeting. The articles of association 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.

The members are invited to attend meetings in the manner and within the time limits determined in a Conseil d'Etat decree. The meeting is convened by the chief executive or, failing this, by the auditor, if there is one. The meeting shall not be held until the time limit for production of the documents referred to in Article L. 223-26 has expired.

One or more members holding one half of the shares or, if they represent at least one quarter of the members,



holding one quarter of the shares, may request that a meeting be convened. Any clause to the contrary is deemed not to exist.

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 chief executive, the auditor or any member may convene a meeting of the members for the sole purpose of replacing the chief executive. 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 cancelled. An action for voidance is nevertheless inadmissible if all the members were present or represented.

Article L223-28

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 memorandum and articles of association.

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 subparagraphs one, two or four above shall be deemed null and void.

Article L223-29

In the shareholders' 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 memorandum and articles of association, 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 L223-32

In the event of an increase in capital by the subscription of shares in cash, the provisions of the final subparagraph of Article L. 223-7 shall apply.

Funds arising from the subscription of shares may be withdrawn by the company's proxy holder after the deposit receipt has been issued.

Should the increase in capital not be carried out within the deadline of six months with effect from the first deposit of the funds, the provisions of subparagraph two of Article L. 223-8 may be applied.

Article L223-33

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

If the increase in capital is effected, either wholly or partly, by means of contributions in kind, the provisions of the first line of Article L. 223-9 are applicable. However, the valuer of contributions in kind is appointed by a decision of the court at the behest of a partner.

When a valuer of contributions in kind has not been consulted, or when the valuation used differs from that proposed by the valuer of contributions in kind, the company's managers and the persons who subscribed to the increase in capital are jointly and severally liable for five years, in regard to third parties, for the value assigned to the said contributions.

Article L223-34

A reduction of capital may be authorised by the shareholders' meeting ruling in accordance with the conditions laid down for amendments to the memorandum and articles of association. Under no circumstances may it interfere with the equality of the members.

If auditors have been appointed, notice of the proposed reduction of capital shall be communicated to them within the deadline laid down by Conseil d'Etat decree. They shall make their opinion on the causes and conditions of the reduction known to the shareholders' meeting.

Should the shareholders' meeting approve a proposed reduction of capital not motivated by losses, creditors whose debt antedates the date on which the minutes of the deliberation are filed with the clerk may lodge an objection to the reduction within the deadline laid down by Conseil d'Etat decree. 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. Reduction of capital transactions may not begin during the deadline for objections.

A company may not purchase its own shares. However, a shareholders' meeting which has decided in favour of a reduction of capital not motivated by losses may authorise the manager to buy a specified number of shares in order to cancel them.

Article L223-35



The members may appoint one or more auditors in accordance with the conditions specified in Article L. 223-29.

At least those limited liability companies which exceed, at the end of the financial year, the figures laid down by Conseil d'Etat decree two of the following criteria shall be obliged to designate an 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 or more members representing at least one tenth of the capital may apply to the court for an auditor to be appointed.

Article L223-36

Members who are not managers shall have the right, twice per financial year, to ask written communication of the company's books and documents and to ask the manager written questions concerning any matter which might compromise continuity of the operation. The manager's reply shall be communicated to the auditor.

Article L223-37

One or more partners representing at least one tenth of the registered capital may, either individually or as a group under any form whatsoever, apply to the court for one or more experts to be appointed and charged with presenting a report on one or more management transactions.

The ministère public and the works council are competent to act in respect of the same ends.

Should the court accede to the application, the court order shall determine the scope of the mission and the powers of the experts. It may rule that the fees shall be for the account of the company.

The report shall be addressed to the applicant, to the ministère public, to the works council, to the auditor and to the manager. This report must also be annexed to that drawn up by the auditor for the next general meeting and receive the same publicity.

Article L223-38

(Law No 2003-706 of 1 August 2003 Article 112 Official Gazette of 2 August 2003)

I. - The auditors, who must be chosen from the list referred to in Article L. 225-219, are appointed for a term of six financial years.

II. and III. - Paragraphs repealed.

IV. - Resolutions passed when the auditors have not been properly appointed, or based on a report from auditors who were appointed or retained contrary to the provisions of the present Article are null and void. The nullity is extinguished if the said resolutions are expressly confirmed by a general meeting on the basis of a report from properly appointed auditors.

Article L223-39

The provisions relating to the powers, the incompatibilities referred to in Article L. 225-222, the functions, the obligations, the liability, the substitution, the challenging, the dismissal and the remuneration of auditors of public companies shall apply to limited liability companies, subject to the specific rules applicable to these latter.

The auditors shall be advised of shareholders' meetings and consultations no later than at the same time as the members. They shall have access to shareholders' meetings.

The documents referred to in subparagraph one of Article L. 223-26 shall be made available to the auditor subject to the conditions and deadlines laid down by Conseil d'Etat decree.

Article L223-40

The repayment of dividends not corresponding to profits made in reality 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 L223-41

A limited liability company shall not be dissolved if a court order for the court-ordered winding-up, personal bankruptcy, prohibition from management as specified by Article L. 625-8 or legal disability measure 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 memorandum and articles of association.

Article L223-42

(Law No 2003-721 of 1 August 2003 Article 1 (IV) Official Gazette of 5 August 2003)

If, on account of losses recorded in the accounting documents, the company's capital were to fall 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 dissolution is not decided with the majority required by the memorandum and articles of association, the company is required, not later than the end 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 shareholders' 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.

If the chief executive or the auditor should fail to secure a decision, or if the partners are unable to validly deliberate, 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 all such cases, the court may grant the company a maximum period of six months in which to put the situation in order, and cannot order its dissolution if the situation has already been put in order by the day on which it rules on the merits.

The provisions of the present Article do not apply to companies in receivership or subject to a recovery plan.

Article L223-43

(Order No 2000-916 of 19 September 2000 Article 4 and Annex II Official Gazette of 22 September 2000 in force on 1 January 2002)

The conversion of a limited liability company into a general partnership, a limited partnership or a limited partnership that issues shares shall require the unanimous agreement of all its members.

Conversion into a limited company must be decided by the majority required for amendments to the memorandum and articles of association. However, it may be decided upon by members representing the majority of the shares if the shareholders' funds stated on the last balance sheet exceed 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.

CHAPTER IV

General provisions applicable to joint-stock companies

Articles L224-1 to
L224-3

Article L224-1

A joint-stock company shall be designated by a business name, which must be immediately preceded or followed by a statement of the duration of the company and the amount of the registered 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 a limited partnership that issues shares.

Article L224-2

(Order No 2000-916 of 19 September 2000 Article 4 and Annex II Official Gazette of 22 September 2000 in force on 1 January 2002)

The registered capital must be at least 225 000 euros if the company's shares are offered to the public and at least 37000 euros in the contrary case.

A reduction of the registered capital to a lesser amount may be decided upon only subject to the suspensive condition of an increase in capital destined to raise this to an amount at least equal to the amount specified in the preceding subparagraph unless the company is converted into another form of company. In the event of failure to comply with the provisions of this subparagraph, 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 regularised on the date on which the court gives judgment on the merits of the case.

By derogation from subparagraph one, the capital of press journalist's companies must be at least 300 euros if they are constituted in the form of a limited company

Article L224-3

(Law No 2001-420 of 15 May 2001 Article 100 Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 98 Official Gazette of 2 August 2003)

When a company, regardless of its form, which does not have an auditor is converted into a joint-stock company, one or more conversion auditors, responsible for estimating the value of the items that comprise the corporate assets and the special advantages, are appointed either by a unanimous decision of the partners or by a decision of the court at the request of the company's executives or one of their number. The conversion auditors may be tasked with drafting the report on the company's situation referred to in the third paragraph of Article L. 223-43. In which case, only one report is written. The conversion auditors are subject to the incompatibilities referred to in Article L. 225-224. The company's auditor can be appointed as a conversion auditor. 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.

Failing the express approval of the partners duly recorded in the minutes, the conversion is null and void.

CHAPTER V

Public limited companies

Articles L225-2 to
L225-1



Article L225-1

A limited 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 I

Formation of public limited companies

Articles L225-2 to
L225-16

Subsection 1

Formation with a public offering

Articles L225-2 to
L225-11

Article L225-2

The draft memorandum and articles of association shall be drawn up and signed by one or more founders, who shall file one copy with the clerk of the Tribunal de commerce of the district in which the registered office is located.

The founders 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 subparagraphs one and two above have not been complied with.

Persons who have forfeited the right of directorship or management of a company or who are disqualified from holding these offices may not be founders.

Article L225-3

The capital must be fully subscribed.

Shares subscribed in cash must be paid in respect of at least fifty percent paid of their face value. The balance may be paid in one or more payments, at the discretion of the board of directors or the management according to the case, within a deadline which may not exceed five years with effect from registration of the company in the commercial and companies register.

Shares subscribed in kind must be paid in full at the time of their issue.

Shares may not represent contributions in the form of services.

Article L225-4

The subscription of shares in cash shall be evidenced by a subscription form drawn up in accordance with the conditions laid down by Conseil d'Etat decree.

Article L225-5

Funds arising from subscriptions in cash 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 communication of this list shall be opened.

With the exception of the deposits referred to by the decree specified in the preceding subparagraph, no party may hold the sums gathered on behalf of a company in formation for more than one week.

Article L225-6

Subscriptions and payments shall be evidenced by a receipt issued by the depository at the time of deposit of the funds, on presentation of the subscription forms.

Article L225-7

Once the receipt of deposit has been issued, the founders shall summon the subscribers to a constitutive shareholders' meeting in accordance with the conditions and deadlines laid down by Conseil d'Etat decree. This meeting shall confirm that the capital has been fully subscribed and that the shares have been paid in respect of the amount due. It shall decide on the adoption of the memorandum and articles of association, 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 session of the meeting shall observe, if applicable, the acceptance of their office by the directors or members of the supervisory board and by the auditors.

Article L225-8

In the event of contributions in kind as in the event of the specification of special benefits for persons who may or may not be members of the company, one or more auditors of the formation proceedings shall be designated by court order at the request of one or more of the founders. They shall be subject to the incompatibilities specified by Article L. 225-224.

The auditors of the formation proceedings shall appraise, subject to their own responsibility, the value of the contributions in kind and the special benefits. The report, filed with the clerk with the proposed memorandum and

articles of association, shall be held at the disposal of the subscribers in accordance with the conditions laid down by Conseil d'Etat decree.



The constitutive shareholders' meeting shall rule 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 L225-9

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 constitutive shareholders' meeting shall deliberate in accordance with the quorum and majority conditions specified for special shareholders' meetings.

Article L225-10

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 the calculation of the majority.

The contributor or the beneficiary shall not be entitled to participate in the deliberation either in person or as a proxy.

Article L225-11

Funds arising from subscriptions in cash may not be withdrawn by the company's proxy holder before it is registered in the commercial and companies register.

Should the company not be formed within the deadline of six months with effect from the deposit of the proposed memorandum and articles of association with the registry, any subscriber may apply to a court for the appointment of a proxy 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 contributors decide subsequently to form the company.

Subsection 2

Formation without a public offering

Articles L225-12 to
L225-16

Article L225-12

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

When there is no public issue, the provisions of Subsection 1 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 L225-13

Payments shall be evidenced 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 L225-14

The memorandum and articles of association must contain an evaluation of any contributions in kind. This shall be carried out by an auditor of the formation proceedings, who shall draw up a report under their own responsibility to be annexed to the memorandum and articles of association.

The same procedure must be followed if special benefits are specified.

Article L225-15

The memorandum and articles of association must be signed by the shareholders either in person or via a proxy on production of a special authorisation, 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 deadlines laid down by Conseil d'Etat decree.

Article L225-16

The first directors and the first members of the supervisory board and the first auditors shall be designated in the memorandum and articles of association.

SECTION II

Management and administration of public limited companies

Articles L225- 17 to
L225-95-1

Subsection 1

Board of directors of the general management

Articles L225- 17 to
L225-42-1

Article L225- 17

(Law No 2001-420 of 15 May 2001 Article 104 (I) and Article 105 Official Gazette of 16 May 2001)



(Law No 2003-706 of 1 August 2003 Article 128 Official Gazette of 2 August 2003)

A limited company is administered by a board of directors composed of at least three members. The memorandum and articles of association stipulate the maximum permissible number of board members, which shall not exceed eighteen.

In the event of the death, resignation or removal from office of the chairman 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 chairman's functions.

Article L225-18

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The directors shall be appointed by the constitutive shareholders' meeting or by the routine shareholders' meeting. In the circumstances specified by Article L. 225-16, they shall be designated in the memorandum and articles of association. The term of their office shall be determined by the memorandum and articles of association but may not exceed six years in the event of appointment by general meetings or three years in the event of appointment in the memorandum and articles of association. However, in the event of merger or division, the appointment may be made by the special shareholders' meeting.

The directors shall be eligible for re-election unless otherwise specified in the memorandum and articles of association. They may be dismissed at any time by the routine shareholders' 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 L225-19

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The memorandum and articles of association must specify an age limit for the exercise of the office of director either for all the directors or for a specific percentage of them.

In the absence of an explicit provision in the memorandum and articles of association, 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 subparagraph shall be null and void.

In the absence of an explicit provision in the memorandum and articles of association specifying another procedure, the oldest director shall be deemed to be retiring from office when the age limit for the directors specified in the memorandum and articles of association or by law is exceeded.

Article L225-20

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

A legal personality 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 joint liability of the legal personality they represent.

Should the legal personality dismiss its representative, it must appoint their replacement at the same time.

Article L225-21

(Law No 2001-420 of 15 May 2001 Article 105 and Article 1001 (1) Official Gazette of 16 May 2001)

(Law No 2002-1303 of 29 October 2002 Article 1 (I) Official Gazette of 30 Oct 2002)

No natural person shall concurrently hold more than five directorships of limited companies having their registered office on French soil.

Contrary to the provisions of the first paragraph, this shall not apply to directorships or supervisory board membership 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 the present 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 the present 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 L225-22

(Act No. 2001-420 of 15 May 2001 Art. 105 Official Journal of 16 May 2001)

(Act No. 2001-1168 of 11 December 2001 Art. 33 II Official Journal of 12 December 2001)

An employee of the company can only become a director if his contract of employment relates to 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 voidance shall not entail voidance of the deliberations that the illegally appointed director participated in.

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, directors representing the employee shareholders or the company's open-end investment company pursuant to Article L225-23, and, in public companies 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 L225-23

(Law No 2001-152 of 19 February 2001 Article 24 (1) and Article 25 (I) Official Gazette of 20 February 2001)

(Law No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

(Law No 2002-73 of 17 January 2002 Article 217 (1) and (2) Official Gazette of 18 January 2002)

If 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 and as prescribed in the relevant decree. Those directors 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 company investment trust 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.

If an extraordinary general meeting is not held within eighteen months of the report being presented, any employee-shareholder may request the presiding judge, ruling on a summary basis, to direct the board of directors, under pain of a coercive fine, to convene an extraordinary general meeting and submit draft resolutions to it aimed at amending the memorandum and memorandum and articles of association as provided for in the preceding paragraph and in the final paragraph of the present Article.

If the request is upheld, the coercive fine and the legal costs shall be paid by the directors.

Companies whose board of directors includes one or more directors designated by the members of the supervisory boards of company investment trusts 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 rules 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 L225-24

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

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 the routine shareholders' meeting with a view to completing the board's numbers.

Should the number of directors have fallen below the minimum number specified in the memorandum and articles of association 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 subparagraphs one and two above shall be subject to confirmation by the very next routine shareholders' 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 proxy charged with convening the general meeting in order to make the appointments or to confirm the appointments specified in subparagraph three.

Article L225-25

(Act No 2001-420 of 15 May 2001 Article 105(3) Official Gazette of 16 May 2001)

Each director must own a number of the company's shares determined by the memorandum and articles of association.

Should a director not own the required number of shares on the date of their appointment or should they cease to



own them during the term of their office, they shall be deemed to have resigned from office if they have not regularised the situation within a deadline of three months.

The provisions of subparagraph one shall not apply to shareholder employees appointed as directors in application of Article L. 225-23.

Article L225-26

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The auditors shall ensure, under their own responsibility, 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.

Article L225-27

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The memorandum and articles of association 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 and 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 not 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, engineers, executives and similar shall have one less directorship.

The directors elected by the employees shall not be taken into account for the determination of the minimum number and the maximum number of directors specified in Article L. 225-17.

Article L225-28

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The directors elected by the employees 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 antedating their appointment by at least two years and corresponding to a real 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 antedates the date of the date of the election shall be electors. The ballot shall be by secret vote.

Should at least one directorship be reserved for engineers, executives and similar, the employees shall be divided into two electing bodies voting separately. The first electing body shall comprise engineers, executives and similar, the second the other employees. The memorandum and articles of association shall determine the distribution of the directorships by electing body in accordance with the employee structure.

The candidates or lists of candidates may be proposed either by one or more representative trades union organisations within the meaning of Article L. 423-2 of the employment code or by one twentieth of the electors or, if their number is in excess of two thousand, by one hundred of them.

Should there be one directorship to fill for the whole of the electoral body, a majority vote with two ballots must be held. Should there be one directorship to fill in an electing body, the election must be held by majority vote with two ballots within this electing body. In addition to the name of the candidate, each candidature must include the name of their potential replacement. The candidate having obtained the absolute majority of the votes cast in the first ballot or the relative majority in the second ballot 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. The list must include a number of candidates double that of the directorships to be filled.

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 memorandum and articles of association.

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 subparagraph one of Article L. 433-11 of the employment code.

Article L225-29

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The directors shall be eligible for re-election unless otherwise specified in the memorandum and articles of association.

Any appointment made in breach of Articles L. 225-27, L 225-28 and this article shall be null and void. This nullity shall not cause that of the deliberations in which the irregularly appointed director has participated.

Article L225-30

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The office of director elected by the employees shall be incompatible with any office of trades union representative, member of the works council, employee representative or member of the company's health, safety and working conditions committee. A director who holds one or more of these offices at the time of their election must resign from it



or them within one week. Should they fail to do so, they shall be deemed to have resigned their office of director.

Article L225-31

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

Directors elected by the employees shall not lose the benefit of their employment contract. Their remuneration as an employee may not be reduced by virtue of the exercise of their office.

Article L225-32

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

Breach of the employment contract shall terminate the office of director elected by the employees.

Directors elected by the employees 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, given in session in chambers at the request of the majority of the members of the board of directors. The order shall be immediately enforceable.

Article L225-33

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

Except in the event of termination at the employee's initiative, the breach of the employment contract of a director elected by the employees may be pronounced only by the board of judgment of the conseil de prud'hommes ruling in the form of summary proceedings. The order shall be immediately enforceable.

Article L225-34

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

I. - In the event of the vacancy of an office of director elected by the employees 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 ballots, 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.

II. The term of office of the director thus designated shall end on the arrival of the normal term of office of the other directors elected by the employees.

Article L225-35

(Law No 2001-420 of 15 May 2001 Article 105 and Article 106 (1) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 129 Official Gazette of 2 August 2003)

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 in so far as the memorandum and articles of association permit, it 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 corporate mission, unless it can prove that the third party knew that a specific action was extraneous to that mission or, given the circumstances, could not have been ignorant of that fact, and mere publication of the memorandum and articles of association 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 chairman or general manager is required to send all the documents and information necessary to perform this task to each director.

Undertakings, avals and guarantees given by companies other than banks or other 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 L225-36

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

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 routine shareholders' meeting.

Article L225-36-I

(inserted by Act No 2001-420 of 15 May 2001 Article 105 and 106(2) Official Gazette of 16 May 2001)

The company's memorandum and articles of association 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 chairman to convene it with a specified agenda.

The general manager may also call upon the chairman to convene the board of directors with a specified agenda.

The chairman shall be bound by the requests addressed to them by virtue of the two preceding subparagraphs.

Article L225-37



(Act No. 2001-420 of 15 May 2001 Art. 105 and Art. 109 1 Official Journal of 16 May 2001)

(Act No. 2003-706 of 1 August 2003 Art. 117 I 1, II Official Journal of 2 August 2003)

(Act No. 2005-842 of 26 July 2005 Art. 5 I, Art. 7 I Official Journal of 27 July 2005)

The board of directors may validly deliberate only if at least half of its members are present. Any clause to the contrary is deemed unwritten.

Unless the memorandum and articles of association require 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 L232-1 and L233-16, and barring any contrary provision in the memorandum and articles of association, 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 memorandum and articles of association 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 memorandum and articles of association, the chairman 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 chairman of the board of directors.

In companies that make public offerings, the chairman of the board of directors describes the preparation and organisation of the board's work and the internal auditing procedures put in place by the company in a report attached to the report referred to in Articles L225-100, L225-102, L225-102-1 and L233-26. Without prejudice to the provisions of Article L225-56, the said report also indicates any limitations the board of directors places on the powers of the general manager.

Article L225-38

(

(Law No 2001-420 of 15 May 2001 Article 105 and Article 111 (1) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (6) Official Gazette of 2 August 2003)

Any agreement entered into, either directly or through an intermediary, between the company and its general manager, 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, 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, an indefinitely 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 L225-39

(Law No 2001-420 of 15 May 2001 Article 105 and Article 111 (5) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (1) Official Gazette of 2 August 2003)

The provisions of Article 225-38 are not applicable to agreements relating to current operations entered into under normal terms and conditions.

Such agreements are nevertheless made known to the chairman of the board of directors by the interested party unless they are of no significance to any party, given their objective or their financial implications. A list of such agreements and their objectives is sent to the members of the board of directors and to the auditors by the chairman.

Article L225-40

(Act No 2001-420 of 15 May 2001 Article 105 and Article 111(8) Official Gazette of 16 May 2001)

The interested party must inform the board immediately upon becoming aware of an agreement to which Article L. 225-38 applies. They may not participate in the vote on the requested prior approval of the Board. The chairman 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 rule on this report.

The interested party may not participate in the vote and their shares shall not be taken into account for the calculation of the quorum and the majority.

Article L225-41

(Act No 2001-420 of 15 May 2001 Article 105 and Article 111(10) Official Gazette of 16 May 2001)

Agreements approved by the meeting shall produce their effects with respect to third parties, as shall those which it refuses, unless they are cancelled in the event of fraud.

Even in the absence of fraud, the prejudicial consequences to the company of refused agreements may be charged to



the interested party and, potentially, to the other members of the board of directors.

Article L225-42

(Act No 2001-420 of 15 May 2001 Article 105 and Article 111(10) Official Gazette of 16 May 2001)

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. However, should the agreement have been dissembled, the starting point for the term of limitation shall be carried forward to the date on which it was revealed.

Nullity may be covered 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 subparagraph four of Article L. 225-40 shall apply.

Article L225-43

(Act No 2001-420 of 15 May 2001 Article 105 and Article 111(11) Official Gazette of 16 May 2001)

In order for the contract to be valid, directors other than legal personalities shall be prohibited from contracting loans from the company irrespective of their form, from arranging for it to grant them a loan account or other borrowing whatsoever, or to arrange for the company to stand surety for them or act as their guarantor in respect of their obligations to third parties.

However, if the company operates a banking or financial establishment, this prohibition shall not apply to current commercial transactions entered into under normal conditions.

The same prohibition shall apply to the general manager, to assistant general managers and to permanent representatives of directors which are legal personalities. 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.

The prohibition shall not apply to loans granted to directors elected by the employees by the company in application of the provisions of Article L. 313-1 of the construction and dwelling place code.

Article L225-44

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

Subject to the provisions of Article L. 225-22 and Article L. 225-27, 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 memorandum and articles of association shall be deemed null and void and any decision to the contrary shall be deemed null and void.

Article L225-45

(Act No 2001-420 of 15 May 2001 Article 105 and Article 117(1) Official Gazette of 16 May 2001)

As remuneration for their activities and in the form of directors' 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 memorandum and articles of association 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 L225-46

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The board of directors may grant exceptional remunerations for missions or mandates conferred upon directors. In such cases, these remunerations shall be charged to operating expenses and subject to the provisions of Articles L. 225-38 to L. 225-42.

Article L225-47

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The board of directors shall elect a chairman from among its members who, in order for their appointment to be valid, must be a natural person. It shall determine their remuneration.

The chairman 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 null and void.

Article L225-48

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

The memorandum and articles of association must specify an age limit for the performance of the office of chairman of the board of directors 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 subparagraph shall be deemed null



and void. A chairman of the board of directors shall be deemed to retire from office on reaching the age limit.

Article L225-50

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

In the event of the temporary incapacity or death of the chairman, the board of directors, may delegate a director to the office of the chairman.

In the event of temporary incapacity, this delegation shall be made or a limited term. It may be renewed. In the event of death, it shall be valid until the election of the new chairman.

Article L225-51

(Law No 2001-420 of 15 May 2001 Article 105 and Article 106 (3) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 117 (I) (3) Official Gazette of 2 August 2003)

The chairman of the board of directors organises and oversees its work and reports to the General Meeting thereon. He sees to it that the company's management structures function well and ensures, in particular, that the directors are able to accomplish their task.

Article L225-51-1

(Act No 2001-420 of 15 May 2001 Article 105 and 106(4) Official Gazette of 16 May 2001)

The general management of the company shall be assumed under their responsibility by either the chairman of the board of directors or by another natural person appointed by the board of directors and bearing the title of general manager.

In accordance with the conditions defined by its memorandum and articles of association, the board of directors shall choose between the two forms of performance of the general management referred to in subparagraph 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 assumed by the chairman of the board of directors, the provisions of this sub-section relating to the general manager shall apply to them.

Article L225-52

(Act No 2001-420 of 15 May 2001 Article 105 Official Gazette of 16 May 2001)

In the event of the instigation of an administrative order or winding-up proceedings 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 L225-53

(Act No 2001-420 of 15 May 2001 Article 105 and Article 107(1) Official Gazette of 16 May 2001)

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 assistant general manager.

The memorandum and articles of association shall determine the maximum number of assistant general managers, which may not exceed five. The board of directors shall determine the remuneration of the general manager and the assistant general managers.

Article L225-54

(Act No 2001-420 of 15 May 2001 Article 105 and Article 107(2) Official Gazette of 16 May 2001)

The memorandum and articles of association shall specify an age limit for the performance of the office of general manager and the assistant 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 subparagraph shall be deemed null and void.

A general manager or assistant general manager shall be deemed to retire from office on reaching the age limit.

Article L225-54-1

(Law No 2001-420 of 15 May 2001 Article 105 and Article 110 (3) Official Gazette of 16 May 2001)

(Law No 2002-1303 of 29 October 2002 Article 1 (II) Official Gazette of 30 Oct 2002)

No natural person shall concurrently act as a general manager of more than one limited company having its registered office on French soil.

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 the present 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 L225-55

(Act No 2001-420 of 15 May 2001 Article 105 and Article 107(3) Official Gazette of 16 May 2001)

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 chairman of the board of directors.

Should the general manager cease to or be unable to perform their 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 L225-56

(Act No 2001-420 of 15 May 2001 Article 105 and Article 107(4) Official Gazette of 16 May 2001)

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 subject to those that the Law allocates explicitly to shareholders' 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 simple publication of the memorandum and articles of association being excluded from constituting this proof.

Provisions in the memorandum and articles of association and decisions of the board of directors limiting the powers of the managers resulting from this article shall not be demurrable with respect to 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 assistant general managers.

The assistant general managers shall have the same powers as the general manager with respect to third parties.

Article L225-22-1

(inserted by Act No. 2005-842 of 26 July 2005 Art. 8 I Official Journal of 27 July 2005)

In companies whose securities are admitted to trading on a regulated market, if a person bound by a contract of employment to the company or to any other controlled company or controlling company within the meaning of II and III of Article L233-16 is appointed as its general manager or chief executive officer, the said contract's provisions, if any, relating to elements of remuneration, compensation or benefits payable or likely to become payable on account of those functions being transferred or altered, or thereafter, shall be subject to the provisions of Articles L225-38 and L225-40 to L225-42.

NB: Act No. 2005-842 of 26 July 2005 Art. 8 II: the provisions of Article 8 I are applicable to agreements entered into with effect from 1 May 2005.

Article L225-42-1

(inserted by Act No. 2005-842 of 26 July 2005 Art. 8 I Official Journal of 27 July 2005)

In companies whose securities are admitted to trading on a regulated market, commitments made to their chairmen, general managers or chief executive officers, by the company itself or by any controlled or controlling company within the meaning of II and III of Article L233-16, relating to elements of remuneration, compensation or benefits payable or likely to become payable on account of their functions ceasing or changing, or thereafter, are subject to the provisions of Articles L225-38 and L225-40 to L225-42.

NB: Act No. 2005-842 of 26 July 2005 Art. 8 II: the provisions of Article 8 I are applicable to agreements entered into with effect from 1 May 2005.

Subsection 2

Management and supervisory board

Articles L225-57 to
L225-90-1

Article L225-57

The memorandum and articles of association of any public limited company may stipulate that it shall be governed by the provisions of this sub-section. If so, the company shall remain subject to all rules applicable to public limited companies, except those contained in Articles L. 225-17 to L.225-56.

It may be decided during the existence of the company that this stipulation shall be introduced into, or deleted from,



its memorandum and articles of association.

Article L225-58

(Order No 2000-916 of 19 September 2000 Article 4 and Annex II, Official Gazette of 22 September 2000, in force on 1 January 2002)

A public limited company shall be managed by a management consisting of not more than five members. Where the company's shares are admitted for trading on a regulated market, the said number may be increased to seven by the memorandum and articles of association.

In public limited companies with a share capital of less than 150,000 euros, the functions conferred on the management may be exercised by a single person.

The management shall exercise its functions under the supervision of a supervisory board.

Article L225-59

The members of the management shall be appointed by the supervisory board, which shall appoint one of the said members as chairman.

Where a single person exercises the functions conferred on the management, that person shall take the title of "sole managing director".

Members of the management, 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 L225-60

The memorandum and articles of association must lay down an age limit for the exercising of the functions of a member of the management or of a sole managing director. In the absence of any express provision, the said age limit shall be sixty-five years.

Any nomination made in breach of the provisions of the preceding sub-paragraph shall be void.

On attaining the said age, a member of the management or the sole managing director shall be deemed to resign from office.

Article L225-61

(Law No 2001-420 of 15 May 2001 Article 108 Official Gazette of 16 May 2001)

The members of the management or the sole managing director may be dismissed by the general meeting, and also, if the memorandum and articles of association so provide, by the supervisory board. If the decision to dismiss them is unreasonable, they may be entitled to sue for damages.

If the interested party has entered into a contract of employment with the company, their dismissal from the post of director shall not have the effect of terminating the said contract.

Article L225-62

The memorandum and articles of association shall determine the term of office of the management within limits of between two and six years. In the absence of any provision in the memorandum and articles of association, the term of office shall be four years. If any post becomes vacant during the said term, the replacement director shall be appointed for the remainder of the mandate of the current management.

Article L225-63

The deed of appointment shall fix the method and amount of the remuneration to be paid to each member of the management.

Article L225-64

The management 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 shareholders' meetings.

In dealings with third parties, the company shall be bound even by acts of the management 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 memorandum and articles of association is considered not to be sufficient proof thereof.

Provisions of the memorandum and articles of association limiting the powers of the management shall not be binding on third parties.

The management shall consider and take its decisions in accordance with the conditions laid down by the memorandum and articles of association.

Article L225-65

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 its said decision by the next routine shareholders' meeting.

Article L225-66



The chairman of the management or the sole managing director, as the case may be, shall represent the company in its dealings with third parties.

Nevertheless, the memorandum and articles of association may empower the supervisory board to attribute the same power of representation to one or more other members of the management, who will then be known as the managing director(s).

Provisions of the memorandum and articles of association limiting the powers of representation of the company shall not be binding on third parties.

Article L225-67

(Law No 2001-420 of 15 May 2001 Article 105 and Article 110 (4) Official Gazette of 16 May 2001)

(Law No 2002-1303 of 29 October 2002 Article 1 (III) Official Gazette of 30 Oct 2002)

No natural person shall concurrently hold more than one directorship or sole managing directorship of companies having their registered office on French soil.

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 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 the present 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 L225-68

(Act No. 2003-706 of 1 August 2003 Art. 117 I 2 Official Journal of 2 August 2003)

(Act No. 2005-842 of 26 July 2005 Art. 7 II, Art. 11 II Official Journal of 27 July 2005)

The supervisory board permanently supervises the executive board's management of the company.

The memorandum and articles of association may make execution of the latter's transactions subject to prior approval from the supervisory board. However, the assignment of real property, the total or partial assignment of equity holdings, the provision of sureties, security, 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. The said decree also determines how any transaction lacking such approval may be raised against third parties.

Throughout the year, the supervisory board carries 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 presents 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 L225-100.

The supervisory board presents its observations on the executive board's report and the accounts for the period to the general meeting referred to in Article L225-100.

In companies that make public offerings, the chairman of the supervisory board describes the preparation and organisation of the board's work and the internal auditing procedures put in place by the company in a report attached to the report referred to in the previous paragraph and in Article L233-26

Article L225-69

(Law No 2001-420 of 15 May 2001 Article 104 (2) Official Gazette of 16 May 2001)

The Supervisory board shall consist of at least three members. The memorandum and articles of association shall fix the maximum number of members of the board, which shall be limited to eighteen.

Article L225-70

The memorandum and articles of association 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 memorandum and articles of association, the number of members of the supervisory board who have attained 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 of the preceding sub-paragraph shall be void.



In the absence of any express provisions in the memorandum and articles of association stipulating some other procedure, where the limit fixed by the memorandum and articles of association 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 resigned from their post.

Article L225-71

(Law No 2001-152 of 19 February 2001 Article 24 (3) and (4) and Article 25 (II) Official Gazette of 20 February 2001)

(Law No 2001-1168 of 11 December 2001 Article 33 (III) Official Gazette of 12 December 2001)

(Law No 2002-73 of 17 January 2002 Article 217 (3) and (4) Official Gazette of 18 January 2002)

If the report presented to the general meeting by the executive board pursuant to Article L. 225-102 establishes that the shares held by the company's 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 members of the supervisory board shall be elected by the general meeting of shareholders on a proposal from the shareholders as provided for in Article L. 225-102 and as prescribed in the relevant decree. Those 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 company investment trust 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.

If an extraordinary general meeting is not held within eighteen months of the report being presented, any employee-shareholder may request the presiding judge, ruling on a summary basis, to direct the executive board, under pain of a coercive fine, to convene an extraordinary general meeting and submit draft resolutions to it aimed at amending the memorandum and memorandum and articles of association as provided for in the preceding paragraph and in the final paragraph of the present Article.

If the request is upheld, the coercive fine and the legal costs shall be paid by the board members.

Companies whose supervisory board includes one or more members designated by the members of the supervisory boards of company investment trusts 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 rules 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 225-79.

Article L225-72

(Law No 2001-420 of 15 May 2001 Article 115 (4) Official Gazette of 16 May 2001)

Every member of the supervisory board must own such number of shares in the company as is determined by the memorandum and articles of association.

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 three months.

The provisions of the first sub-paragraph shall not apply to paid employees holding shares who are appointed as members of the supervisory board pursuant to Article L. 225-71.

Article L225-73

The auditors shall be responsible, on their own liability, for ensuring that the rules laid down in Article L225-72 are duly observed and shall disclose any breach thereof in their report to the annual general meeting.

Article L225-74

No member of the supervisory board may be a member of the management.

Article L225-75

Members of the supervisory board shall be appointed by the inaugural general meeting or the routine shareholders' meeting. In the circumstances specified in Article L225-16, they shall be designated in the memorandum and articles of association. Their terms of office shall be determined by the memorandum and articles of association, but may not exceed six years where they are appointed by the general meetings and three years where they are appointed in the memorandum and articles of association.

They shall be eligible for re-election unless otherwise stipulated by the memorandum and articles of association. They may be dismissed by the routine shareholders' meeting at any time.

Any appointment made in breach of the foregoing rules shall be void except any that may be made in the circumstances specified in Article L. 225-78.

Article L225-76

A legal person 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 criminal



liabilities as if they were a member of the Board in their own name, without prejudice to the joint and several liability of the legal person they represent.

If a legal person dismisses its representative, it must simultaneously replace them.

Article 225-77

(Law No 2001-420 of 15 May 2001 Article 110 (5) Official Gazette of 16 May 2001)

(Law No 2002-1303 of 29 October 2002 Article 1 (IV) Official Gazette of 30 October 2002)

No natural person shall concurrently be a member of the supervisory board of more than five limited companies having their registered office on French soil.

Contrary 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 the present 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 occupied 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 the present 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 L225-78

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 management must immediately call an routine shareholders' meeting to complete the membership of the supervisory board.

Where the number members of the supervisory board shall have fallen below the minimum required by the memorandum and articles of association, 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 sub-paragraphs above shall be subject to ratification by the next routine shareholders' meeting. If the appointments are not so ratified, any decisions previously taken and acts previously effected by the board shall nevertheless remain valid.

If the board shall neglect to make the requisite appointments or if the meeting shall not be 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 sub-paragraph.

Article L225-79

It may be stipulated in the memorandum and articles of association 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 personnel or by the personnel of the company and those of its direct or indirect subsidiaries whose registered offices are situated 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, engineers, executives and employees of similar rank 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 L225-80

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 shall be fixed in accordance with the rules defined in Articles L.225-28 to L.225-34.

Article L225-81

The supervisory board shall elect from among its own members a chairman and a deputy chairman who shall be responsible for calling meetings and conducting its discussions. It shall determine their remuneration if it sees fit.

The chairman and deputy chairman 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 L225-82

(Act No. 2001-420 of 15 May 2001 Art. 109 2 Official Journal of 16 May 2001)



(Act No. 2005-842 of 26 July 2005 Art. 5 II Official Journal of 27 July 2005)

The Supervisory Board may validly deliberate only if at least half of its members are present.

Unless the memorandum and articles of association require 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 L232-1 and L233-16, and barring any contrary provision in the memorandum and articles of association, the internal regulations may provide for supervisory board members 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 memorandum and articles of association 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 memorandum and articles of association, the chairman of the meeting has a casting vote in the event of a split vote.

Article L225-83

(Law No 2001-420 of 15 May 2001, Article 117 II, Official Gazette of 16 May 2001)

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 memorandum and articles of association or previous decisions. The amount of the said sum shall be entered in the accounts as operating expenses. The distribution thereof among the members of the supervisory board shall be fixed by the latter.

Article L225-84

The supervisory board may allocate extraordinary payments in remuneration of duties or mandates entrusted to members of the board. In any such case, the said payments, which shall be entered in the accounts as operating expenses, shall be subject to the provisions of Articles L.225-86 to L.225-90.

Article L225-85

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.3225-84, and, if appropriate, those payable under a contract of employment for a post actually held.

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 memorandum and articles of association shall be deemed non-existent and any decision to the contrary shall be void.

Article L225-86

(Law No 2001-420 of 15 May 2001 111 (2) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (6) Official Gazette of 2 August 2003)

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, an indefinitely 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 L225-87

(Law No 2001-420 of 15 May 2001 Article 111 (7) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (2) Official Gazette of 2 August 2003)

The provisions of Article 225-86 are not applicable to agreements relating to current operations entered into under normal terms and conditions.

Such agreements are nevertheless made known to the chairman of the supervisory board by the interested party unless they are of no significance to any party, given their objective or their financial implications. A list of such agreements and their objectives is sent to the members of the supervisory board and to the auditors by the chairman.

Article L225-88

(Law No 2001-420 of 15 May 2001, Article 111(9), Official Gazette of 16 May 2001)



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 chairman of the supervisory board shall notify the auditors of all agreements approved and shall submit the same to the general meeting for approval.

The auditors shall present a special report on the said agreements to the meeting, which shall pass a resolution regarding the said report.

The interested party shall not be entitled to take part in the vote and their shares shall not be taken into account when calculating the quorum and the majority.

Article L225-89

(Law No 2001-420 of 15 May 2001, Article 111(12), Official Gazette of 16 May 2001)

Whether or not approved by the meeting, agreements shall have legal effect so far as third parties are concerned, unless the annulled for fraud.

Even where there is no fraud, the interested party, and other members of the management if appropriate, may be held liable for any consequences of unapproved agreements that are damaging to the company.

Article L225-90

Without prejudice to the liability of the interested party, any such agreements as are referred to in Article L.225-86, if entered into without the prior consent of the supervisory board, may be annulled if they have had damaging effects on the company.

An action for annulment must be brought within three years of 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.

The annulment of such an agreement may be covered by a vote of the general meeting acting on a special auditors' report stating the reasons why the consent procedure was not followed. The fourth sub-paragraph of Article L.225-88 shall apply.

Article L225-91

It shall be prohibited for members of the management 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 likewise apply to the spouses, ascendants and descendants of persons referred to in this Article, or any intermediary.

Nevertheless, where 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 prohibition shall not apply to loans granted by the company to members of the supervisory board elected by the employees, pursuant to Article 313-1 of the Building and Housing Code.

Article L225-92

Members of the management and the supervisory board, and likewise any person called to attend meetings of the said boards, shall required to maintain the secrecy of any information of a confidential nature given as such by the chairman.

Article L225-93

Should proceedings be commenced for a Court order for financial reorganisation on insolvency or liquidation subject to judicial supervision, pursuant to Title II of Book VI, the persons referred to in the said provisions may be held liable for the debts of the company and shall be subject to the relevant prohibitions and prohibition, as laid down by the said provisions.

Article L225-79-1

(inserted by Act No. 2005-842 of 26 July 2005 Art. 8 I Official Journal of 27 July 2005)

In companies whose securities are admitted to trading on a regulated market, if a person bound by a contract of employment to the company or to any other controlled company or controlling company within the meaning of II and III of Article L233-16 is appointed as a member of the executive board, the said contract's provisions, if any, relating to elements of remuneration, compensation or benefits payable or likely to become payable on account of those functions ceasing or changing, or thereafter, shall be subject to the provisions of Articles L225-86 and L225-88 to L225-90.

NB: Act No. 2005-842 of 26 July 2005 Art. 8 II: the provisions of Article 8 I are applicable to agreements entered into with effect from 1 May 2005.

Article L225-90-1

(inserted by Act No. 2005-842 of 26 July 2005 Art. 8 I Official Journal of 27 July 2005)



In companies whose securities are admitted to trading on a regulated market, commitments made to executive board members, by the company itself or by any controlled or controlling company within the meaning of II and III of Article L233-16, relating to elements of remuneration, compensation or benefits payable or likely to become payable on account of their functions ceasing or changing, or thereafter, are subject to the provisions of Articles L225-86 and L225-88 to L225-90.

NB: Act No. 2005-842 of 26 July 2005 Art. 8 II: the provisions of Article 8 I are applicable to agreements entered into with effect from 1 May 2005.

Subsection 3

Provisions common to managing agents of public limited companies

Articles L225-94 to
L225-95-1

Article L225-94

(Law No 2001-420 of 15 May 2001 Article 110 (6) Official Gazette of 16 May 2001)

(Law No 2002-1303 of 29 October 2002 Article 1 (V) Official Gazette of 30 October 2002)

The limitation of the number of seats on the board of directors or the supervisory board that any one natural person can occupy concurrently by virtue of Articles L. 225-212 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 general managership of one company and that of another company which is controlled by that company within the meaning of Article L. 233-16.

Article L225-94-1

(Law No 2001-420 of 15 May 2001 Article 110 (7) Official Gazette of 16 May 2001)

(Law No 2002-1303 of 29 October 2002 Article 1 (VI) Official Gazette of 30 October 2002)

(Law No 2003-706 of 1 August 2003 Article 131 (1) Official Gazette of 2 August 2003)

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, director, sole managing director or member of the supervisory board of limited companies having their registered office on French soil. 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 directorships, or supervisory board membership, 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 the present 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.

NB (1): These provisions enter into force on 16 November 2002.

Article L225-95

(Law No 2001-420 of 15 May 2000 Article 104 (3) Official Gazette of 16 May 2001)

In the event of a merger of public limited companies, 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 L225-95-1

(Act No. 2001-420 of 15 May 2001 Art. 110 8 Official Journal of 16 May 2001)

(Act No. 2002-1303 of 29 October 2002 Art. 2 Official Journal of 30 October 2002)

(Act No. 2003-706 of 1 August 2003 Art. 63 V Official Journal of 2 August 2003)

Notwithstanding the provisions of Articles L225-21, L225-77 and L225-94-1, a remit as a permanent representative of a venture capital company referred to in Article 1 of Act No. 85-695 of 11 July 1985 containing 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 containing various provisions of an economic and financial nature, or of a management company authorised to manage open-end investment companies governed by paragraph 1 of Subsection 6 of Section 1 of Chapter IV of Part I of Book II and Articles L214-36 and L214-41 of the Monetary and Financial Code, are not taken into account.

If the conditions stipulated in the present article are no longer met, any natural person must resign from the functions which do not meet the requirements of Articles L225-21, L225-77 and L225-94-1 within three months. 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 he participated in.

Notwithstanding Articles L225-21, L225-54-1, L225-67 and L225-94-1, remits as chairman, general manager, sole general manager, executive board member or director of a local semipublic 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 III

Shareholders' meetings

Articles L225-96 to
L225-126

Article L225-96

(Act No. 2005-842 of 26 July 2005 Art. 6 I Official Journal of 27 July 2005)

Only an extraordinary General Meeting is authorised to amend any provision of the articles of association. Any clause to the contrary is deemed unwritten. It 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. In companies which do not make public offerings, the memorandum and articles of association may require higher quorums.

It rules on a majority of two thirds of the votes held by the shareholders present or represented.

Article L225-97

An special shareholders' 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 L225-98

(Act No. 2005-842 of 26 July 2005 Art. 6 II Official Journal of 27 July 2005)

The ordinary general meeting makes all decisions other than those referred to in Articles L225-96 and L225-97.

It may validly deliberate when first convened only if the shareholders present or represented hold at least one fifth of the voting shares. In companies which do not make public offerings, the memorandum and articles of association may require a higher quorum. If it is reconvened, no quorum is required.

It rules on a majority of the votes held by the shareholders present or represented.

Article L225-99

(Act No. 2005-842 of 26 July 2005 Art. 6 III Official Journal of 27 July 2005)

The holders of shares in a given category attend special 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 meeting of shareholders.

Special meetings may only validly deliberate when first convened if the shareholders present or represented 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. In companies which do not make public offerings, the memorandum and articles of association may require higher quorums.

They rule as stipulated in the third paragraph of Article L225-96.

Article L225-100

(Act No. 2001-420 of 15 May 2001 Art. 118 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 I Official Journal of 26 June 2004)

(Order No. 2004-1382 of 20 December 2004 Art. 3 Official Journal of 22 December 2004)

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.

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.

The said 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 the present 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 also includes a description of the main risks and uncertainties 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 also contains 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 Article L. 225-235.

The meeting deliberates and rules 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.

NB: Order 2004-1382 2004-12-20 Art. 12: The provisions of the present order shall apply with effect from the first financial year commenced on or after 1 January 2005.

Article L225-100-1

(inserted by Order No. 2004-1382 of 20 December 2004 Art. 4 Official Journal of 22 December 2004)

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. The present paragraph does not apply to companies whose financial instruments referred to in 1 or 2 of I 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. The present paragraph does not apply to companies whose financial instruments referred to in 1 or 2 of I of Article L. 211-1 of the Monetary and Financial Code are admitted to trading on a regulated market.

NB: Order 2004-1382 2004-12-20 Art. 12: The provisions of the present order shall apply with effect from the first financial year commenced on or after 1 January 2005.

Article L225-100-2

(inserted by Order No. 2004-1382 of 20 December 2004 Art. 4 Official Journal of 22 December 2004)

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 trend, 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 increases the key performance indicators of a nature 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 also includes 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 contains, where applicable, references to the figures shown in the consolidated accounts and additional explanations relating thereto.

The report also contains 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.

NB: Order 2004-1382 2004-12-20 Art. 12: The provisions of the present order shall apply with effect from the first financial year commenced on or after 1 January 2005.

Article L225-101

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, a valuer shall be appointed by a Court order to value the asset in question on his own



liability, on an application by the chairman of the board of directors or the management, as the case may be. The appointment of the said valuer shall be subject to the incompatibility rules set out in Article L.225-224.

The valuer's report shall be made available to the shareholders. The routine shareholders' meeting shall rule on the valuation of the asset, failing which the acquisition shall be void. The seller shall not have the right to vote either on its 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 L225-102

(Law No 2001-152 of 19 February 2001 Article 26 Official Gazette of 20 February 2001)

The report submitted to the routine meeting by the board of directors or the management, 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 personnel and personnel 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 company investment trusts governed by Chapter III of Law No 88-1201 of 23 December 1988 relating to security investment trusts and creating debt investment trusts. Shares directly held by employees during the periods of inaccessibility specified in Articles L.225-194 and L.225-197, in Article 11 of Law No 86-912 of 6 August 1986 relating to terms and conditions of privatisation and Article 442-7 of the Employment Code shall also be taken into account.

Shares acquired by employees in connection with the buy-out of a company by its employees, as provided for by Law 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 Law No 78-763 of 19 July 1978 laying down rules for production co-operatives shall not be taken into account when evaluating the proportion of capital as mentioned in the preceding sub-paragraph.

Where the Annual Report does not contain the information referred to in the first sub-paragraph, any interested party may make an interlocutory application to the Presiding Judge of the Court 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 daily penalty if it fails to do so.

Where the application is granted, any penalty and the expenses of the proceedings shall be payable by the directors or members of the management, as the case may be.

Article L225-102-1

(Act No. 2001-420 of 15 May 2001 Art. 116 I Official Journal of 16 May 2001)

(Act No. 2003-706 of 1 August 2003 Art. 138 Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 51 II Official Journal of 26 June 2004)

(Act No. 2005-842 of 26 July 2005 Art. 9 I Official Journal of 27 July 2005)

The report referred to in Article L225-102 itemises the total remuneration and benefits of all kinds paid to each company officer during the accounting period including any allotments 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 L228-13 and L228-93.

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 L233-16 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 likewise 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. Barring arrangements made in good faith, payments and commitments made in violation of the provisions of the present paragraph may be cancelled.

It also includes a list of all the remits and functions performed in each company by each company officer during the accounting period.

It also includes a list of information as laid down in a Conseil d'Etat decree concerning the manner in which the company deals with the social and environmental consequences of its business. The present paragraph does not apply to companies whose securities are not admitted to trading on a regulated market.

The provisions of the last two paragraphs of Article L225-102 apply to the information referred to in the present 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 L233-16 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 remit in a company whose securities are admitted to trading on a regulated market.



Article L225-102-2

(inserted by Law No. 2003-699 of 30 July 2003 Article 23 Official Gazette of 31 July 2003)

For companies which 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 the present code shall:

- provide details of the technological accident risk-prevention policy 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 L225-103

(Law No 2001-420 of 15 May 2001 Article 114 (2) Official Gazette of 16 May 2001)

I.- The general meeting shall be convened by the board of directors or the management, as the case may be.

II.- If not so convened, the 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, the general meeting may be convened by the supervisory board.

IV.- The foregoing provisions shall be applicable to special meetings. Shareholders applying for the appointment of a judicial representative must hold at least one tenth of the shares of the relevant class.

V. Unless otherwise provided by the memorandum and articles of association, shareholders' meetings shall be held at the registered office or anywhere else in the same department.

Article L225-104

Shareholders' meetings shall be convened in the manner and subject to time limits to be laid down by an Order approved by the Conseil d'Etat.

Any meeting may be cancelled if incorrectly convened. An application for cancellation shall not, however, be admissible where all the shareholders were present or represented.

Article L225-105

(Law No 2003-706 of 1 August 2003 Article 119 Official Gazette of 2 August 2003)

The agenda for general meetings is 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 draft resolutions on the agenda. Such 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 the present paragraph if the share capital exceeds a level specified therein.

The meeting cannot deliberate on an item which 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 it.

Article L225-106

(Law No 2001-152 of 19 February 2001 Article 27 Official Gazette of 20 February 2001)

A shareholder may be represented by another shareholder or by his or her spouse.

Any shareholder may receive powers issued by other shareholders to represent them at a meeting, without limits other than those imposed by the law or the memorandum and articles of association fixing the maximum number of votes a single person may hold either on his own behalf or as a proxy.

Before every general shareholders' meeting,, the chairman of the board of directors or the management, 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 proxies to represent them at the meeting in accordance with the provisions of this Article.

Such a consultation shall be obligatory where, following the amendment of the memorandum and articles of association pursuant to Article L.225-23 or Article L.225-71, the routine shareholders' 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 board of the company investment trusts that holds the company's shares.

Such a consultation shall also be obligatory where an special shareholders' meeting is required to take a decision on an amendment to the memorandum and articles of association pursuant to Article L.225-23 or Article L.225-71.

Any clauses that conflict with the provisions of the preceding sub-paragraphs shall be deemed non-existent.

In the case of any power of representation given by a shareholder without naming a proxy, the chairman of the general meeting shall issue a vote in favour of adopting an draft resolutions submitted or approved by the board of directors or the management, as the case may be, and a vote against adopting any other draft resolutions. To issue any other vote, the shareholder must appoint a proxy who agrees to vote in the manner indicated by his principal.

Article L225-107

(Law No 2001-420 of 15 May 2001 Article 115 (1) Official Gazette of 16 May 2001)

I. Any shareholder may vote by post, using a form the wording of which shall be fixed by an Order approved by the Conseil d'Etat. Any provisions to the contrary contained in the memorandum and articles of association shall be deemed non-existent.

When calculating the quorum, only forms received by the company before the meeting shall be taken into account, on conditions to be laid down by an Order approved by the Conseil d'Etat. Forms not indicating any vote or expressing an abstention shall be considered negative votes.

II. If the memorandum and articles of association so provide, 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 an Order approved by the Conseil d'Etat, shall be deemed to be present at the said meeting for the purposes of calculating the quorum and majority.

Article L225-107-1

(Act No. 2001-420 of 15 May 2001 Art. 119 1 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 III Official Journal of 26 June 2004)

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 L225-108

The board of directors or management, as the case may be, must send or make available to the shareholders the necessary documents to enable them to make decisions based on a knowledge of the facts and arrive at an informed judgment on the management and progress of the company and its business.

The nature of the said documents and the conditions upon which they are sent or made available to shareholders shall be determined by an Order approved by the Conseil d'Etat.

From the date of the delivery of documents specified in the first sub-paragraph, any shareholder shall be entitled to submit written questions, to which the board of directors or the management, as the case may be, shall required to reply in the course of the meeting.

Article L225-109

The chairman, managing directors and directors of a company, and any natural persons 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 an Order approved by the Conseil d'Etat, to register or deposit any shares belonging to themselves or their non-emancipated minor children that 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 sub-paragraph shall (unless judicially separated) be subject to

the same obligation.

Article L225-110

Where shares are subject to a life interest, voting rights attached thereto shall belong to the beneficiary thereof at routine shareholders' meetings and to the remainderman at special shareholders' meetings.

Joint owners of undivided shares shall be represented at routine shareholders' meetings by one of them or by a single proxy. In the event of disagreement, the proxy 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. To that end, the pledgee shall, at the debtor's request, place the shares he holds as security on deposit, on conditions and within time limits to be fixed by an Order approved by the Conseil d'Etat.

The memorandum and articles of association may create exceptions to the rule contained in the first sub-paragraph hereof.

Article L225-111



The company shall not be entitled to voting rights attached to shares it shall itself have subscribed, acquired or taken as a pledge. Such shares shall not be taken into account when calculating the quorum.

Article L225-113

Any shareholder may take part in special shareholders' meetings and any shareholder holding shares of the type referred to in Article L225-99 may take part in special meetings. Any clause to the contrary shall be deemed non-existent.

Article L225-114

An attendance sheet, the wording of which shall be determined by an Order approved by the Conseil d'Etat, shall be kept at every meeting.

Article L225-115

(Act No. 2001-420 of 15 May 2001 Art. 111 6 Official Journal of 16 May 2001)

(Act No. 2003-706 of 1 August 2003 Art. 123 I 3 Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 51 VI Official Journal of 26 June 2004)

Any shareholder is entitled, under the conditions and subject to the time limits determined in a Conseil d'Etat decree, to discovery of:

1. The inventory, 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. A list of the agreements relating to normal business entered into under normal terms and conditions, and their objects, drawn up pursuant to Articles L. 225-39 and L. 225-87.

Article L225-116

Before any general meeting is held, every shareholder shall be entitled, subject to conditions and time limits to be determined by an Order approved by the Conseil d'Etat, to obtain the disclosure of a list of shareholders.

Article L225-117

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 last three years.

Article L225-118

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 remainderman and the beneficiary in the case of shares subject to a life interest.

Article L225-120

(Order No 2000-916 of 19 September 2000 Article 4 and Annex II Official Gazette of 22 September 2000, in force on 1 January 2002)

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 L225-103, L225-105, L225-230, L225-231, L225-232, L225-233 and L225-252, such associations must have notified the company and the Commission des Operations de Bourse [Securities and Investments Board] of their legal status.

Where, however, the company's capital exceeds 5,000,000 F, 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 L225-121

Decisions taken by meetings in breach of Articles L.225-96, L.225-97, L.225-98, the third and fourth sub-paragraphs



of Article L.225-99, the second sub-paragraph of Article L.225-100 and Articles L.225-105 and L.225-114 shall be void.

In the event of breach of the provisions of Articles L.225-115 and L.225-116 or their implementing order, the meeting may be annulled.

Article L225-122

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 considered non-existent.

II.- In limited partnerships with shares, whose capital is partly owned by the State, departments, municipalities or public institutions as a matter of public policy, and those whose object is to operate services under licence from the competent Government authorities, outside mainland France, voting rights shall be governed by the memorandum and articles of association in force at 1 April 1967.

Article L225-123

A voting right equivalent to twice that attributed to other shares may be attributed to fully paid 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 memorandum and articles of association or an special shareholders' meeting.

Furthermore, in the event of an increase in capital by incorporation of reserve funds, profits or issue premiums, a double voting right may be conferred from the date of issue on registered

shares allocated to a shareholder free of charge in proportion to any former shares for which he has the benefit of that right.

The voting right provided in the first and second sub-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 L225-124

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 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 said Article.

The merger or division of a company shall have no effect on double voting rights capable of being exercised within the beneficiary company or companies, where the memorandum and articles of association of the latter created it.

Article L225-125

The memorandum and articles of association 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 class, other than non-voting preferred stock.

Article L225-126

Subject to the provisions of Articles L.225-161 and L.225-174, the memorandum and articles of association may provide for the creation of preference shares not carrying the right to vote at general shareholders' meetings. They shall be governed by Articles L.228-12 to L.228-20.

Only companies that shall have made a distributable profit as defined by the first sub-paragraph of Article L.232-11 during the last two financial years shall be entitled to create non-voting preferred stock.

SECTION IV

Changes to share capital and the body of employee shareholders

Articles L225-127 to
L225-217

Subsection 1

Capital increases

Articles L225-127 to
L225-149-3

Article L225-127

(Order No. 2004-604 of 24 June 2004 Art. 2 Official Journal of 26 June 2004)

The share capital is increased either by an issue of ordinary shares or preference shares, or by increasing the nominal value of the existing capital securities.

It may also be increased by exercise of the rights attached to transferable securities giving access to the capital, as provided for in Articles L. 225-149 and L. 225-177.

Article L225-128

(Order No. 2004-604 of 24 June 2004 Art. 3 Official Journal of 26 June 2004)

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 cash contribution, including compensation against encashable 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 the capital, including, where applicable, payment of the corresponding sums.

Article L225-129

(Act No. 2001-152 of 19 February 2001 Art. 29 1 Official Journal of 20 February 2001)

(Act No. 2003-7 of 3 January 2003 Art. 50 II Official Journal of 4 January 2003)

(Act No. 2003-706 of 1 August 2003 Art. 132 Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 4 Official Journal of 26 June 2004)

Only an extraordinary general meeting is competent to decide an immediate or eventual capital increase, 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 the capital or subsequent to the exercise of options as envisaged in Article L. 225-177.

Article L225-129-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 5 Official Journal of 26 June 2004)

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 L225-129-2

(Order No. 2004-604 of 24 June 2004 Art. 5 Official Journal of 26 June 2004)

(Finance Act 2005 No. 2004-1484 of 30 December 2004 Art. 83 I b Official Journal of 31 December 2004)

When the extraordinary general meeting delegates its competence to decide a capital increase to the board of directors or the executive board, it determines the period, which shall not exceed twenty-six months, during which that delegation may be used, and the overall ceiling for that increase.

Such delegation renders any prior delegation having the same object ineffective.

The issues referred to in Articles L. 225-135 to L. 225-138-1 and L. 225-177 to L. 225-186, and L. 225-197-1 to L. 225-197-3, and likewise the issues of preference shares referred to in Articles L. 228-11 to L. 228-20, must be the subject of special resolutions.

Within the limits of the delegation given by the general meeting, the board of directors or the executive board has the powers required to determine the conditions of issue, to declare the completion of the resultant capital increases and to make the appropriate amendment to the articles of association.

Article L225-129-3

(inserted by Order No. 2004-604 of 24 June 2004 Art. 5 Official Journal of 26 June 2004)

Any delegation made by the general meeting is suspended while a takeover bid or exchange offer for the company's securities is in progress, unless it forms part of the company's normal business activities and its implementation is not liable to cause the offer to fail.

Article L225-129-4

(inserted by Order No. 2004-604 of 24 June 2004 Art. 5 Official Journal of 26 June 2004)

In limited companies whose securities are admitted to trading on a regulated market:

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 delegated general managers, the power to decide to proceed with the issue, or to postpone it;

b) The executive board may delegate to its chairman or, with his agreement, to one of its members, the power to decide to proceed with the issue, or to postpone it.

The designated persons 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 L225-129-5

(inserted by Order No. 2004-604 of 24 June 2004 Art. 5 Official Journal of 26 June 2004)

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 draws up a supplementary report for the next ordinary general meeting in the manner determined in a Conseil d'Etat decree.

NB: Order 2004-604 2004-06-24 Art. 64: The provisions of Article L. 225-129-5 of the Commercial Code apply to financial years commenced on or after 1 January 2004.

Article L225-129-6



(Order No. 2004-604 of 24 June 2004 Art. 5 Official Journal of 26 June 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XXVII Official Journal of 10 December 2004)
(Act No. 2005-842 of 26 July 2005 Art. 42 Official Journal of 27 July 2005)

When any capital increase via a cash contribution takes place, unless it results from a prior issue of transferable securities giving access to the capital, an extraordinary general meeting shall rule on a draft resolution to increase the capital as provided for in Article L443-5 of the Labour Code. An extraordinary general meeting shall also rule on such a draft resolution when it delegates its power to increase the capital pursuant to Article L225-129-2.

Every three years, an extraordinary general meeting is convened to rule on a draft resolution to increase the capital as provided for in Article L443-5 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 L225-102, the securities held by the staff of the company and of any companies linked to it within the meaning of Article L225-180 represent less than 3% of the capital.

Article L225-130

(Order No. 2004-604 of 24 June 2004 Art. 6 Official Journal of 26 June 2004)

When a capital increase effected by issuing new capital securities or increasing the nominal value of the existing capital securities takes place through incorporation of reserves, profits or share premiums, the general meeting, contrary to the provisions of Article L. 225-96, decides this under the quorum and majority conditions laid down in Article L. 225-98. In which case, it may decide that the rights attached to fractional shares are neither tradable 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 effected by increasing the nominal value of the capital securities may only be decided with the unanimous consent of the shareholders.

Article L225-131

(Order No. 2004-604 of 24 June 2004 Art. 51 IV Official Journal of 26 June 2004)

The capital must be fully paid up before any issue of new shares to be paid up in cash takes place.

Moreover, a capital increase by way of public offering effected 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 a verification of the assets and liabilities, and, where applicable, the specific benefits granted.

Article L225-132

(Order No. 2004-604 of 24 June 2004 Art. 7, Art. 51 V Official Journal of 26 June 2004)

The shares confer a preferential right to subscribe to capital increases.

Proportionate to the value of their shares, shareholders have a preferential right to subscribe shares issued for cash to increase the capital.

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 the shares resulting from the conversion.

A decision to issue transferable securities giving access to the capital also entails the waiving of the shareholders' preferential right to subscribe the capital securities to which the transferable securities issued give entitlement.

Article L225-133

(Order No. 2004-604 of 24 June 2004 Art. 8 Official Journal of 26 June 2004)

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 irrevocably subscribed are allotted to the shareholders who have subscribed a number of securities greater than that which they could subscribe preferentially, in proportion to the subscription rights they hold and, in any event, within the limit of their requests.

Article L225-134

(Order No. 2004-604 of 24 June 2004 Art. 9 Official Journal of 26 June 2004)

I. - If the irrevocable subscriptions and, where applicable, the free subscriptions, 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 effected 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 is deemed not to have been taken.

Article L225-135

(Order No. 2004-604 of 24 June 2004 Art. 10 Official Journal of 26 June 2004)

A meeting which decides or authorises a capital increase may remove the preferential subscription right for the total capital increase or one or more tranches thereof. It decides this on the basis of a report from the board of directors or the executive board. When it decides to proceed with a capital increase, it also takes account of an auditor's report. In the case of issues made by the board of directors or the executive board pursuant to authorisation given by the general meeting, the auditor draws up a report for the board of directors or the executive board.

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 have a subscription priority period in favour of the shareholders of a minimum duration determined in 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 determines the particulars of the auditor's reports referred to in the present article.

Article L225-135-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 11 Official Journal of 26 June 2004)

When a capital increase is effected, with or without a preferential subscription right, the meeting may request that the number of securities be increased for a period determined in a Conseil d'Etat decree, proportionate to a fraction of the initial issue determined in that same decree, and at the same price as that initial issue. The limit provided for in 1 of I of Article L. 225-134 is then increased in the same proportion.

Article L225-136

(Order No. 2004-604 of 24 June 2004 Art. 12 Official Journal of 26 June 2004)

An issue of capital securities by way of public offering without a preferential subscription right is subject to the following conditions:

1. For companies whose capital securities are admitted to trading on a regulated market, if the transferable securities to be issued immediately or subsequently shall have equivalent status, the issue price 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 determines in the light of a report from the board of directors or the executive board, and a special report from the auditor. When such authorisation is used, the board of directors or the executive board draws 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 determining that price are determined by the extraordinary general meeting on a report of the board of directors or the executive board and on special report from the auditor.

Article L225-137

Public issues without rights of subscription of new shares not conferring the same rights on their holders as those conferred by the previous shares shall be subject to the following conditions:

1. The issue must take place within two years of the date of the meeting that authorised it;

2. The issue price or conditions on which the same is fixed shall be determined by an special shareholders' meeting on a report by the board of directors or management and a special auditor's report.

II.- If the issue shall not have taken place by the date of the next annual general meeting following the decision, an special shareholders' meeting must decide, on the basis of the report by the board of directors or management and the special auditor's report, whether to maintain or adjust the issue price or the conditions in accordance with which it is determined. If it fails to do so, the decision of the earlier meeting shall lapse.

Article L225-138

(Act No. 2001-152 of 19 February 2001 Art. 10 III, Art. 17 VII, Art. 29 2 Official Journal of 20 February 2001)

(Act No. 2003-706 of 1 August 2003 Art. 124 Official Journal of 2 August 2003)

(Act No. 2003-775 of 21 August 2003 Art. 109 III 3 Official Journal of 22 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 13 Official Journal of 26 June 2004)

I. - A general meeting which decides on a capital increase may reserve it for one or more persons designated by name or for categories of persons who meet certain criteria. To that end, it may remove the preferential subscription



right. The persons designated by name who benefit from that provision shall not participate in the vote. The quorum and majority required are calculated after deduction of the shares that they hold. The procedure provided for in Article L. 225-147 shall not apply.

When the extraordinary general meeting removes the preferential subscription right in favour of one or more categories of persons who meet the criteria it sets, it may delegate to the board of directors or the executive board the task of drawing up a list of the beneficiaries within that category, or those categories, and the number of securities to be allotted to each of them, subject to the ceilings specified in the first paragraph of Article L. 225-129-2. When such a delegation is used, the board of directors or the executive board draws up a supplementary report for the next ordinary general meeting, certified by the auditor, which sets out the definitive terms of the operation.

II. - The issue price or the formula for calculating it is determined by the extraordinary general meeting on a report of the board of directors or the executive board and a special report from the auditor.

III. - The issue must take place within eighteen months of the general meeting which decided it or which approved the delegation provided for in Article L. 225-129.

Article L225-138-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 13, Art. 14 Official Journal of 26 June 2004)

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 preferential subscription right 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 is still determined in the manner described in Article L. 443-5 of the Labour Code;

2. The capital increase is only effected in the amount of the capital securities subscribed by the employees individually or through an open-end investment company 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 the capital 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 the capital thus subscribed which are 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 the capital 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 the present code, be issued even when the share capital has not been fully paid up.

The fact of the securities referred to in the previous paragraph not having been fully paid up does not prevent the issue of capital securities from being paid up in cash.

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 the capital issued by the company in the circumstances and under the terms and conditions laid down in the Conseil d'Etat decrees referred to in Article L. 442-7 of that same code.

Article L225-139

(Order No. 2004-604 of 24 June 2004 Art. 15 Official Journal of 26 June 2004)

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 the capital being issued.

Article L225-140

(Order No. 2004-604 of 24 June 2004 Art. 16 Official Journal of 26 June 2004)

When capital securities are subject to a usufruct, the preferential subscription right attached to them shall belong to the bare 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 bare owner fails to exercise his right, the usufructuary may subscribe new shares or sell the rights in his place. In the latter case, the bare owner may demand re-use of the proceeds of sale. The property thus acquired is subject to the usufruct.

The new shares shall belong to the bare owner for the bare ownership and to the usufructuary for the usufruct. However, where funds are paid out by the bare owner or the usufructuary to pay for or complete a subscription, the new shares shall belong to the bare 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 determines the present article's implementing regulations, 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 L225-141

(Order No. 2004-604 of 24 June 2004 Art. 17 Official Journal of 26 June 2004)

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 irrevocable subscription rights are exercised or as soon as the capital increase is fully subscribed following individual waivers of subscription rights by the non-subscribing shareholders.

Article L225-142

Before the opening date of subscription, the company shall deal with the publication formalities, details of which shall be fixed by an Order approved by the Conseil d'Etat.

Article L225-143

(Order No. 2004-604 of 24 June 2004 Art. 18 Official Journal of 26 June 2004)

The subscription agreement for capital securities or transferable securities giving access to the capital is 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 L225-144

Shares paid in cash must be paid as 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 unconditional.

The provisions of the first sub-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 cash when the deposit certificate has been issued.

If the increase in capital shall not have taken place within six months of the opening subscription date, the provisions of the second sub-paragraph of Article L.225-11 may be applied.

Article L225-145

(Act No. 2001-1168 of 11 December 2001 Art. 27 II Official Journal of 12 December 2001)

In companies which make public offerings to distribute their shares, 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 L321-1 of the Monetary and Financial Code, or persons referred to in Article L532-18 of that code authorised to provide the same service in their country of origin, have irrevocably guaranteed its proper execution. Settlement of the paid-up fraction of the nominal value and the entirety of the issue premium must take place within thirty-five days of the close of the subscription period.

Article L225-146

Subscriptions and payments shall be recorded by a deposit certificate issued on the deposit of funds, on production of a subscription report.

Payment of shares by set-off against liquidated enforceable debts owed by the company shall be recorded by a notarial or auditor's certificate. Such a certificate shall replace the deposit certificate.

Article L225-147

(Order No. 2004-604 of 24 June 2004 Art. 19 Official Journal of 26 June 2004)

When contributions in kind are made or special privileges are stipulated, one or more valuers of contributions in kind are appointed by a court decision. They are subject to the incompatibilities referred to in Article L. 822-11.

The said valuers shall assess the value of the contributions in kind and the special privileges under their own liability. A Conseil d'Etat decree determines the main headings of their report, the time limit for its submission, and the manner 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 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 is not proceeded with.

The capital securities issued in respect of a contribution in kind are 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 the capital, when the provisions of Article L. 225-148 are not applicable. The board of directors or the executive board decides on the report of the valuer(s) of contributions in kind referred to in the first and second paragraphs above pursuant to the third or fourth paragraphs above.

Article L225-148

(Order No. 2004-604 of 24 June 2004 Art. 51 VIII Official Journal of 26 June 2004)

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 a 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 takes 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 L225-149

(Order No. 2004-604 of 24 June 2004 Art. 20 Official Journal of 26 June 2004)

A capital increase resulting from exercise of the rights attached to transferable securities giving access to the capital 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. When the holder of a transferable security issued pursuant to Article L. 225-149-2 is not entitled to a whole number, a cash 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 is 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 articles of association relative to the amount of the share capital and the number of securities that represent it.

The chairman 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 L225-149-1

(Act No. 2003-706 of 1 August 2003 Art. 134 IV Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 21 Official Journal of 26 June 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XXVII Official Journal of 10 December 2004)

In the event of new capital securities or new transferable securities giving access to the capital 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 and 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 L225-149-2

(inserted by Order No. 2004-604 of 24 June 2004 Art. 22 Official Journal of 26 June 2004)

The rights attached to shares giving access to the capital which have been used or acquired by the issuing company or by the company issuing the new capital securities are cancelled by the issuing company.

Article L225-149-3

(inserted by Order No. 2004-604 of 24 June 2004 Art. 22 Official Journal of 26 June 2004)

Decisions founded on the second paragraph of Article L. 225-129-6 or relating to the supplementary reports referred to in Article L. 225-129-5, the second paragraph of 1 of Article L. 225-136 and the second paragraph of I of Article L. 225-138 may give rise to an order pursuant to the terms and conditions set forth in Articles L. 238-1 and L. 238-6.

Decisions taken in violation of Articles L. 225-129-3 and L. 225-142 may be cancelled.

Decisions taken in violation of the provisions of the present subsection other than those referred to in the present article are null and void.

Subsection 2

Subscription and purchase of shares by employees

Articles L225-150 to
L225-197-5



Article L225-150

On a report by the board of directors or the management, as the case may be, and a special auditors' report, an special shareholders' meeting may authorise the issue of bonds with one or more subscription warrants. The said warrants shall entitle the holder to subscribe shares to be issued by the company at one or more prices and according to the conditions and within the time limits fixed by the issue agreement. The time limit for the exercise of the right must not be more than three months later than the date of final repayment of the loan.

A company may issue bonds with warrants giving the holder the right to subscribe to shares to be issued by a company that directly or indirectly owns more than half its share capital. In any such case, the bond issue must be authorised by the routine shareholders' meeting of the subsidiary company issuing the bonds, and the share issue by an special shareholders' meeting of the company required to issue the shares.

The special shareholders' meeting shall, in particular, decide the method of calculation of the price or prices at which the right of subscription shall be exercised and the maximum total number of shares that can be subscribed by warrant holders. The total price or prices at which the right of subscription shall be exercised must not be less than the nominal value of the shares subscribed on the presentation of warrants.

Unless otherwise stipulated in the issue agreement, warrants may be transferred or negotiated independently of the bonds.

Article L225-151

Shareholders of the company required to issue the shares shall have a preferential right of subscription of bonds with warrants. The said preferential right of subscription shall be governed by Articles L.225-132 to L.225-141.

The consent of an special shareholders' meeting to the issue shall imply the waiver by the shareholders of their preferential right of subscription of the shares to be subscribed on presentation of the said warrants in favour of the warrant holders.

Issues of bonds with warrants must take place within a maximum period of five years of the date of the decision of the special shareholders' meeting. The said period shall be reduced to two years where the shareholders waive their preferential right of subscription of the bonds with warrants.

Article L225-152

In the event of an increase in capital, merger or division of the company required to issue the shares, the board of directors or the management may suspend the exercise of the right of subscription for a period not exceeding threemonths.

Shares subscribed by warrant holders shall entitle the holder to dividends paid in respect of the financial year during which the said shares were subscribed.

Article L225-153

With effect from the date of the vote by the special shareholders' meeting of the company required to issue the shares, and as long as there are valid warrants in existence, the company shall not be permitted to amortise its share capital or vary the distribution of its profits.

Nevertheless, the company may create non-voting preferred stock provided that the rights of the bond holders are preserved as stipulated by Article L.225-154.

In the event of a reduction in capital caused by losses and effected by reducing the nominal total value or number of shares, the rights of warrant holders shall be reduced accordingly, as if the said holders had been shareholders since the date of issue of the bonds with share warrants.

Article L225-154

With effect from the date of the vote by the special shareholders' meeting of the company required to issue the shares, and as long as there are valid warrants in existence, the issue of shares to be subscribed against cash payments reserved to shareholders, the incorporation of reserve funds, profits or issue premiums into the share capital, and the distribution of reserve funds in cash or portfolio securities shall be authorised only provided that the rights of any warrant holders exercising their right of subscription are preserved.

To that end, the company must, in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat, allow warrant holders exercising their right of subscription either to subscribe whole shares or obtain new shares free of charge, or to receive cash or securities similar to those distributed in the same quantities or proportions and according to the same conditions, save as regards the enjoyment of possession thereof, as if they had been shareholders at the date of the said issue, incorporation or distribution.

In the event of an issue of bonds with warrants or further convertible or exchangeable bonds, the company shall give notice of the said issue to the holders or bearers of warrants by public notice, in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat, to enable them to opt for conversion within the time limit specified in the said notice. If the period within which the right of subscription may be exercised has not yet commenced, the exercise price to be adopted shall be the first price shown in the issue agreement. The provisions of this sub-paragraph shall apply to any other operation involving a right of subscription reserved to shareholders.

Nevertheless, where the warrants entitle the holder to subscribe shares admitted to trading on a regulated market, the issue agreement may provide, instead of the measures specified in the preceding sub-paragraphs, for the



adjustment of the conditions of subscription originally laid down, in order to allow for the effects of the issue, incorporation or distribution, in accordance with conditions and by methods of calculation to be laid down by an Order approved by the Conseil d'Etat, under the supervision of the Commission des Opérations de Bourse [Securities and Investments Board].

Article L225-155

Increases in capital resulting from the exercise of the right of subscription shall not require the formalities specified in Article L.225-142, the second sub-paragraph of Article L.225-144 and Article L.225-146. They shall be unconditionally effected merely by virtue of the payment of the subscription price accompanied by the subscription report and, if appropriate, the sums rendered payable by the subscription of cash shares under the circumstances referred to in Article L.225-154.

At its first meeting after the end of each financial year, the board of directors or management of the company, as the case may be, shall, if necessary, record the number and total nominal value of the shares subscribed by warrant holders during the year just ended and make the necessary amendments to the memorandum and articles of association relating to the total share capital and the number of shares it comprises. The chairman may, on being delegated by the board of directors or the management to do so, effect these operations in the months immediately following the end of the financial year. The board of directors or the management, or the chairman if delegated, may also, at any time, record the same information for the current year and amend the memorandum and articles of association accordingly.

Where, as a result of one of the operations mentioned in Articles L.225-154 and L.225-156, a holder of warrants presenting their certificates of entitlement to a number of shares including a fractional share, the fraction in question must be paid in cash according to methods of calculation to be fixed by an Order approved by the Conseil d'Etat.

Where the company required to issue shares is absorbed by another company or merges with one or more other companies to form a new company, or de-merges, by transferring its shares to existing or new companies, warrant holders may subscribe shares in the absorbing company or new companies. The number of shares they shall be entitled to subscribe shall be determined by correcting the number of shares to which they were entitled in the company required to issue the shares by the ratio of exchange of the latter company's shares for shares in the absorbing company or the new company or companies, taking the provisions of Article L.225-154 into account if appropriate.

The general meeting of the absorbing company or the new company or companies shall decide, in accordance with the conditions specified in the first paragraph of Article L.225-150, whether to waive the preferential right of subscription mentioned in Article L.225-151.

The absorbing company or the new company or companies shall replace the company issuing the shares for the purposes of Articles L.225-153 to L.225-155.

Article L225-157

Decisions taken in breach of Articles L.225-150 to L.225-156 shall be void.

Article L225-158

Warrant holders may, in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat, obtain disclosure of the documents listed in paragraphs 1 and 2 of Article L.225-115 for the last three financial years of the company issuing the shares, except its inventory of assets.

Article L225-159

Share warrants purchased by the issuing company and warrants used for share subscriptions shall be cancelled.

Article L225-160

The provisions of Articles L.225-150 to L.225-159 shall apply to the issue of bonds with warrants allocated to employees by way of a share of the profits derived from the expansion of companies.

Article L225-161

On a report by the board of directors or the management, as the case may be, and a special auditors' report relating to the proposed conversion basis, a special shareholders' meeting may authorise the issue of bonds convertible into shares, to which the provisions of Part 5 of Chapter VIII of this Title shall be applicable. Unless it is decided to make an exception in accordance with Article L.225-135, shareholders shall be entitled to subscribe convertible bonds in accordance with the same conditions as those laid down for the subscription of new shares.

The said authority must contain an express waiver by the shareholders, in favour of the bond holders, of their preferential right to subscribe shares issued on the conversion of bonds.

Conversion may take place only with the agreement of the bearers, and in accordance with the conditions and conversion bases laid down by the bond issue agreement. The said agreement shall indicate either that conversion shall take place during one or more specific option periods, or that conversion may take place at any time.

The issue price of bonds convertible into shares must not be less than the nominal value of the shares to be received by the bond holders if they opt for conversion.

With effect from the date of the vote by the meeting and as long as there are any bonds convertible into shares in existence, the company shall be prohibited from amortising its share capital or varying the distribution of dividends.



Nevertheless, the company may create non-voting preferred stock provided that the rights of bond holders are preserved, as stipulated by Article L.225-162.

In the event of a capital reduction caused by losses, by reducing either the total nominal value or number of shares, the rights of bond holders opting for the conversion of their securities shall be reduced accordingly, as if the said bond holders had been shareholders with effect from the date of issue of the bonds.

Article L225-162

With effect from the date of the vote by the meeting referred to in Article L.225-161, and as long as there are any bonds convertible into shares in existence, the incorporation of reserve funds, profits or issue premiums into the share capital, and the distribution of reserve funds in cash or portfolio securities shall be authorised only on condition that the rights of bond holders opting for conversion shall be preserved.

To that end, the company must, in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat, allow bond holders opting for conversion either to subscribe whole shares or obtain new shares free of charge, or to receive cash or securities similar to those distributed in the same quantities or proportions and likewise in accordance with the same conditions, save as regards the enjoyment of possession thereof, as if they had been shareholders at the date of the said issue, incorporation or distribution.

In the event of an issue of bonds with warrants or new convertible or exchangeable bonds, the company shall give notice of the said issue to the holders or bearers of warrants by notice to be published in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat, to enable them, if they wish to participate in the operation, to exercise their option within the time limit specified in the said notice. If the period within which the right of subscription may be exercised has not yet commenced, the exercise price to be adopted shall be the first price shown in the issue agreement. The provisions of this sub-paragraph shall apply to any other operation involving a right of subscription reserved to shareholders, except those arising from the application of the first sub-paragraph of Article L.225-177.

Nevertheless, provided that the company's shares are admitted to trading on a regulated market, the issue agreement may provide, instead of the measures specified in the preceding sub-paragraph for the adjustment of the conditions of subscription originally laid down, in order to allow for the effects of the issue, incorporation or distribution, in accordance with conditions and by methods of calculation to be laid down by an Order approved by the Conseil d'Etat, under the supervision of the Commission des Opérations de Bourse [Securities and Investments Board].

In the case of shares issued to subscribers for cash or new convertible or exchangeable bonds, where a general meeting has removed the preferential right of subscription, the decision must be approved by the routine shareholders' meeting of bond holders affected thereby.

Article L225-163

In the case of an issue of bonds convertible into shares at any time, conversion may be applied for during a period commencing no later than either the first repayment date or the fifth anniversary of the start of the issue, and expiring three months after the date on which the bond is required to be repaid. Nevertheless, in the event of an increase in capital or merger, the board of directors or management, as the case may be, may suspend the exercise of the right for a period not exceeding three months.

Shares delivered to bond holders shall entitle the holder to dividends distributed for the year in which conversion was applied for.

Where, as a result of one or more of the operations referred to in Articles L.225-162 and L.225-164, a bond holder applying for conversion of their shares is entitled to a number of shares that includes a fraction of a share, the said fraction must be paid in cash in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat.

Increases in capital rendered necessary by the conversion of bonds shall not require the formalities specified in Article L.225-142, the second sub-paragraph of Article L.225-144 and Article L.225-146. It shall be unconditionally effected merely by virtue of the application for conversion, except where the second sub-paragraph of Article L.225-143 applies, the subscription report and, if appropriate, the sums rendered payable by the subscription of cash shares in the circumstances referred to in Article L225-162.

At its first meeting after the end of each financial year, the board of directors or management of the company, as the case may be, shall if necessary record the number and total nominal value of the shares issued on conversion during the year just ended and make the necessary amendments to the memorandum and articles of association relating to the total share capital and the number of shares it comprises.

The Chairman may, on being delegated by the board of directors or the management, effect these operations within a month of the end of the financial year. The board of directors or the management, or the Chairman if delegated, may also, at any time, record the same information for the current year and amend the memorandum and articles of association accordingly.

Article L225-164

With effect from the date of issue of the bonds convertible into shares, and as long as such bonds exist, the absorption of the issuing company by another company or the merger thereof with one or more other companies to form a new company shall be subject to the approval of an special shareholders' meeting of the bond holders affected. If the meeting shall not have approved the absorption or merger, or if it shall not have been able to take a valid decision for lack of



the requisite quorum, the provisions of Article L.228-73 shall apply.

Bonds convertible into shares may be converted into shares in the absorbing or new company, either during the option period or periods provided by the issue agreement, or at any time, as the case may be. The conversion basis shall be determined by correcting the ratio of exchange of shares in the issuing company against shares in the absorbing or new company as specified in the said agreement, taking the provisions of Article L.225-162 into account if appropriate.

On the contribution auditors' report, as provided in Article L.225-147, that of the board of directors or management, as the case may be, and the company auditors' report, as provided in Article L.225-161, the general meeting of the absorbing or new company shall decide whether to approve the merger and the waiver of the preferential right of subscription specified in the second sub-paragraph of Article L.225-161.

The absorbing or new company shall replace the issuing company for the purposes of the third and fifth sub-paragraphs of Article L.225-161, Article L.225-162 and, if applicable, Article L.225-163.

Article L225-165

Decisions taken in breach of Articles L.225-161 to L.225-164 shall be void.

Article L225-166

The provisions of Articles L.225-161 to L.225-165 shall apply to the issue of bonds convertible into shares allocated to employees by way of a share of the profits derived from the expansion of companies.

Article L225-167

If proceedings for judicial reorganisation on insolvency are commenced in respect of a company issuing convertible bonds, the time limit for the conversion of the said bonds into shares shall commence on the date on which judgment is given drawing up the rehabilitation plan and the conversion may take place, with the agreement of every bond holder, subject to the conditions laid down in the plan.

Article L225-168

Companies whose shares are admitted to trading on a regulated market may issue bonds exchangeable for shares in accordance with the conditions laid down by Articles L.225-169 to L.225-176. The provisions of Articles L.228-38 to L.228-90 shall apply to such bonds.

Article L225-169

On a report by the board of directors or management, as the case may be, and a special auditors' report, an special shareholders' meeting may authorise the issue of bonds that may be exchanged for shares already issued and held by third parties or for shares created on a simultaneous increase in capital. In the latter case, the shares shall be subscribed either by one or more credit institutions, or by one or more persons who shall have obtained a pledge of security from credit institutions.

The said authority shall imply the waiver by the shareholders of their preferential right of subscription in relation to the increase in capital.

Unless they waive the same in accordance with the conditions specified in Article L.225-135, the shareholders shall have a preferential right of subscription in relation to the exchangeable bonds issued. The said right shall be governed by Articles L.225-132 to L.225-141.

Article L225-170

On the same reports as are mentioned in the first sub-paragraph of Article L.225-169, an special shareholders' meeting must be called to approve any agreement between the company and persons who undertake to effect the exchange of the bonds after subscribing a corresponding number of shares. The auditors' special report must specifically state the remuneration stipulated for the said persons.

Article L225-171

The issue price of exchangeable bonds must not be less than the nominal value of the shares the bond holders will receive in the event of exchange.

The exchange may not take place without the bond holders' agreement. It shall be effected in accordance with the conditions and basis laid down by the issue agreement and by the agreement referred to in Article L.225-170. It may be applied for at any time within a period of three months after the date on which the bond is repayable.

Article L225-172

Immediately upon the issue of the bonds, and until the expiration of the option exercise period, the persons who have undertaken to effect the exchange must exercise all rights of subscription relating to whole numbers of shares and all rights of allocation attached to the shares subscribed. In the event of exchange the new shares so obtained must be offered to the bond holders, who must be responsible for repaying the total amount of the sums paid to subscribe and pay up the said shares or to purchase the necessary supplemental rights to complete the number of rights attached to the old shares, together with interest on the said sums if so stipulated by the agreement referred to in Article L.225-170.



In the case of fractional shares, the bond holder shall be entitled to payment in cash of the value of the said fractional shares, as valued at the date of exchange.

Article L225-173

The requisite shares to effect the exchange of bonds must be registered, non-transferable and non-attachable. They may be transferred only when the exchange can be proved to have taken place.

They must also be pledged in favour of the bond holders as security for the due performance of the obligations assumed by the persons who have undertaken to effect the exchange.

The provisions of the two preceding sub-paragraphs shall be applicable to new shares obtained pursuant to Article L.225-172.

Article L225-174

With effect from the date of the vote by the meeting referred to in Article L.225-169, it shall be prohibited for the company to amortise its share capital or vary the distribution of dividends until all the bonds issued have been exchanged or become repayable. The company may, however, create non-voting preferred stock.

In the case of distribution by the company of reserves in the form of shares during the same period, shares earmarked for exchange shall be subject to the provisions of the first and second sub-paragraphs of Article L.225-172.

Shares to be delivered to bond holders in the event of exchange must correspond to the number of shares to which they are entitled. Any fractional shares must be paid for in cash, the price being calculated according to the value of the shares at the date of exchange. Dividends and interest becoming due between the date of distribution and the date of exchange shall be payable to the persons who have undertaken to effect the exchange.

In the event of distribution by the company of reserves in cash during the period referred to in the first sub-paragraph above, bond holders shall be entitled on the exchange of their shares to a sum equivalent to that which they would have received if they had been shareholders at the time of distribution.

Article L225-175

Between the issue of bonds exchangeable for shares and the date at which all bonds must have been exchanged or repaid, the absorption of the issuing company by another company or the merger of the issuing company with one or more companies to form a new company shall be subject to the prior approval of an special shareholders' meeting of the bond holders affected.

Bonds exchangeable for shares may in any such case be exchanged, within the period stipulated in the second sub-paragraph of Article L.225-171, for shares in the absorbing or new company that have been received by the persons who have undertaken to effect the exchange. The exchange bases shall be fixed by correcting the ratio of exchange fixed by the issue agreement according to the ratio of exchange between shares in the issuing company and shares in the absorbing or new company.

The absorbing or new company shall replace the issuing company for the purposes of Article L.225-174 and the agreement referred to in Article L.225-170.

Article L225-176

Any decisions taken in breach of the provisions of Articles L.225-169, L.225-170, L.225-171, L.225-174 and L.225-175 shall be void.

Article L225-177

(Act No. 2001-420 of 15 May 2001 Art. 132 I Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 determines 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 determines the conditions under which the options shall be granted. The said 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 takes account of the company's net assets position, profitability and business prospects, applying a weighting specific to each case. The said 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. A decree determines the method for calculating the subscription price. 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 structures 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 date ten stock-exchange trading days after that 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 L225-178

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 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. It is definitively effected merely upon submission of the option-exercise declaration together with the application form and payment of the appropriate sum in cash or through offsetting against monies owed by the company.

At its first meeting following the close of each financial year, the board of directors or the executive board, as applicable, duly records the number and value of the shares, if any, issued during the financial year as a result of options being exercised, and makes the necessary amendments to the articles of association to reflect the new amount of the share capital and the number of shares that represent it. If duly empowered by the board of directors or the executive board, the chairman may proceed with this during the month which follows the close of the financial year. The board of directors or the executive board, or the chairman if so empowered, may also record the same information, at any time, for the financial year in progress and make the relevant amendments to the articles of association.

Article L225-179

(Act No. 2001-420 of 15 May 2001 Art. 132 II Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 staff options to purchase shares deriving from a redemption effected by the company itself prior to the opening of the option in the manner described in Articles L. 225-208 or L. 225-209. The extraordinary general meeting determines the period during which that 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.

Article L225-180

(Act No. 2001-420 of 15 May 2001 Art. 32 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

I. - Options may be granted, under the terms and conditions 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 the employees of companies or economic interest groups directly or indirectly holding at least 10% of the capital or voting rights of the company granting the options;

3. Or 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.

Options may also be granted under the terms and conditions 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 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 or its affiliated institutions.

Article L225-181

(Order No. 2004-604 of 24 June 2004 Art. 51 IX, X Official Journal of 26 June 2004)

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 L225-182

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The total number of options open and not yet exercised shall not constitute entitlement to subscribe 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 L225-183

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The extraordinary general meeting determines 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 L225-184

(Act No. 2001-420 of 15 May 2001 Art. 132 III Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

A special report informs 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.

The said report also indicates:

- the number, expiry dates and price of the options to subscribe or purchase shares which, during the year and relative to the duties and functions performed in the company, have been granted to each of those executives 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 options to subscribe or purchase shares which have been granted during the year to each of those executives relative to the duties and functions they perform by controlled companies within the meaning of Article L. 233-16;

- the number and price of the shares subscribed or purchased by the company's executives during the financial year through exercise of one or more of the options held on the companies referred to in the previous two paragraphs.

The said report also indicates:

- the number, price and expiry dates of the options to subscribe or purchase 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-executive 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 on the companies referred to in the previous paragraph by each of the ten non-executive employees of the company who thus purchased or subscribed the highest number of shares.

Article L225-185

(Act No. 2001-420 of 15 May 2001 Art. 132 IV Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 natural-person executives 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 natural-person executives of a company who combine with employees to purchase 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 purchase of the majority of a company's shares by its employees or executives, the maximum indicated in the last paragraph of Article L. 225-182 is



increased to one third of the capital.

The chairman of the board of directors, the general manager, the acting general managers, 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.

They may also be granted options which give entitlement to subscribe or purchase 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 L225-186

(Act No. 2001-420 of 15 May 2001 Art. 31 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

Articles L. 225-177 to L. 225-185 are applicable to investment certificates, cooperative investment certificates and members' investment certificates.

Article L225-187-1

(Act No. 2001-152 of 19 February 2001 Art. 29 5 Official Journal of 20 February 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The wording of Articles L. 225-192 to L. 225-194 and Article L. 225-197 which predates the publication of Act No. 2001-152 of 19 February 2001 relating to save-as-you-earn schemes shall remain applicable until a period of five years has elapsed since its publication.

Article L225-197-1

(inserted by Finance Act 2005 No. 2004-1484 of 30 December 2004 Art. 83 I a Official Journal of 31 December 2004)

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 a free allotment of existing or new shares to the company's staff or to certain categories of staff.

The extraordinary general meeting determines the maximum percentage of the share capital which may be allotted as indicated above. The allotment of the shares to the beneficiaries becomes absolute upon expiry of an acquisition period of a minimum duration determined by the extraordinary general meeting which shall not be less than two years. The extraordinary general meeting also determines the minimum period during which the beneficiaries must hold the shares. The said period shall run from the date on which the allotment of shares becomes absolute, but shall never be less than two years.

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 period of ten stock-exchange trading days that precede or follow 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 structures 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 date ten stock-exchange trading days after that on which the said information is published.

The board of directors or, where applicable, the executive board, determines the identity of the beneficiaries of the share allotments referred to in the first paragraph. It also lays down the conditions and, where applicable, the allotment criteria, applicable to the shares.

The extraordinary general meeting determines the period during which the board of directors or the executive board may use the said authorisation. Which period shall not exceed thirty-eight months.

The total number total of shares freely allotted shall not exceed 10% of the share capital.

II. - The chairman of the board of directors, the general manager, the acting 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.

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.

Shares may not be allotted to employees and executives who individually hold more than 10% of the share capital. Moreover, a free allotment of shares shall not result in individual employees and executives holding more than 10% of the share capital.

Article L225-197-2

(inserted by Finance Act 2005 No. 2004-1484 of 30 December 2004 Art. 83 I a Official Journal of 31 December 2004)

I. - Shares may be allotted, in the same way 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 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 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 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 terms and conditions set forth in Article L. 225-197-1 by a company which is directly or indirectly and solely or jointly controlled by a central body 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 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 or those credit institutions.

Article L225-197-3

(inserted by Finance Act 2005 No. 2004-1484 of 30 December 2004 Art. 83 I a Official Journal of 31 December 2004)

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.

Article L225-197-4

(inserted by Finance Act 2005 No. 2004-1484 of 30 December 2004 Art. 83 I a Official Journal of 31 December 2004)

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.

The said report also indicates:

- the number and value of the shares which have been freely allotted to each of those executives by the company and the companies affiliated to it, as provided for in Article L. 225-197-2, relative to the duties 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 executives by controlled companies within the meaning of Article L. 233-16 relative to the duties and functions they perform.

The said report also indicates 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-executive employees of the company who received the highest number of freely allotted shares.

Article L225-197-5

(inserted by Finance Act 2005 No. 2004-1484 of 30 December 2004 Art. 83 I a Official Journal of 31 December 2004)

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.

Subsection 3

Capital write-offs

Articles L225-198 to
L225-203

Article L225-198

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

Capital write-offs are effected by virtue of a stipulation in the articles of association or 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 shares.

Article L225-199

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The fully or partially redeemed shares lose entitlement, pro tanto, to the first dividend referred to in Article L. 232-19 and to repayment of the nominal value. They retain all their other rights.

Article L225-200

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 articles of association, to convert the fully or partially redeemed shares into capital shares.

To that end, it makes provision for a compulsory deduction to be made from the portion of the company's profits, for one or more financial years, that relates to those shares in respect of the redeemed amount of the shares to be converted, after payment of the first dividend or any cumulative preferred dividend to which the partially redeemed shares may give entitlement.

Article L225-201



(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 dividend for the elapsed portion of the then current financial year and, where appropriate, the previous financial year.

Article L225-202

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 L225-203

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The board of directors or the executive board, as applicable, makes the necessary amendments to the articles of association, insofar as the said 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

Articles L225-204 to
L225-205

Article L225-204

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 deliberates on the auditors' report which presents their assessment of the reasons and arrangements for the reduction.

When the board of directors or the executive board, as applicable, is duly empowered to proceed with the reduction by the general meeting, it draws up a report thereon which must be published and makes the appropriate amendment to the articles of association.

Article L225-205

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 decision may reject the objection or order either that the debts be repaid or that guarantees be provided if the company offers them and they are deemed to be sufficient.

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 original jurisdiction grants the objection, the capital reduction procedure is immediately halted until sufficient guarantees are provided or until the debts are repaid. If he rejects it, the reduction procedure may recommence.

Subsection 5

Subscription, purchase or taking pledge of their own shares by companies Articles L225-206 to
L225-217

Article L225-206

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

I. - The company is prohibited from subscribing 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 violation 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, jointly and severally 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 L225-207

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

A general meeting which has decided a capital reduction not motivated by 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 L225-208

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

(Finance Act 2005 No. 2004-1484 of 30 December 2004 Art. 83 I b Official Journal of 31 December 2004)

Companies which allot shares to their employees in the context of 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 L225-209

(Act No. 2003-7 of 3 January 2003 Art. 50 II Official Journal of 4 January 2003)

(Order No. 2004-604 of 24 June 2004 Art. 23, Art. 51 IX Official Journal of 26 June 2004)

(Act No. 2004-1484 of 30 December 2004 Art. 83 I b Finance for 2005 Official Journal of 31 December 2004)

(Act No. 2005-842 of 26 July 2005 Art. 27 Official Journal of 27 July 2005)

The general meeting of a company whose shares are admitted to trading on a regulated market may authorise the board of directors or the executive board, as applicable, to purchase a number of shares representing up to 10% of the company's capital. The general meeting defines 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.

A special annual report informs the general meeting of the execution of the share purchase transactions it has authorised and specifies, for each purpose, the number and price of the shares thus acquired, the volume of the shares used and any reallocations thereof to other purposes.

The board of directors may delegate to the general manager or, with his agreement, to one or more assistant general managers, the powers required to execute such transactions. The executive board may delegate to its chairman or, with his agreement, to one or more of its members, the powers required to execute such transactions. The persons thus designated report to board of directors or the executive board on the use made of that power as determined by the said boards.

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. The company reports to the Financial Markets Council each month on the purchases, assignments, transfers and cancellations thus effected. The Financial Markets Council brings this information to the attention of the public.

Companies which enable their employees to participate in the benefits of their expansion by allocating their own shares to them, those which allocate their shares as provided for in Articles L225-197-1 to L225-197-3 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 II of Article L225-196 and in Articles L443-1 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 redemption schedules submitted to general meetings for approval from 1 January 2006 onwards.

In the event of shares purchased being cancelled, the capital reduction is 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, is sent to the company's shareholders within a time limit determined in a Conseil d'Etat decree.

Article L225-210

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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. The said shares must be in registered form and be fully paid up when purchased. 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 the 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 statutory 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 cash, 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 close of the subscription period.

Article L225-211

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The company or person responsible for administration of its securities shall 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. 225-208 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, the reasons for the purchases made and the fraction of the capital that they represent.

Article L225-212

(Act No. 2003-706 of 1 August 2003 Art. 46 I 1, V 1 Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

Companies shall declare the transactions that they envisage carrying out pursuant to the provisions of Article L. 225-209 to the Financial Markets Authority, and shall report their acquisitions to it as soon as they are made.

The Financial Markets Authority may request 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 breach the provisions of Article L. 225-209, the Financial Markets Authority may take all necessary measures to prevent execution of orders transmitted directly or indirectly by such companies.

NB: Act No. 2003-706 of 1 August 2003 article 46 V 1 and 2:

1. All references to the Stock Exchange Commission and the Disciplinary Board for Financial Management are replaced with a reference to the Financial Markets Authority;

2. All references to the Stock Exchange Commission's Rules and the General Regulations of the Financial Markets Council are replaced with a reference to the General Regulations of the Financial Markets Authority.

Article L225-213

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The provisions of Articles L. 225-206 and L. 225-209 do not apply to fully paid-up shares acquired subsequent to a general transfer of assets 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. Upon expiry of that period, they must be cancelled.

Article L225-214

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

Shares held in violation of Articles L. 225-206 to L. 225-210 must be sold within one year of their subscription or acquisition. Upon expiry of that period, they must be cancelled.

Article L225-215

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

The company is prohibited from taking pledge of 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 general transfer of assets or a court decision. Failing this, the contract of pledge is automatically null and void.

The prohibition referred to in the present article shall not apply to the ordinary transactions of credit institutions.

Article L225-216

(Act No. 2001-152 of 19 February 2001 Art. 29 3 Official Journal of 20 February 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

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 L225-217

(Order No. 2004-604 of 24 June 2004 Art. 51 IX Official Journal of 26 June 2004)

Articles L. 225-206 to L. 225-216 are applicable to investment certificates.

SECTION V

Supervision of public limited companies

Articles L225-218 to
L225-242

Article L225-218

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

(Law No 2003-706 of 1 August 2003 Article 104 (I) Official Gazette of 2 August 2003)

In each company, the auditing function is performed by one or more auditors.

Article L225-219

I.- No person may act as an auditor unless they is enrolled in an official list to be prepared for that purpose.

II.- An Order to be approved by the Conseil d'Etat shall fix the structure of the auditors' profession. It shall in particular determine:

1. The method by which the list is prepared and revised, which shall be the prerogative of regional registration boards, and, at appeal, a National Registration Board the composition of which is specified in Article L.225-220;

2. The conditions of registration in the list;

3. The disciplinary system, which shall be the prerogative of regional disciplinary boards, and, at appeal, a National Disciplinary Authority, as mentioned in Article L.225-221;

4. The conditions upon which auditors shall be grouped into professional associations.

Article L225-220

I.- Every regional registration board must include:

1. A judge of the Cour d'appel, as chairman;

2. A judge of a Tribunal de grande instance [Tribunal de grande instance] of the jurisdiction of the Cour d'appel, as deputy chairman;

3. A judge of the Tribunal de grande instance of Local Government Auditors;

4. A member of the Tribunaux de commerce;

5. A professor of law, economics or management;

6. A person qualified in the field of business management;

7. A representative of the Minister of Economy and Finance;

8. A member of the Regional Society of Auditors.

II.- Decisions of the Regional Registration Boards may be referred to a National Registration Board on appeal. The National Board must include:

1. A judge of the Civil and Criminal jurisdiction system, as chairman;

2. A judge of the Court of Auditors;

3. A professor of law, economics or management;

4. A person qualified in the field of business management;

5. A representative of the Minister of Economy and Finance;

6. A member of the Tribunaux de commerce;

7. Two auditors.

III.- If a vote is tied between members of the Regional or National Board, the chairman shall have the casting vote.

IV.- Members of the Regional Boards and the National Board and their deputies, in equal numbers and chosen from the same categories, shall be appointed in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat. With regard to the auditors, they shall be appointed on the proposal of their regional societies or their national society respectively.

Article L225-221

The Regional Registration Board shall be given the status of a regional disciplinary board to rule in disciplinary proceedings taken against an auditor who is a member of a regional society, wherever the acts of which they is accused may have been committed.

The National Registration Board shall be given the status of a regional disciplinary board to rule on appeals against decisions of the regional disciplinary boards.

A judge of the civil and criminal jurisdiction system belonging to the Parquet at local or national level shall act as Procureur de la République on each regional or national disciplinary board. The said judges shall be appointed by the Minister for Justice.



Article L225-222

The functions of an auditor shall be incompatible:

1. With any activity or act of such a nature as to affect their independence;
2. With any paid employment; nevertheless, an auditor may give instruction in the skills of their profession or occupy a paid post in a firm or company of auditors or accountants;
3. With any commercial activity, whether exercised directly or through an intermediary.

Article L225-223

Within a month of being enrolled in the list referred to in Article L.225-219, every auditor must take an oath in the Cour d'appel having jurisdiction over their locality, to discharge the duties of their profession honourably and with integrity and to observe the laws and cause them to be observed.

Article L225-224

The following may not be auditors of a public limited company:

1. Founders, contributors in kind, holders of special privileges, directors or members of the management or supervisory board, as the case may be, of the company or its subsidiaries as defined in Article L.233-1;
2. Relatives of the persons referred to in sub-paragraph 1 by blood or marriage up to and including the fourth degree of kinship;
3. Directors, members of the management or supervisory board, and, if applicable, spouses of directors or of members of the management or supervisory board holding one tenth of the company's capital or a company of which the company owns one tenth of the capital;
4. Persons who, directly or indirectly or through an intermediary, receive from those mentioned in sub-paragraph 1 of this Article, or from the company or any company to which sub-paragraph 3 above applies, any salary, wages or remuneration whatsoever in respect of any activity other than that of an auditor; this provision shall not apply either to complementary professional activities carried on abroad or to specific review missions carried out by the auditor on behalf of the company in companies consolidated or intended to be consolidated therewith. Auditors may receive remuneration from the company for temporary missions with limited objectives, carried out in the course of their duties, provided that the said missions are assigned to them by the company at the request of a public authority;
5. Companies or firms of auditors where one of their partners, shareholders or directors is in one of the situations described in sub-paragraph 1, 2, 3 or 4;
6. Spouses of persons who receive any salary, wages or remuneration in respect of a permanent activity other than that of auditor either from the company or its directors or members of its management or supervisory board, or from companies owning one tenth of the company's capital or of which the company owns one tenth of the capital,;
7. Firms or companies of auditors where the spouse of one of their directors, or of the partner or shareholder acting as auditor on behalf of the company, is in one of the situations described in sub-paragraph 6.

Article L225-225

Auditors may not be appointed as directors, managing directors or members of the management of the companies they audit within five years of relinquishing their functions. The same prohibition shall apply to partners, shareholders or directors of a firm or company of auditors.

They shall not exercise their functions within the same period in companies holding 10% of the capital of the company they audit or in a company of which the latter holds 10% of the capital at the date when they relinquish the functions of an auditor.

Article L225-226

Persons who have been directors, managing directors, members of the management, managers or paid employees of a company may not be appointed as auditors of the said company within five years of relinquishing their posts.

They may not be appointed within the same period as auditors in companies holding 10% of the capital of the company in which they held their posts or in a company of which the latter held 10% of the capital at the date when they relinquish their posts.

The prohibitions referred to in this Article for the persons mentioned in the first sub-paragraph shall apply to firms or companies of auditors of which the said persons are partners, shareholders or directors.

Article L225-227

Decisions taken in the absence of a legally appointed auditor, or on a report by auditors appointed or remaining in office in breach of the provisions of Articles L.225-219 and L.225-224 shall be void. An action to have such a decision declared void shall be extinguished if the said decisions are confirmed by a general meeting on a report by legally appointed auditors.

Article L225-228

(Law No 2003-706 of 1 August 2003 Article 105 Official Gazette of 2 August 2003)



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 makes use of public issues, the board of directors chooses the auditors which it plans to propose, but the general manager and the assistant general manager do not participate in the voting if they are directors.

If the auditor has verified the contribution and merger operations of the companies which it controls within the meaning of subparagraph II of Article L. 233-16 for the two preceding financial years, the draft resolution referred to in the previous paragraph makes reference to that fact.

Save for the circumstances envisaged in Articles L. 225-7 and L. 225-16, the auditors are appointed by the ordinary general meeting.

One or more deputy auditors, whose task it is to replace the incumbent auditors in the event of refusal, unavailability, resignation or death, are appointed by the ordinary general meeting. The functions of a deputy auditor called upon to replace the incumbent cease upon expiry of the latter's term of office unless the unavailability is of a temporary nature. If this is the case, when the incumbent becomes available again he resumes his duties after the next general meeting called to approve the accounts has taken place.

Companies which are obliged to publish consolidated accounts pursuant to the provisions of the present Title are required to appoint at least two auditors.

The auditors carry out a joint examination of the accounting practices, in accordance with the instructions laid down in a code of professional standards established pursuant to the sixth paragraph of Article L. 821-1. A code of professional standards also determines the principles that govern the distribution of the tasks to be carried out by each auditor in the accomplishment of their mission.

Article L225-229

(Law No 2003-706 of 1 August 2003 Article 107 Official Gazette of 2 August 2003)

The auditors are appointed for six financial years. Their functions expire after the ordinary general meeting called to approve the accounts for the sixth financial year.

The auditor appointed by the meeting to replace another remains in office only until his predecessor's term of office has expired.

If the meeting should fail to elect an auditor, any shareholder may ask the court to appoint one after duly informing the chairman of the board of directors or the chairman of the executive board. The remit thus conferred ceases when one or more auditors have been appointed by the general meeting.

When an auditing firm is taken over by another auditing firm, the acquiring firm shall maintain the remit entrusted to the acquired firm until it expires.

Contrary to the provisions of the first paragraph, however, the controlled firm's first general meeting held subsequent to the acquisition may deliberate on the maintenance of the remit, after hearing the auditor.

Article L225-230

(Law No 2001-420 of 15 May 2001 Article 114 (1) Official Gazette of 16 May 2001)

One or more shareholders representing at least 5% of the share capital, the works council, the ministère public and, in companies issuing offers to the public, the Commission des opérations de bourse [Securities and Investments Board] may, within time limits and in accordance with conditions to be fixed by an Order approved by the Conseil d'Etat, apply to the Court for an Order for the withdrawal, on reasonable grounds, of one or more auditors appointed by the general meeting.

Such an application may also be made by an association meeting the requirements laid down in Article L.225-120.

Where such an application is granted, a new auditor shall be appointed by an order of the Court. they shall remain in office until the auditor appointed by the general meeting shall take office.

Article L225-231

(Law No 2001-420 of 15 May 2001 Article 114 (3) Official Gazette of 16 May 2001)

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 chairman of the board of directors or the management on one or more of the company's management operations, and also, if appropriate, 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 shall have been received within a month, or if the information contained in the reply is unsatisfactory, the said shareholders may make an ex parte application to a Judge sitting in emergency interim proceedings for an Order appointing one or more experts to submit a report on one or more management transactions.

The ministère public, the works council, and, in companies issuing offers to the public, the Commission des opérations de bourse may likewise make an ex parte application to a Judge sitting in emergency interim proceedings for an Order appointing one or more experts to submit a report on one or more management transactions.

If the application is granted, the Court order shall determine the extent of the experts' instructions and powers. The company may be ordered to pay their fees.

The report shall be sent to the applicant, the ministère public, the works council, the auditors and the board of



directors or management, as the case may be, and also, in companies issuing offers to the public, to the Commission des opérations de bourse. The said report must also be annexed to the auditors' report prepared for the next general meeting and must be similarly published.

Article L225-232

(Law No 2001-420 of 15 May 2001 Article 114 (1) Official Gazette of 16 May 2001)

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 chairman of the board of directors or the management twice a year on any matter of such a nature as to threaten the continued operation of the company. The reply must be sent to the auditors.

Article L225-233

(Law No 2001-420 of 15 May 2001 Article 114 (1) Official Gazette of 16 May 2001)

In case of default or inability to act, the auditors may, on an ex parte application by the board of directors, the management, the works council, one or more shareholders representing at least 5% of the share capital or the general meeting, be relieved of their duties by a Court order before the normal date of expiration of their term of office, in accordance with conditions to be laid down by an Order approved by the Conseil d'Etat.

Such an application may also be made by the ministère public, and, in companies issuing offers to the public, by the Commission des opérations de bourse. It may also be made by an association meeting the requirements laid down in Article L.225-120.

Article L225-234

(Law No 2003-706 of 1 August 2003 Article 106 Official Gazette of 2 August 2003)

When it is proposed to the meeting that an auditor's remit should not be renewed upon expiry, the auditor is entitled to address the general meeting if he so requests, without prejudice to the provisions of Article L. 822-14.

Article L225-235

(Act No. 2003-706 of 1 August 2003 Art. 112, Art. 120 Official Journal of 2 August 2003)

(Act No. 2005-842 of 26 July 2005 Art. 9 II Official Journal of 27 July 2005)

(Order No. 2005-1126 of 8 September 2005 Art. 20 III Official Journal of 9 September 2005)

In a report attached to the report referred to in the second paragraph of Article L225-100, the auditors present their observations on the report referred to in Article L225-37 or Article L225-68, as applicable, concerning the internal auditing procedures relating to the preparation and processing of accounting and financial information.

Article L225-236

The auditors must at all times of the year, together or separately, make all such checks and inspections as they may consider appropriate and may demand the production in situ of all such documents as they shall consider of assistance in the performance of their duties, and in particular any contracts, agreements, books, accounting documents and minute books.

In order to carry out their inspections, the auditors may, under their own responsibility, obtain the assistance of such experts or assistants as they may choose. They must notify the company of the names of any such experts or assistants, who shall have the same rights of investigation as the auditors.

The said investigations may be carried out either at the company's premises or at those of parent or subsidiary companies as defined in Article L.233-1.

They may also be carried out pursuant to the second sub-paragraph of Article L.223-235 at the premises of all companies included in the consolidation.

The auditors may also collect all such information as may be of assistance in the performance of their duties at the premises of third parties that have carried out operations on the company's behalf. This right of information shall not, however, extend to the disclosure of any papers, contracts and documents held by third parties, unless sanctioned by a Court order. The rule of professional secrecy may not be invoked against the auditors except by lawyers and other legal officials.

Article L225-237

The auditors must inform the board of directors or management, as the case may be, of:

1. The controls and inspections they have carried out and their various random checks;
2. Any items in the balance sheet and other accounting documents which they consider require amendment, together with any relevant comments on the evaluation methods used to prepare the said documents;
3. Any irregularities or inaccuracies they may have discovered;
4. The conclusions to be drawn from their aforementioned comments and amendments as regards the results for the financial year, as compared with those achieved the previous year.

Article L225-238

(Law No 2003-706 of 1 August 2003 Article 108 Official Gazette of 2 August 2003)

The auditors are invited to all meetings of the board of directors or the executive board which examine or close off



the annual or interim accounts, and also to all shareholders' meetings.

Article L225-239

Auditors' fees shall be payable by the company. They shall be fixed by methods to be laid down by an Order approved by the Conseil d'Etat.

The Regional Disciplinary Board, and, on appeal, the National Disciplinary Board shall be competent to hear any dispute relating to their remuneration.

Article L225-240

(Law No 2003-706 of 1 August 2003 Article 112 Official Gazette of 2 August 2003)

The auditors draw the attention of the next general meeting to any irregularities or inaccuracies they discover? while performing their remit.

Furthermore, they report any criminal acts which they become aware of to the Public Prosecutor and incur no liability in connection with such disclosures.

Article L225-241

Auditors shall be liable both to the company and to third parties for the damaging consequences of any negligent or tortious acts they may commit in the performance of their duties. They shall not, however, be liable for any transmission or disclosure of information effected in the performance of their duties as defined in Articles L.234-1 and L.234-2.

They shall not be liable in civil law for any illegal acts committed by the directors or members of the management, unless, having been aware of the sad acts, they shall have failed to disclose the same in their report to the general meeting.

Article L225-242

Civil law actions against auditors shall be subject to the time limits specified in Article L.225-254.

SECTION VI

Conversion of public limited companies

Articles L225-243 to
L225-245-1

Article L225-243

Any public limited company may be converted to another legal form of legal person 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 L225-244

The decision to change the form of a public limited company 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 or founders' rights.

The decision to change the company's form must be published in such manner as shall be determined by an Order approved by the Conseil d'Etat.

Article L225-245

Conversion into a general partnership 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 sub-paragraph of Article L.225-244 shall not be required.

Conversion into a limited partnership, with or without shares, shall be decided in accordance with the conditions laid down for the amendment of the memorandum and articles of association and subject to the agreement of all the partners who agree to be active partners.

Conversion into a limited liability company shall be decided in accordance with the conditions laid down for the amendment of the memorandum and articles of association for companies incorporated in that legal form.

Article L225-245-1

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

In the event of a public limited company being converted into a European company, the first paragraph of Article L225-244 is not applicable.

The company draws up a plan to convert the company into a European company. The said plan is 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 court-appointed conversion commissioners draw up a report to the converting company's shareholders, under their own responsibility, attesting that the shareholders' equity is at least equivalent to the authorised capital. They are subject to the incompatibilities referred to in Article L822-11.

Conversion into a European company is decided pursuant to the provisions of Articles L225-96 and L225-99.

SECTION VII



Dissolution of public limited companies

Articles L225-246 to
L225-248

Article L225-246

The premature dissolution of a company must be decided by a special shareholders' meeting.

Article L225-247

The Tribunal de commerce may, on an application by any interested party, order the dissolution of a company, if it has had less than seven shareholders for more than a year.

It may allow a company a maximum period of six months to rectify the situation. It shall not make a dissolution order if the said rectification takes place on the day judgment is given on the merits.

Article L225-248

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 management, as the case may be, must call an special shareholders' meeting within four months of the approval of the accounts revealing the said loss to decide whether the company should be prematurely dissolved.

If it is not decided to dissolve the company, the company must, by no later than the end of the second financial year after that 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 imputed to reserves unless the equity capital shall have 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 in such manner as shall be determined by an Order approved by the Conseil d'Etat.

If no general meeting shall be held, or if the meeting shall not have been able to take a valid decision at the final time of asking, any interested party may make an ex parte application to the Court for an order that the company be dissolved. The same rule shall apply if the provisions of the second sub-paragraph above shall not have been observed. In any such case, the Court may grant the company a maximum period of six months to rectify the situation. It shall not make a dissolution order if the said rectification takes place on the day judgment is given on the merits.

The provisions of this Article shall not apply to companies undergoing judicial reorganisation or having the benefit of a recovery plan.

SECTION VIII

Civil liability

Articles L225-249 to
L225-257

Article L225-249

The founders of a company the incorporation of which is liable be held void, and its directors in office at the time the said liability is incurred, may be held jointly and severally liable for any loss or damage to its shareholders or to third parties arising from the non-incorporation of the company.

Those of the shareholders whose contributions and privileges have not been examined and approved may similarly be held jointly and severally liable.

Article L225-250

Any action for liability based on the non-incorporation of the company must be brought within the time limits laid down in Article 235-13.

Article L225-251

(Law No 2001-420 of 15 May 2001, Article 107 (6) and (7) Official Gazette of 16 May 2001)

The directors and managing director shall be individually or jointly and severally liable to the company or third parties either for infringements of the laws or regulations applicable to public limited companies, or for breaches of the memorandum and articles of association, 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 L225-252

(Law No 2001-420 of 15 May 2001, Article. 107 (8) Official Gazette of 16 May 2001)

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 an Order approved by the Conseil d'Etat, bring an action for liability on behalf of the company against its directors or managing director. The plaintiffs shall be authorised to sue for compensation for the full amount of the loss or damage suffered by the company, to which damages shall be awarded if necessary.

Article L225-253



(Law No 2001-420 of 15 May 2001, Article 107 (9) Official Gazette of 16 May 2001)

Any clause in the memorandum and articles of association the effect of which would be to make the exercise of any action subject to prior notice or to the consent of the general meeting, or to waive the right to any such action in advance, shall be deemed non-existent.

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 L225-254

(Law No 2001-420 of 15 May 2001, Article 107 (10) Official Gazette of 16 May 2001)

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. Nevertheless, where the act is defined as a criminal offence, the said period shall be extended to ten years.

Article L225-255

Where proceedings for judicial reorganisation or compulsory liquidation are brought pursuant to Title II of Book VI relating to the judicial reorganisation 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 prohibition and prohibition, in accordance with the conditions stipulated thereby.

Article L225-256

Where a company is subject to the provisions of Articles L.225-57 to L.225-93, the members of its management 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 reorganisation or compulsory liquidation are brought pursuant to Title II of Book VI relating to the judicial reorganisation 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 prohibition and prohibition, in accordance with the conditions stipulated thereby.

Article L225-257

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 management 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.

SECTION IX

Public limited companies with worker participation

Articles L225-258 to
L225-270

Article L225-258

It may be stipulated in the memorandum and articles of association of any public limited company that the company has worker participation.

Companies whose memorandum and articles of association do not contain such a stipulation may change their legal form to that of companies partly owned by their employees, using the procedure laid down in Article L225-96.

Companies partly owned by their employees shall be subject to the provisions of this section, irrespective of the general rules applicable to public limited companies.

Article L225-259

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 means of the words "à participation ouvrière" [with worker participation].

Article L225-260

The shares of the company shall consist:

1. Of capital shares or share coupons;
2. Of shares known as "employee shares".

Article L225-261

Employee shares shall be collectively owned by paid personnel (employees and workers), in the form of a workers' commercial co-operative. The said co-operative must be exclusively formed by all paid employees who have been with the company for at least a year and are aged over eighteen. 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 during the previous financial year by the interested party before they left 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 public limited company with worker participation, the memorandum and articles of association of the public limited company must provide for the setting aside of the shares allocated to collective ownership by employees until the end of the year. At the end of that period, the shares shall be delivered to the legally constituted 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 memorandum and articles of association of the co-operative and the decisions of its general meetings. Nevertheless, the memorandum and articles of association of the public limited company must provide that, before any distribution of dividends, there shall be deducted from the profits, for the benefit of holders of capital shares, a sum corresponding to that which would be yielded, at such interest rate as they shall fix, by the capital paid.

In no circumstances shall employee shares be individually allocated to employees of the company who are members of the co-operative.

Article L225-262

Employee shares must be registered in the name of the workers' co-operative, and non-transferable throughout the existence of the public limited company with worker participation.

Article L225-263

Members of the workers' co-operative shall be represented at general meetings of the public limited company by representatives elected by the said members at a meeting of the co-operative.

Representatives so elected must be chosen from among the members. The number of representatives shall be fixed by the memorandum and articles of association of the public limited company.

The number of votes held by the said representatives at each general meeting of the public limited company 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 memorandum and articles of association. It 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 most senior representatives.

The general meeting of the workers' co-operative shall meet every year within a period fixed by the memorandum and articles of association, or, if they contain no such provisions, within four months after the general meeting of the public limited company.

Article L225-264

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

Each participant at the labour cooperative's general meeting has one vote.

The memorandum and articles of association 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 as of the close of the previous financial year, and the lowest annual remuneration paid by the company to employees aged above eighteen years.

The memorandum and articles of association may make provision for the participants to be divided into colleges, each specific to a personnel category, with each college electing its representative(s) and the agreement of each college, with majorities as specified in the memorandum and articles of association, being necessary for amendments to the cooperative's memorandum and articles of association and other decisions indicated in the memorandum and articles of association.

Article L225-265

The general meeting of the workers' co-operative shall take valid decisions only if, at the first time of asking, two thirds of the members of the co-operative are present or represented at the meeting. The memorandum and articles of association shall fix the requisite quorum for a meeting held at the second time of asking. If the memorandum and articles of association contain no such provisions, the quorum shall not be less than half the members of the co-operative, present or represented.

The general meeting shall take decisions on a simple majority of votes cast. Where a secret ballot is held, blank votes shall not be included in the count.

Nevertheless, for amendments to the memorandum and articles of association and other decisions listed thereby, 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 secret ballot is held, blank votes shall not be included in the count.

Article L225-266

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 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 sub-paragraph of Article L.225-263 and in Articles



L.225-264 and L.225-265.

Article L225-267

Nevertheless, general meetings of public limited companies with worker participation called to decide on amendments to be made to the memorandum and articles of association or proposals that the company shall continue in existence beyond the term fixed for its duration, or that it be dissolved before the expiration of the said term, shall be validly constituted and able to take valid decisions only provided that they include a number of shareholders representing three quarters of the share capital. The memorandum and articles of association may decide otherwise.

Where a decision of the general meeting includes a change in the rights attached to employee shares, the said decision shall not be final until it has been ratified by a general meeting of the workers' co-operative.

Article L225-268

The board of directors of a public limited company with worker participation must include one or more representatives of the workers' co-operative. The said 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 L225-269

In the event of dissolution, 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 decision 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, 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 abolition of jobs or a reduction in personnel.

Nevertheless, former members who fulfil the conditions set out in the preceding sub-paragraph shall be included in the distribution only as to 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 dissolution of the public limited company shall entail the dissolution of the workers' co-operative.

Article L225-270

I.- Where a public limited company with worker participation finds itself in the situation referred to in Article L.225-248, and it is not decided to dissolve it, an special shareholders' meeting may decide, within the period fixed in the final sub-paragraph of the same Article, to amend the memorandum and articles of association to provide for the loss of the status of a public limited company with worker participation, and consequently the dissolution of the workers' co-operative, notwithstanding the provisions of the second sub-paragraph of Article L.227-267 and any provision to the contrary in the memorandum and articles of association.

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, representative of employees for the purposes of Article L.132-2 of the Employment Code, providing for the dissolution of the 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 Law No 94-679, of 8 August 1994, introducing miscellaneous economic and financial provisions, the stipulations contained in this sub-paragraph shall be considered to have been complied with.

II.- Where a workers' co-operative is dissolved pursuant to the provisions of sub-paragraph I above, compensation shall be paid to the members and former members mentioned in the second sub-paragraph of Article L.225-269.

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 special shareholders' meeting of shareholders of the public limited company 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 to be laid down by an Order approved by the Conseil d'Etat.

III.- On the decision of an special shareholders' meeting of shareholders of the public limited company, compensation may take the form of an exclusive allocation of shares to the members and former members mentioned in the second sub-paragraph of Article L.225-269.

The said shares may be created by deduction at source from available premiums and reserve funds. By way of exception to the provisions of Article L.225-206, a public limited company may also acquire its own shares in order to allocate them, within a period of a year from the date of acquisition, to the members and former members mentioned in the second sub-paragraph of Article L.225-269.

Shares so allocated may not be disposed of within a period of three years after the date of dissolution of the workers' co-operative.



Notwithstanding the provisions of the preceding sub-paragraph, an special shareholders' meeting of shareholders of the public limited company may decide to assign the management of the shares in question to a company investment trust governed by the provisions of Article 21 of Law No 88-1201, of 23 December 1988, relating to collective security investment institutions and creating debt investment trusts, specifically and exclusively constituted for that purpose by no later than the date of allocation of the shares. In any such case, the proportion of the funds that constitute its assets may not be disposed of within the period mentioned in the preceding sub-paragraph. The rules governing the said funds shall be approved by a collective employees' agreement.

IV.- For the purposes of the provisions of this Article, decisions taken by the general shareholders' meeting of the public limited company 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 sub-paragraph 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 dissolution of a workers' co-operative, and within six months of the decision of an extraordinary general shareholders' meeting of the public limited company fixing the amount and form of compensation, the said 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 the said 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 situated.

The provisions of the third sub-paragraph of Article L.225-169 shall apply in the case referred to in the present sub-paragraph V.

VI.-The compensation referred to in sub-paragraph 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 when calculating 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.

CHAPTER VI

Partnerships limited by shares

Articles L226-1 to
L226-14

Article L226-1

Partnerships limited by shares, whose capital is divided into shares, shall be formed by one or more managing partners, who shall have the capacity of traders and who shall be indefinitely and jointly liable for the partnership's debts, and 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 partners may not be less than three.

Where they are compatible with the special provisions specified by this chapter, the rules on limited partnerships and public limited companies, with the exception of Articles L.225-17 to L.225-93, shall apply to partnerships limited by shares.

Article L226-2

The initial manager or managers shall be appointed by the articles of association. They shall carry out the formation formalities with which the founders of public limited companies are charged by Articles L.225-2 to L.225-16.

During the existence of the partnership, unless otherwise specified in the articles of association, the manager or managers shall be appointed by the routine shareholders' meeting with the agreement of all the managing partners.

The manager, whether or not a partner, shall be dismissed in accordance with the conditions specified by the articles of association.

In addition, the manager may be dismissed by the Tribunal de commerce for a legitimate reason, at the request of any partner or the partnership. Any clause to the contrary shall be deemed to be unwritten.

Article L226-3

The articles of association 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 above paragraph shall be invalid.

When managers reach the age limit, they shall be deemed to automatically resign.

Article L226-4

The routine shareholders' meeting shall appoint, in accordance with the conditions fixed by the articles of association, a supervisory board composed of at least three shareholders.

In order for its appointment to be valid, managing partners may not be members of the supervisory board. Shareholders who have the capacity of managing partner may not participate in appointing the members of this board.

Unless otherwise specified in the articles of association, the rules on the appointment and term of office of directors of public limited companies shall apply.



Article L226-5

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The memorandum and articles of association must make provision, in regard to membership of the supervisory board, for an upper age limit which applies either to all the council's members or to a specific percentage among them.

Failing an express provision in the memorandum and articles of association, the number of members of the supervisory board having reached the age of seventy years cannot exceed one third of the members of the supervisory board in office.

Any appointment made in breach of the provisions of the previous paragraph is null and void.

Failing an express provision in the memorandum and articles of association which stipulates a different procedure, when the age limit for supervisory board membership imposed by the Articles or by the law has been exceeded, the oldest member of the supervisory board is automatically deemed to have resigned.

Article L226-6

The routine shareholders' meeting shall appoint one or more auditors.

Article L226-7

The manager shall be invested with the widest powers in order to act in all circumstances on behalf of the partnership.

In relations with third parties, the partnership shall be committed even by acts of the manager which do not fall within the partnership'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 publication alone of the articles of association is sufficient to constitute this proof.

The clauses of the articles of association 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. The objection made by one manager to the acts of another manager shall be null and void with regard to third parties, unless it is established that they knew about this.

Subject to the provisions of this chapter, the manager shall have the same obligations as the board of directors of a public limited company.

Article L226-8

Any remuneration other than that specified in the articles of association may be allocated to the manager only by the routine shareholders' meeting. This may only occur with the agreement of the managing partners given unanimously, unless otherwise specified.

Article L226-9

The supervisory board shall carry out the permanent supervision of the partnership's management. It shall have, to this end, the same powers as the auditors.

It shall submit to the annual routine shareholders' 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 latter. It may convene the general meeting of shareholders.

Article L226-10

(Law No 2001-420 of 15 May 2001 Article 111 (3) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (6) Official Gazette of 2 August 2003)

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 executives, 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 indefinitely liable partner, a manager, a director or a general manager 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 L226-11

The amendment of the articles of association shall require, unless otherwise specified, the agreement of all the managing partners.

The amendment of the articles of association resulting from an increase in capital shall be noted by the managers.

Article L226-12



The provisions of Articles L.225-109 and L.225-249 shall apply to the managers and members of the supervisory board.

The provisions of Articles L.225-52, L.225-251 and L.225-255 shall apply to the managers, even where they are not partners.

Article L226-13

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 L226-14

The conversion of the limited partnership that issues shares into a public limited company or a limited liability company shall be decided by the special shareholders' meeting of shareholders, with the agreement of the majority of the managing partners.

CHAPTER VII

Simplified joint-stock companies

Articles L227-1 to
L227-20

Article L227-1

(Act No 420 of 15 May 2001, Article 101, Official Gazette of 16 May 2001)

A simplified joint-stock company 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 sole proprietor. The sole proprietor shall exercise the powers conferred on the partners when this chapter specifies collective decision-making.

Where they are compatible with the special provisions specified by this chapter, the rules on public limited companies, with the exception of Articles L.225-17 to L.225-126 and L.225-243, shall apply to the simplified joint-stock company. In order to apply these rules, the powers of the board of directors or its chairman shall be exercised by the chairman of the simplified joint-stock company or by those of its directors which the articles of association specify for this purpose.

Article L227-2

The simplified joint-stock company may not make a public offering.

Article L227-3

The decision to convert into a simplified joint-stock company shall be taken unanimously by the partners.

Article L227-4

If one person holds all the shares in a simplified joint-stock company, the provisions of Article 1844-5 of the Civil Code on winding-up proceedings shall not apply.

Article L227-5

The articles of association shall fix the conditions in accordance with which the company is managed.

Article L227-6

(Law No 2003-706 of 1 August 2003 Article 118 Official Gazette of 2 August 2003)

The company is represented in its dealings with third parties by a chairman appointed as prescribed in the memorandum and articles of association. The chairman is invested with the broadest powers to act on behalf of the company in all circumstances, within the purview of the corporate mission.

In its dealings with third parties, the company is bound even by acts of the chairman which do not come within the purview of the company's corporate mission, unless it can prove that the third party knew that a specific action was extraneous to that mission or, given the circumstances, could not have been ignorant of that fact, and mere publication of the memorandum and articles of association does not suffice to constitute such proof.

The memorandum and articles of association may stipulate the circumstances in which one or more persons other than the chairman, having the title of general manager or assistant general manager, may exercise the powers conferred on the chairman by the present Article.

Provisions in the memorandum and articles of association which limit the chairman's powers cannot be raised against third parties.

Article L227-7

When a legal person is appointed chairman or director of a simplified joint-stock company, the directors of said legal person shall be subject to the same conditions and obligations and shall incur the same civil and criminal liabilities as if they were chairman or director in their own name, without prejudice to the joint liability of the legal person which they



manage.

Article L227-8

The rules establishing the liability of members of the board of directors and management of public limited companies shall apply to the chairman and directors of the simplified joint-stock company.

Article L227-9

(Act No 420 of 15 May 2001, Article 125, Official Gazette of 16 May 2001)

The articles of association shall determine the decisions which must be taken collectively by the partners in the forms and in accordance with the conditions which they specify.

However, the powers conferred on the extraordinary and routine shareholders' meetings of public limited companies in terms of the increase, amortisation or reduction of capital, merger, division, dissolution, conversion into another form of company, appointment of auditors, annual accounts and profits shall, in accordance with the conditions specified by the articles of association, be exercised collectively by the partners.

In companies consisting of only one partner, the annual report, annual accounts and, where applicable, consolidated financial statements shall be made up by the chairman. The sole proprietor shall approve the accounts, following a report from the auditor, within six months of the end of the financial year. The sole proprietor may not delegate their powers. Their decisions 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 L227-10

(Law No 2001-420 of 15 May 2001 Article 111 (4) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (6) Official Gazette of 2 August 2003)

The auditor presents a report to the partners on any agreement entered into, either directly or through an intermediary, between the company and its chairman, one of its executives, 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 partners give a decision on that report.

Agreements which are not approved nevertheless produce their effects, and the onus is on the person concerned and, possibly, the chairman and the other members of the management, 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 partner, only agreements entered into either directly or through an intermediary between the company and its manager are recorded in the decisions register.

Article L227-11

(Law No 2001-420 of 15 May 2001 Article 111 (13) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (4) Official Gazette of 2 August 2003)

When agreements relating to current operations entered into under normal terms and conditions are of no significance to any party, given their objective or their financial implications, they are reported to the auditor. Any partner is entitled to have sight of them.

Article L227-12

The prohibitions specified in Article L.225-43 shall apply, in accordance with the conditions determined by this article, to the chairman and directors of the company.

Article L227-13

The articles of association of the company may specify the inalienability of the shares for a period not exceeding ten years.

Article L227-14

The articles of association may subject any assignment of shares to prior approval by the company.

Article L227-15

Any assignment carried out in breach of the clauses of the articles of association shall be invalid.

Article L227-16

In accordance with the conditions which they determine, the articles of association may specify that a partner may be required to assign the shares held thereby.

They may also specify the suspension of the non-financial rights of this partner until the latter has carried out this assignment.

Article L227-17

The articles of association may specify that partner companies whose control is altered within the meaning of Article L.233-3 must, on this alteration, inform the simplified joint-stock company of this. The latter may decide, in accordance



with the conditions fixed by the articles of association, to suspend the exercise of the non-financial rights of these partners and to exclude the latter.

The provisions of the above paragraph may be applied, in accordance with the same conditions, to partners who have acquired this capacity following a merger, division or dissolution operation.

Article L227-18

If the articles of association do not specify the terms for deciding the share assignment price 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 L227-19

The clauses of the articles of association 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 partners.

Article L227-20

Articles L.227-13 to L.227-19 shall not apply to companies consisting of only one partner.

CHAPTER VIII

Securities issued by joint-stock companies

Articles L228-1 to
L228-106

SECTION I

Transferable securities: common provisions

Articles L228-1 to
L228-6-3

Article L228-1

(Act No. 2001-420 of 15 May 2001 Art. 119 2 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 24 Official Journal of 26 June 2004)

Joint-stock companies issue all transferable securities as indicated in the present Book.

The transferable securities issued by joint-stock companies are described in Article L. 211-2 of the Monetary and Financial Code.

The transferable securities issued by joint-stock companies take the form of bearer securities or registered securities, with the exception of companies in respect of which the law or the articles of association impose 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 to the other form.

However, the conversion of registered securities is not possible in the case of companies in respect of which the law or the articles of association impose the registered form for some or all of the capital.

Such transferable securities, regardless of their form, must be registered in the name of their holder as provided for in II of Article 94 of the 1982 Finance Act (No. 81-1160 of 30 December 1981).

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 authorised account-keeping financial intermediary, 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 trading on a regulated market or transferable securities not admitted to trading on a regulated market but registered with an authorised intermediary participating in a settlement-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. 431-2 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 L228-2

(Act No. 2001-420 of 15 May 2001 Art. 119 2 Official Journal of 16 May 2001)

(Act No. 2003-706 of 1 August 2003 Art. 125 1 Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 25 Official Journal of 26 June 2004)

I. - For the purpose of identifying the holders of bearer securities, the issuing company's articles of association 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 shareholders' meetings, the number of



securities held by each of them and any restrictions applicable thereto.

The aforementioned central custodian gathers the said information from the book-keeping institutions affiliated to it, which are required to provide it within a time limit determined in a Conseil d'Etat decree. The central custodian then provides that information to the company within five working days of receiving it.

If the time limit determined by decree is not respected, 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, under pain of a 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 book-keeping authorised financial intermediary, 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 L228-3

(Act No. 2001-420 of 15 May 2001 Art. 119 2 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 XI Official Journal of 26 June 2004)

In the case of securities in registered form giving immediate or eventual access to the capital, 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 L228-3-1

(Act No. 2001-420 of 15 May 2001 Art. 119 2 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 XI Official Journal of 26 June 2004)

I. - Whenever the issuing company considers that certain holders whose identity has been communicated to it are acting on behalf of third-party owners of the securities, it is entitled to ask the said holders to disclose the identity of the owners 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 entity 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 entity's share capital or the voting rights exercised at its general meetings.

Article L228-3-2

(Act No. 2001-420 of 15 May 2001 Art. 119 2 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 XII Official Journal of 26 June 2004)

An intermediary having fulfilled the obligations stipulated in the seventh and eighth paragraphs of Article L. 228-1 may, pursuant to a general securities management remit, transfer to a meeting a share owner's vote or power as defined in the third paragraph of that same article

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.

The vote or the power issued by 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 L228-3-3

(Act No. 2001-420 of 15 May 2001 Art. 119 2 Official Journal of 16 May 2001)

(Order No. 2004-604 of 24 June 2004 Art. 51 XIII Official Journal of 26 June 2004)

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 or eventual access to the capital relative 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 L228-3-4

(Law No 2001-420 of 15 May 2001 Article 119 (2) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 46 (V) (1), Article 125 (2) Official Gazette of 2 August 2003)

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 professional secrecy under the terms and conditions and subject to the penalties provided for in Articles 226-13 and 226-14 of the Penal Code. Professional secrecy cannot be invoked against either the Financial Markets Authority or the judicial authorities.

NB: Law No. 2003-706 of 1 August 2003, Article 46 V 1 and 2:

1. The references to the Stock-Exchange Regulatory Body and the Financial Management Disciplinary Council have been replaced with the references to the Financial Markets Authority;

2. The references to the regulations of the Stock-Exchange Regulatory Body and the general regulations of the Derivatives Markets Regulatory Body are replaced by the reference to the general regulations of the Financial Markets Authority.

Article L228-4

(Order No. 2004-604 of 24 June 2004 Art. 26 Official Journal of 26 June 2004)

Under pain of being declared null and 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 L228-5

With regard to the company, the securities shall be indivisible, subject to the application of Articles L.225-110 and L.225-118.

Article L228-6

Notwithstanding any stipulations to the contrary in the articles of association, companies which have carried out either exchanges of securities following an operation to merge or divide, reduce the capital, consolidate or divide and compulsorily convert 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, management or managers, sell, under the terms fixed by a Conseil d'Etat decree, 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 terms fixed by said decree.

From the date of this sale, the former securities or the former rights to the distributions or allotments shall, as necessary, be cancelled and their holders may thereafter claim only for the distribution in cash of the net proceeds from the sale of the unclaimed securities.

Article L228-6-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 27 Official Journal of 26 June 2004)

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 may decide that, upon expiry of a period which shall not exceed a limit determined in a Conseil d'Etat decree, and consistent with the date of registration in their account of the whole number of shares allotted, a global sale of the unallotted shares corresponding to the rights attached to fractional shares shall take place under terms and conditions determined by the said decree, with a view to distributing the funds among the parties concerned.

Article L228-6-2

(inserted by Order No. 2004-604 of 24 June 2004 Art. 27 Official Journal of 26 June 2004)

The non-financial rights attached to transferable securities registered in a joint account are exercised by one or other of the joint holders pursuant to terms and conditions laid down in the agreement on opening of the account.

Article L228-6-3

(inserted by Order No. 2004-604 of 24 June 2004 Art. 27 Official Journal of 26 June 2004)



Securities whose holders, despite compliance with the formalities for convening general meetings, are either unknown to the book-keeper or have not responded to notices to attend 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 the said article, provided that the book-keeper has taken all necessary measures during that period to make contact with the holders or their assigns in the manner stipulated in that same decree.

SECTION II
Shares

Articles L228-7 to
L228-29-10

Article L228-7

(Order No. 2004-604 of 24 June 2004 Art. 28 Official Journal of 26 June 2004)

Shares paid in cash are those whose amount is paid up in cash or by offsetting, those 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 cash payment. The last-mentioned 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 cash.

Article L228-8

The face value of shares or subdivided shares may be fixed by the articles of association. This option applies to all share issues.

Article L228-9

The share paid in cash shall be registered until it is fully paid up.

Article L228-10

(Order No. 2004-604 of 24 June 2004 Art. 29 Official Journal of 26 June 2004)

Shares are not tradable until the company is entered in the register of companies. When a capital increase is effected, the shares are tradable with effect from its completion.

The trading of share promises is prohibited unless it relates to shares yet to be created in respect of which admission to trading on a regulated market has been applied for, or to 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 L228-11

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

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. Such rights are defined in the articles of association pursuant to 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.

Article L228-12

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

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 terms and conditions of redemption or conversion of preference shares may also be determined in the articles of association.

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 articles of association relative to the amount of the share capital and the number of securities that represent it.

The chairman 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 L228-13

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XXVII Official Journal of 10 December 2004)

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.

NB: These provisions are applicable in Mayotte, New Caledonia and the Wallis and Futuna Islands.

Article L228-14

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

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 meeting, may raise an objection to the conversion within the time limit and under the terms 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 L228-15

(Act No. 2003-7 of 3 January 2003 Art. 50 II Official Journal of 4 January 2003)

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

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 valuer of contributions in kind referred to in the said articles is 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, under pain of the meeting's deliberations being declared null and 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.

Article L228-16

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

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 share holders.

The said effects may also be recorded in the articles of association.

Article L228-17

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

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

parity which takes account of the special rights waived.

In the event of no exchange for shares conferring equivalent special rights taking place, the merger or demerger is subject to the approval of the special meeting referred to in Article L. 225-99.

Article L228-18

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

The dividend paid, where applicable, to the holders of preference shares may be distributed in the form of capital securities under terms and conditions laid down by the extraordinary general meeting or in the articles of association.

Article L228-19

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

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 is distributed to those shareholders at a special meeting.

Article L228-20

(Order No. 2004-604 of 24 June 2004 Art. 31 Official Journal of 26 June 2004)

When the preference shares are admitted to trading on a regulated market, they may be redeemed or repaid, at the initiative of the company or the holder, if the market lacks liquidity, as provided for in the articles of association.



Article L228-21

Shares may continue to be traded after the company is dissolved and until the end of the winding-up.

Article L228-22

The cancellation of the company or an issue of shares shall not lead to the nullity of the trading which occurred prior to the cancellation decision, if the securities are regular in form. However, the purchaser may bring an action to reinforce a guarantee against the seller.

Article L228-23

(Order No. 2004-604 of 24 June 2004 Art. 32 Official Journal of 26 June 2004)

In a company whose capital securities are not admitted to trading on a regulated market, the assignment of capital securities or transferable securities giving access to the capital, whatever the reason therefor, may be made subject to the company's approval by a clause in the articles of association. The said clause is inapplicable in the event of succession, settlement under a marriage contract or assignment to a spouse, an ascendant or a descendant.

A consent clause may only be stipulated if the securities are registered by virtue of the law or the articles of association.

When the articles of association of a company which does not make public offerings reserve shares for the company's employees, a consent clause prohibited by the provisions of the first paragraph above may be stipulated, provided that the object of the said clause is to prevent the said shares from being devolved upon or assigned to persons who are not employees of the company.

Any assignment effected in violation of a consent clause in the articles of association is null and void.

Article L228-24

(Order No. 2004-604 of 24 June 2004 Art. 33 Official Journal of 26 June 2004)

If a consent 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 executives, 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 relinquish assignment of his shares or transferable securities giving access to the capital. Any clause to the contrary in Article 1843-4 of the said code is deemed not to exist.

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 L228-25

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

If, notwithstanding the provisions of Article L. 228-24, trading takes place through the intermediary of an investment service provider, the company must exercise its right of approval provided for in the memorandum and articles of association within thirty trading days.

If the company does not approve the buyer, the board of directors, the executive board or the partners are required, within thirty trading days of the date of notification of the rejection, to arrange the sale of the shares, either to a shareholder or to a third party, or to the company itself to reduce the capital.

The price applied is that originally negotiated; however, the sum paid to the non-approved buyer cannot be lower than that which results from applying the quoted market price of the day on which approval was refused or, if there was

no quotation on that day, that of the most recent quotation prior to that rejection.

If the purchase is not completed when the time allotted in the second paragraph above has elapsed, approval is deemed to have been given.

Article L228-26

If the company has given its consent to a share pledge plan in accordance with the conditions specified in the first paragraph of Article L.228-24, this consent shall include approval of the transferee 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 L228-27

If the shareholder fails to pay up, at the times fixed by the board of directors, management 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.

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 auctions. The defaulting shareholder shall owe or receive the difference. The terms of application of this paragraph shall be determined by a Conseil d'Etat decree.

Article L228-28

The defaulting shareholder, the successive transferees and the subscribers shall be jointly liable for the unpaid-up amount of the share. 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 recourse for 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 L228-29

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 shareholders' 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 non-prescribed dividends. 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 L228-29-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 34 Official Journal of 26 June 2004)

Shares having a nominal value lower than or equal to a value determined in a Conseil d'Etat decree which are not admitted to trading on a regulated market may be combined notwithstanding any contrary provision of the law or in the articles of association. Such combination are decided by general meetings of shareholders deliberating in the manner prescribed for amendments to the articles of association and pursuant to the provisions of Article L. 228-29-2.

Article L228-29-2

(inserted by Order No. 2004-604 of 24 June 2004 Art. 34 Official Journal of 26 June 2004)

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 provide 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 L228-29-3

(inserted by Order No. 2004-604 of 24 June 2004 Art. 34 Official Journal of 26 June 2004)

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 in respect of which payment has been suspended pursuant to the first paragraph are, in the event of subsequent combination, paid to the owners of the old shares insofar as they are not subject to prescription.

Article L228-29-4

(inserted by Order No. 2004-604 of 24 June 2004 Art. 34 Official Journal of 26 June 2004)

When the owners of securities do not have free administration of their assets, the applications to exchange old securities and the purchases or assignments of fractional shares which are necessary to effect the combination are treated as simple administrative acts unless the new securities are requested in bearer form in exchange for registered securities.

Article L228-29-5

(inserted by Order No. 2004-604 of 24 June 2004 Art. 34 Official Journal of 26 June 2004)

The new securities shall have the same characteristics and automatically confer the same rights in rem or liens as the old securities that they replace, without any formality being necessary.

The rights in rem and the pledges are automatically noted on the new securities allotted to replace the old securities



thus encumbered.

Article L228-29-6

(inserted by Order No. 2004-604 of 24 June 2004 Art. 34 Official Journal of 26 June 2004)

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 assigns, with the exception of any defaulting shareholders, and without prejudice to any damages where appropriate.

Article L228-29-7

(inserted by Order No. 2004-604 of 24 June 2004 Art. 34 Official Journal of 26 June 2004)

A Conseil d'Etat decree determines 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.

Subsection 1: General provisions

Article L228-29-8

(inserted by Order No. 2004-604 of 24 June 2004 Art. 35 Official Journal of 26 June 2004)

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 modifying the commercial legislation.

Article L228-29-9

(inserted by Order No. 2004-604 of 24 June 2004 Art. 35 Official Journal of 26 June 2004)

Failing application of Article L. 225-138, the holders of securities governed by the present section have a preferential subscription right on the preference shares referred to in Article L. 228-11 when they confer rights equivalent to those of the securities they hold.

Failing application of Article L. 225-138, the holders of securities governed by the present section have a preferential right to subscribe 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 L228-29-10

(inserted by Order No. 2004-604 of 24 June 2004 Art. 35 Official Journal of 26 June 2004)

Non-voting preference shares and existing investment certificates are taken into account for calculation of the quotas referred to in Article L. 228-11.

Application of the provisions of the previous paragraph shall not impede maintenance of the rights of the holders of existing securities, however.

SECTION III

Investment certificates

Articles L228-30 to
L228-35-1

Article L228-30

(Order No. 2004-604 of 24 June 2004 Art. 35 I, Art. 36 I Official Journal of 26 June 2004)

The extraordinary general meeting of a joint-stock company or, in companies which do not have such meetings, the structure 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 any, benefit from a preferential right to subscribe to the investment certificates issued through the procedure applied to capital increases. The holders of investment certificates waive the preferential right at a special meeting convened and held 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 creation capacity 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, consistent with their requests. Any balance



remaining after the said 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 tradable. Its nominal value is equal to that of the shares. When the shares are divided, the 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 said holder must declare this to the company within fifteen days, failing which the share is stripped of its voting right until the situation is regularised and for one month thereafter.

A certificate shall not be issued for a fraction of a voting right. The general meeting determines 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 L228-31

(Order No. 2004-604 of 24 June 2004 Art. 35 I, Art. 36 I Official Journal of 26 June 2004)

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 the existing certificates as shares and those that confer special privileges as shares conferring the same advantages on their holders.

The extraordinary general meeting referred to in the previous paragraph deliberates 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 held 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 is then made to the company, contrary to 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 terms and conditions 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 articles of association make no express provision therefor.

Article L228-32

(Order No. 2004-604 of 24 June 2004 Art. 35 I, Art. 36 I Official Journal of 26 June 2004)

The holders of investment certificates may have sight of the company's documents in the same way as the shareholders.

Article L228-33

(Order No. 2004-604 of 24 June 2004 Art. 35 I, Art. 36 I, II Official Journal of 26 June 2004)

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 L228-34

(Order No. 2004-604 of 24 June 2004 Art. 35 I, Art. 36 I, III Official Journal of 26 June 2004)

In the event of a capital increase in cash, 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 preferential irrevocable subscription right on the new preference shares proportionate to the number of securities that they own. At a special meeting convened and held 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 founded 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 preferential subscription right, new preference shares shall not be issued.

Article L228-35

(Order No. 2004-604 of 24 June 2004 Art. 35 I, Art. 36 I, IV Official Journal of 26 June 2004)

If convertible loan stock is issued, the holders of investment certificates shall have a preferential right to subscribe to



them irrevocably proportionate to the number of securities that they hold. Their special meeting, convened and held pursuant to the rules for extraordinary general meetings of shareholders, may waive that right.

The said stock may only be converted into non-voting preference shares having the same rights as the investment certificates.

Article L228-35-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 I, Art. 35 I, Art. 37 Official Journal of 26 June 2004)

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 articles of association or the issuance contract 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.

SECTION IIIbis

Non-voting preference shares

Articles L228-35-2 to
L228-35-11

Article L228-35-2

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 II, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

Non-voting preference shares 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 L228-35-3

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

Non-voting preference shares may be created through a capital increase or through conversion of ordinary shares already issued. They may be converted into ordinary shares.

Non-voting preference shares 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 non-voting preference shares 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 non-voting preference shares are created through conversion of ordinary shares already issued, or if non-voting preference shares are converted into ordinary shares, the extraordinary general meeting determines the maximum number of shares to be converted and the terms and 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 shareholding, with the exception of the persons referred to in Article L. 228-35-8. The extraordinary general meeting determines the period during which the shareholders may accept the conversion offer.

As an exception to Article L. 225-99, the articles of association or the issuance contract may state that a decision to convert non-voting preference shares into ordinary shares taken at an extraordinary general meeting shall not be binding on the holders of such shares.

Article L228-35-4

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

Non-voting preference shares confer entitlement to a preferred dividend deducted from the distributable profits for the financial year before any other allotment is made. If it appears that the preferred dividend cannot be fully paid on account of there being insufficient distributable profits, it shall be distributed pro tanto between the holders of non-voting preference shares. The right to payment of the preferred dividend which has not been fully paid on account of there being insufficient distributable profits is carried forward to the next financial year and, if necessary, the following two financial years or, if the articles of association so provide, subsequent financial years. The said right is exercised primarily in relation to payment of the preferred dividend due for the financial year.

The preferred 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 non-voting preference shares represent. Such shares shall not give entitlement to the first dividend.

After deduction of the preferred dividend and, if the articles of association so provide, the first dividend, or a dividend of 5% for the benefit of all ordinary shares calculated as provided for in Article L. 232-16, non-voting preference shares have the same rights as ordinary shares proportionate to their nominal value.

If the ordinary shares are divided into categories that give different entitlement to the first dividend, the amount of the first dividend referred to in the second paragraph of the present article applies to the highest first dividend.

Article L228-35-5

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35, Art. 38 Official Journal of 26 June 2004)



When the preferred dividends due in respect of 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 preferred dividend is fully paid, including the dividend due in respect of previous financial years.

Article L228-35-6

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

The holders of non-voting preference shares come together at special meetings as provided for in a Conseil d'Etat decree.

Any shareholder owning non-voting preference shares may participate in special meetings. Any clause to the contrary is deemed not to exist.

A special meeting of the holders of preferred dividend shares without voting rights may express an opinion before any decision is taken at the general meeting. It then rules on a majority of the votes cast by the shareholders present or represented. If a ballot is held, blank ballot papers are not counted. The result is communicated to the company. It is brought to the notice of the general meeting and entered in the minutes.

If the articles of association so provide, the special meeting may designate one or more representatives to represent the holders of preferred dividend shares without voting rights at general meetings of shareholders and, where appropriate, to express their opinion before any vote is taken. The said opinion is entered in the minutes of the general meeting.

Without prejudice to Article L. 228-35-7, any decision which affects the rights of the holders of non-voting preference shares does not become final until it is approved by the special meeting referred to in the first paragraph of the present article under the quorum and majority conditions referred to in Article L. 225-99.

If an objection is raised to the designation of representatives to represent the holders of preferred dividend shares without voting rights at general meetings of shareholders, the presiding judge, ruling on a summary basis, may designate a representative to act in that capacity at the request of any shareholder.

Article L228-35-7

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

If a capital increase is effected through cash contributions, the holders of non-voting preference shares have the same preferential subscription right as the ordinary shareholders. Having obtained the opinion of the special meeting referred to in Article L. 228-35-6, however, the extraordinary general meeting may decide to endow them with a preferential right to subscribe, in the same way, to new non-voting preference shares having the same rights as the non-voting preferred dividend shares which shall be issued in the same proportion.

The free allotment of new shares following a capital increase through incorporation of reserves, profits or share premiums applies to the holders of non-voting preference shares. Having obtained the opinion of the special meeting referred to in Article L. 228-35-6, however, the extraordinary general meeting may decide that the holders of non-voting preference shares shall receive new non-voting preference shares having the same rights as the non-voting preferred dividend shares which 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 applies to non-voting preference shares. The preferred 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 L228-35-8

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

The chairman and the members of the board of directors, the general managers, the members of the executive board and of the supervisory board of a public limited company, or the executives of a partnership limited by shares and their spouse from whom they are not judicially separated and their children not declared of full age and capacity, shall not hold non-voting preference shares issued by that company in any form whatsoever.

Article L228-35-9

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35, Art. 38 Official Journal of 26 June 2004)

A company which has issued non-voting preference shares is prohibited from writing off its capital.

When a capital reduction not motivated by losses is carried out, non-voting preference shares are bought before the ordinary shares, as provided for in the last two paragraphs of Article L. 228-35-10, and cancelled.

However, these provisions do not apply to capital reductions effected as provided for in Article L. 225-209. In such cases, the provisions of Article L. 225-99 are not applicable if the shares were bought on a regulated market.

Non-voting preference shares have the same rights as other shares, proportionate to their nominal value, on the reserves distributed during the life of the company.

Article L228-35-10



(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

The articles of association may give the company the right to demand the redemption of all of its own non-voting preference shares or certain categories thereof, with each category being determined by its date of issue. The redemption of a category of non-voting preference shares must comprise all the shares in that category. The redemption is decided by the general meeting in the manner indicated in Article L. 225-204. The provisions of Article L. 225-205 are applicable. The redeemed shares are cancelled pursuant to Article L. 225-207 and the capital is automatically reduced.

The redemption of non-voting preference shares may only be demanded by the company if a specific stipulation to that effect was inserted in the articles of association before the said shares were issued.

The value of non-voting preference shares is determined on the redemption date by mutual agreement between the company and a special meeting of the selling shareholders held 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 is applied.

Redemption of non-voting preference shares can only take place if the preferred dividend due in respect of previous financial years and the financial year then current has been fully paid.

Article L228-35-11

(inserted by Order No. 2004-604 of 24 June 2004 Art. 30 III, Art. 35 I, Art. 38 Official Journal of 26 June 2004)

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 IV

Participating securities

Articles L228-36 to
L228-37

Article L228-36

(Act No 624 of 17 July 2001, Article 36 VI, Official Gazette of 18 July 2001)

Joint-stock companies belonging to the public sector and cooperative associations established in the form of public limited companies or limited liability companies 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 issue agreement.

Their remuneration shall involve a fixed part and a variable part calculated by reference to elements relating to the activity or results of the company and based on the face value of the security. A Conseil d'Etat decree shall fix the conditions in accordance with which the basis of the variable part of the remuneration shall be capped.

Participating securities may be traded.

In order to apply Article 26 of Act No 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 L228-37

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 which shall have a 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 the shareholders' 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 routine shareholders' meeting for the issue of participating securities. The fourth paragraph of this article shall not apply.

SECTION V

Bonds

Articles L228-38 to
L228-90

Article L228-38

As stated in Article 284 of Act No 357 of 24 July 1966 on commercial companies:

"Art. 284.- Bonds are negotiable securities which, within the same issue, confer the same rights of claim for the



same face value.”

Article L228-39

(Act No 420 of 15 May 2001, Article 102, Official Gazette of 16 May 2001)

The issue of bonds by a joint-stock company which has not established 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 unpaid-up shares 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 to employees bonds issued in respect of the participation of the latter in the fruits of the company's expansion.

Article L228-40

(Order No. 2004-604 of 24 June 2004 Art. 39 Official Journal of 26 June 2004)

The board of directors, the executive board and the chief executive(s) are empowered to decide or authorise the issue of bonds unless the articles of association reserve such power for the general meeting, and if the general meeting does not decide to exercise it itself.

The board of directors may delegate to one or more of its members, to the general manager or, with the latter's agreement, to one or more acting 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 chairman and, with his agreement, 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 report to the board of directors or the executive board in the manner determined by those structures.

Article L228-41

The general meeting of shareholders may delegate to the board of directors, management or managers, as applicable, the powers needed to issue bonds on one or more occasions, within a period of five years, and to determine the terms of this.

The board of directors or management, as applicable, may delegate to its chairman or to any person of its choice who is a member of the board of directors or management the powers which it has received pursuant to the above paragraph. The chairman or delegate shall report to the board of directors or management in accordance with the conditions specified by the latter.

Article L228-42

The provisions of Articles L.228-40 and L.228-41 shall not apply to companies whose main object is to issue bonds needed to finance the loans which they grant.

Article L228-43

If an offer is made to the public, the company shall comply, before opening the subscription, with the formalities for publishing the issue conditions according to the terms fixed by a Conseil d'Etat decree.

Article L228-44

The company may not use its own bonds as security.

Article L228-45

Where the issuing company has continued to pay the proceeds of bonds redeemable by drawings, it may not pay these sums again when these bonds are presented for redemption.

Any clause to the contrary shall be deemed to be unwritten.

Article L228-46

The holders of bonds from the same issue shall be grouped 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 issue agreement specifies this, group bondholders with identical rights into a single body.

Article L228-47

The body shall be represented by one or more representatives elected by the general meeting of bondholders. Their number may not under any circumstances exceed three. In the event of an issue through a public offering, the representatives may be appointed in the issue agreement.

Article L228-48

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 Communities, domiciled in French territory, and to the associations and companies with



their registered office therein.

Article L228-49

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 management and supervisory board, managing directors, auditors or employees of the companies referred to in 1° and 3°, and their ancestors, descendants and spouses;
- 5° Persons to whom the exercise of the profession of banker is prohibited or who are deprived of the right to run, administer or manage any type of company.

Article L228-50

In an emergency, the representatives of the body may be appointed by a court decision at the request of any interested party.

Article L228-51

When they are not appointed in the issue agreement, representatives of the body of bondholders with regard to a loan for which the company has made a public offering 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 L228-52

The representatives of the body may be relieved of their duties by the general meeting of bondholders.

Article L228-53

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 L228-54

The representatives of the body, duly authorised by the general meeting of bondholders, shall alone have the capacity to bring, on behalf of the latter, actions for nullity of the company or acts and 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 L228-55

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 latter.

Article L228-56

(Law No 2003-706 of 1 August 2003 Article 134 (VI) Official Gazette of 2 August 2003)

The remuneration of the representatives of the general body as determined by the general meeting or by the issue agreement, is paid by the debtor company.

If this remuneration is not determined, or if the amount thereof is contested by the company, it is 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 latter in breach of the provisions of the present Article is null and void.

Article L228-57

The general meeting of bondholders in the same body may meet at any time.

Article L228-58

The general meeting of bondholders shall be convened by the board of directors, management 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 L228-59

The general meetings of bondholders shall be convened in accordance with the same formal and deadline conditions as the shareholders' meetings. In addition, the notices of the meetings shall contain special information which shall be determined by a Conseil d'Etat decree.

Any meeting unduly convened may be cancelled. However, the action to cancel this shall not be admissible when all the bondholders in the body in question are present or represented.

Article L228-60

(Order No. 2004-604 of 24 June 2004 Art. 41 I Official Journal of 26 June 2004)

The agenda of a meeting is determined by the person convening it.

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 are placed on the agenda and put to the vote by the chairman of the meeting.

The meeting shall not deliberate on an item which is not placed on the agenda.

The agenda for the meeting may be amended on a second convening.

Article L228-60-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 41 II Official Journal of 26 June 2004)

An attendance sheet is kept for each meeting.

The decisions taken at each meeting are recorded in minutes signed by the members of the committee which are entered in a special register kept at the registered office.

The elements that must be included in the attendance sheet and the minutes are determined in a Conseil d'Etat decree.

Article L228-61

(Order No. 2004-604 of 24 June 2004 Art. 42 Official Journal of 26 June 2004)

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 at it by the representative of their choice.

Any bondholder may vote by correspondence using a form as prescribed in a Conseil d'Etat decree. Any contrary provision in the articles of association is deemed not to exist.

When the quorum is calculated, only voting forms received by the company before the date of the meeting in the manner and within the time limits determined in a Conseil d'Etat decree are counted. Forms which do not indicate a voting intention or which express an abstention are treated as negative votes.

If the articles of association so provide, 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 which 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 L228-62

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 said company, and their ancestors, descendants and spouses, may not represent bondholders at general meetings.

Article L228-63

The representation of a bondholder may not be entrusted to persons to whom the exercise of the profession of banker is prohibited or who are deprived of the right to run, administer or manage any type of company.

Article L228-64

The meeting shall be chaired 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 chairman. If the meeting is convened by a legal agent, the meeting shall be chaired by the latter.

In the absence of the body 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 provisional chairmanship of the holder holding or the representative representing the highest number of bonds.



Article L228-65

(Order No. 2004-604 of 24 June 2004 Art. 43 Official Journal of 26 June 2004)
(Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

I. - The general meeting deliberates on all measures intended to protect the bondholders and ensure execution 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 L236-13 and L236-18;

4 Any proposal relating to the issuing of bonds conferring a preferential right in relation to the debt of the general body of bondholders;

5 Any proposal relating to total or partial abandonment of the guarantees conferred on the bondholders, rescheduling of the due date for payment of interest or changes to the terms 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 deliberates under the quorum conditions indicated in the second paragraph of

Article

L225-98. It rules on a majority of two thirds of the votes held by the bondholders present or represented.

Article L228-66

The voting right in general meetings of bondholders shall belong to the bare owner.

Article L228-67

The voting right 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 L228-68

(Order No. 2004-604 of 24 June 2004 Art. 51 XIV Official Journal of 26 June 2004)

Meetings shall neither increase the bondholders' charges 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 contrary provision is deemed not to exist.

Article L228-69

All bondholders shall be entitled to receive, in accordance with the conditions and deadlines 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 L228-70

Bondholders shall not be allowed individually to exercise control over the operations of the company or to request notification of company documents.

Article L228-71

The debtor company shall support the expenses of convening and holding the general meetings and of publishing their decisions, together with the expenses resulting from the procedure specified in Article L.288-50. The 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 L228-72

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, management or managers of the debtor company may carry on regardless by offering to redeem the bonds within the period fixed by a Conseil d'Etat decree.

The decision of the board of directors, management or managers to carry on regardless 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 L228-73

(Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

If a general meeting of the bondholders of the company acquired or hived off has not approved a proposal referred to in 3 and 6 of I of Article L228-65 or was unable to validly deliberate on account of the required quorum not being achieved, the board of directors, the executive board or the executives of the debtor company may carry on regardless. The decision is 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 terms, and with the effects, stipulated in Article L236-14.

Article L228-74

Bonds repurchased by the issuing company and bonds drawn and redeemed shall be cancelled and may not be put back into circulation.

Article L228-75

In the absence of special provisions in the issue agreement, the company may not impose the early redemption of bonds on bondholders.

Article L228-76

In the event of early dissolution of the company, not caused by a merger or division, the general meeting of bondholders may request the redemption of the bonds and the company may impose this.

Article L228-77

In the event of an issue of bonds accompanied by special securities, the latter shall be established by the company before the issue, on behalf of the body of bondholders. Acceptance shall result from the sole fact of the bonds being subscribed. It shall be retroactive to the date of registration for securities subject to registration and to the date of their establishment for other securities.

Article L228-78

The guarantees specified in Article L.228-77 shall be given by the chairman of the board of directors, the representative of the management or the manager, following authorisation from the company body authorised to this end by the articles of association.

Article L228-79

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 subscription being opened, the result of this shall be recorded in a notarised document by the company's representative.

The terms of 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, under their responsibility, the observation of the provisions on the renewal of the registration.

Article L228-80

The cancellation of registrations shall occur in accordance with the conditions determined by a Conseil d'Etat decree.

Article L228-81

The guarantees established after the issue of the bonds shall be given by the chairman of the board of directors, the representative of the management or the manager, following authorisation from the company body authorised to this end by the articles of association. They shall be accepted by the representative of the body.

Article L228-82

The issue of bonds whose redemption is guaranteed by a capitalisation company is prohibited.

Article L228-83

In the event of an administrative order or winding-up proceedings of the company, the representatives of the body of bondholders shall be authorised to act on the latter's behalf.

Article L228-84

(Order No. 2005-845 of 26 July 2005 Art. 165 III Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

On behalf of all the bondholders in the general body, the representatives of the general body 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 court-ordered receivership or reorganisation proceedings. They are not required to present their principals' certificates in support of that declaration.

Article L228-85

(Order No. 2005-845 of 26 July 2005 Art. 165 III Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Failing such a declaration by the representatives of the general body, a court decision, made at the request of the court-appointed liquidator, appoints a representative to represent the general body in the court-ordered receivership or



liquidation proceedings and to declare the debt.

Article L228-86

(Order No. 2005-845 of 26 July 2005 Art. 165 III Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The representatives of the general body are consulted by the court-appointed administrator concerning the terms of settlement for the bonds proposed pursuant to Article L621-59. They give their consent as stipulated by the ordinary general meeting of bondholders convened for that purpose.

Article L228-87

The expenses incurred in representing the bondholders during the procedure for the administrative order of the company shall be incumbent on the latter and shall be regarded as legal administrative expenses.

Article L228-88

The administrative order or winding-up proceedings of the company shall not end the operation and role of the general meeting of bondholders.

Article L228-89

In the event of closure due to insufficient assets, the representative of the body or the appointed legal agent shall recover the exercise of the rights of the bondholders.

Article L228-90

Unless otherwise specified in the issue agreement, 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.288-83 to L.228-89 shall not apply to companies whose loans are subject to special legal rules nor to loans guaranteed by the State, departments, municipalities or public establishments nor to loans issued abroad by French companies.

SECTION VI

Other securities conferring the right to the allotment of shares representing a portion of the capital

Articles L228-91 to L228-106

Subsection 1

General provisions

Articles L228-91 to L228-97

Article L228-91

(Order No. 2004-604 of 24 June 2004 Art. 44, Art. 45 Official Journal of 26 June 2004)

Joint-stock companies may issue transferable securities giving access to the capital or giving entitlement to an allotment of debt instruments.

The shareholders of a company issuing transferable securities giving access to the capital have a preferential right to subscribe those transferable securities in proportion to the value of their shares.

The said right is governed by the provisions applicable to the preferential subscription right attached to capital securities pursuant to Articles L. 225-132 and L. 225-135 to L. 225-140.

The issuance contract may stipulate that such transferable securities and the capital securities or debt instruments to which they give entitlement shall not be assigned and traded together. In such cases, if the security originally issued is a capital security, it 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 debts. Any clause to the contrary is deemed not to exist.

Transferable securities issued pursuant to the present article shall not be deemed to constitute a promise of share within the meaning of the second paragraph of Article L. 228-10.

Article L228-92

(Order No. 2004-604 of 24 June 2004 Art. 44, Art. 46 Official Journal of 26 June 2004)

Issues of transferable securities giving access to the capital or giving entitlement to an allotment of debt instruments governed by Article L. 228-91 are authorised by the extraordinary general meeting of shareholders pursuant to Articles L. 225-129 to L. 225-129-6. The said meeting rules on the basis of a report from the board of directors or the executive board and the auditor's special report.

Article L228-93

(Order No. 2004-604 of 24 June 2004 Art. 44, Art. 47 Official Journal of 26 June 2004)

A joint-stock company may issue transferable securities giving access to the capital of the company which directly or indirectly holds more than half of its capital or a company whose capital it directly or indirectly holds more than one half of.



Under pain of being declared null and void, 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 manner indicated in Article L. 228-92.

Article L228-95

(Act No. 2003-706 of 1 August 2003 Art. 134 VII Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 44, Art. 48 Official Journal of 26 June 2004)

Decisions taken in violation of the second and third paragraphs of Article L. 228-91 are null and void.

Article L228-97

(Act No. 2003-706 of 1 August 2003 Art. 61 Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 44 Official Journal of 26 June 2004)

When transferable securities representing debts on the issuing company are issued, including those giving entitlement to subscribe or purchase 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 the present 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 the capital

Articles L228-98 to
L228-106

Article L228-98

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

With effect from the date of issue of transferable securities giving access to the capital, 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 issuance contract or as provided for in Article L. 228-103.

Moreover, it may neither change the rules for allocating its profits nor write off its capital unless it is authorised to do so by the issuance contract or 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 the capital in the manner described in Article L. 228-99.

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 the capital are consequently reduced, as if they had exercised them before the date on which the reduction of capital became definitive.

Article L228-99

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

The company which is to allot the capital securities or the transferable securities giving access to the capital must take the necessary steps to protect the interests of the holders of the rights created if it decides to proceed, regardless of their form, with the issue of new capital securities with a preferential subscription right reserved for its shareholders, to distribute reserves, in cash or in kind, and share premiums, or to change the allocation of its profits through the creation of preference shares.

To that end, it shall:

1. Permit the holders of those rights to exercise them, if the period stipulated for the issuance contract 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 provisions which will allow them, should they exercise their rights subsequently, to irrevocably subscribe the new transferable securities issued, or to obtain a free allotment thereof, or to receive cash or goods similar to those which would have been distributed to them, in the same quantities or proportions and under the same conditions, save for possession, had they been shareholders when those operations took place;

3. Or change the conditions of subscription, the bases of conversion, or the terms and conditions of exchange or 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 issuance contract, the company may simultaneously take the measures indicated 1 and 2. It may, in all instances, replace them with the change authorised in 3. The said change is stipulated in the issuance contract when the capital securities are not admitted to trading on a regulated market.

The present article's implementing regulations are determined in a Conseil d'Etat decree.

Article L228-100

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

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 L228-101

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

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 the capital shall exercise their rights in the company, or companies, benefiting from the contributions. Article L. 228-65 shall not apply, unless otherwise stipulated in the issuance contract.

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 issuance contract proposes to issue or allot in proportion to the number of shares to be created by the company, or companies, benefiting from the contributions. The valuer of contributions in kind gives an opinion on the number of securities thus determined.

Approval of the merger or demerger plan by the shareholders of the company, or companies, benefiting from the contributions or the new company, or companies, entails relinquishment by the shareholders and, where applicable, by the holders of those companies' investment certificates, of the preferential subscription right 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 the capital.

The company, or companies, benefiting 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 L228-102

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

In the absence of special stipulations in the issuance contract, and save for early dissolution which is not the result of a merger or demerger, the company shall not impose redemption or repayment on the holders of transferable securities giving access to its capital.

Article L228-103

(Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XXVII Official Journal of 10 December 2004)

The holders of transferable securities giving deferred access to the capital after detachment, where applicable, of the rights to the original security pursuant to the present 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 the holders of such transferable securities are called upon to authorise any amendment to the issuance contract 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 the capital gives entitlement 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 called upon to issue or allot new transferable securities representing its share capital.

When the transferable securities issued pursuant to the present 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 the present article are applicable to the body created pursuant to Article L. 228-46.

NB: These provisions are applicable in Mayotte, New Caledonia and the Wallis and Futuna Islands.

Article L228-104

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

Deliberations entered into, or stipulations made, in violation of Articles L. 228-98 to L. 228-101 and L. 228-103 are null and void.

Article L228-105

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

As determined in a Conseil d'Etat decree, the holders of transferable securities giving access to the capital have, in relation to the company issuing the securities they are entitled to receive, a right to discovery 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 of discovery is 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 of discovery is exercised by the representatives of the body constituted pursuant to Article L. 228-103.

In all cases, the representatives of the different bodies 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 L228-106

(inserted by Order No. 2004-604 of 24 June 2004 Art. 49 Official Journal of 26 June 2004)

When judicial receivership 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 reorganisation plan, at each holder's discretion, and as indicated in that plan.

CHAPTER IX

European Companies

Articles L229-1 to
L229-15

Article L229-1

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

European companies registered in the trade 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, those of the present chapter and those applicable to public companies which are not contrary thereto.

A European company is subject to the provisions of Article L210-3. The registered office location indicated in a European company's memorandum and articles of association cannot be dissociated from its principal administrative establishment.

Article L229-2

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

Any European company properly registered in the trade and companies register may transfer its registered office to another Member State. It draws up a transfer plan. The said plan is 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 L225-96 and is subject to ratification by the special meetings of shareholders referred to in Articles L225-99 and L228-35-6.

In the event of a transaction being objected to, the shareholders may request redemption of 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 ruling 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 is subject to publicity as determined in a Conseil d'Etat decree. Any investment-certificate holder who has not assigned his securities within a time limit determined in a Conseil d'Etat decree retains that status without prejudice to those investment certificates and voting rights being exchanged for shares.

The transfer plan is submitted to a meeting of the company's bondholders unless redemption of the securities upon request is offered to the said bondholders. The offer of redemption is subject to publicity 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 rejects the objection or orders 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 is ineffective against those creditors. An objection lodged by a creditor does not have the effect of halting the transfers in progress. The provisions of the present paragraph shall not impede application of the agreements authorising the creditor to demand immediate repayment of his debt in the event of the registered office being transferred.

A notary issues a certificate conclusively attesting to compliance with the formalities which must be completed prior to the transfer.

Article L229-3

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

I. - Verification of the legality of the merger is carried out, for the part of the procedure relating to each company being merged, by the registrar of the court having jurisdiction at the place where the company is registered pursuant to Article L236-6.

Verification of the legality of the merger is carried out, for the part of the procedure relating to the completion of the merger and the formation of a European company, by a notary.

To this end, each company being merged presents to the notary the certificate referred to in Article 25 of the



aforementioned (EC) Council Regulation No. 2157/2001 of 8 October 2001 within six months of its issuance, along with a copy of the merger plan approved by the company.

The notary verifies in particular that the companies which are merging have approved a merger plan under the same terms and that the terms and conditions relating to the workers' involvement were determined pursuant to Articles L439-25 to L439-45 of the Labour Code.

The notary also verifies that the formation of a European company through a merger meets the conditions imposed by French law.

II. - Voidance of the proceedings of a meeting which decided a merger operation pursuant to the law applicable to a public limited company, or failure to verify legality, constitute grounds for dissolution of a European company.

When it is possible to remedy an irregularity likely to entail dissolution, the tribunal before which an action for dissolution of a European company created by merger is brought grants time to permit regularisation of the situation.

Actions for dissolution of a European company lapse six months after the date of the last entry in the trade 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 memorandum and articles of association and Chapter VII of Part III of the present Book.

When a court ruling ordering the dissolution of a European company on grounds envisaged in the sixth paragraph of the present article has become definitive, the said ruling is published as determined in a Conseil d'Etat decree.

Article L229-4

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

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 applicable law, and likewise the formation of a European company through a merger involving a company governed by French law, is the public prosecutor.

Article L229-5

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

The companies promoting the creation of a European holding company draw up a common plan to create a European company.

The said 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 provided for in a Conseil d'Etat decree.

One or more court-appointed European holding company formation commissioners draw up a report to the shareholders of each company, under their own responsibility, 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 L236-9 and Articles L236-13 and L236-14 are applicable if a European holding company is formed.

Article L229-6

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

As an exception to the second sentence of Article L225-1, 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 limited liability company held by a sole proprietor set forth in Articles L223-5 and L223-31.

In such cases, the sole shareholder exercises the powers vested in the general meeting.

In the case of a European company under sole proprietorship, Articles L225-25, L225-26, L225-72 and L225-73 do not apply to that company's directors or the members of its supervisory board.

Article L229-7

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

The management and administration of a European company are governed by the provisions of Section 2 of Chapter V of the present Part, with the exception of the first paragraph of Articles L225-37 and L225-82 and the fourth paragraph of Article L225-64.

As an exception to Article L225-62, 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 the said period, that member's functions on the supervisory board are suspended.

The provisions of the first paragraph of Article L225-17, the second paragraph of Article L225-22, Article L225-69 and the second paragraph of Article L225-79 shall not impede participation of the workers as defined in Article L439-25 of the Labour Code.

Each member of the supervisory board may request from the chairman 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 memorandum and articles of association must contain rules similar to those set forth in Articles L225-38 to L225-42 and L225-86 to L225-90. In the case of a company referred to in Article L229-6, however, an entry in the record of proceedings constitutes approval of the agreement.

Article L229-8

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

The general meetings of a European company are subject to the rules laid down in section 3 of Chapter V of the present Part insofar as they are compatible with the aforementioned (EC) Council Regulation No. 2157/2001 of 8 October 2001.

Article L229-9

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

If the principal administrative establishment 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 principal administrative establishment at the site of the registered office in France, under pain of a coercive fine if necessary.

The court shall impose a time limit for such regularisation.

Failing regularisation upon expiry of the time limit, the court shall pronounce the liquidation of the company as provided for in Articles L237-1 to L237-31.

Such decisions are sent to the public prosecutor by the court registry. The judge's decision indicates that the judgement emanated from the court registry.

In the event of it being noted that the principal administrative establishment of a European company registered in another Member State has been transferred to France in contravention of Article 7 of the aforementioned (EC) Council Regulation No. 2157/2001 of 8 October 2001, the public 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.

In the event of it being noted that the principal administrative establishment of a European company registered in France has been transferred to another Member State in contravention 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 public prosecutor of the Tribunal de grande instance having jurisdiction at the place where the company is registered.

Article L229-10

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

Any European company may convert itself into a limited company 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 plan to convert itself into a limited company. The said plan 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 commissioners draw up a report to the converting company's shareholders under their own responsibility attesting that the shareholders' equity is at least equivalent to the authorised capital. They are subject to the incompatibilities referred to in Article L822-11.

Conversion into a limited company is decided as provided for in Articles L225-96 and L225-99.

Article L229-11

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

The memorandum and articles of association of a European company which does not make public offerings 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 memorandum and articles of association is null and void. Such voidance is binding on the assignee or his assigns. 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 L229-12

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

Under the terms and conditions of the memorandum and articles of association of a European company which does not make public offerings, a shareholder may be required to assign his shares. Likewise, that same shareholder's non-pecuniary rights may be suspended until such time as he effects the said assignment.

Article L229-13

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

The memorandum and articles of association of a European company which does not make public offerings may require a corporate shareholder whose control within the meaning of Article L233-16 changes to inform the European company thereof as soon as the change takes place. The latter may decide, under the terms of the memorandum and



articles of association, to suspend exercise of that shareholder's non-pecuniary rights and exclude it.

The provisions of the first paragraph may apply in the same way to a legal entity which becomes a shareholder following a merger, demerger or dissolution.

Article L229-14

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

If the memorandum and articles of association do not specify a method for evaluating the transfer price of the shares when a European company implements a clause adopted pursuant to Articles L229-11 to L229-13, 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 bought by a European company, it is required to transfer them within six months or cancel them.

Article L229-15

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

Clauses stipulated pursuant to Articles L229-11 to L229-14 may be adopted or amended only by a unanimous vote of the shareholders.

TITLE III

Provisions common to various commercial companies

Articles L231-1 to
L238-3-1

CHAPTER I

Variable capital

Articles L231-1 to
L231-8

Article L231-1

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The memorandum and articles of association of companies other than public limited companies, 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 memorandum and articles of association contain the above stipulation are subject to the provisions of the present Chapter regardless of the general rules specific to their status.

Article L231-2

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 L231-3

Instruments recording increases or reductions of the share capital made under the terms of Article L.231-1 or withdrawals 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 L231-4

The 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 to the company registers and the articles of association may confer, either on the board of directors or on the general meeting, the right to object to the transfer.

Article L231-5

(Act No 420 of 15 May 2001, Article 124 II, Official Gazette of 16 May 2001)

The articles of association shall determine a sum below which the capital may not be reduced by the acquisitions of contributions authorised by Article L.231-1.

This sum may not be less than one-tenth of the share capital stipulated in the articles of association 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 this amount of one-tenth.

Article L231-6

Each member may withdraw from the company when this seems appropriate thereto 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 articles of association, that one or more of the members shall cease to belong to the company.



The member who ceases to belong to the company, either due to their own 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 their withdrawal.

Article L231-7

The company, whatever its form, shall be validly represented in court by its directors.

Article L231-8

The company shall not be dissolved by the death or withdrawal of a member, by a winding-up judgment, 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.

CHAPTER II

Financial statements

Articles L232-1 to
L232-23

SECTION I

Accounting documents

Articles L232-1 to
L232-6

Article L232-1

I.- At the end of each financial year, the board of directors, management or managers shall prepare the inventory and 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 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 the securities granted thereby.

II.- The annual report shall set out the situation of the company during the previous financial year, its forecast 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.

Article L232-2

In commercial companies meeting one of the criteria defined by a Conseil d'Etat decree and drawn from the number of employees or the turnover, possibly taking into account the nature of the activity, the board of directors, management or managers shall be required to prepare a statement of the liquid and current assets, excluding operating assets, and 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 terms of 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 L232-3

In public limited companies, 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 management. 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 management, 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 L232-4

In companies other than public limited companies, 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 therefrom, 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 meeting of members. This report shall be notified to the works council.

Article L232-5



Companies which prepare consolidated financial statements in accordance with Articles L.233-18 to L.233-26 may, in accordance with the conditions specified in Article L.123-17 and as an exception to Article L.123-18, enter the shares of the companies which they exclusively control, within the meaning of Article L.233-16, into the assets side of the balance sheet according to the portion of equity capital, determined in line with the consolidation rules, which these shares represent. This valuation method, if chosen, shall apply to all the shares meeting the above conditions. This choice shall be indicated in the annex.

The contra of the annual variation in the total portion of equity capital representing these shares shall not constitute an item in the results. It shall be entered separately as an equity capital item. 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 which it controls shall apply the same method when they themselves control other companies in accordance with the same conditions.

A Conseil d'Etat decree shall fix the terms for applying this article.

Article L232-6

When, in accordance with the conditions defined in Article L.123-17, amendments are made to the presentation of the annual accounts and the valuation methods used, these shall also be indicated in the annual report and, if applicable, in the auditors' report.

SECTION II

Documents specific to companies making a public offering

Articles L232-7 to
L232-8

Article L232-7

Companies whose shares are accepted for trading in a regulated market shall be required to annex to their annual accounts an inventory of the securities held in the portfolio at the end of the financial year.

They shall also annex a table relating to the distribution and allocation of the distributable sums which shall be proposed to the general meeting.

These companies, with the exception of investment companies with variable capital, shall also be required to establish and publish, at the latest within four months of the first half of the financial year, a report commenting on the information in figures relating to the turnover and results of the company during the last half-year and describing its activity during this period, its projected development during the financial year and the important events which occurred during the first half-year. The text which must be included in the half-year report and the terms of its publication shall be fixed by a Conseil d'Etat decree. The auditors shall verify the truthfulness of the information contained in the half-year report.

Article L232-8

(Order No 916 of 19 September 2000, Article 4 and Annex II, Official Gazette of 22 September 2000 in force on 1 January 2002)

When half of their capital belongs to one or more companies whose shares are accepted for trading in a regulated market, the companies whose shares are not accepted for this and those which do not have the form of joint-stock companies shall be required, if their balance sheet exceeds 3 000 000 euro or if the inventory value or the stock-market value of their portfolio exceeds 300 000 euro, to annex to their annual accounts an inventory of the securities held in the portfolio at the end of the financial year.

SECTION III

Depreciation and provisions

Article L232-9

Article L232-9

Subject to the provisions of the second paragraph of Article L.232-15, the expenses of forming the company shall be depreciated before any distribution of profits and, at the latest, within five years.

The expenses of increasing the capital shall be depreciated 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 relating to this increase.

However, companies whose exclusive object is construction and the management of rented buildings mainly for residential use or property leasing and property companies for trade and industry may depreciate the expenses of forming the company and the expenses of increasing the capital in accordance with the same conditions as their property. Companies approved for financing telecommunications may depreciate the formation expenses and increase in capital expenses in accordance with the same conditions as their property and equipment.

SECTION IV

Profits

Articles L232-10 to
L232-20



Article L232-10

With any decision to the contrary being invalid, in limited liability companies and joint-stock companies a deduction of at least one-twentieth, allocated to the formation of a reserve fund referred to as the "legal reserve", shall be made from the profits for the financial year less, if applicable, the previous losses.

This deduction shall cease to be compulsory when the reserve reaches one-tenth of the share capital.

Article L232-11

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The distributable profit consists of the profit for the period, less the losses brought forward, plus the sums carried forward pursuant to the law or the memorandum and articles of association, plus the profit brought forward.

The general meeting may, moreover, decide to distribute sums taken from the reserves available to it. In which 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 memorandum and articles of association require in order for distribution to take place.

The revaluation differential is not distributable. It may be wholly or partly incorporated into the capital.

Article L232-12

After the annual accounts are approved and the existence of distributable sums is recorded, the general meeting shall determine the part 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 depreciation and reserves, having deducted, if applicable, the previous losses and the sums to be entered in reserve pursuant to the law or articles of association and taking into account the profits carried forward, 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 conditions and terms fixed by a Conseil d'Etat decree.

Any dividend distributed in breach of the rules indicated above shall be a sham dividend.

Article L232-13

The terms for paying the dividends voted by the general meeting shall be fixed thereby or, failing this, by the board of directors, management 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. The extension of this period may be agreed by a court decision.

Article L232-14

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The memorandum and articles of association may allot an increase in dividends, with a ceiling of 10%, to any shareholder who can show a registered contribution of at least two years' duration at the year-end which was still current on the date of payment of the dividends. The rate thereof is determined by the extraordinary general meeting. In companies whose shares are quoted on a regulated stock market, the number of shares 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 free shares being distributed.

This increase cannot be allotted before the close of the second financial year following the amendment to the memorandum and articles of association.

Article L232-15

It is prohibited to stipulate fixed or interim interest to the benefit of members. Any clause to the contrary shall be deemed to be 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 L232-16

The articles of association may specify the allocation, by way of an initial dividend, of interest calculated on the paid-up and non-redeemed amount of the shares. Unless otherwise specified in the articles of association, the reserves shall not be taken into account when calculating the initial dividend.

Article L232-17

The company may not request from shareholders any repayment 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 of this or could not have been unaware of this given the circumstances.



Article L232-18

In joint-stock companies, the articles of association may specify that the meeting ruling on 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 cash or in shares.

When there are different categories of shares, the general meeting ruling 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 L232-19

The issue price of shares issued in accordance with the conditions specified in Article L.232-18 may not be less than the face value.

In companies in which the shares are accepted for trading in 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 choice 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 management, 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 round number of shares, the latter may receive the number of shares immediately below plus a balancing cash adjustment or, if the general meeting has requested this, the number of shares immediately above by paying the difference in cash.

Article L232-20

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 said general meeting. The increase in capital shall be carried out due solely to this request and, if applicable, to 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 management, as applicable, may suspend the exercise of the right to obtain the payment of the dividend in shares for a period which 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 management shall record the number of shares issued pursuant to this article and shall make the necessary amendments to the clauses of the articles of association relating to the amount of the share capital and the number of shares representing this. The chairman may, with authority from the board of directors or management, carry out these operations in the month following the expiration of the period fixed by the general meeting.

SECTION V

Publication of accounts

Articles L232-21 to
L232-23

Article L232-21

I.- General partnerships in which all the indefinitely liable partners are limited liability companies or joint-stock companies shall be required to file, in duplicate, with the court registry, in order to be annexed to the commercial and companies register, in the month following approval of the annual accounts by the routine meeting of partners:

1° The annual accounts, annual report and, if applicable, consolidated financial statements, group annual report and auditors' reports on the annual accounts and consolidated financial statements, possibly supplemented by the latter's observations on the amendments made by the meeting which have been submitted thereto;

2° The result allocation proposal submitted to the meeting and the allocation resolution voted on or the allocation decision made.

II.- In the event of refusal of approval or acceptance, a copy of the deliberations of the meeting shall be filed within the same period.

III.- The obligations defined above shall also be imposed on general partnerships in which all the indefinitely liable partners are general partnerships or limited partnerships in which all the indefinitely liable partners are limited liability companies 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 limited liability companies or joint-stock companies.



Article L232-22

I.- All limited liability companies shall be required to file, in duplicate, with the court registry, in order to be annexed to the commercial and companies register, in the month following approval of the annual accounts by the routine meeting of partners or by the sole proprietor:

1° The annual accounts, annual report and, if applicable, consolidated financial statements, group annual report and auditors' reports on the annual accounts and consolidated financial statements, possibly supplemented by the latter's observations on the amendments made by the meeting or sole proprietor to the annual accounts which have been submitted thereto;

2° The result allocation proposal submitted to the meeting or to the sole proprietor and the allocation resolution voted on or the allocation decision made.

II.- In the event of refusal of approval or acceptance, a copy of the deliberations of the meeting or of the decision of the sole proprietor shall be filed within the same period.

Article L232-23

I.- All joint-stock companies shall be required to file, in duplicate, with the court registry, in order to be annexed to the commercial and companies register, in the month following approval of the annual accounts by the general meeting of shareholders:

1° The annual accounts, annual report and auditors' report on the annual accounts, possibly supplemented by the latter's observations on the amendments made by the meeting to the annual accounts which have been submitted thereto and, if applicable, the consolidated financial statements, group annual report, auditors' report on the consolidated financial statements and report of the supervisory board;

2° The result allocation proposal submitted to the meeting and the allocation resolution voted on.

II.- In the event of refusal of approval of the annual accounts, a copy of the deliberations of the meeting shall be filed within the same period.

CHAPTER III

Subsidiaries, shares and controlled companies

Articles L233-1 to
L233-31

SECTION I

Definitions

Articles L233-1 to
L233-5

Article L233-1

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 L233-2

When a company owns, in another company, a percentage of the capital of between 10 and 50%, the first company shall be regarded, in order to apply this chapter, as having a holding in the second company.

Article L233-3

(Act No. 2001-420 of 15 May 2001 Art. 120 I Official Journal of 16 May 2001)

(Act No. 2001-1168 of 11 December 2001 Art. 28 I Official Journal of 12 December 2001)

(Act No. 2005-842 of 26 July 2005 Art. 33 I Official Journal of 27 July 2005)

I. - For the purposes of sections 2 and 4 of the present 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 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 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 structures.

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 or shareholder directly or indirectly holds a fraction larger than its own.

III. - For the purposes of the same sections of the present chapter, two or more companies acting jointly are

deemed to jointly control another company when they effectively determine the decisions taken at its general meetings.

Article L233-4

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 latter.

Article L233-5

The procureur de la République and the Stock Exchange Committee for companies making a public offering shall be authorised to bring legal proceedings in order to ensure that the existence of control over one or more companies is recorded.

SECTION II

Notifications and information

Articles L233-6 to
L233-15

Article L233-6

When a company has acquired, during a financial year, 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 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, management 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 financial statements, the report indicated above may be included in the group annual report indicated in Article L.233-26.

Article L233-7

(Act No. 2001-420 of 15 May 2001 Art. 119 3 Official Journal of 16 May 2001)

(Act No. 2003-706 of 1 August 2003 Art. 46 I 2, Art. 125 3 Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 51 XV Official Journal of 26 June 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XXVII Official Journal of 10 December 2004)

(Act No. 2005-842 of 26 July 2005 Art. 33 II Official Journal of 27 July 2005)

I. - When the shares of a company having its registered office in France are admitted to trading on a regulated market or a financial instruments market which permits trading in shares which may be entered in the books of an authorised intermediary as provided for in Article L211-4 of the Monetary and Financial Code, any natural person or legal entity, acting alone or jointly, who comes into possession of a number of shares representing 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 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 fall below the thresholds indicated in that paragraph.

Persons required to provide the information indicated in the first paragraph shall indicate the number of securities they hold which give deferred access to the capital, as well as the voting rights attached thereto.

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. This information is published as determined in the General Regulations of the Financial Markets Authority.

The general regulations also specify the method for calculating participation thresholds.

III. - The company's memorandum and articles of association may impose an additional reporting obligation relating to the holding of fractions of the capital or voting rights below 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 reporting obligations stipulated in I, II and III do not apply to:

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 (EC) Council Directive 93/6, of 15 March 1993 concerning the adequacy of the funds of credit investment companies, 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 reporting obligations stipulated in I, II and III do not apply:



1 To a market maker when the threshold of one twentieth of the capital or voting rights is exceeded in connection with market making, provided that he does not participate in the issuer's management within the meaning of the General Regulations of the Financial Markets Authority;

2 When the person referred to in I is controlled, within the meaning of Article L233-3, by an entity subject to the obligation 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 L233-3, by an entity subject to the obligation laid down in I to III for those same shares.

VI. - In the event of the reporting obligation referred to in III not being complied with, the company's memorandum and articles of association may provide for the provisions of the first two paragraphs of Article L233-14 to 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%.

VII. - When the company's shares are admitted to trading on a regulated market, the person required to provide the information indicated in I shall also declare the objectives to be pursued during the next twelve months whenever the thresholds of one tenth or one fifth of the capital or voting rights are exceeded. The said declaration shall indicate whether the buyer is acting alone or jointly, whether it envisages making further acquisitions, whether it is seeking to acquire a controlling interest in the company, directorships for itself or for one or more other persons, or seats on the executive board or the Supervisory Board. It is sent to the company whose shares have been acquired and to the Financial Markets Authority within ten trading days. The said information is published as determined in the General Regulations of the Financial Markets Authority. If the stated objectives change, and this can occur only in the event of major changes in the environment, situation or shareholder base of the persons concerned, a new declaration, published in the same way, shall be made and sent to the company and the Financial Markets Authority.

Article L233-8

(Act No. 2003-706 of 1 August 2003 Art. 46 I Official Journal of 2 August 2003)

(Act No. 2005-842 of 26 July 2005 Art. 33 III Official Journal of 27 July 2005)

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. 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 thereof.

II. - Under terms and conditions determined in the General Regulations of the Financial Markets Authority, companies having shares which are admitted to trading on a regulated market publish the total number of voting rights and the number of shares that make up the company's capital each month if they have varied in relation to those previously published. Such companies are deemed to have fulfilled the obligation referred to in I.

Article L233-9

(Act No. 2005-842 of 26 July 2005 Art. 33 IV Official Journal of 27 July 2005)

I. - The following are treated as shares or voting rights owned by the person required to provide the information referred to in I of Article L233-7:

1 Shares or voting rights owned by other persons on behalf of that person;

2 Shares or voting rights owned by companies which control that person within the meaning of Article L233-3; 3

Shares or voting rights owned by a third party with whom that person acts jointly;

4 Shares or voting rights which that person or a person referred to in 1 to 3 above is entitled to acquire on its own initiative by virtue of an agreement;

5 Shares in respect of which that person is the usufructuary;

6 Shares or voting rights owned by a third party with whom that person has entered into a temporary transfer agreement covering those shares or voting rights;

7 Shares lodged with that person, provided that it may exercise the voting rights attached to them as it chooses in the absence of specific instructions from the shareholders;

8 Voting rights which that person may freely exercise by virtue of a power of attorney in the absence of specific instructions from the shareholders concerned.

II. The following are not treated as shares or voting rights owned by the person required to provide the information referred to in I of Article L233-7:

1 Securities held by undertakings for collective investment in transferable securities managed by a portfolio management company controlled by that person within the meaning of Article L233-3, barring any exception provided for in the General Regulations of the Financial Markets Authority;

2 Securities held in a portfolio managed by an investment service provider controlled by that person within the meaning of Article L233-3, in the context of a portfolio management service provided to third parties as envisaged in the General Regulations of the Financial Markets Authority, barring any exception provided for in those same general regulations.

Article L233-10

(Law No 2001-420 of 15 May 2001 Article 121 Official Gazette of 16 May 2001)



(Law No 2001-1168 of 11 December 2001 Article 28 (II) Official Gazette of 12 December 2001)
(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

I. - Persons who have entered into an agreement with a view to buying or selling voting rights or with a view to exercising voting rights to implement a policy in relation to a company are deemed to be acting in concert.

II. - Such an agreement is presumed to exist:

1. Between a company, the chairman of its board of directors and its general managers or the members of its executive board or its partners;
2. Between a company and the companies it controls within the meaning of Article L. 233-3;
3. Between companies controlled by the same person or persons;
4. Between the partners in a simplified joint-stock company in relation to the companies it controls.

III. - Persons acting in concert are jointly and severally bound by the obligations imposed on them by the laws and regulations.

Article L233-11

(Law No 2001-420 of 15 May 2001 Article 1 Official Gazette of 16 May 2001)
(Law No 2003-706 of 1 August 2003 Article 46 (I) (4) Official Gazette of 2 August 2003)

Any clause in an agreement which allows preferential terms and conditions to be applied to the sale and purchase of shares which are quoted on a regulated stock market and which amount to at least 0.5% of the capital or voting rights of the company which issued those shares must be submitted within five trading days of the signing of the agreement or of the addendum containing the clause concerned to the company and to the Financial Markets Authority. Failing such submission, the effects of that clause are suspended, and the parties are released from their undertakings while any public offer of sale is in progress.

The company and the Financial Markets Authority must also be informed of the date on which the clause lapses.

Clauses in agreements entered into before the date of publication of Law No. 2001-420 of 15 May 2001 relating to the new financial regulations which had not been sent to the Financial Markets Authority by that date must be sent to it in the same way, within six months, and subject to the effects indicated in the first paragraph.

The information referred to in the preceding paragraphs is published as prescribed in the general regulations of the Financial Markets Authority.

Article L233-12

When a company is directly or indirectly controlled by a joint-stock company, it shall notify the latter and each of the companies participating in this control of the amount of the shares which it has directly or indirectly in their respective capital and the variations in this amount.

The notifications shall be made within one month of either the date when the assumption of control became apparent to the company with regard to the shares which it held before this date or the date of the transaction for the subsequent acquisitions or disposals.

Article L233-13

(Act No. 2005-842 of 26 July 2005 Art. 33 VI Official Journal of 27 July 2005)

Based on the information received pursuant to Articles L233-7 and L233-12, the report presented to the shareholders on the business during the accounting period indicates the identity of any natural person 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 or nineteen twentieths of the authorised capital or voting rights at General Meetings. It also indicates 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. Where applicable, this information is noted in the auditors' report.

Article L233-14

(Act No. 2003-7 of 3 January 2003 Art. 50 II Official Journal of 4 January 2003)
(Act No. 2003-706 of 1 August 2003 Art. 46 I 5, V 1, 2 Official Journal of 2 August 2003)
(Order No. 2004-604 of 24 June 2004 Art. 51 XV bis Official Journal of 26 June 2004) (Act No. 2005-842 of 26 July 2005 Art. 33 VII Official Journal of 27 July 2005)

If they have not been properly declared as stipulated in I and II of Article L233-7, shares in excess of the fraction which should have been declared, when they are admitted to trading on a regulated market or a financial instruments market which permits trading in shares which may be entered in the books of an authorised intermediary as provided for in Article L211-4 of the Monetary and Financial Code, are stripped of the voting right for any shareholders' meeting held within two years of the date of effective notification.

In the same circumstances, the voting rights attached to those shares which have not been properly declared cannot be exercised or delegated by the defaulting shareholder.

A shareholder who has not made the declaration referred to in VII of Article L233-7 is stripped of the voting rights attached to the securities exceeding the fraction of one tenth or one fifth referred to in that same paragraph for any shareholders' meeting held within two years of the date of effective notification.

The commercial court having jurisdiction at the place where the company has its registered office may, having



sought the opinion of the public prosecutor, and at the request of the company's chairman, 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 L233-7 or who failed to respect the content of the declaration referred to in VII of that same article during the twelve-month period following its publication as stipulated in the General Regulations of the Financial Markets Authority.

Article L233-15

The board of directors, management or manager of any company with subsidiaries or shares shall annex to the company's balance sheet a table showing the situation of these subsidiaries or shares.

SECTION III

Consolidated financial statements

Articles L233-16 to
L233-28

Article L233-16

(Law No 2003-706 of 1 August 2003 Article 133 Official Gazette of 2 August 2003)

I. - Each year, the board of directors, the executive board or the chief executive(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 structures 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 or shareholder directly or indirectly held a fraction greater than its own;

3. When a dominant interest is exerted over the company by virtue of a contract or the terms and conditions of its memorandum and articles of association, when the applicable law allows this (1).

III. - Joint control exists when control of a company operated jointly by a limited number of partners 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.

NB (1): Law 2003-721 Article 133 II: The provisions of this paragraph apply with effect from the first financial year commencing after publication of Law No. 2003-76 of 1 August 2003 in the Official Gazette.

Article L233-17

As an exception to the provisions of Article L.233-16, the companies indicated in said article, with the exception of those issuing securities accepted for trading in a regulated market or negotiable debt securities, shall be exempt, in accordance with the conditions fixed by a Conseil d'Etat decree, from the obligation to prepare and publish consolidated financial statements and a group annual report:

1° When they are themselves under the control of an undertaking 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 undertaking 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 L233-18

(Order No. 2004-1382 of 20 December 2004 Art. 2 Official Journal of 22 December 2004)

The accounts of companies subject to the exclusive control of the consolidating company are consolidated via global integration.

The accounts of companies controlled by the consolidating company jointly with other shareholders or members are consolidated via proportional integration.

The accounts of companies over which the consolidating company exercises considerable influence are consolidated via equity accounting.

NB: Order 2004-1382 2004-12-20 Art. 12: The provisions of the present order shall apply with effect from the first financial year commenced on or after 1 January 2005.

Article L233-19

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 when:

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 aim defined in Article L.233-21;

3° The information needed to prepare the consolidated financial statements cannot be obtained without excessive cost or within the periods compatible with those fixed pursuant to the provisions of Article L.233-27.

Article L233-20

The consolidated financial statements shall include the consolidated balance sheet and profit and loss account and an annex: 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 financial statements.

The consolidated financial statements shall be prepared and published according to the terms fixed by a Conseil d'Etat decree adopted following an opinion from the National Accounting Board. This decree shall determine in particular the classification of the elements of the balance sheet and profit and loss account and the information to be included in the annex.

Article L233-21

The consolidated financial statements must be honest and truthful and ensure a faire representation of the assets, financial situation and results of the whole formed of 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 L233-22

Subject to the provisions of Article L.233-23, consolidated financial statements 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 financial statements in relation to annual accounts.

The assets and liabilities elements and the expenditure and income elements included in the consolidated financial statements shall be valued according to similar methods, except where the necessary reworkings would lead to disproportionately high expenses and would have a negligible effect on the consolidated assets, financial situation and results.

Article L233-23

Subject to this being justified in the annex, the consolidating company may use, in accordance with the conditions specified in Article L.123-17, valuation rules fixed by a regulation of the Committee on Accounting Rules, and intended:

1° To take account of price variations or replacement values;

2° To value the wasting assets by taking into account that the first item out is the last item in;

3° To allow rules not complying with those fixed by Articles L.123-18 to L.123-21 to be taken into account.

Article L233-24

(Order No. 2004-1382 of 20 December 2004 Art. 1 Official Journal of 22 December 2004)

When they apply 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.

NB: Order 2004-1382 2004-12-20 Art. 12: The provisions of the present order shall apply with effect from the first financial year commenced on or after 1 January 2005.

Article L233-25

Subject to this being justified in the annex, consolidated financial statements may be prepared at a different date from that of the annual accounts of the consolidating company.

If the end date of the financial year of an undertaking included within the consolidation is more than three months before the end date of the consolidation financial year, the consolidated financial statements 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 L233-26

The group annual report shall set out the situation of the whole formed by the undertakings included within the consolidation, its anticipated development, the important events which occurred between the end date of the



consolidation financial year and the date when the consolidated financial statements were prepared and its research and development activities. This report may be included in the annual report indicated in Article L.232-1.

Article L233-27

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 L233-28

Legal persons having the capacity of trader and which publish consolidated financial statements, although not being required to do so due to their legal form or the size of the whole group, 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 the first paragraph of Article L.225-235, their consolidated financial statements shall be certified in accordance with the conditions of the second paragraph of this article.

SECTION IV

Reciprocal shares

Articles L233-29 to
L233-31

Article L233-29

A joint-stock company may not own shares in another company if the latter holds a percentage of its capital higher than 10%.

Failing agreement between the companies involved in order to regularise the situation, the company holding the smallest percentage of the capital of the other company shall dispose of its investment. If the reciprocal investments are the same size, each company shall reduce its investment so that this does not exceed 10% of the capital of the other.

When a company is required to dispose of shares in another company, the disposal shall be carried out within the period fixed by a Conseil d'Etat decree. The company may not exercise the voting rights attached to these shares.

Article L233-30

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 these, it must dispose of these within the period fixed by a Conseil d'Etat decree and it may not, as a result of these, exercise the voting rights.

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 excess within the period fixed by a Conseil d'Etat decree and it may not, as a result of this excess, exercise the voting rights.

Article L233-31

When 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.

CHAPTER IV

Warning procedure

Articles L234-1 to
L234-4

Article L234-1

(Act No. 2005-845 of 26 July 2005 Art. 162 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

If, in the performance of his duties, the auditor of a public limited company notes costs likely to compromise the continuity of the business, he shall inform the chairman of the board of directors or the executive board chairman 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 request the chairman of the board of directors or the executive board chairman, in a letter copied to the presiding judge of the commercial court, to have the board of directors or the supervisory board deliberate the facts noted. The auditor shall be invited to that meeting. The minutes of the board of directors' meeting or supervisory board meeting shall be sent to the presiding judge of the commercial court and to the works council or, failing this, to the workers' representatives.

If these provisions are not complied with or if the auditor finds that, despite the decisions taken, the continuity of the business remains compromised, a general meeting shall be convened under conditions, and within a time limit, determined in a Conseil d'Etat decree. The auditor shall draw up a special report which is presented to that meeting. The said report is sent to the works council or, failing this, to the workers' representatives.



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 commercial court of his actions and send him his results.

Article L234-2

(Act No. 2005-845 of 26 July 2005 Art. 162 III Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In companies other than limited companies, the auditor asks the manager, in the manner prescribed in a Conseil d'Etat decree, to explain the facts referred to in the first paragraph of Article L234-1. The manager is required to reply to him within fifteen days. The reply is sent to the works council or, failing this, to the workers' representatives and, if there is one, to the supervisory board. The auditor informs the presiding judge of the commercial court thereof.

If these provisions are not complied with or if the auditor finds that, despite the decisions taken, the continuity of the business remains compromised, he shall draw up a special report and request the manager, in a letter copied to the presiding judge of the commercial court, to have a general meeting convened subject to the conditions and time limit determined in a Conseil d'Etat decree to deliberate 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 commercial court of his actions and send him his results.

Article L234-3

The works council or, failing this, the workers' representatives, exercise the remits described in Articles L422-4 and L432-5 of the Labour Code in commercial companies.

The chairman of the board of directors, the executive board chairman or the executives, as applicable, send(s) the auditors the questions formulated by the works council or the workers' representatives, the reports sent to the board of directors or the supervisory board, as applicable, and the replies from those structures, pursuant to Articles L422-4 and L432-5 of the Labour Code.

Article L234-4

(inserted by Act No. 2005-845 of 26 July 2005 Art. 162 IV Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The provisions of the present chapter do not apply when a conciliation or continuity procedure has been initiated by the executives pursuant to the provisions of Parts I and II of Book VI.

CHAPTER V

Nullities

Articles L235-1 to
L235-14

Article L235-1

The nullity of a company or an instrument amending the articles of association may result only from an express provision in this book or from the acts governing the nullity of contracts. With regard to limited liability companies and joint-stock companies, the nullity of the company may not result either from a defect in consent or from prohibition, unless this affects all the founding partners. The nullity of the company may also not result from clauses prohibited by Article 1844-1 of the Civil Code.

The nullity 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 acts governing contracts.

Article L235-2

In general and limited partnerships, the fulfilment of the publication formalities shall be required in order for the partnership, act or deliberations, as applicable, to be valid. However, the partners and the partnership may not rely on, with regard to third parties, this reason for nullity. Nevertheless, the court shall have the option of not pronouncing the nullity incurred if no fraud is identified.

Article L235-2-1

(inserted by Law No. 2003-706 of 1 August 2003 Article 134 (III) Official Gazette of 2 August 2003)

Decisions made in breach of the provisions that govern the voting rights attached to the shares are null and void.

Article L235-3

The action for nullity shall be extinguished when the reason for the nullity ceases to exist on the day when the court rules on the merits at first instance, except where this nullity is based on the unlawfulness of the purpose of the company.

Article L235-4

The Tribunal de commerce hearing an action for nullity may, even automatically, fix a period for allowing the nullities to be cured. The court may not pronounce the nullity less than two months after the date of the writ of summons.

If, in order to cure a nullity, 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 judgment, the time needed for the members to take a decision.

Article L235-5

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 to act.

Article L235-6

In the event of the nullity of a company or of acts and deliberations subsequent to its formation, based on a defect in consent or the prohibition of a member, and when the situation may be regularised, any person having an interest in this may send formal notice to the person able to carry this out either to regularise the situation or to bring an action for nullity within six months, otherwise this will be out of time. 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 above paragraph, any measure likely to rule out the interest of the plaintiff, 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 articles of association. The vote of the member whose rights it is being requested to repurchase 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 partner shall be determined in accordance with the provisions of Article 1843-4 of the Civil Code. Any clause to the contrary shall be deemed to be unwritten.

Article L235-7

When the nullity of acts and deliberations subsequent to the formation of the company is based on the breach of the publication rules, any person having an interest in regularising the act may send the company formal notice to do so, within the period fixed by a Conseil d'Etat decree. Failing regularisation 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 L235-8

The nullity of a merger or division 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 nullity, the court hearing the action for nullity of a merger or division shall grant the interested companies a period to regularise the situation.

Article L235-9

(Order No. 2004-604 of 24 June 2004 Art. 51 XVI Official Journal of 26 June 2004)

Actions for nullity of the company or acts and deliberations subsequent to its formation shall lapse three years after the date on which the nullity is incurred, without prejudice to the debarment referred to in Article L. 235-6.

However, action for nullity of a merger or demerger of companies lapses six months after the date of the last entry in the register of companies made necessary by the operation.

An action for nullity 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 L235-10

When the nullity of the company is pronounced, it shall be wound up in accordance with the provisions of the articles of association and Chapter VII of this title.

Article L235-11

When a court decision pronouncing the nullity of a merger or division 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 division takes effect and that of the publication of the decision pronouncing the nullity.

In the event of a merger, the companies having participated in the operation shall be jointly and severally liable 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 division, 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 division takes effect and that of the publication of the decision pronouncing the nullity.

Article L235-12

Neither the company nor the members may rely on a nullity with regard to third parties acting in good faith. However, the nullity resulting from prohibition 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 L235-13

The action for damages based on the cancellation of the company or acts and deliberations subsequent to its formation shall be prescribed three years after the date when the cancellation decision becomes final.

The disappearance of the reason for the nullity shall not prevent the action for damages 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 prescribed three years after the date when the nullity was cured.

Article L235-14

(inserted by Order No. 2004-274 of 25 March 2004 Art. 20 II Official Journal of 27 March 2004)

The fact of the chairman of the management and administration structures or the presiding chairman of those structures failing to record the deliberations of those structures in minutes shall cause the deliberations of the said structures 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.

The action for nullity may be exercised 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 cancelled are approved.

It is subject to Articles L. 235-4 and L. 235-5.

CHAPTER VI

Merger and division

Articles L236-1 to
L236-24

SECTION I

General provisions

Articles L236-1 to
L236-7

Article L236-1

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 division, 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 cash adjustment whose amount may not exceed 10% of the face value of the shares allotted.

Article L236-2

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 articles of association.

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.

When the operations involve the participation of public limited companies and limited liability companies, the provisions of Articles L.236-10, L.236-11, L.236-14, L.236-20 and L.236-21 shall apply.

Article L236-3

I.- The merger or division shall lead to the dissolution without winding-up of the companies which are disappearing and the universal transfer of their assets to the receiving companies, in their current state on 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 division 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 L236-4

The merger or division 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 L236-5

As an exception to 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 L236-6

All the companies participating in one of the operations indicated in Article L.236-1 shall prepare a merger or division plan.

This plan 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 acts and regulations. The clerk, under his responsibility, shall ensure the conformity of the declaration with the provisions of this article.

Article L236-7

The provisions of this chapter on bondholders shall apply to holders of participating securities.

SECTION II

Provisions specific to public limited companies

Articles L236-8 to
L236-22

Article L236-8

The operations referred to in Article L.236-1 and carried out solely between public limited companies shall be subject to the provisions of this section.

Article L236-9

Mergers shall be decided by the special shareholders' 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 merger plan shall be submitted to the special meetings of holders of investment certificates ruling 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.

The board of directors or management of each of the companies participating in the operation shall prepare a written report which shall be provided to the shareholders.

Article L236-10

I.- One or more auditors of the merger, appointed by a court decision, shall prepare under their responsibility a written report on the terms of the merger. They may obtain all relevant documents from each company and shall make all the necessary checks. They shall be subject, with regard to the participating companies, to the incompatibilities specified in Article L.225-224.

II.- The auditors of 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.

III.- The report or reports of the auditors of the merger shall be provided to the shareholders. They must:

1° Indicate the method or methods followed for determining the exchange ratio proposed;

2° Indicate whether this or these methods are appropriate in the case in question and indicate 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° Indicate in addition the particular valuation difficulties, if any.

IV.- In addition, the auditors of the merger shall assess, under their responsibility, the value of the contributions in kind and the special advantages and shall prepare, for this purpose, the report specified in Article L.225.147.



Article L236-11

When, following the filing with the registry of the Tribunal de commerce of the merger plan and until the operation is carried out, the acquiring company permanently holds all the shares representing the whole capital of the acquired companies, the merger shall not have to be approved by the special shareholders' meeting of the acquired companies and the reports indicated in the last paragraph of Article L.236-9 and in Article L.236-10 shall not have to be prepared. The special shareholders' meeting of the acquiring company shall rule, with regard to the report of an auditor on the contributions, in accordance with the provisions of Article L.225-147.

Article L236-12

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 articles of association of the new company shall be approved by the special shareholders' meeting of each of the disappearing companies. The operation shall not have to be approved by the general meeting of the new company.

Article L236-13

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The merger plan is 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, the arrangements for which are 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 L236-14

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 merger plan 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 L236-15

(Order No. 2004-604 of 24 June 2004 Art. 51 XVII Official Journal of 26 June 2004)

A merger plan is 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 in the circumstances and with the effects indicated in the second paragraph et seq of Article L. 236-14.

Article L236-16

Articles L.236-9 and L.236-10 shall apply to divisions.

Article L236-17

When the division must be carried out by making contributions to new public limited companies, 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 report indicated in Article L.236-10 shall not have to be prepared.

In all cases, the draft articles of association of the new companies shall be approved by the special shareholders' meeting of the divided company. The operation shall not have to be approved by the general meeting of each of the new companies.

Article L236-18

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The demerger plan is submitted to the demerged company's bondholders' meetings pursuant to the provisions of 3 of Article L. 228-65, unless the bondholders are offered on-demand redemption of their bonds. The offer of redemption is subject to publication, the arrangements for which are determined in a Conseil d'Etat decree.

When on-demand redemption is offered, the companies benefiting from the contributions become the jointly and



severally liable debtors of the bondholders who request redemption.

Article L236-19

The division plan shall not be submitted to the meetings of bondholders of the companies to which the assets are transferred. However, the routine meeting of bondholders may authorise the representatives of the body to object to the division, in accordance with the conditions and with the effects specified in the second and subsequent paragraphs of Article L.236-14.

Article L236-20

The companies receiving the contributions resulting from the division shall become jointly indebted to the bondholders and the non-bondholder creditors of the divided company in place of the latter, without this replacement leading to novation in their respect.

Article L236-21

As an exception to the provisions of Article L.236-20, it may be stipulated that the receiving companies as a result of the division shall be bound only with regard to the part of the liabilities of the divided company subject to the respective charge and without any joint and several liability between them.

In this case, the non-bondholder creditors of the participating companies may object to the division in accordance with the conditions and with the effects specified in the second and subsequent paragraphs of Article L.236-14.

Article L236-22

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 III

Provisions specific to limited liability companies

Articles L236-23 to
L236-24

Article L236-23

The provisions of Articles L.236-10, L.236-11, L.236-14, L.236-20 and L.236-21 shall apply to mergers or divisions of limited liability companies to the benefit of companies of the same form.

When mergers are carried out by making contributions to a new limited liability company, this may be formed without any contributions other than those from the merging companies.

When divisions are carried out by making contributions to new limited liability companies, these may be formed without any contribution other than that of the divided company. In this case, and if the shares in each of the new companies are allotted to the members of the divided company in proportion to their rights to the capital of this company, the report indicated in Article L.236-10 shall not have to be prepared.

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 limited liability companies.

Article L236-24

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 division by making contributions to existing limited liability companies.

CHAPTER VII

Winding-up

Articles L237-1 to
L237-30

SECTION I

General provisions

Articles L237-1 to
L237-13

Article L237-1

Subject to the provisions of this chapter, the winding-up of companies shall be governed by the provisions contained in their articles of association.

Article L237-2

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 closed.



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 L237-3

The instrument appointing the liquidator shall be published by the latter, in accordance with the conditions and within the periods fixed by a Conseil d'Etat decree which shall also determine the documents to be filed in the annex to the commercial and companies register.

Article L237-4

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

Persons who have been prohibited 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 L237-5

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 places attached to these buildings.

If the lease is assigned and the guarantee obligation can no longer be ensured under the terms of this lease, any guarantee offered by the transferee or a third party, which is deemed sufficient, may replace this by a court decision.

Article L237-6

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 having had, in this company, the capacity of general or limited partner, manager, director, managing director, member of the supervisory board, member of the management, auditor or comptroller may not occur without the authorisation of the Tribunal de commerce, with the liquidator and, if any, the auditor or comptroller having been duly heard.

Article L237-7

The assignment of all or part of the assets of the company being wound up to the liquidator or its employees or their spouses, ancestors or descendants shall be prohibited.

Article L237-8

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

A total transfer of the company's assets or the contribution of the assets to another company, by way of a merger, is authorised:

1. In general partnerships, with the unanimous approval of the partners;
2. In limited partnerships, with the unanimous approval of the financing partners and with the majority approval of

the sleeping partners in terms of both number and capital;

3. In public limited companies, with the majority required to amend the memorandum and articles of association;

4. In joint-stock companies, on the basis of the quorum and majority conditions laid down for extraordinary general meetings, and, likewise, in public limited partnerships, with the unanimous approval of the financing partners.

Article L237-9

The members, including the holders of non-voting preferred stock, shall be convened at the end of the winding-up in order to rule 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 L237-10

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 L237-11

The end of winding-up notice shall be published according to the terms fixed by a Conseil d'Etat decree.

Article L237-12

The liquidator shall be responsible, with regard to both the company and third parties, for the harmful consequences of the errors committed thereby in fulfilling his duties.

The action for damages against the liquidators shall be prescribed in accordance with the conditions specified in Article L.225-254.

Article L237-13

All actions against the members not in favour of the winding-up or their surviving spouses, heirs or successors shall



be prescribed after five years from the publication of the company's dissolution in the commercial and companies register.

SECTION II

Provisions applicable following a court decision

Articles L237-14 to
L237-30

Article L237-14

(Act No 2001-420 of 15 May 2001, Article 114(2), Official Gazette of 16 May 2001)

I.- Unless otherwise specified in the articles of association 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 limited partnerships, limited liability companies and joint-stock companies;

3° Creditors of the company.

III.- In this case, the provisions of the articles of association which are contrary to those of this chapter shall be deemed to be unwritten.

Article L237-15

The powers of the board of directors, management 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 L237-16

The dissolution of the company shall not end the duties of the supervisory board and auditors.

Article L237-17

In the absence of auditors, and even in companies which are not required to appoint these, one or more comptrollers 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 comptrollers 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 L237-18

I.- One or more liquidators shall be appointed by the members if the dissolution results from the company's term being reached according to the articles of association or if this is decided by the members.

II.- The liquidator shall be appointed:

1° In general partnerships, unanimously by the partners;

2° In limited partnerships, unanimously by the managing partners and by the majority in capital of the limited partners;

3° In limited liability companies, by the majority in capital of the members;

4° In public limited companies, in accordance with the quorum and majority conditions specified for routine shareholders' meetings;

5° In partnerships limited by shares, in accordance with the quorum and majority conditions specified for routine shareholders' meetings, with this majority having to include all the managing partners;

6° In simplified joint-stock companies, unanimously by the members, unless otherwise specified.

Article L237-19

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 L237-20

If the dissolution of the company is ordered by a court decision, this decision shall appoint one or more liquidators.

Article L237-21

The duration of the liquidator's mandate may not exceed three years. However, this mandate may be renewed by the members or the president of the Tribunal de commerce, according to whether the liquidator was appointed by the members or by a court decision.

If the meeting of members 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 periods required to complete the winding-up.

Article L237-22

Liquidators shall be dismissed and replaced according to the forms specified for their appointment.

Article L237-23

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 period 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.

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 L237-24

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 articles of association 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 L237-25

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 articles of association, at least once a year and within six months of the end of the financial year, the meeting of members which shall rule on the annual accounts, give the necessary authorisations and possibly renew the mandate of the comptrollers, 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.

Article L237-26

During the winding-up period, the members may obtain company documents in accordance with the same conditions as before.

Article L237-27

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 capital in general partnerships, limited partnerships and limited liability companies;

2° In accordance with the quorum and majority conditions of routine meetings in joint-stock companies;

3° Unless otherwise specified, unanimously by the members in simplified joint-stock companies.

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 articles of association, 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 L237-28

If the company continues to be operated, the liquidator shall be required to convene the meeting of members, in accordance with the conditions specified in Article L.237-25. Failing this, any interested party may request the convening of the meeting either by the auditors, supervisory board or controlling body or by a representative appointed by a court decision.

Article L237-29

Unless otherwise specified in the articles of association, 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 L237-31

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.

Article L237-30

Non-voting preferred stock shall be redeemed before ordinary shares.

The same shall apply for preference dividends which have not been fully paid.

Non-voting preferred stock shall, in proportion to their face value, have the same rights as the other shares to the winding-up profit.

Any clause contrary to the provisions of this article shall be deemed to be unwritten.

CHAPTER VIII

Orders to perform

Articles L238-1 to
L238-3-1

Article L238-1

(Act No. 2001-420 of 15 May 2001 Art. 122 1 Official Journal of 16 May 2001)

(Order No. 2004-274 of 25 March 2004 Art. 21 II Official Journal of 27 March 2004)

(Order No. 2004-604 of 24 June 2004 Art. 51 XVIII Official Journal of 26 June 2004)

When interested parties cannot obtain production, discovery or transmission of the documents referred to 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 ask the presiding judge, ruling on a summary basis, to either order the liquidator or the directors, executives and executives to produce them, under pain of a coercive fine, or to designate a representative responsible for producing them.

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 L238-2

(inserted by Law No. 2003-706 of 1 August 2003 Article 134 (V) Official Gazette of 2 August 2003)

Any interested party may ask the presiding judge, ruling on a summary basis, to direct the liquidator, under pain of a coercive fine, to meet the obligations referred to in Articles L. 237-21 and L. 237-25.

Article L238-3

(Act No. 2003-721 of 1 August 2003 Art. 9 3 Official Journal of 5 August 2003)

(Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

The public prosecutor and any interested party may ask the presiding judge, ruling on a summary basis, to order the legal representative of a limited liability company, a public limited company, a simplified joint-stock company, a European company or a partnership limited by shares, under pain of a coercive fine, to show on all deeds and other documents emanating from the company the registered company name, immediately preceded or followed by the words "limited liability company" or the initials "SARL", "public limited company" or the initials "SA", "simplified joint-stock company" or the initials "SAS", "European company" or the initials "SE", or "partnership limited by shares", legibly written, and the authorised capital.

Article L238-4

(inserted by Order No. 2004-274 of 25 March 2004 Art. 20 III Official Journal of 27 March 2004)

Any interested party may ask the presiding judge, ruling on a summary basis, to order the chairman 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 L238-5

(inserted by Order No. 2004-274 of 25 March 2004 Art. 22 III Official Journal of 27 March 2004)

Any interested party may ask the presiding judge, ruling on a summary basis, to order the chairman 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 L238-6

(inserted by Order No. 2004-604 of 24 June 2004 Art. 50 I Official Journal of 26 June 2004)

If the special meeting of preferred 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 on a summary basis, may, at the request of any shareholder, order the management or the chairman of the board of directors or the executive board, under pain of a coercive fine, to convene such a meeting or 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 the 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 Article L. 228-16 or L. 228-103.

Article L238-3-1

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

Any interested party may ask the presiding judge, ruling on a summary basis, to order companies using the acronym "SE" in their registered company name in violation of the provisions of Article 11 of (EC) Council Regulation No. 2157/2001 of 8 October 2001, relating to the status of a European company (SE), to amend that registered company name, under pain of a coercive fine.

TITLE IV

Penal provisions

Articles L241-1 to
L248-1

CHAPTER I

Offences involving limited liability companies

Articles L241-1 to
L241-9

Article L241-1

(Order No. 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)
(Law No 2003-721 of 1 August 2003 Article 9 (1) Official Gazette of 5 August 2003)

The omission from the memorandum and articles of association of a public limited company of the declaration relating to the distribution of the capital shares among all the partners, the paid-up status of the shares or the depositing of the funds carries a penalty of two years' imprisonment and a fine of 9,000 euros.

The provisions of the present Article are applicable in the event of the capital being increased.

Article L241-2

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)
(Order No. 2004-274 of 25 March 2004 Art. 19 Official Journal of 27 March 2004)

The fact of managers issuing 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 punished by a fine of 9,000 euros.

Article L241-3

The following shall be punished by a prison sentence of five years and a fine of 375,000 euros:

1° If any person fraudulently assigns to a contribution in kind a valuation higher than its real value;

2° If managers distribute sham dividends between the members in the absence of an inventory or using fraudulent inventories;

3° If managers present to the members, 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;

4° If managers use the company's property or credit, in bad faith, in a way which 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° If managers use the powers which they possess or the votes which they have in this capacity, in bad faith, in a way which 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 L241-4

(Act No 2001-420 of 15 May 2001, Article 122(2), Official Gazette of 16 May 2001)

The following shall be punished by a fine of 9,000 euros:

1° If managers do not, for each financial year, prepare the inventory, annual accounts and an annual report; 2° and 3° (deleted).

Article L241-5

If managers do not hold the meeting of members within six months of the end of the financial year or, in the event of an extension, within the period fixed by a court decision or do not submit for approval by said meeting or the sole proprietor the documents specified in 1° of Article L.241-4, this shall be punished by a prison sentence of six months and



a fine of 9,000 euros.

Article L241-6

If managers, when the equity capital of the company, due to losses identified in the accounting documents, becomes less than half the share capital:

1° Do not, in the four months following approval of the accounts having revealed these losses, consult the members in order to decide whether the company should be dissolved early;

2° Do not file with the Tribunal de commerce registry, enter in the commercial and companies register and publish in a legal notices newspaper the decision adopted by the members, this shall be punished by a prison sentence of six months and a fine of 4,500 euros.

Article L241-9

(Law No 2003-721 of 1 August 2003 Article 9 (5) Official Gazette of 5 August 2003)

The provisions of Articles L. 241-2 to L. 241-6 are applicable to any person who, either directly or indirectly, has in reality managed a public limited company on behalf of, or in the place of, its legal manager.

CHAPTER II

Offences involving public limited companies

Articles L242-1 to
L242-31

SECTION I

Offences relating to formation

Articles L242-1 to
L242-5

Article L242-1

If the founders, chairman, directors or managing directors of a public limited company issue shares or subdivided shares either before the registration of said company in the commercial and companies register or at any time if the registration has been obtained fraudulently or also when the formalities for the formation of this company have not been duly fulfilled, this shall be punished by a fine of 9,000 euros.

A prison sentence of one year may also be ordered if the shares or subdivided shares are issued without the shares paid in cash having been paid up, on their subscription, by at least one-quarter or without the initial shares having been fully paid up prior to the registration of the company in the commercial and companies register.

If the persons referred to in the first paragraph do not maintain the shares paid in cash in the registered form until they are fully paid up, this shall be punished by the penalties specified in the above paragraph.

The penalties specified in this article may be doubled when this involves public limited companies making a public offering.

Article L242-2

(Act No 2001-420 of 15 May 2001, Article 122(2), Official Gazette of 16 May 2001)

The following shall be punished by a prison sentence of five years and a fine of 9,000 euros: 1°,

2° and 3° (deleted);

4° If any person fraudulently assigns to a contribution in kind a valuation higher than its real value.

Article L242-3

(Act No 2001-420 of 15 May 2001, Article 122(2), Official Gazette of 16 May 2001)

If the founders, chairman of the board of directors, directors or managing directors of a public limited company, and the holders of shares, trade:

1° Shares paid in cash which did not remain in the registered form until they were fully paid up;

2° Shares paid in cash for which the payment of one-quarter has not been made;

3° (deleted),

this shall be punished by a prison sentence of one year and a fine of 9,000 euros.

Article L242-4

(Order No. 2004-604 of 24 June 2004 Art. 50 II Official Journal of 26 June 2004)

The penalties imposed by Article L. 242-3 also apply to whoever has established or published the value of the shares or promises of shares referred to in the said article.

Article L242-5

The acceptance or continuation of the duties of an auditor of contributions, notwithstanding the legal prohibitions and incompatibilities, shall be punished by a prison sentence of six months and a fine of 9,000 euros.

SECTION II

Offences relating to management and administration

Articles L242-6 to



L242-8

Article L242-6

The following shall be punished by a prison sentence of five years and a fine of 375,000 euros:

1° If the chairman, directors or managing directors of a public limited company distribute sham dividends between the shareholders in the absence of an inventory or using fraudulent inventories;

2° If the chairman, directors or managing directors of a public limited company publish or present to the 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° If the chairman, directors or managing directors of a public limited company use the company's property or credit, in bad faith, in a way which 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° If the chairman, directors or managing directors of a public limited company use the powers which they possess or the votes which they have in this capacity, in bad faith, in a way which 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 L242-8

If the chairman, directors or managing directors of a public limited company do not, for each financial year, prepare the inventory, annual accounts and an annual report, this shall be punished by a fine of 9,000 euros.

SECTION III

Offences relating to shareholders' meetings

Articles L242-9 to
L242-16

Article L242-9

(Order No. 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

(Law No 2003-706 of 1 August 2003 Article 134 (I) Official Gazette of 2 August 2003)

The following offences carry a penalty of two years' imprisonment and a fine of 9,000 euros:

1. The fact of preventing a shareholder from participating in a shareholders' meeting;
2. Subparagraph cancelled;

3. The fact of securing agreement, a guarantee or a promise of advantages for voting in a certain way or for not voting, and also the acts of agreeing, guaranteeing or promising such advantages.

Article L242-10

If the chairman or directors of a public limited company do not hold the routine shareholders' meeting within six months of the end of the financial year or, in the event of an extension, within the period fixed by a court decision or do not submit for approval by said meeting the annual accounts and annual report specified in Article L.232-1, this shall be punished by a prison sentence of six months and a fine of 9,000 euros.

Article L242-15

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Act No. 2003-706 of 1 August 2003 Art. 134 I Official Journal of 2 August 2003)

(Order No. 2004-274 of 25 March 2004 Art. 22 I Official Journal of 27 March 2004)

The fact of the chairman or the directors of a public limited company committing the following offences shall incur a fine of 3,750 euros:

1. Paragraph abrogated.
2. Failure to append to the attendance sheet the proxies given to each representative;

3. Failure to record the decisions of any meeting of shareholders in minutes signed by the members of the committee which indicate the date and venue of the meeting, the means used to convene it, the agenda, the composition of the committee, the number of shares represented 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.

Article L242-16

If the chairman of the meeting and the members of the meeting's committee do not comply, during shareholders' meetings, with the provisions governing the voting rights attached to shares, this shall be punished by the penalties specified in Article L.242-15.

SECTION IV

Offences relating to changes in the share capital

Articles L242-17 to



L242-24

Subsection 1
Increase in capital

Articles L242-17 to
L242-21

Article L242-17

I.- If the chairman, directors or managing directors of a public limited company issue, during an increase in capital, shares or subdivided shares:

1° Either before the depositary's certificate has been prepared or the guarantee agreement specified in Article L.225-145 has been signed;

2° Or also when the formalities prior to the increase in capital have not been duly fulfilled, this shall be punished by a fine of 9,000 euros.

II.- A prison sentence of one year may also be ordered if the shares or subdivided shares are issued 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 premium.

III.- If the same persons do not maintain the shares paid in cash in the registered form until they are fully paid up, this shall be punished by the fines and prison sentences specified in I and III.

IV.- The penalties specified in this article may be doubled when this involves public limited companies making a public offering.

V.- The provisions of this article shall not apply to shares which have been duly issued by converting bonds convertible at any time or by using subscription warrants nor to shares issued in accordance with the conditions specified in Articles L.232-18 to L.232-20.

Article L242-20

If the chairman, directors or auditors of a public limited company 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 L242-21

The provisions of Articles L.242-2 to L.242-5 on the formation of public limited companies shall apply in the event of an increase in capital.

Subsection 2
Reduction of capital

Articles L242-23 to
L242-24

Article L242-23

If the chairman or directors of a public limited company reduce the share capital:

1° Without respecting the equality of shareholders;

2° Without ensuring the publication of the capital reduction decision in the commercial and companies register and in a newspaper authorised to receive legal notices, this shall be punished by a fine of 9,000 euros.

Article L242-24

If the chairman, directors or managing directors of a public limited company subscribe, purchase, use as security, keep or sell, in the name of the company, shares issued by the latter in breach of the provisions of Articles L.225-206 to L.225-215, this shall be punished by the penalty specified in Article L.242-23.

If the chairman, directors or managing directors use shares bought by the company, pursuant to Article L.225-208, for purposes other than those specified in said article, this shall be punished by the same penalty.

If the chairman, directors or managing directors of a public limited company 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 VI
Offences relating to dissolution

Article L242-29

Article L242-29

(Order No. 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)
(Law No 2003-706 of 1 August 2003 Article 134 (I) Official Gazette of 2 August 2003)

A fine of 3,750 euros is imposed on the chairman or the directors of a public limited company if they fail to:

1. Subparagraph cancelled;



2. Append to the attendance sheet details of the powers given to each representative;

3. Consign the decisions of any meeting of shareholders in minutes signed by the members of the panel which are kept in a special book at the registered office and which indicate the time and place of the meeting, the manner in which it was convened, the agenda, the composition of the panel, the number of shares in respect of which votes were cast and the quorum achieved, the documents and reports submitted to the meeting, a summary of the proceedings, the texts of the resolutions put to the vote and the results of the voting.

SECTION VII

Offences relating to public limited companies with a management and a supervisory board Article L242-30

Article L242-30

(Law No 2003-721 of 1 August 2003 Article 9 (6) Official Gazette of 5 August 2003)

The penalties provided for in Articles L. 242-6 to L. 242-29 for the chairmen, general managers and directors of limited companies are applicable, in keeping with their respective remits, to members of the executive board and members of the supervisory board of the limited companies governed by the provisions of Articles L. 255-57 to L.

225-93.

The provisions of Article L. 246-2 are also applicable to limited companies governed by Articles L. 255-57 to L. 225-93.

SECTION VIII

Offences relating to public limited companies with worker participation Article L242-31

Article L242-31

If the chairman, directors or managing directors of a public limited company with worker participation, using the option to issue employee's shares, do not mention this circumstance by the addition of the words "à participation ouvrière" (with worker participation) to all instruments or documents originating from the company and intended for third parties, this shall be punished by a fine of 3,750 euros.

CHAPTER III

Offences involving partnerships limited by shares Article L243-1

Article L243-1

Articles L.242-1 to L.242-29 shall apply to partnerships limited by shares.

The penalties specified with regard to the chairmen, directors or managing directors of public limited companies shall apply, in respect of their powers, to the managers of partnerships limited by shares.

CHAPTER IV

Offences involving simplified joint-stock companies Articles L244-1 to L244-4

Article L244-1

Articles L.242-1 to L.242-6, L.242-8 and L.242-17 to L.242-29 shall apply to simplified joint-stock companies.

The penalties specified with regard to the chairmen, directors or managing directors of public limited companies shall apply to the chairmen and directors of simplified joint-stock companies.

Articles L.242-20, L.242-26 and L.242-27 shall apply to the auditors of simplified joint-stock companies.

Article L244-2

(Law No 2001-420 of 15 May 2001 Article 128 Official Gazette of 16 May 2001)

(Order No. 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)

(Law No 2003-721 of 1 August 2003 Article 9 (4) Official Gazette of 5 August 2003)

Failure, on the part of an executive of a simplified joint-stock company, to consult the partners in the manner prescribed in the memorandum and articles of association in the event of an increase, write-off or reduction of capital, a merger, a 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 L244-3

If the directors of a simplified joint-stock company make a public offering, this shall be punished by a fine of 18,000 euros.

Article L244-4

The provisions of Articles L.244-1, L.244-2 and L.244-3 shall apply to any person who, directly or through an intermediary, has actually managed a simplified joint-stock company under the guise or in place of the chairman and



directors of this company.

CHAPTER IV bis

Offences relating to European companies

Article L244-5

Article L244-5

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 I Official Journal of 27 July 2005)

Articles L242-1 to L242-30 apply to European companies.

The penalties imposed on the chairman, the directors, the general managers, the executive board members or the supervisory board members of limited companies are applicable to the chairman, directors, general managers, executive board members or supervisory board members of European companies.

Article L242-20 applies to the auditors of European companies.

CHAPTER V

Offences relating to securities issued by joint-stock companies

Articles L245-3 to
L245-17

SECTION I

Offences relating to shares

Articles L245-3 to
L245-5

Article L245-3

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-604 of 24 June 2004 Art. 50 III Official Journal of 26 June 2004)

The chairman and the directors, the managers, and the members of the executive board and the supervisory board of a public limited company, and the executives of a partnership limited by shares, shall incur a term of six months' imprisonment and a fine of 6,000 euros in the following circumstances:

1. If the company writes off its capital when all of the non-voting preference shares have not been fully redeemed and cancelled;

2. If the company, in the event of a capital reduction not motivated by losses being carried out pursuant to the terms and conditions indicated in Article L. 225-207, does not redeem the non-voting preference shares before the ordinary shares in order to cancel them.

Article L245-4

If the chairman and directors, managing directors and members of the management and supervisory board of a public limited company or the managers of a limited partnership that issues shares hold, directly or indirectly in accordance with the conditions specified in Article L.228-17, non-voting preferred stock in the company or partnership which they manage, this shall be punished by the penalties specified in Article L.245-3.

Article L245-5

If the liquidator of a company or partnership does not comply with the provisions of Article L.237-30, this shall be punished by a prison sentence of six months and a fine of 6,000 euros.

SECTION III

Offences relating to bonds

Articles L245-9 to
L310-1

Article L245-9

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-274 of 25 March 2004 Art. 23 Official Journal of 27 March 2004)

The fact of the chairman, the directors, the general managers or the executives of a joint-stock company issuing tradable bonds on behalf of that company which, within a single issue, do not confer the same creditor's rights for the same par value, shall incur a fine of 9,000 euros.

Article L245-10

If the chairman, directors, managing directors or managers of a joint-stock company issue, on behalf of this company, premium bonds without authorisation, this shall be punished by a prison sentence of six months and a fine of 6,000 euros.

Article L245-11

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-604 of 24 June 2004 Art. 50 IV Official Journal of 26 June 2004)

Whoever commits the following offences shall be punished 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 L245-12

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-604 of 24 June 2004 Art. 50 V Official Journal of 26 June 2004)

Commission of the following offences shall incur a fine of 6,000 euros:

1. On the part of the chairman, the directors, the general managers, the executives, the auditors, the members of the supervisory board or the 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 chairman, the directors, the general managers or the 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 L245-13

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-274 of 25 March 2004 Art. 22 II Official Journal of 27 March 2004)

The fact, on the part of the chairman of the general meeting of bondholders, of failing to record the decisions of any general meeting of bondholders in minutes which 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 L245-14

If:

1° The chairman, directors or managers of a joint-stock company offer or pay to representatives of the body of bondholders a remuneration higher than that which has been allocated thereto by the meeting or by a court decision;

2° Any representative of the body of bondholders accepts a remuneration higher than that which has been allocated thereto by the meeting or by a court decision, without prejudice to the company being refunded the sum paid, this shall be punished by a fine of 18,000 euros.

Article L245-15

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Act No. 2003-706 of 1 August 2003 Art. 134 IX Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 50 VI Official Journal of 26 June 2004)

The offences referred to in Articles L. 245-9, and Articles L. 245-12 and L. 245-13 are punished by five years' imprisonment and a fine of 18,000 euros when they are committed fraudulently in order to deprive some or all of the bondholders of certain rights attached to their debt instrument.

Article L310-1

(Order No. 2004-274 of 25 March 2004 Art. 26, Art. 29 Official Journal of 27 March 2004)

Sales accompanied or preceded by advertising and presented as being intended, through price reductions, to achieve rapid disposal of some or all of the goods held by a commercial establishment following a decision, regardless of the reason therefor, to cease, seasonally suspend, or change its business activity, or to substantially alter its mode of exploitation, are deemed to be clearance sales.

Clearance sales must be declared in advance to the relevant administrative authority having jurisdiction over the location of the clearance sale. The declaration thus made shall state the reason for and duration of the clearance sale, which shall not exceed two months. It shall be accompanied by an inventory of the goods to be disposed of. If the event giving rise to the clearance sale has not taken place within six months, at the latest, of the declaration being made, the declarant is required to inform the relevant administrative authority thereof.

The offering for sale of goods other than those indicated in the inventory in respect of which the prior declaration was made is prohibited for the duration of the clearance sale.

SECTION IV

Common provisions

Articles L245-16 to
L245-17

Article L245-16

The provisions of this chapter referring to the chairmen, 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 under the guise or in place of their legal agents.



Article L245-17

The penalties specified by Articles L.245-1 to L.245-15 in respect of the chairmen, managing directors and directors of public limited companies shall apply, according to their respective powers, to the members of the management and to the members of the supervisory board of the public limited companies governed by the provisions of Articles L.225-57 to L.225-93.

The provisions of Article L.245-16 shall also apply to the public limited companies governed by Articles L.225-57 to L.225-93.

SECTION V

Offences relating to public limited companies with a management and a supervisory board

CHAPTER VI

Offences common to various forms of joint-stock company

Article L246-2

Article L246-2

(Act No. 2003-721 of 1 August 2003 Art. 9 7 Official Journal of 5 August 2003)

(Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

The provisions of Articles L242-1 to L242-29, L243-1 and L244-5 applicable to the chairman, the directors or the general managers of limited companies or European companies and the managers of partnerships limited by shares 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.

CHAPTER VII

Offences common to various forms of commercial company

Articles L247-1 to
L247-10

SECTION I

Offences relating to subsidiaries, shares and controlled companies

Articles L247-1 to
L247-3

Article L247-1

I.- If the chairman, directors, managing directors or managers of any company:

1° Do not 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° Do not, in the same report, 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° Do not annex, 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 shares,

this shall be punished by a prison sentence of two years and a fine of 9,000 euros.

II.- If the members of the management or board of directors or the managers of the companies referred to in Article L.233-16, subject to the exceptions specified in Article L.233-17, do not prepare and present the consolidated financial statements to the shareholders or members, within the periods specified by law, this shall be punished by a fine of 9,000 euros. The court may also order the publication of the judgment, at the expense of the offender, in one or more newspapers.

III.- If the auditor does not indicate in his report the information referred to in 1° of I of this article, this shall be punished by the penalties indicated in I.

Article L247-2

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Act No. 2003-7 of 3 January 2003 Art. 50 II Official Journal of 4 January 2003)

(Act No. 2003-706 of 1 August 2003 Art. 46 V Official Journal of 2 August 2003)

I. - A chairman, 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 L233-7 on account of the equity interests it holds, shall incur a fine of 18,000 euros.

II. - The same penalty shall apply to a chairman, 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 L233-12 on account of the equity interests it holds in the joint-stock company which controls it.

III. - The same penalty shall apply to a chairman, 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 L233-13.

IV. - The fact of the auditor failing to include in his report the references referred to in III shall incur the same penalty.

V. - For companies which make public offerings, proceedings are instituted after the opinion of the Financial Markets Authority has been sought.

Article L247-3

If the chairmen, directors, members of the management, managing directors or managers of companies contravene the provisions of Articles L.233-29 to L.233-31, this shall be punished by a fine of 18,000 euros.

For companies making a public offering, proceedings for breach of the provisions of Article L.233-31 shall be brought after the opinion of the Stock Exchange Committee has been requested.

SECTION II

Offences relating to publication

Article L247-4

Article L247-4

If any person does not fulfil the obligations resulting from Article L.225-109 within the period and according to the terms fixed by a Conseil d'Etat decree, this shall be punished by a fine of 9,000 euros.

SECTION III

Offences relating to winding-up

Articles L247-5 to
L247-8

Article L247-5

If anyone contravenes the prohibition on fulfilling the duties of liquidator, this shall be punished by a prison sentence of two years and 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 fulfilled the prohibited duties. In the event of a breach of this prohibition, the sentenced person and their employer, if the latter knew of this, shall be punished by the penalties specified in said paragraph.

Article L247-6

If the liquidator of a company:

1° Does not publish, within one month of his appointment, in a legal notices newspaper in the department where the registered office is situated, the instrument appointing the latter as liquidator and does not file with the commercial and companies register the decisions ordering the dissolution;

2° Does not convene the members, at the end of the winding-up, to rule on the final accounts, the discharge of his management and the release of the latter from his mandate, and to record the end of the winding-up, or does not, in the case specified in Article L.237-10, file the accounts with the court registry or request the approval of these by the courts, this shall be punished by a prison sentence of six months and a fine of 9,000 euros.

Article L247-7

(Law No 2001-420 of 15 May 2001 Article 122 (2) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 134 (I) Official Gazette of 2 August 2003)

The following omissions on the part of a liquidator called upon to liquidate a company pursuant to the provisions of Articles L. 237-14 to L. 237-31 give rise to application of the penalties provided for in Article L. 247-6:

1. Failure to submit a report, within six months of being appointed, on the assets and liabilities situation and the ongoing liquidation operations, and failure to apply for the authorisations required to complete them;

2. Failure to draw up annual accounts for inventorying purposes and likewise a written report giving details of the liquidation operations carried out in the previous financial year within three months of the close of each financial year;

3. (deleted);

4. and 5. Paragraphs cancelled;

6. Failure to deposit the sums allocated for distribution among the partners and the creditors in an account opened with a lending institution in the name of the company in liquidation within fifteen days of the decision to effect a distribution, or failure to deposit with the Caisse des dépôts et consignations any sums allocated to creditors or to partners which they have not claimed.

Article L247-8

If a liquidator, in bad faith:

1° Uses 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 encourage another company or undertaking in which he is directly or



indirectly involved;

2° Assigns 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,

this shall be punished by a prison sentence of five years and a fine of 9,000 euros.

SECTION IV

Offences relating to public limited companies with a management and a supervisory board Article L247-9

Article L247-9

The penalties specified by Articles L.247-1 to L.247-4 in respect of the chairmen, managing directors and directors of public limited companies shall apply, according to their respective powers, to the members of the management and to the members of the supervisory board of the public limited companies governed by the provisions of Articles L.225-57 to L.225-93.

SECTION V

Offences relating to companies with variable capital Article L247-10

Article L247-10

If the chairman, manager or, in general, the director of a company using the option specified in Article L.231-1 does not mention this circumstance by adding the words "à capital variable" (with variable capital) to all instruments and documents originating from the company and intended for third parties, this shall be punished by a fine of 3,750 euros.

CHAPTER VIII

Provisions relating to the deputy managing directors of public limited companies Article L248-1

Article L248-1

(Act No. 2001-420 of 15 May 2001 Art. 107 5 Official Journal of 16 May 2001)

(Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

The provisions of the present Part applicable to the general managers of limited companies or European companies are applicable, commensurate with their remits, to chief executive officers.

TITLE V

Economic interest groupings Articles L251-1 to L252-13

CHAPTER I

Economic interest grouping governed by French law Articles L251-1 to L251-23

Article L251-1

Two or more natural or legal persons 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 is not to make profits for the grouping.

The activity of the grouping must be linked to the economic activity of its members and may not be additional to this.

Article L251-2

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 this.

Article L251-3

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 to be unwritten.

Article L251-4

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 instruments 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 L251-5

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The nullity of the economic interest group and of its actions and deliberations can only result from a violation of the imperative provisions of the present Chapter, or from one of the causes of nullity of contracts in general.

An action for voidance of contract lapses if the cause of nullity has ceased to exist on the day on which the court rules on the merits in the first instance, unless that nullity 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 groups.

Article L251-6

Members of the grouping shall be liable for the debts of the latter in respect of their own assets. However, a new member may, if the agreement allows this, be exonerated from the debts arising prior to their entry into the grouping. The exoneration decision must be published. Members shall be jointly and severally liable, 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 L251-7

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 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 L251-8

I.- The economic interest grouping agreement 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 surnames, company names or business names, legal form, address of the domicile or registered office and, if applicable, identification number of each of the members of the grouping, and, where applicable, the town where the registry is situated with which it is registered or the town where the chamber of trade is situated with which it is registered;

3° The term for which the grouping is formed;

4° The object 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 L251-9

The grouping, during its existence, may accept new members in accordance with the conditions fixed by the formation agreement.

Any member of the grouping may withdraw in accordance with the conditions specified by the agreement, provided that they have fulfilled their obligations.

Article L251-10

The meeting of members of the grouping shall be authorised to take all decisions, including on early dissolution or extension, 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 which 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 L251-11

The grouping shall be administered by one or more persons. A legal person 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 person appointed as administrator, shall be individually or jointly and severally liable, 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 several administrators have



cooperated in the same acts, the court shall determine the contribution of each one to the compensation for the damage.

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 object. Any limitation of powers shall not be binding on third parties.

Article L251-12

The supervision of the management, which must be entrusted to natural persons, and the supervision of the accounts shall occur 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, the supervision of the management 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.

The supervision of the 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.225-219 and appointed by the meeting for a term of six financial years. The provisions of this code on the incompatibilities, powers, duties, obligations, liability, withdrawal, dismissal and remuneration of the auditor of public limited companies 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 persons managing these companies.

Article L251-13

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 L251-14

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 requires observations therefrom, the auditor shall indicate this in a report to the administrators or in the annual report. The auditor may request that this report is sent to the members of the grouping or that it is brought to the attention of the meeting of members. This report shall be notified to the works council.

Article L251-15

When the auditors identify, while carrying out their work, facts likely to compromise the continued operation of the grouping, they shall inform the administrators of these, 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 president of the court of this.

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 the facts identified. This report shall be notified to the works council.

If, at the end of the general meeting, the auditors note that the decisions taken do not allow the continued operation of the grouping to be ensured, they shall inform the president of the court of the steps taken and the results of these.

Article L251-16

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 L251-17

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: "groupement d'intérêt économique" (economic interest grouping) or the abbreviation: "GIE".

Any breach of the provisions of the above paragraph shall be punished by a fine of 3,750 euros.



Article L251-18

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 person.

An economic interest grouping may be converted into a general partnership without giving rise to the dissolution or creation of a new legal person.

Article L251-19

The economic interest grouping shall be dissolved:

1° When the term is reached;

2° When its object is achieved or terminated;

3° When its members decide this in accordance with the conditions specified by Article L.251-10; 4°

By a court decision, for due reasons;

5° By the death of a natural person or by the dissolution of a legal person, where these are members of the grouping, unless otherwise stipulated in the agreement.

Article L251-20

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

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 group is dissolved, unless its continuation is provided for in the contract or the other members so decide unanimously.

Article L251-21

The dissolution of the economic interest grouping shall lead to its winding-up. The personality of the grouping shall continue for the purposes of the winding-up.

Article L251-22

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 paying the debts, the surplus of 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 L251-23

(Order No. 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)
(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The designation "economic interest group" and the acronym "EIG" can only be used by groups which are subject to the provisions of the present Chapter. The illicit use of that designation or that acronym or any expression likely to cause confusion in relation thereto carries a penalty of two years' imprisonment and a fine of 6,000 euros.

The court may also order publication of the judgment, at the convicted person's expense, in a maximum of three periodicals, and posting thereof under the conditions laid down in Article L. 131-35 of the Penal Code.

CHAPTER II

European economic interest grouping

Articles L252-1 to
L252-13

Article L252-1

European economic interest groupings registered in France in the commercial and companies register shall enjoy legal personality from their registration.

Article L252-2

European economic interest groupings shall be civil or commercial in nature, depending on their object. Registration shall not lead to a presumption of commerciality of a grouping.

Article L252-3

The rights of members of the grouping may not be represented by negotiable securities.

Article L252-4

The collegial decisions of the European economic interest grouping shall be taken by the 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 L252-5

The manager or managers of a European economic interest grouping shall be individually or jointly and severally liable, as applicable, towards the grouping or third parties for breaches of the acts or regulations applying to the



grouping, for the violation of the grouping rules and for their management errors. If several managers have cooperated in the same acts, the court shall determine the contribution of each one to the compensation for the damage.

Article L252-6

A legal person 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 joint and several liability of the legal person which they represent.

Article L252-7

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 L252-8

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 person.

A European economic interest grouping may be converted into an economic interest grouping governed by French law or a general partnership without giving rise to the dissolution or creation of a new legal person.

Article L252-9

The nullity 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 nullity of agreements in general.

The action for nullity shall be extinguished when the reason for the nullity ceases to exist on the day when the court rules on the merits at first instance, except where this nullity is based on the illegality of the object of the grouping.

Articles 1844-12 and 1844-17 of the Civil Code shall apply.

Article L252-10

European economic interest groupings may not make a public offering. 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 person managing a European economic interest grouping make a public offering, this shall be punished by a prison sentence of two years and a fine of 300,000 euros.

Article L252-11

The use in relations with third parties of any instruments, letters, notes and similar documents not containing the text specified by Article 25 of Council Regulation (EEC) No 2137/85 of 25 July 1985 shall be punished by the penalties specified by Article L.251-17.

Article L252-12

The name "groupement européen d'intérêt économique" (European economic interest grouping) and the abbreviation "GEIE" may be used only by groupings subject to the provisions of Council Regulation (EEC) No 2137/85 of 25 July 1985. The illegal use of this name, this abbreviation or any expression likely to lead to confusion with these shall be punished by the penalties specified by Article L.251-23.

Article L252-13

Articles L.242-26 and L.242-27 shall apply to the auditors of European economic interest groupings. Articles L.242-25 and L.242-28 shall apply to the directors of the grouping and to the natural persons running member companies or who are permanent representatives of the legal persons running these companies.

BOOK III

Certain types of sale and exclusivity clauses

Articles L310-1 to
L330-3

TITLE I

Closing-down sales, warehouse sales, clearance sales and sales in factory shops Articles L310-1 to
L310-7

Article L310-1

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 shall be subject to authorisation on the basis of a detailed inventory of the goods to be cleared



produced by the applicant who may be required to prove the origin of the goods by means of invoices. Authorisation shall be granted by the prefect in whose jurisdiction the location of the closing-down sale is situated, for a period which may not exceed two months and subject to the recipient of the authorisation proving, within six months of this, that the event giving rise to the application for authorisation has actually occurred.

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 authorisation was granted.

Article L310-3

(Order No. 2004-274 of 25 March 2004 Art. 29 Official Journal of 27 March 2004)

I. - General sales involve the selling of goods accompanied or preceded by advertising and are presented as being intended, through price reductions, to achieve rapid disposal of goods held in stock.

Such sales can only take place during two periods in each calendar year for a maximum duration of six weeks, the dates of which are determined in each Department by the relevant administrative authority pursuant to conditions laid down in the decree referred to in Article L. 310-7, and may only involve goods offered for sale and paid for at least one month prior to the commencement date of the sale period in question.

II. - In any advertising, company name, corporate name or trade name, use of the word "sale(s)" or derivatives

thereof is prohibited for designation of any activity, corporate name, trade name, company name or feature which does not relate to a general sale as defined in I above.

Article L310-4

A factory warehouse or shop name may be used only by producers selling, directly to the public, part of their production not disposed of through mass channels or which has been returned. These direct sales shall involve solely the production from the previous marketing season, thus justifying its sale at a reduced price.

Article L310-5

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-274 of 25 March 2004 Art. 28 Official Journal of 27 March 2004)

Those who commit the following offences shall incur a fine of 15,000 euros:

1. The fact of holding a clearance 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 sale on temporary premises without the authorisation stipulated in Article L. 310-2 or in violation of that authorisation;

3. The fact of holding sales outside the periods indicated in I of Article L. 310-3 or involving goods held for less than one month on the commencement 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 shop" or "factory depot" in violation of the provisions of Article L. 310-4;

6. The fact of organising a commercial event without making the declaration referred to in Article L. 740-2 or 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 L310-6

Legal persons may be declared criminally liable, in accordance with the conditions specified by Article 121-2 of the Penal Code, for the offences defined in Article L.310-5.

The penalties incurred by legal persons shall be:

1° The fine according to the terms specified by Article 131-38 of the Penal Code;

2° The posting on a notice-board or circulation of the decision ordered in accordance with the conditions specified by 9° of Article 131-39 of the Penal Code.

Article L310-7

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.

TITLE II

Sales by public auction

Articles L321-4 to
L320-2

Article L320-1

No-one may use public auctions as the normal method for carrying out their trade.



Article L320-2

Sales established by the law or carried out by the courts and sales following death, winding-up proceedings or cessation of trading, or in all other necessary cases which shall be assessed by the Tribunal de commerce, shall be exempt from the ban specified by Article L.320-1.

Sales by public auction of edible goods and low-value objects known in the trade as small dry goods shall also be exempt.

CHAPTER I

Voluntary sales of chattels by public auction

Articles L321-4 to
L321-38

SECTION I

General provisions

Articles L321-4 to
L321-3

Article L321-1

Voluntary sales of chattels by public auction may involve only second-hand goods or new goods originating directly from the seller's production if the latter is neither a trader nor a craftsperson. These goods shall be sold separately or in lots.

This chapter defines chattels as property which is movable by nature.

Goods which, at any stage of their production or distribution, have entered the possession of a person for their own use, through any act for money consideration or free of charge, shall be regarded as second-hand.

Article L321-2

Voluntary sales of chattels by public auction shall, except in the cases specified by Article L.321-36, be organised and conducted by the commercial companies governed by Book II and whose activity is regulated by the provisions of this chapter.

These sales may also be organised and conducted, by way of a secondary activity, by notaries and court huissiers. This activity shall be carried out in the context of their office and according to the rules applying thereto. They may be appointed as agent only by the owner of the goods.

Article L321-3

The act of offering an item of property, by acting as the owner's agent, in public computerised auctions in order to sell this to the highest bidder shall constitute a sale by public auction within the meaning of this chapter.

Brokerage operations in computerised auctions, characterised by the absence of a sale by auction 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.

Brokerage operations in computerised auctions involving cultural property shall also be subject to the provisions of this chapter, except for Articles L.321-7 and L.321-16.

Subsection 1

Companies involved in voluntary sales of chattels by public auction

Articles L321-4 to
L321-17

Article L321-4

The object of companies involved in voluntary sales of chattels by public auction shall be limited to the valuation of chattels and to the organisation and conducting of voluntary sales of chattels by public auction in accordance with the conditions fixed by this chapter.

Companies involved in voluntary sales of chattels by public auction shall act as agents for the owner of the property. They shall not be authorised to purchase or sell, directly or indirectly and on their own behalf, chattels offered for sale by public auction. This ban shall also apply to the directors, members and employees of the company. Exceptionally, the latter may, however, sell, through the company, property belonging thereto provided that this is specified by the publicity.

Article L321-5

Companies involved in voluntary sales of chattels by public auction may carry out their activity only after having obtained the approval of the Authority for Voluntary Sales of Chattels by Public Auction established by Article L.321-18.

They must present sufficient guarantees with regard to their organisation, their technical and financial resources, the honourability and experience of their directors and the arrangements for ensuring the security of transactions with regard to their clients.

Article L321-6

Companies involved in voluntary sales of chattels by public auction must, whatever their form, appoint an auditor and



a deputy auditor.

They must provide proof of:

- 1° The existence, at a credit institution, of an account intended exclusively to receive the funds held on behalf of others;
- 2° An insurance covering their professional liability;
- 3° An insurance or surety guaranteeing the representation of the funds mentioned in 1°.

Article L321-7

Companies involved in voluntary sales of chattels by public auction shall give the Authority for Voluntary Sales of Chattels by Public Auction any necessary clarification on the premises where the chattels offered for sale will normally be exhibited and where the operations for sales by public auction will usually take place. When the exhibition or sale takes place in another location, or by computer, the company shall inform the Authority of this in advance.

Article L321-8

Companies involved in voluntary sales of chattels by public auction shall contain, among their directors, members or employees, at least one person with the qualification required to conduct a sale or holding a certificate, diploma or authorisation recognised as equivalent in this respect, in accordance with the conditions defined by a Conseil d'Etat Decree.

Article L321-9

The persons referred to in Article L.321-8 shall alone be authorised to conduct the sale, designate the highest bidder as the successful bidder or declare the item not sold and 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 seller, the description of the item and its publicly recorded price.

Within fifteen days of the sale, the seller may, through the company, sell by private treaty the items declared as not sold at the end of the auction. This transaction shall not be preceded by any exhibition or publicity. It 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 L321-10

Companies involved in voluntary sales of chattels by public auction 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.

Article L321-11

Each voluntary sale of chattels by public auction shall give rise to publicity in any appropriate form.

The reserve price is the minimum price agreed with the seller 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 publicity or announced publicly by the person conducting the sale and indicated in the official record.

Article L321-12

Companies involved in voluntary sales of chattels by public auction may guarantee to the seller a minimum sale price for the item offered for sale, which shall be paid if the item is sold. 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.

This option shall be open only to companies which have concluded, with an insurance company or credit institution, a contract under the terms of which this company or institution undertakes, in the event of the company's failure, to refund the difference between the guaranteed amount and the sale price if the amount of the guaranteed price is not achieved during the sale by auction.

Article L321-13

Companies involved in voluntary sales of chattels by public auction may give the seller an advance on the sale price of the item offered for sale.

Article L321-14

Companies involved in voluntary sales of chattels by public auction shall be liable, with regard to the seller 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 to be unwritten.

The item sold may be delivered to the purchaser only when the company 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 seller's request due to the sham bid of the defaulting bidder. If the seller does not request this within one month of the sale by auction, the sale shall be cancelled ipso jure, without prejudice to the damages due by the defaulting bidder.



The funds held on behalf of the seller shall be paid thereto at the latest two months after the sale.

Article L321-15

I.- Where one or more voluntary sales of chattels by public auction are conducted:

1° If the company organising the sale does not have the approval specified by Article L.321-5 either because it does not hold this or because its approval has been suspended or temporarily or permanently withdrawn;

2° Or if the national of a Member State of the European Communities or of a Member State of the European Economic Area 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.321-8 or is subject to a temporary or permanent ban on conducting these sales,

this shall be punished 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 social activity in the exercise or on the occasion of the exercise of which the offence was committed;

2° The posting on a notice-board or circulation 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.- Legal persons may be declared criminally liable, in accordance with the conditions specified by Article 121-2 of the Penal Code, for the offences defined in this article. The penalties incurred by legal persons shall be:

1° The fine according to the terms specified by Article 131-38 of the Penal Code;

2° For a maximum period of five years, the penalties indicated in 1°, 2°, 3°, 4°, 8° and 9° of Article 131-39 of the Penal Code. The ban indicated in 2° of the same article shall involve the activity in the exercise or on the occasion of the exercise of which the offence was committed.

Article L321-16

The provisions of Article L.720-5 shall not apply to the premises used by the companies indicated in Article L.321-2.

Article L321-17

(Act No. 2004-130 of 11 February 2004 Art. 57 Official Journal of 12 February 2004)

Companies conducting voluntary sales of movables by public auction, and public or ministerial officials authorised to conduct judicial and voluntary sales, and likewise experts who carry out valuations of assets, assume liability when movables are sold by public auction, pursuant to the rules applicable to such sales.

Clauses which seek to avoid or limit their liability are prohibited and deemed not to exist.

Vicarious liability actions initiated in relation to valuations and voluntary and judicial sales of movables by public auction lapse ten years after the date of the adjudication or valuation.

Subsection 2

Authority for Voluntary Sales of Chattels by Public Auction

Articles L321-18 to
L321-23

Article L321-18

An Authority for Voluntary Sales of Chattels by Public Auction shall be established which shall enjoy legal personality.

The Authority for Voluntary Sales of Chattels by Public Auction shall be responsible:

1° For approving the companies involved in voluntary sales of chattels by public auction and the experts referred to in Section 3;

2° For registering the declarations of nationals of the States referred to in Section 2;

3° For penalising, in accordance with the conditions specified by Article L.321-22, breaches of the acts, regulations and professional obligations applying to companies involved in voluntary sales of chattels by public auction, to approved experts and to nationals of a Member State of the European Communities or a Member State of the European Economic Area occasionally carrying out the activity of voluntary sales of chattels by public auction in France.

The decision of the Authority for Voluntary Sales of Chattels by Public Auction refusing or withdrawing the approval of a company or expert or the registration of the declaration of a national of a State referred to in Section 2 must be reasoned.

Article L321-19

The Authority for Voluntary Sales of Chattels by Public Auction and the National Board of Court Valuers and Auctioneers of Chattels shall jointly organise the professional training with a view to obtaining the qualification required to conduct sales.

Article L321-20



The Authority for Voluntary Sales of Chattels by Public Auction shall inform the National Board, the boards of court valuers and auctioneers of chattels 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 chattels by public auction.

The departmental boards of court huissiers and notaries, the National Board and the boards of court valuers and auctioneers of chattels shall provide the same information to the Authority for Voluntary Sales of Chattels by Public Auction.

Article L321-21

The Authority for Voluntary Sales of Chattels by Public Auction shall consist of eleven members appointed for four years by the Minister for Justice, as follows:

1° Six qualified persons;

2° Five representatives of the professionals, including one expert.

Members of the Authority may only be reappointed once.

The chairman shall be elected by the members of the Authority from amongst them.

Deputies shall be appointed in equal number and in the same forms.

A member of the Attorney-General's department shall be appointed to carry out the duties of government commissioner to the Authority for Voluntary Sales of Chattels by Public Auction.

The Authority shall be financed by the payment of professional contributions by the companies involved in voluntary sales of chattels by public auction and by the approved experts. The amount of these contributions shall be fixed by the Authority according to the activity of those required to pay.

Article L321-22

Any breach of the acts, regulations or professional obligations applying to companies involved in voluntary sales of chattels by public auction, to approved experts 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.

The Authority shall rule by reasoned decisions. No penalty may be ordered without the complaints having been notified to the legal agent of the company, to the expert 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.

The penalties applicable to companies involved in voluntary sales of chattels by public auction, to approved experts and to persons authorised to conduct sales, taking into account the gravity of the alleged acts, shall be: caution, reprimand, ban on temporarily carrying out all or part of the activity for a period which may not exceed three years and withdrawal of the company's or expert's approval or a permanent ban on conducting sales.

In an emergency and as a precautionary measure, the chairman of the Authority may order the temporary suspension of the exercise of all or part of the activity of a company involved in voluntary sales of chattels by public auction, of an approved expert or of a person authorised to conduct sales, 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 chairman shall immediately inform the Authority of this.

Article L321-23

The decisions of the Authority for Voluntary Sales of Chattels by Public Auction and its chairman shall be open to appeal before the Paris Cour d'appel. The appeal may be brought before the first president of said court ruling on urgent applications.

SECTION II

Free provision of services in the activity of voluntary sales of chattels by public auction by nationals of the Member States of the European Communities and of the Member States of the European Economic Area

Articles L321-24 to
L321-28

Article L321-24

Nationals of a Member State of the European Communities or of a Member State of the European Economic Area who permanently carry out the activity of voluntary sales of chattels 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 Authority for Voluntary Sales of Chattels by Public Auction. The declaration shall be made at least three months before the date of the first sale held in France. The Authority shall be informed of subsequent sales at least one month before they are held. It may object, in a reasoned decision, to the holding of one of these sales.

Article L321-25

Persons permanently carrying out the activity of voluntary sales of chattels by public auction in their country of origin may use, in France, their qualification expressed in the 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 L321-26

In order to be able to occasionally carry out the activity of voluntary sales of chattels by public auction, the national of another Member State of the European Communities or of a Member State of the European Economic Area must prove, to the Authority for Voluntary Sales of Chattels by Public Auction, that they hold one of the diplomas, certificates or authorisations specified by Article L.321-8 or, in the event of a legal person, that this has, among its directors, members or employees, a person meeting this condition.

They must also provide proof to the Authority of the existence of an establishment in their country of origin and of professional and personal character guarantees.

Article L321-27

Nationals of a Member State of the European Communities or of a Member State of the European Economic Area shall be required to respect the rules governing the activity of voluntary sales of chattels by public auction specified by this chapter without prejudice to the obligations not contrary thereto which are incumbent on them in the State in which they are established.

Article L321-28

In the event of a breach of the provisions of this chapter, nationals of the Member States of the European Communities and of the Member States of the European Economic Area shall be subject to the provisions of Article L.321-22. However, the penalties of the temporary ban on carrying out the activity and of the withdrawal of approval shall be replaced by the penalties of the temporary or permanent ban on carrying out in France the activity of voluntary sales of chattels by public auction.

In the event of penalties, the Authority for Voluntary Sales of Chattels by Public Auction shall inform the competent authority in the State of origin of these.

SECTION III

Experts approved by the Authority for Voluntary Sales of Chattels by Public

Articles L321-29 to
L321-35-1

Auction

Article L321-29

The experts who may be used by the companies involved in voluntary sales of chattels by public auction, court huissiers, notaries and court valuers and auctioneers of chattels may be approved by the Authority for Voluntary Sales of Chattels by Public Auction.

The Authority shall establish a list of the approved experts in each speciality.

Article L321-30

All approved experts must be entered in one of the specialities whose nomenclature is established by the Authority for Voluntary Sales of Chattels by Public Auction.

No-one may be entered in more than two specialities, unless these involve specialities connected to previous specialities which may not number more than two.

Article L321-31

(Act No. 2004-130 of 11 February 2004 Art. 58 1 Official Journal of 12 February 2004)

Any expert, registered or otherwise, is required to take out an insurance policy to cover his professional liability. He is jointly and severally liable with the organiser of the sale in respect of his own activities.

Article L321-32

Persons entered in the list specified by Article L.321-29 may indicate their capacity only using the term "expert approved by the Authority for Voluntary Sales of Chattels by Public Auction".

This term must be accompanied by the indication of their speciality or specialities.

Article L321-33

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 on the part of the public, this shall be punished by the penalties specified by Article 433-17 of the Penal Code.

Article L321-34

The Authority for Voluntary Sales of Chattels by Public Auction may order the withdrawal of approval of an expert in the event of court-ordered prohibition, serious professional misconduct or sentencing for acts contrary to honour, probity or good morals.

Article L321-35

(Act No. 2004-130 of 11 February 2004 Art. 58 2 and 3 Official Journal of 12 February 2004)



An expert, registered or otherwise, shall not value or offer for sale an item belonging to him, nor directly or indirectly acquire an item for his own account, in the sales by public auction in which he is involved.

By way of exception, however, an expert may sell an item belonging to him through a person referred to in Article L. 321-2, subject to that fact being stated in the publicity.

Article L321-35-1

(inserted by Act No. 2004-130 of 11 February 2004 Art. 58 4 Official Journal of 12 February 2004)

When he deals with an unregistered expert, the organiser of the sale shall ensure that the said expert complies with the obligations stipulated in the first paragraph of Article L. 321-31 and Article L. 321-35.

SECTION IV

Sundry provisions

Articles L321-36 to
L321-38

Article L321-36

Sales by public auction of chattels belonging to the State and defined in Article L.68 of the State Property Code and all sales of chattels carried out in the State property form in accordance with the conditions specified by Article L.69 of the same code shall continue to be carried out according to the terms specified by these articles. However, as an exception to the provisions of Articles L.68, L.69 and L.70 of the same code, these sales may be carried out with publicity and competition, on behalf of the State, by companies involved in voluntary sales of chattels by public auction in accordance with the conditions specified by this chapter.

Sales of chattels by 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 companies involved in voluntary sales of chattels by public auction in accordance with the conditions specified by this chapter.

Article L321-37

The civil courts alone shall be competent to hear legal proceedings relating to sale activities in which a company involved in voluntary sales of chattels by public auction, established in accordance with this chapter, is a party. Any clause to the contrary shall be deemed to be unwritten. However, members may agree, in the articles of association, to submit to arbitrators disputes which may occur between them or between companies involved in voluntary sales due to their activity.

Article L321-38

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

A Conseil d'Etat decree determines the conditions of implementation of the present Chapter, which include the guarantee scheme provided for in Article L. 321-6, the arrangements for informing the council for voluntary sales of movables at public auctions when the exhibition or the sale does not take place in the premises referred to in the first sentence of Article L. 321-7, the indications that must appear in the publication referred to in Article L. 321-11, the terms and conditions applicable to the organisation and operations of the council for sales at public auctions and the council's conditions for the approval of experts.

CHAPTER II

Other sales by auction

Articles L322-1 to
L322-16

Article L322-1

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 professional officers employed for the forced sale of chattels in accordance with Article 53 of Act No 650 of 9 July 1991 on the reform of civil execution procedures and with Article 945 of the Code of Civil Procedure.

Article L322-2

Sales of goods following a winding-up proceedings shall be conducted in accordance with Article L.622-18 et seq.

The debtor's chattels may be sold at auction only by court valuers and auctioneers of chattels, notaries or huissiers, in accordance with the acts and regulations determining the powers of these various officers.

Article L322-3

Public sales and sales by auction following a cessation of trading, or in the other cases of necessity specified by Article L.320-2, may take place only where they have been previously authorised by the Tribunal de commerce, at the request of the trading owner to which a detailed list of the goods shall be attached.

The court shall record, in its judgment, 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 fix.



It shall decide who, from among the brokers, court valuers and auctioneers of chattels or other public officers, shall be responsible for receiving the bids.

The authorisation due to a reason of necessity may be granted only to the sedentary trader who has 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 judgment authorising this.

Article L322-4

Public sales by auction of wholesale goods shall be conducted by sworn commodities brokers in the cases, in accordance with the conditions and according to the forms fixed by a Conseil d'Etat decree.

Article L322-5

Any breach of the provisions of Articles L.320-1, L.320-2 and L.322-1 to L.322-7 shall be punished by the confiscation of the goods placed on sale and also a fine of 3,750 euros which shall be ordered jointly and severally against both the seller and the public officer assisting the latter, without prejudice to damages, if any.

Any person whose agent is intended to evade the ban specified by Article L.320-1 shall be regarded as an accomplice and shall be subject to the same penalties.

Article L322-6

If sellers or public officers include in sales held by court order, following attachment, death, court-ordered winding-up, cessation of trading or in the other cases of necessity specified by Article L.320-2, new goods not forming part of the business or chattels placed on sale, this shall be punished by the penalties specified by Article L.322-5.

Article L322-7

In places where there are no commercial brokers, the court valuers and auctioneers of chattels, notaries and huissiers shall conduct the above sales, according to the rights which are respectively assigned thereto by the acts and regulations.

They shall, for these sales, be subject to the forms, conditions and tariffs imposed on brokers.

Article L322-8

(Order No. 2004-279 of 25 March 2004 Art. 3 I Official Journal of 27 March 2004)

Sworn brokers may conduct voluntary wholesale auctions of goods without the commercial court's permission. Permission is nevertheless required for goods such as motor vehicles, arms, munitions and their accessories, objets d'art, collector's items, antiques and other second-hand goods, a list of which is drawn up by order of the Minister of Justice and the Trade Minister.

NB: Order 2004-279 of 25 March 2004 Arts. 8 and 9: The provisions of Article L322-8 of the Commercial Code are applicable in New Caledonia and the Wallis and Futuna Islands.

Article L322-9

Brokers established in a town where a Tribunal de commerce is situated shall be authorised to conduct the sales governed by this chapter in all localities falling within the jurisdiction of this court in which there are no brokers.

They shall comply with the provisions specified by Articles 871 and 873 of the General Tax Code.

Article L322-10

The brokerage fee for sales covered by Articles L.322-8 to L.322-13 shall be fixed, for each locality, by the Minister

for Agriculture, Trade or Public Works, following an opinion from 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 goods.

Article L322-11

Disputes relating to sales conducted pursuant to Article L.322-8 shall be brought before the Tribunal de commerce.

Article L322-12

The sales specified by Article L.322-8 shall be held in premises specially authorised for this purpose, following an opinion from the chamber of trade and industry and the Tribunal de commerce.

Article L322-13

A Conseil d'Etat decree shall determine the measures needed to apply Articles L.322-11 and L.322-12, in particular the forms and conditions of the authorisations specified by Article L.322-12.

Article L322-14

The tribunaux de commerce may, following a death or cessation of trading, and in all other cases of necessity whose assessment is submitted thereto, authorise the sale by wholesale 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 judgment, the act giving rise to the sale.



Article L322-15

Sales authorised pursuant to the above article, and all those which are authorised or ordered by the consular court in the various cases specified by this code, shall be carried out by brokers.

However, the court, or the judge authorising or ordering the sale, shall remain responsible for appointing, in order to proceed with this, another type of public officer. In this case, the public officer, whoever this is, shall be subject to the provisions governing brokers with regard to forms, tariffs and liability.

Article L322-16

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.

TITLE III

Exclusivity clauses

Articles L330-1 to
L330-3

Article L330-1

The period of validity of any exclusivity clause by which the purchaser, transferee or lessee of chattels undertakes with regard to the seller, assignor or lessor not to use similar or additional items originating from another supplier shall be limited to a maximum of ten years.

Article L330-2

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 L330-3

Any person who provides to another person a corporate name, trademark or trade name, by requiring therefrom an exclusivity or quasi-exclusivity undertaking in order to carry out their activity, shall be required, prior to the signature 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 with full knowledge of the facts.

This document, whose content shall be fixed by decree, shall specify in particular the age and experience of the undertaking, the state and prospects for development of the market concerned, the size of the network of operators, the term and conditions of renewal, cancellation and assignment of the contract and the scope of the exclusive rights.

When the payment of a sum is required prior to the signature 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 by the first paragraph and the draft contract shall be notified at least twenty days before the signature of the contract or, where applicable, before the payment of the sum indicated in the above paragraph.

BOOK IV

Pricing freedom and competition

Articles L410-1 to
L470-8

TITLE I

General provisions

Articles L410-1 to
L410-2

Article L410-1

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 L410-2

Except in cases where the law specifies otherwise, the prices of goods, products and services falling, prior to 1 January 1987, under Order No 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 acts or regulations, a Conseil d'Etat decree may regulate the prices after the Council on Competition has been consulted.

The provisions of the first two paragraphs shall not prevent the government from ordering 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.

TITLE II



Anti-competitive practices

Articles L420-1 to
L420-7

Article L420-1

(Act No 2001-420 of 15 May 2001, Article 52, Official Gazette of 16 May 2001)

Common actions, agreements, express or tacit undertakings or coalitions, particularly when they are intended to: 1° Limit access to the market or the free exercise of competition by other undertakings;

2° Prevent price fixing by the free play of the market, by artificially encouraging the increase or reduction of prices; 3°

Limit or control production, opportunities, investments or technical progress;

4° Share out the markets or sources of supply,

shall be prohibited, even through the direct or indirect intermediation of a company in the group established outside France, when they have the aim or may have the effect of preventing, restricting or distorting the free play of competition in a market.

Article L420-3

Any undertaking, agreement or contractual clause referring to a practice prohibited by Articles L.420-1 and L.420-2 shall be invalid.

Article L420-4

(Act No 2001-420 of 15 May 2001, Article 48, Official Gazette of 16 May 2001)

The following practices are not subject to the provisions of Articles L.420-1 and L.420-2:

1° Those which result from the implementation of an act or regulation adopted in application thereof;

2° Those whose perpetrators 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 which 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 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 Council on Competition.

Article L420-6

(Act No 2001-420 of 15 May 2001, Article 67, Official Gazette of 16 May 2001)

If any natural person fraudulently takes a personal and decisive part in the conception, organisation or implementation of the practices referred to in Articles L.420-1 and L.420-2, this shall be punished by a prison sentence of four years and a fine of 75,000 euros.

The court may order that its decision is published in full or in summary in the newspapers which it designates, at the expense of the offender.

Acts interrupting the period of prescription before the Council on Competition pursuant to Article L.462-7 shall also interrupt the period of prescription of the public action.

Article L420-7

(Act No. 2001-420 of 15 May 2001 Art. 82 Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 1 Official Journal of 5 November 2004)

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 the tribunaux de grande instance or the commercial courts, whose province and scope of jurisdiction are determined in a Conseil d'Etat decree. The said decree also determines the province and scope of jurisdiction of the court(s) of appeal which are competent to take cognisance of decisions pronounced by those jurisdictions.

TITLE III

Economic concentration

Articles L430-1 to
L430-10

Article L430-1

(Act No 2001-420 of 15 May 2001, Article 86, Official Gazette of 16 May 2001)

I.- A concentration shall be deemed to arise where:

1° two or more previously independent undertakings merge;



2° one or more persons already holding control of at least one undertaking or when one or more undertakings acquire control of all or part of one or 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 within the meaning of this article.

III.- For the purposes of applying this title, control shall be constituted by rights, contracts or any other means which, either or separately or in combination and having regard to the considerations of fact or law involved, confer all the possibility of exercising 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 which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Article L430-2

(Act No 2001-420 of 15 May 2001 Article 87 Official Gazette of 16 May 2001)

(Act No 2003-660 of 21 July 2003 Article 59 Official Gazette of 22 July 2003)

(Ordinance No 2004-274 of 25 March 2004 Article 25 Official Gazette of 27 March 2004)

Any merger operation within the meaning of 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 aggregate 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 achieved 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. 4064/89 (EEC) of 21 December 1989 relating to control of concentrations between undertakings.

However, a concentration which comes within the scope of the aforementioned regulation and which has been referred, totally or partially, to the national legislation, is subject, within the limits of that referral, to the provisions of the present Article.

In the overseas departments, when a concentration within the meaning of Article 430-1 has the effect of taking either the selling space, as defined in Article L. 720-4, above the threshold set in that same Article, or the market share, expressed as turnover, of the companies subject to the provisions of that same Article, above 25%, the minister may, within three months of the operation being effectively concluded, make it subject to the procedure provided for in Articles L. 430-3 et seq. The provisions of Article L. 430-4 are not applicable to such operations, however.

Article L430-3

(Act No 2001-420 of 15 May 2001, Article 88, Official Gazette of 16 May 2001)

(Act No 2004-1343 of 9 December 2004, Article 83, Official Gazette of 10 December 2004)

The concentrations shall be notified must be notified to the minister of the Economy prior to its completion. This notification shall be made when the party(ies) concerned can demonstrate a good faith intention to conclude an agreement, and particularly when they have signed an intended agreement, a letter of intent or, in the case of a public bid, when they have publicly announced an intention to make such a bid. Referral by the Commission of the European Communities shall be valid as notification.

The notification shall be submitted by the natural or legal persons 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 operation, a communiqué shall be published by the Minister of the Economy in accordance with the procedures determined by decree.

On receipt of the notification file, the minister shall send a copy of this to the Council on Competition.

Article L430-4

(Act No 2001-420 of 15 May 2001, Article 89, Official Gazette of 16 May 2001)

A concentration operation cannot be carried through until after the agreement of the Minister of the Economy and, where applicable, of the minister responsible for the economic sector concerned.

In the event of a duly justified special need, the notifying parties may ask the Minister of the Economy for an derogation 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 L430-5

(Act No 2001-420 of 15 May 2001, Article 90, Official Gazette of 16 May 2001)

I.- The Minister of the Economy shall decide on the concentration within five weeks from the date of reception of the complete notification.



II.- The parties to the concentration may commit themselves to taking 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 five-week period from the date of receipt of the complete notification, as long as the decision set forth by I has not been delivered.

If the Minister receives commitments more than two weeks after the complete notification of the concentration, the period indicated in I shall expire three weeks after the date of receipt of these undertakings by the Minister of the Economy.

III.- The Minister of the Economy 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.

However, if the Minister considers that the concentration is likely to adversely affect competition and that the commitments made are not sufficient to remedy this, he shall refer the matter to the Council on Competition for an opinion.

IV.- If the Minister does not take any of the three decisions specified by III within the period indicated in I, possibly extended pursuant to II, the concentration shall be deemed to have been authorised.

Article L430-7

(Act No 2001-420 of 15 May 2001, Article 92, Official Gazette of 16 May 2001)

I.- When the Council on Competition has been referred to, the concentration shall be decided on within four weeks from the submission of the Council's opinion to the Minister of the Economy.

II.- After having read the Council on Competition's opinion, the parties may propose undertakings likely to remedy the anti-competitive effects of the concentration before the end of a four-week period from the date of submission of the opinion to the minister, unless the concentration has already been decided on as specified by I.

If the undertakings are sent to the minister more than one week after the date of submission of the opinion to the minister, the period referred to in I shall expire three weeks after the date of receipt of these undertakings by the minister.

III.- The Minister of the Economy and, if applicable, the minister responsible for the economic sector concerned may, in 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 and social progress to compensate for the adverse effects on competition.

The orders and requirements specified by the above two paragraphs shall be imposed whatever the contractual clauses which may be concluded by the parties.

The draft decision shall be sent to the interested parties which shall have a period for presenting their observations.

IV.- If the Minister of the Economy and the minister responsible for the economic sector concerned do not intend to take either of the two decisions specified by III, the Minister of the Economy shall authorise the concentration in a reasoned decision. The authorisation may be subordinated to the actual implementation of the undertakings made by the notifying parties.

V.- If none of the three decisions specified by III and IV has been taken within the period indicated in I, possibly extended pursuant to II, the concentration shall be deemed to have been authorised.

Article L430-8

(Act No 2001-420 of 15 May 2001, Article 92, Official Gazette of 16 May 2001)

I.- If a concentration has been carried out without being notified, the Minister of the Economy may impose, on the persons on whom the responsibility for notification is incumbent, a financial penalty whose maximum amount shall be, for legal persons, 5% of their pre-tax turnover made in France during the last closed financial year, plus, if applicable, the turnover which the acquired party made in France during the same period, and, for natural persons, 1.5 million euro.

In addition, the Minister shall enjoin the parties, subject to a penalty, to notify the concentration, otherwise the situation must be restored as it prevailed prior to the concentration. The Minister may also refer to the Council on Competition without waiting for the notification. The procedure specified by Articles L.430-5 to L.430-7 shall then apply.

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 Minister of the Economy may impose on the notifying persons a financial penalty which may not exceed the amount defined in I.

III.- In the event of an omission or incorrect declaration in a notification, the Minister of the Economy may impose on the notifying persons a financial penalty which 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 is considered that the parties have not fulfilled an order, requirement or commitment within the fixed periods, the Minister of the Economy may refer to the Council on Competition for an opinion.

If the Council on Competition's opinion indicates non-fulfilment, the Minister of the Economy and, if applicable, the minister responsible for the economic sector concerned 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 on whom the unfulfilled obligation was incumbent, subject to a penalty, to fulfil, within a period which they shall fix, the orders, requirements or commitments.

In addition, the Minister of the Economy may impose on the persons on whom the unfulfilled obligation was incumbent a financial penalty which may not exceed the amount defined in I.

Article L430-9

(Act No 2001-420 of 15 May 2001, Article 91, Official Gazette of 16 May 2001)

The Council on Competition may, in the event of the abuse of a dominant position or a state of economic dependence, ask the Minister of the Economy to enjoin, by a reasoned order, jointly with the minister responsible for the sector, the undertaking or group of undertakings in question 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 L430-10

(Act No 2001-420 of 15 May 2001, Article 93, Official Gazette of 16 May 2001)

I.- The decisions adopted pursuant to Articles L.430-5 to L.430-8 shall be made public, if applicable accompanied by the Council on Competition's opinion, according to the terms defined by decree.

II.- When the Minister of the Economy questions third parties on the subject of the concentration, its effects and the commitments proposed by the parties and makes public his decision in accordance with the conditions specified by I, he shall take account of the legitimate interest of the notifying parties or the persons cited that their business secrets are not disclosed.

TITLE IV

Transparency, restrictive competitive practices and other prohibited practices

Articles L441-1 to
L443-1

PRELIMINARY CHAPTER

General provisions

CHAPTER I

Transparency

Articles L441-1 to
L441-5

Article L441-1

(Act No. 2001-1168 of 11 December 2001 Art. 13 IV 1 Official Journal of 12 December 2001)

The rules relating to the conditions of sale to the consumer are determined in Article L113-3 of the Consumer Code reproduced hereunder:

"Art. L113-3. - Any seller of products or any service provider shall, by means of marking, labelling, posters or any other suitable means, inform the consumer of the prices, limitations, if any, contractual liability and special conditions of sale pursuant to the conditions laid down in orders of the Finance Minister issued after consultation with the National Consumer Council.

This provision applies to all the activities referred to in the last paragraph of Article L113-2.

The rules relating to the obligation for credit institutions and the organisations referred to in Article L518-1 of the Monetary and Financial Code to provide information are determined in I and II of Article L312-1-1 of that same code."

Article L441-2

(Act No. 2001-420 of 15 May 2001 Art. 49 Official Journal of 16 May 2001)

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Act No. 2005-157 of 23 February 2005 Art. 32 Official Journal of 24 February 2005)

Any advertising meant for the consumer displayed on any medium or visible from outside the place of sale which mentions a price reduction or a promotional price on perishable foodstuffs must indicate the nature and origin of the product(s) 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 size 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.

The price of a fresh fruit or vegetable covered by a transfer price agreement between the supplier and its customer may be advertised away from the place of sale for a maximum period of seventy-two hours immediately preceding the day on which it is first applied and for a period not exceeding five days thereafter.

In all other cases, any price of a fresh fruit or vegetable advertised away from the place of sale, regardless of its origin, must be covered by an interdepartmental order for a renewable term of one year entered into under the provisions of Article L632-1 of the Rural 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 the provisions of Articles L632-3 and L632-4 of that same code.

The provisions of the three preceding paragraphs do not apply to fresh fruits and vegetables of species not produced in Metropolitan France.

Any violation of the provisions of the above paragraphs incurs a fine of 15,000 euros.

Cessation of advertising which does not comply with the provisions of the present article may be ordered as provided for in Article L121-3 of the Consumer Code.

Article L441-2-1

(Act No. 2005-157 of 23 February 2005 Art. 33 Official Journal of 24 February 2005)

(Act No. 2006-11 of 5 January 2006 Art. 53 III Official Journal of 6 January 2006)

For agricultural produce which is perishable or 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 only have the benefit of discounts, reductions and rebates or be remunerated for commercial cooperation services if these are provided for in a written contract relating to the sale of such products by the supplier.

The said 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.

When a standard contract for the activities referred to in the first paragraph is included in an interdepartmental order adopted by the recognised inter-branch organisation for the product concerned and extended pursuant to the provisions of Articles L632-3 and L632-4 of the Rural Code, the contract referred to in the first paragraph must conform to that standard contract. The said standard contract shall, inter alia, include standard clauses relating to the commitments, the method of price calculation referred to in the second paragraph, the delivery schedules, the term of the contract and the floor price principle, the content of the said standard clauses is decided through commercial negotiations between the contracting parties.

Any violation of the provisions of the present article incurs a fine of 15,000 euros.

Article L441-3

(Act No 2001-420 of 15 May 2001, Article 53 I, Official Gazette of 16 May 2001)

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 raise the invoice when the sale is made or when the service is provided. The purchaser must demand this. 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 conditions of sale and the rate of the penalties due from the day after the payment date entered on the invoice. 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 L441-4

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 that which should have been invoiced.

Article L441-5

Legal persons may be declared criminally liable in accordance with the conditions specified by Article 121-2 of the Penal Code for the breach specified by Article L.441-4. The penalties incurred by legal persons shall be:

1° The fine according to the terms specified by Article 131-38 of the Penal Code;

2° The penalty of exclusion from the public markets for a maximum period of five years, pursuant to 5° of Article 131-39 of the same code.

CHAPTER II



Competitive restrictive practices

Articles L442-1 to
L442-10

Article L442-1

(Law No 2001-1168 of 11 December 2001 Article 13 IV (2) Official Gazette of 12 December 2001)
(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

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 eventually, to a premium consisting of products, goods or services, is prohibited unless they are identical to those provided.

This provision does not apply to petty items or services of low value or to samples.

For the lending institutions and other institutions referred to in Article L. 518-1 of the Monetary and Financial Code,

the rules relating to sales with premiums are set out in subparagraph 2 (I) of Article L. 312-1-2 of that same 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.

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 subparagraph 1 (I) of Article L. 312-1-2 of that same code."

Article L442-3

Legal persons may be declared criminally liable, in accordance with the conditions specified by Article 121-2 of the Penal Code, for the offence specified by Article L.442-2.

The penalties incurred by legal persons shall be:

1° The fine according to the terms specified by Article 131-38 of the Penal Code; 2°

The penalty referred to in 9° of Article 131-39 of the same code.

The cessation of the advertising may be ordered in accordance with the conditions specified by Article L.121-3 of the Consumer Code.

Article L442-4

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:

a) To products whose sale has a marked seasonal nature, during the final period of the sale season and in the interval between two sale seasons;

b) To products which no longer respond to the general demand due to the development of fashion or the emergence of technical improvements;

c) To products, with identical characteristics, whose restocking has occurred at a lower price, with the actual purchase price then being replaced by the price resulting from the new purchase invoice;

d) 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, whose resale price is aligned with the price legally applied to the same products by another trader in the same area of activity;

2° 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.

II.- The exceptions specified by I shall not prevent the application of 2 of Article L.625-5 and 1 of Article L.626-2.

Article L442-5

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, this shall be punished by a fine of 15,000 euros.

Article L442-7

No associations or cooperatives of undertakings or administrations may normally offer products for sale, sell these or provide services if these activities are not specified by their articles of association.

Article L442-8

It is prohibited for any person to offer products for sale or to propose services by using, in accordance with 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 procureur de la République 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 L442-9

(inserted by Act No. 2005-157 of 23 February 2005 Art. 34 I Official Journal of 24 February 2005)

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 L441-2-1 of the present code during an economic crisis as defined in Article L611-4 of the Rural Code shall render the person responsible liable and compel him to make good the damage thus caused.

III and IV of Article L442-6 are applicable to the action covered by the present article.

Article L442-10

(inserted by Act No. 2005-882 of 2 August 2005 Art. 51 Official Journal of 3 August 2005)

I. - A contract through 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 presenter of the successful bid 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. It shall be produced if any inquiry is conducted pursuant to Part V of the present Book.

III. - On-line reverse auctions organised by the buyer or its representative are prohibited for the agricultural products referred to in the first paragraph of Article L441-2-1 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 L442-6 are applicable to the transactions referred to in I to III of the present article.

CHAPTER III

Other prohibited practices

Article L443-1

Article L443-1

Subject to 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 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° Failing multi-industry agreements concluded pursuant to Book VI of the Rural Code and made compulsory by regulation for all operators throughout mainland France with regard to payment times, seventy-five days after the day of delivery for purchases of alcoholic drinks subject to the transportation duties specified by Article 438 of the same code.

TITLE V

Investigative powers

Articles L450-1 to
L450-8

Article L450-1

(Act No. 2001-420 of 15 May 2001 Art. 81 I Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 2 Official Journal of 5 November 2004)

Officials duly authorised by the Minister for Economic Affairs may carry out the necessary inquiries pursuant to the



provisions of the present Book.

The Competition Council's rapporteurs have the same powers in regard to cases referred to that Council.

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 Minister for Economic Affairs may authorise agents of that competition authority to assist the authorised officials referred to in the first paragraph or the rapporteurs referred to in the second paragraph with their investigations. The particulars of such assistance are determined in a Conseil d'Etat decree.

Category A officials of the Ministry of 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.

The authorised officials referred to in the present article may exercise the investigative powers conferred on them by the present article and the following articles throughout the national territory.

Article L450-2

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 shall be left with the interested parties. These shall be authentic unless otherwise proven.

Article L450-3

(Act No 2001-420 of 15 May 2001, Article 76, Official Gazette of 16 May 2001)

The inquirers may access all premises, land or means of transport for professional use, request the notification 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 L450-4

(Act No. 2001-420 of 15 May 2001 Art. 77 Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 3 Official Journal of 5 November 2004)

The investigating officials 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 Council's general rapporteur on the basis of a proposal from the rapporteur or judicial authorisation given by the freedoms and custody judge of the Tribunal de grande instance 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. When 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 the presiding judge of one (1) of the courts.

The judge shall verify that the application for authorisation submitted to him is well-founded; the said 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 commission of violations of the provisions of Book IV of the present code to be established, the application for authorisation may contain only the evidence which gives grounds for suspecting the existence of the practices in respect of which proof is sought in that specific instance.

The inspection and seizure take place under the authority and control of the judge who authorised them. He shall designate one or more law enforcement officers 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 shall issue letters rogatory delegating such control to the presiding judge (1) of the Tribunal de grande instance 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.

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 thereof against acknowledgement of receipt or a signature in the margin of the official record. In the absence of the occupant of the premises or his representative, the order is served by recorded-delivery registered mail after the inspection. Service is deemed to have been effected on the date shown on the confirmation of receipt.

The order referred to in the first paragraph of the present article shall be open to appeal on points of law only under the rules laid down by the Code of Criminal Procedure. Such appeals do not have suspensive effect.

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. 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, Consumer Affairs and the Prevention of Fraud, or that of the Competition Council.

Only the investigating officials, 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.

The taking of inventories and placing of seals are carried out pursuant to Article 56 of the Code of Criminal Procedure.

The originals of the official record and the inventory are sent to the judge who ordered the inspection.

The documents and other items seized are returned to the occupant of the premises within six months of the date on which the Competition Council's decision becomes definitive. The occupant of the premises is given formal notice, by recorded-delivery registered mail, 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 the subject of an appeal to the judge who authorised them, lodged within two months of service of the relevant order for the persons occupying the premises where the said procedures took place, and, for other persons brought into the proceedings subsequently on account of items seized during those procedures, of the date on which they became aware of the existence of the said procedures and not later than the date of notification of the claims referred to in Article L. 463-2. The judge rules on such appeals through an order which shall be open to appeal on points of law only under the rules laid down by the Code of Criminal Procedure. Such appeals do not have suspensive effect.

(1) NB: Article 49 X 1 and 2 of Act No. 2000-516 of 15 June 2000, effective from 16 June 2002, amended Article 48 of Order No. 86-1243 of 1 December 1986 by substituting the words "freedoms and custody judge" for the words "presiding judge". The said Article 48 was repealed and codified by Order No. 2000-912 of 18 September 2000, thus becoming Article L. 450-4 of the Commercial Code.

Article L450-5

(Act No 2001-420 of 15 May 2001, Article 78, Official Gazette of 16 May 2001)

The general rapporteur of the Council on Competition shall be immediately informed of the start and end of the investigations referred to in Article L.450-4 when these have been carried out on the initiative of the Minister for Economic Affairs and when they relate to acts likely to come under Articles L.420-1 and L.420-2.

The general rapporteur may propose to the Council that it assumes jurisdiction of its own motion.

Article L450-6

(Act No 2001-420 of 15 May 2001, Article 80, Official Gazette of 16 May 2001)

The general rapporteur shall appoint, for the examination of each matter, one or more rapporteurs. At the general rapporteur's request, the authority to which the agents referred to in Article L.450-1 are answerable shall appoint the inquirers and have any inquiry which the rapporteur considers appropriate conducted immediately. The latter shall define the directions of the inquiry and shall be kept informed of its progress.

A decree shall specify the conditions in accordance with which, at the reasoned request of the chairman of the Council on Competition, the authority to which the agents referred to in Article L.450-1 are answerable shall provide, for a specified period, to the general rapporteur of the Council on Competition, the inquirers to conduct certain inquiries, in accordance with the directions defined by the rapporteurs.

Article L450-7

The inquirers may, without professional secrecy being raised against them, access any document or information held by the services and establishments of the State and other public authorities.

Article L450-8

If anyone objects, in any way whatsoever, to the fulfilment of the duties with which the agents appointed by Article L.450-1 and the rapporteurs of the Council on Competition are entrusted pursuant to this book, this shall be punished by a prison sentence of six months and fine of 7,500 euros.

TITLE VI

Council on Competition

Articles L461-1 to
L464-8

CHAPTER I

Organisation

Articles L461-1 to
L461-3

Article L461-1

I.- The Council on Competition shall consist of seventeen members appointed for a term of six years by a decree adopted following the report of the Minister for Economic Affairs.

II.- It shall be composed of:

1° Eight members or former members of the Conseil d'Etat, Cour de Cassation, Auditor-General's department or other administrative or ordinary courts;

2° Four 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, craftwork, services or the professions.

III.- The chairman and three vice-chairmen shall be appointed, with regard to three of them, from among the members or former members of the Conseil d'Etat, Cour de Cassation or Auditor-General's department, and with regard to one of them, from the categories of persons indicated in 2° and 3° of II.

IV.- The four persons specified by 2° of II shall be chosen from a list of eight names submitted by the eight members specified by 1° of II.

V.- Members of the Council on Competition may be reappointed.

Article L461-2

The chairman and vice-chairmen 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 Council who has not participated, without a valid reason, in three consecutive sessions or who has not fulfilled the obligations specified by the two paragraphs below shall be declared by the minister to have automatically resigned. All members of the Council must inform the chairman of the interests which they hold or have just acquired and of the duties which they fulfil in an economic activity.

No Council 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 commissioner to the Council shall be appointed by the Minister for Economic Affairs.

Article L461-3

(Act No. 2001-420 of 15 May 2001 Art. 65 Official Journal of 16 May 2001)

(Amending Finance Act for 2001 No. 2001-1276 of 28 December 2001 Art. 85 Official Journal of 29 December 2001)

The council may meet in a plenary session, in sections, or as a permanent commission. The permanent commission is composed of the chairman and the three vice-chairmen.

In the event of a tied vote, the chairman of the meeting shall have a casting vote.

The general rapporteur, the assistant general rapporteur(s) and the permanent rapporteurs are appointed by order of the Finance Minister on a proposal from the chairman. The other rapporteurs are appointed by the chairman.

The general rapporteur may delegate some or all of the duties conferred on him by Book IV of the present code to one or more assistant general rapporteurs.

The operating credits allocated to the Competition Council are charged to the budget of the Finance Minister. The provisions of the Act of 10 August 1922 relating to the organisation of expenditure control do not apply to management thereof.

The chairman is the certifying officer for the council's income and expenditure.

CHAPTER II

Powers

Articles L462-1 to
L462-9

Article L462-1

The Council on Competition 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 the territorial authorities, professional associations and trade unions, approved consumer organisations, chambers of agriculture, chambers of trade or chambers of trade and industry, with regard to the interests for which these are responsible.

Article L462-2

The Council 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 L462-3

(Order No. 2004-1173 of 4 November 2004 Art. 4 Official Journal of 5 November 2004)

The courts may consult the council regarding the anti-competitive practices described in Articles L. 420-1, L. 420-2 and L. 420-5 hereof and Articles 81 and 82 of the Founding Treaty of the European Community when they are raised in the cases referred to them. It may issue an opinion only after a procedure in which all parties were heard is concluded. If it already has information gathered during an earlier procedure, however, it may issue its opinion without implementing the procedure envisaged in the present text.



The prescription period is suspended, where applicable, when the council is consulted.
The council's opinion may be published after the dismissal or judgement.

Article L462-4

The Council may be consulted by the Minister for Economic Affairs on any concentration project or any concentration likely to adversely affect competition in accordance with the conditions specified by Title III above.

Article L462-5

The Council on Competition may be referred to by the Minister for Economic Affairs on any practice mentioned in Articles L.420-1, L.420-2 and L.420-5. It may assume jurisdiction of its own motion or be referred to by undertakings 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.

Article L462-6

(Order No. 2004-1173 of 4 November 2004 Art. 5 Official Journal of 5 November 2004)

The Competition Council considers whether the practices referred to it come within the scope of Articles L. 420-1, L. 420-2 or L. 420-5 or may be justified by virtue of Article L. 420-4. It imposes sanctions and orders where appropriate.

When it considers that the facts warrant application of Article L. 420-6, it refers the case to the public prosecutor. Such referrals suspend the prescription of criminal prosecutions.

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 L462-7

(Order No. 2004-1173 of 4 November 2004 Art. 6 Official Journal of 5 November 2004)

Facts dating back more than five years may not be referred to the council if no attempt has been made to investigate, establish or punish them.

Article L462-8

(Act No. 2001-420 of 15 May 2001 Art. 74 Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 7 Official Journal of 5 November 2004)

In a reasoned decision, the Competition Council may declare the referral inadmissible for want of a legal interest or quality to act on the part of the referrer, or if the facts are prescribed within the meaning of Article L. 462-7, or if it considers that the facts invoked are beyond its scope.

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 another national competition authority of a 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. When such information is received by the rapporteur at the preparatory stage, the general rapporteur may suspend the referral.

In the same circumstances, the Competition Council may also decide to close a case it had routinely taken up.

Withdrawals by the parties or removals from the courts at the behest of the European Commission are duly recorded in a decision of the chairman of the Competition Council or a vice-chairman designated by him.

Article L462-9

(Act No. 2001-420 of 15 May 2001 Art. 83 Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 8 Official Journal of 5 November 2004)

I. - The Competition Council may, with regard to matters within its jurisdiction, and after giving the Minister 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 professional secrecy as rigorous as that required in France.

The Competition Council may, applying the conditions, procedures and sanctions specified for the performance of its duties, conduct, or ask the Minister 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 secrecy obligations.



Assistance requested by a foreign authority exercising similar powers which involves investigations or the transmission of information held or gathered by the Competition Council is 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.

For implementation of the present article, the council may enter into agreements which organise its relations with foreign authorities exercising similar powers. The said agreements are approved by the council as determined in Article L. 463-7. They are published in the Official Journal.

II. - In implementing the competition rules laid down in articles 81 and 82 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 of the Founding Treaty of the European Community, with the exception of the provisions of the first five paragraphs of I of the present article.

To implement the provisions of 4 of Article 11 of the said regulation, the Competition Council shall send the European Commission a summary of the case and a document setting out the solution envisaged, which may be a notification 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.

CHAPTER III Procedure

Articles L463-1 to
L463-8

Article L463-1

(Order No. 2004-1173 of 4 November 2004 Art. 9 I Official Journal of 5 November 2004)

All the parties are fully heard at the preparatory stage and in the proceedings before the Competition Council, without prejudice to the provisions of Article L. 463-4.

Article L463-2

(Act No. 2001-420 of 15 May 2001 Art. 68 I and II Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 9 II Official Journal of 5 November 2004)

Without prejudice to the measures referred to in Article L. 464-1, the general rapporteur sends the claims to the parties concerned and to the government representative, who may consult the file, without prejudice to the provisions of Article L. 463-4, and present their observations within two months.

The report is then sent to the parties, to the government representative and to the ministers concerned. It is 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.

When exceptional circumstances so warrant, the chairman of the council may, through an unappealable decision, grant the parties a further period of one month to prepare their case and submit their observations.

Article L463-3

(Act No 2001-420 of 15 May 2001, Article 69, Official Gazette of 16 May 2001)

The chairman of the Council on Competition or a vice-chairman delegated thereby may, after notification of the complaints to the interested parties, decide that the matter shall be decided by the Council without the prior preparation of a report. This decision shall be notified to the parties.

Article L463-4

(Act No. 2001-420 of 15 May 2001 Art. 70 Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 9 III Official Journal of 5 November 2004)

Save for cases in which discovery or consultation of such documents is necessary for the proceedings or for exercise of the rights of the party or parties involved, the chairman of the Competition Council, or a vice-chairman delegated by him, may refuse discovery or consultation of documents or certain elements contained in them which affect business secrecy. Either the documents concerned are removed from the file, or certain references therein are struck out.

In cases in which discovery or consultation of such documents, despite business secrecy being affected, is necessary for the proceedings or for exercise of the rights of one or more of the parties, they are placed in a confidential appendix to the file and disclosed only to the government representative and to the party or parties involved who need the documents or elements in order to exercise their rights.

A Conseil d'Etat decree lays down the present article's implementing regulations, as necessary.



Article L463-5

The courts investigating and hearing the case may notify to the Council on Competition, at its request, the inquiry reports or official records having a direct link with the facts referred to the Council.

Article L463-6

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 L463-7

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The meetings of the Council for Competition are not public. Only the parties and the Government Commissioner can attend them. The parties may ask to be heard by the Council and can arrange to be represented or assisted.

The Council for Competition may hear any person whose evidence it considers to be material to its enquiry.

The general reporter, or the assistant general reporter(s) and the Government Commissioner may present their observations.

The general reporter, or the assistant general reporter(s) and the reporter 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 L463-8

(inserted by Act No 2001-420 of 15 May 2001, Article 71, Official Gazette of 16 May 2001)

The general rapporteur 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 financing of the expert assessment shall be the responsibility of the party requesting this or the Council where this 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.

CHAPTER IV

Decisions and appeals

Articles L464-1 to
L464-8

Article L464-1

(Act No 2001-420 of 15 May 2001, Article 72, Official Gazette of 16 May 2001)

The Council on Competition may, at the request of the Minister 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 commissioner, 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 complainant 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.

The precautionary measures shall be published in the Official Gazette on Competition, Consumer Affairs and the Prevention of Fraud.

Article L464-2

(Act No. 2001-420 of 15 May 2001 Art. 73 Official Journal of 16 May 2001)

(Order No. 2004-1173 of 4 November 2004 Art. 10 Official Journal of 5 November 2004)

I. - The Competition Council 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 from them to discontinue the non-competitive practices.

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 are proportionate to the seriousness of the charges brought, 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 the present Part. They are 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 Council may order that its decision, or an abstract thereof, be posted on the court notice-board 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.

II. - The Competition Council may impose 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:

a) 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;

b) 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 amount of the coercive fine is definitively set by the Competition Council.

III. - When a body or a company does not contest the truth of the allegations made against it and undertakes to alter its conduct in the future, the general rapporteur may recommend that the Competition Council, 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.

IV. - A total or partial exemption from financial penalties may be granted to a company 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 which the council or the administration did not have access to beforehand. To that end, subsequent to the initiative taken by that company or body, the Competition Council, at the request of the general rapporteur or the Minister for Economic Affairs, adopts a plea for leniency which stipulates the conditions the envisaged exemption is subject to 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. When a decision is taken pursuant to I of the present article, the council 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.

Article L464-3

(Order No. 2004-1173 of 4 November 2004 Art. 11 Official Journal of 5 November 2004)

If the measures, orders or commitments referred to in Articles L. 464-1 and L. 464-2 are not complied with, the council may impose a financial penalty within the limits set in Article L. 464-2.

Article L464-4

(Order No. 2004-1173 of 4 November 2004 Art. 12 Official Journal of 5 November 2004)

The financial penalties and coercive fines are recovered as State debts separate from taxes and state property.

Article L464-5

(Act No 2001-420 of 15 May 2001, Article 69, Official Gazette of 16 May 2001)

The Council, 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 euro for each of the perpetrators of prohibited practices.

Article L464-6

(Act No. 2001-420 of 15 May 2001 Art. 75 Official Journal of 16 May 2001)

(Order No. 2004-274 of 25 March 2004 Art. 24 I Official Journal of 27 March 2004)

When no practice likely to jeopardise competition on the market is established, the Competition Council 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 L464-6-1

(inserted by Order No. 2004-274 of 25 March 2004 Art. 24 II Official Journal of 27 March 2004)

The Competition Council 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:

a) 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;

b) 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 L464-6-2

(inserted by Order No. 2004-274 of 25 March 2004 Art. 24 II Official Journal of 27 March 2004)

However, the provisions of Article L. 464-6-1 do not apply to agreements and practices which contain any of the following blatant anti-competitive restrictions:

- a) Restrictions 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;
- b) Restrictions on unsolicited sales to end users made by a distributor outside its contractual territory;
- c) 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;
- d) Restrictions applied to cross-deliveries between distributors within a selective distribution network, including those between distributors operating at different commercial phases.

Article L464-7

The Council's decision adopted pursuant to Article L.464-1 may be open to an application to set this aside or alter this by the parties in question and the government commissioner 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 president of the Paris Cour d'appel may order that the enforcement of the precautionary measures 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 L464-8

(Act No. 2001-1168 of 11 December 2001 Art. 33 IV Official Journal of 12 December 2001)

(Order No. 2004-274 of 25 March 2004 Art. 24 III Official Journal of 27 March 2004)

(Order No. 2004-1173 of 4 November 2004 Art. 13 Official Journal of 5 November 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 83 II Official Journal of 10 December 2004)

The decisions of the Competition Council referred to in Articles L. 462-8, L. 464-2, L. 464-3, L. 464-5, L. 464-6 and L. 464-6-1 are notified to the parties involved and to the Minister for Economic Affairs, who then have a period of one month in which to make an application for cancellation or reversal to the Paris Court of Appeal.

The decisions are published in the Official Gazette for Competition, Consumer Affairs and the Prevention of Fraud. The Minister for Economic Affairs oversees their implementation. The decisions may provide for limited publication to take account of the parties' legitimate interest in not having their business secrets divulged.

The appeal does not have suspensive effect. However, the presiding judge of the Paris Court of Appeal 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 Minister for Economic Affairs may, in all cases, enter an appeal on points of law against an order of the Paris Court of Appeal.

TITLE VII

Sundry provisions

Articles L470-1 to
L470-8

Article L470-1

The court may order legal persons jointly and severally to pay the fines ordered against their directors pursuant to the provisions of this book and the texts adopted in application thereof.

Article L470-2

In the event of sentencing under Articles L.441-3, L.441-4, L.441-5, L.442-2, L.442-3, L.442-5 and L.443-1, the court may order that its decision be posted on a notice-board or circulated in accordance with the conditions specified by Article 131-10 of the Penal Code.

Article L470-3

When a person having been sentenced 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.

Article L470-4

When a legal person having been sentenced 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 L470-5

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 L470-6

(Act No. 2001-420 of 15 May 2001 Art. 84 Official Journal of 16 May 2001)
(Order No. 2004-1173 of 4 November 2004 Art. 14 Official Journal of 5 November 2004)
(Act No. 2004-1343 of 9 December 2004 Art. 83 II Official Journal of 10 December 2004)

For application of Articles 81 to 83 of the Founding Treaty of the European Community, the Minister for Economic Affairs and the officials he has designated or empowered pursuant to the provisions of the present Book, on the one hand, and the Competition Council, 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 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 Part V of Book IV.

Article L470-7

Professional associations may bring actions before the civil or Tribunal de commerce with regard to facts directly or indirectly harming the collective interest of the profession or sector which they represent or fair competition.

Article L470-8

A Conseil d'Etat decree shall determine the terms for applying this book.

BOOK V

Commercial paper and guarantees

Articles L511-1 to
L526-4

TITLE I

Commercial paper

Articles L511-1 to
L512-8

CHAPTER I

Bill of exchange

Articles L511-1 to
L511-81

SECTION I

Creation and form of the bill of exchange

Articles L511-1 to
L511-6

Article L511-1

I.- The bill of exchange shall contain:

1° The term "bill of exchange" inserted in the actual text of the bill and expressed in the language used for wording this bill;

2° The unconditional order to pay a certain sum;

3° The name of the person who must pay, referred to as the drawee;

4° The indication of its expiration;

5° The indication of the place where payment must be made;

6° The name of the person to whom or to the order of whom payment must be made;

7° The indication of the date when and the place where the bill was created;

8° The signature of the person issuing the bill, referred to as the drawer. This signature shall be added either by hand or using any non-written method.

II.- Bills from which one of the items indicated in I is missing shall not be valid as bills of exchange, except in the cases specified by III to V of this article.

III.- Bills of exchange whose expiration is not indicated shall be regarded as payable on sight.

IV.- Unless specifically indicated, the place stated beside the name of the drawee shall be deemed to be the place of payment and, at the same time, the place of domicile of the drawee.

V.- Bills of exchange not indicating the place of their creation shall be regarded as having been signed in the place



indicated beside the drawer's name.

Article L511-2

Bills of exchange may be made out to the order of the drawer.

They may be drawn on the drawer.

They may be drawn on behalf of a third party.

They may be payable at the domicile of a third party, either in the locality where the drawee has its domicile or in another locality.

Article L511-3

In a bill of exchange payable on sight or after sight, it may be stipulated by the drawer that the sum shall produce interest. In any other bill of exchange, this stipulation shall be deemed to be unwritten.

The interest rate must be indicated in the bill. If this is not indicated, the clause shall be deemed to be unwritten.

The interest shall run from the date of the bill of exchange unless another date is indicated.

Article L511-4

The bill of exchange whose amount is written in both words and figures shall be valid, in the event of a difference between these, for the sum written in words.

The bill of exchange whose amount is written several times, either in words or in figures, shall be valid, in the event of a difference between these, only for the lowest sum.

Article L511-5

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 the bill of exchange bears the signatures of persons who are not capable of binding themselves by a bill of exchange, false signatures or signatures of imaginary persons or signatures which, for any other reason, cannot be binding on the persons who have signed the bill of exchange, or in whose name this has been signed, the obligations of the other signatories shall not be any less valid.

Anyone putting their signature to a bill of exchange as the representative of a person for whom they do not have the power to act shall be bound themselves with regard to the bill and, if they have paid, to the same rights which the alleged principal would have had. The same shall apply to representatives who have exceeded their powers.

Article L511-6

The drawer shall act as guarantor for the acceptance and payment.

The drawer may be exonerated from the acceptance guarantee. Any clause by which the drawer is exonerated from the payment guarantee shall be deemed to be unwritten.

SECTION II Consideration

Article L511-7

Article L511-7

Consideration must be provided by the drawer or by the person on whose behalf the bill of exchange shall be drawn, without the drawer on behalf of another person ceasing to be personally bound towards the endorsers and the bearer only.

Consideration exists if, on the expiration of the bill of exchange, that for which this is supplied is payable to the drawer, or to the person on whose behalf the bill is drawn, in a sum at least equal to the amount of the bill of exchange.

Ownership of the consideration shall be automatically transferred to the successive holders of the bill of exchange.

Acceptance shall presume consideration.

It shall provide proof of this with regard to endorsers.

Whether or not there is acceptance, the drawer alone shall be required to prove, in the event of refusal, that those on whom the bill was drawn had consideration on the expiration. Otherwise, the drawer shall be required to guarantee this, even if the protest has been made after the fixed periods.

SECTION III Endorsement

Articles L511-8 to L511-14

Article L511-8

Any bill of exchange, even where not expressly drawn to order, shall be transferable by means of endorsement.

When the drawer has inserted in the bill of exchange the words "not to order" or an equivalent expression, the bill shall be transferable only in the form and with the effects of an ordinary assignment.

The endorsement may be carried out to the benefit of the drawee, whether or not this is the acceptor, the drawer or



any other obligor. These persons may endorse the bill again.

The endorsement must be unconditional. Any condition to which it is subject shall be deemed to be unwritten.

Partial endorsement shall be invalid.

Endorsement "to the bearer" shall be valid as a blank endorsement.

The endorsement must be entered on the bill of exchange or on a sheet attached thereto and referred to as an extension. It must be signed by the endorser. The signature of the latter shall be 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 extension.

Article L511-9

I.- The endorsement shall transfer all the rights resulting from the bill of exchange.

II.- If the endorsement is blank, the bearer may:

1° Fill in the blank, either with his name or the name of another person;

2° Endorse the bill again either blank or to another person;

3° Hand over the bill to a third party without filling in the blank and without endorsing it.

Article L511-10

The endorser shall, unless otherwise specified, act as guarantor for the acceptance and payment.

The endorser may prohibit another endorsement. In this case, the endorser shall not be bound by the guarantee towards the persons to whom the bill is subsequently endorsed.

Article L511-11

The holder of a bill of exchange shall be regarded as the legitimate bearer if they can prove their right by an uninterrupted series of endorsements, even if the last endorsement is blank. Deleted endorsements shall be deemed to be unwritten in this respect. When a blank endorsement is followed by another endorsement, the signatory of the latter shall be deemed to have acquired the bill by the blank endorsement.

If a person has been dispossessed of a bill of exchange by any event whatsoever, the bearer proving their right in the manner indicated in the above paragraph shall be required to relinquish the bill only if they have acquired this in bad faith or if, in acquiring this, they have committed a serious offence.

Article L511-12

Persons against whom actions are brought with regard to bills of exchange may not raise against the bearer the exceptions based on their personal relationships with the drawer or with the previous bearers, unless the bearer, in acquiring the bill, has acted knowingly to the detriment of the debtor.

Article L511-13

When the endorsement contains the words "bill for collection" or "for collection" or any other text implying a simple order, the bearer may exercise all the rights deriving from the bill of exchange, but may endorse this only for collection.

The obligors may, in this case, invoke against the bearer only the exceptions which would be binding on the endorser.

The order contained in an endorsement "for collection" shall not end with the death of the principal or the occurrence of their incapacity.

When an endorsement contains the words "pledged security" or any other text implying a charge, the bearer may exercise all the rights deriving from the bill of exchange, but an endorsement made thereby shall be valid only as an endorsement "for collection".

The obligors may not invoke against the bearer the exceptions based on their personal relationships with the endorser unless the bearer, on receiving the bill, has acted knowingly to the detriment of the debtor.

Article L511-14

Endorsement after the expiration shall produce the same effects as an endorsement before the expiration. However, endorsement subsequent to the protest for lack of payment, or made after the expiration of the period fixed for making the protest, shall produce only the effects of an ordinary assignment.

Unless otherwise proven, the undated endorsement shall be deemed to have been made before the expiration of the period fixed for making the protest.

It is forbidden to backdate orders. If this occurs, these will be regarded as forgeries.

SECTION IV

Acceptance

Articles L511-15 to
L511-20



Article L511-15

Bills of exchange may, until their expiration, be presented for acceptance by the drawee, at the place of their domicile, by the bearer or even by a simple holder.

In any bill of exchange, the drawer may stipulate that this must be presented for acceptance, with or without fixing a deadline for this.

The drawer may prohibit presentation for acceptance in the bill unless this involves a bill of exchange payable at a third party's domicile or a bill payable in a locality other than that of the domicile of the drawee or a bill drawn after sight.

The drawer may also stipulate that presentation for acceptance may not occur before an indicated date.

Any endorser may stipulate that the bill must be presented for acceptance, with or without fixing a deadline for this, unless it has been declared not acceptable by the drawer.

After sight bills of exchange must be presented for acceptance within one year of their term.

The drawer may reduce the latter period or stipulate a longer period.

These periods may be reduced 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 their acceptance on the expiration of a period complying with normal commercial practice in terms of recognition of goods.

The refusal of acceptance shall lead ipso jure to the expiration of the term at the expense of the drawee.

Article L511-16

The drawee may request that a second presentation is made thereto on the day after the first. The interested parties shall not be allowed to claim that this request is only permitted if it is indicated in the protest.

The bearer shall not be required to relinquish, to the drawee, the bill presented for acceptance.

Article L511-17

The acceptance shall be written on the bill of exchange. It shall be expressed by the word "accepted" or any other equivalent word and shall be signed by the drawee. The simple signature of the drawee added to the reverse of the bill shall be valid for acceptance.

When the bill is payable after sight or when it must be presented for acceptance within a specified period pursuant to a special stipulation, the acceptance must be dated on the day when this was given, unless the bearer requires only that it is dated on the day of presentation. In the absence of this date, the bearer, in order to protect its rights of recourse against the endorsers and drawer, shall have this omission noted by a protest made in due time.

The acceptance shall be unconditional, but the drawee may restrict this to part of the sum.

Any other change made by the acceptance to the indications of the bill of exchange shall be equivalent to a refusal of acceptance. However, the acceptor shall be bound under the terms of its acceptance.

Article L511-18

When the drawer has indicated in the bill of exchange a place of payment other than that of the domicile of the drawee, without designating a third party at whose domicile the payment must be made, the drawee may indicate this on acceptance. Failing this indication, the acceptor shall be deemed to be obliged to pay itself at the place of payment.

If the bill is payable at the domicile of the drawee, the latter may, in the acceptance, indicate an address in the same place where the payment must be made.

Article L511-19

As a result of the acceptance, the drawee is obliged to pay the bill of exchange on expiration.

Failing payment, the bearer, even if this is the drawer, shall have against the acceptor a direct action resulting from the bill of exchange for anything which may be demanded pursuant to Articles L.511-45 and L.511-46.

Article L511-20

If the drawee, having marked the bill of exchange with its acceptance, deletes this before the return of the bill, the acceptance shall be deemed to have been refused. Unless otherwise proven, the deletion shall be deemed to have been made before the return of the bill.

However, if the drawee indicated its acceptance in writing to the bearer or to any signatory, the former shall be bound towards these within the terms of its acceptance.

SECTION V Guarantee

Article L511-21

Article L511-21

Payment of a bill of exchange may be secured as to all or part of the amount thereof by a guarantee.

The said guarantee shall be provided by a third party or by the signatory to the bill.

The guarantee shall be provided either on the bill of exchange or attached to it, or by a separate act indicating the place at which the guarantee is given.

It shall be expressed by the words "valid as guarantee" or any equivalent formula, and must be signed by the



guarantor.

It shall be deemed to have come into existence simply on signature by the guarantor on the reverse side of the bill of exchange, except where the signature is that of the drawee or the drawer.

The guarantee must indicate the person on whose behalf it is given. In the absence of any such indication, it shall be deemed to be for the benefit of the drawer.

The guarantor shall be bound according to the terms of the guarantee given.

The guarantee shall be valid even though the obligation guaranteed may be void for any reason other than a formal defect.

On paying the bill of exchange, the guarantor shall acquire the rights against the beneficiary of the guarantee arising from the bill of exchange and any persons bound by obligations to the said beneficiary by virtue of the bill of exchange.

SECTION VI

Expiration

Articles L511-22 to
L511-25

Article L511-22

I. A bill of exchange may be drawn:

1. At sight;
2. A certain length of time after presentation;
3. A certain length of time after its date;
4. On a fixed date.

II.- Bills of exchange with other expiration dates or successive expiration dates shall be void.

Article L511-23

Bills of exchange shall be payable on presentation. They must be presented for payment within a year of the date thereof. The drawer may reduce the said period or stipulate a longer one. The said periods may be reduced by endorsers.

The drawer may stipulate that a bill of exchange payable at sight must not be presented for payment before the end of a specified period. In any such case, the period during which the bill may be presented shall begin on the expiration of the said period.

Article L511-24

The expiration date of a bill of exchange payable a certain length of time after presentation shall be determined either by the date of acceptance or by the date of protest.

In the absence of any protest, an undated acceptance shall be deemed for the acceptor's purposes to have been given on the final day of the period specified for presentation for acceptance.

A bill of exchange drawn one or more months after the date of the bill or of presentation shall mature on the corresponding day of the month on which payment is due. In the absence of a corresponding date, such a bill shall mature on the last day of the said month.

Where a bill of exchange is drawn one or more months and a half after the date of the bill or of presentation, the full months shall be counted first.

If the expiration date is fixed at the beginning, in the middle or at the end of the month, the said terms shall be understood to mean the 1st, 15th or last day of the month.

The expressions "eight days" or "fifteen days" shall mean eight or fifteen actual days rather than one or two weeks.

The expression "half a month" shall indicate a period of fifteen days.

Article L511-25

Where a bill of exchange is payable on a fixed date at a place where the calendar is different from that of the place of issue, the expiration date shall be considered fixed according to the calendar of the place of payment.

Where a bill of exchange drawn between two places with different calendars is payable a certain length of time after the date thereof, the date of issue shall be put back to the corresponding date in the calendar of the place of payment and its expiration date shall be fixed accordingly.

Periods for the presentation of bills of exchange shall be calculated according to the rules indicated in the preceding sub-paragraph.

These rules shall not apply where a clause in a bill of exchange, or simply the wording of the document, indicates that the parties intended to adopt different rules.

SECTION VII

Payment

Articles L511-26 to
L511-37

Article L511-26

The bearer of a bill of exchange payable on a fixed date or a certain length of time after presentation or the date



thereof must present the bill either on the day on which it is payable, or on one of the next two working days thereafter. Presentation of a bill of exchange to a clearing house shall be equivalent to presentation for payment.

Article L511-27

On paying a bill of exchange, the drawee may demand that it be delivered endorsed with an acknowledgement of receipt by the bearer.

The bearer may not refuse a part payment.

In the event of part payment, the drawee may demand that a note of the part payment be endorsed on the bill and that an acknowledgement of receipt thereof be given.

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 L511-28

The bearer of a bill of exchange shall not be obliged to receive payment before the expiration date.

Drawers who pay before the expiration date shall do so at their own risk.

Drawers who pay on the expiration date shall be validly discharged, unless there is any dishonesty or serious fraud on their part. They must satisfy themselves that the successive endorsements are legally valid, but need not check the endorsers' signatures.

Article L511-29

Where a bill of exchange is stipulated to be payable in a currency not valid in the place of payment, the amount due may be paid in the currency of the country, according to its value on the expiration date. If the debtor is late in making payment, the bearer may opt to demand payment of the amount due under the bill of exchange in the currency of the country according to the rate of exchange either on the expiration date or on the date of payment.

The value of a foreign currency shall be determined according to the usual practice in the place of payment. The drawer may, however, stipulate that the sum payable be calculated according to a rate specified in the bill.

The rules herein specified shall not apply where the drawer shall have stipulated that payment must be made in a certain currency indicated by a clause specifying cash payment in a foreign currency.

Where the amount payable under the bill of exchange is indicated in a currency of the same denomination, but a different value, in the country of issue and the country of payment, it shall be presumed to refer to the country of payment.

Article L511-30

If a bill of exchange is not presented for payment on its expiration date, or on one of the next two working days thereafter, any debtor shall be entitled to deposit the amount of the bill with the Consignments office at the risk and cost of the bearer.

Article 511-31

No objection to payment shall be admissible save in the event of loss of the bill of exchange or of an administrative order or liquidation of the bearer.

Article 511-32

In case of loss of an unaccepted bill of exchange, the owner may pursue payment on any subsequent bill.

Article L511-33

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 security.

Article L511-34

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 demanded and obtained by means of a court order, subject to the production of accounting evidence of ownership and the provision of security.

Article L511-35

In the event of refusal to pay on a demand 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 deed of protestation. The said deed must be executed on the day after the expiration 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 L511-36

In order to obtain the subsequent bill, the owner of the 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 L511-37

The pledge of security referred to in Articles L511-33 and L511-34 shall be extinguished after three years unless any claims shall have been made or legal proceedings commenced within that period.

SECTION VIII

Recourse due to non-acceptance and non-payment

Articles L511-38 to
L511-51

Article L511-38

I.- Bearers may exercise the remedies to which they are entitled against the endorsers, the drawer and other parties under obligation:

1. On the expiration date of the bill, if payment shall not have taken place;

2. Even before the expiration date:

a) In the event of total or partial refusal of acceptance;

b) In the event of an administrative order of the drawee, whether or not the bill is accepted, or of insolvency of the drawee even if not recognised by a Court decision, or of an unsuccessful attempt to attach the drawee's assets;

c) In the event of an administrative order of the drawer of a non-acceptable bill.

II. - Nevertheless, sureties against whom a right of action is exercised in the circumstances described in paragraph 1 b) and c) may within three days of the date of commencing the said action apply to the Presiding Judge of the Tribunal de commerce of the district in which they are resident for time to pay. If the said application is held to be justified, the Judge shall make an order fixing 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 payment. No objection or appeal may be made against such an order.

Article L511-39

Refusal to accept or pay must be recorded by a deed known as a non-acceptance protest or a non-payment protest.

A non-acceptance protest must be issued within the time limits fixed for presentation for acceptance. Where, however, in the circumstances described in Article L.511-16 (1), the bill is presented for the first time on the final day of the said period, the protest may be issued on the following day.

A non-payment protest relating to a bill of exchange payable on a fixed date or a certain length of time after the date or presentation thereof must be registered on one of the two working days following the date on which the bill of exchange is payable. In the case of bills of exchange payable at sight, the protest must be drawn in accordance with the conditions indicated in the preceding sub-paragraph relating to non-acceptance protests.

A non-acceptance protest shall dispense with the need for presentation for payment or a non-payment protest.

Should the drawee, whether or not accepting the bill, have suspended payments, or in the event of an unsuccessful attempt to attach the drawee's assets, the bearer shall be entitled to exercise the relevant rights only after presentation of the bill to the drawee for payment and the registration of a protest.

In the event of an administrative order or liquidation of the drawee, whether or not accepting the bill, and likewise in the event of an administrative order or liquidation of the drawer of a non-acceptable bill, the production of a declaratory judgment shall suffice to enable the bearer to exercise the appropriate remedies.

Article L511-40

Where a bearer agrees to accept payment by ordinary cheque, by a payment order drawn on the Bank of France, or by Giro cheque, the cheque or order must indicate the number and expiration 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, notice of the non-payment protest relating to the said cheque must be served on the bank at which payment of the bill should take place within the period provided in Article 41 of the Decree-Law of 30 October 1935 unifying the law relating to cheques and payment cards. The protest of non-payment of the

cheque and the notice must be served under cover of the same writ, save where, for reasons of territorial jurisdiction, two separate huissiers are required.

Where settlement is effected by payment order and the order is rejected by the Bank of France, or by Giro cheque and the order is rejected by the Giro bank where the account to be debited is held, the non-payment thereof shall be recorded in a form of notice served at the address for service 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 L511-41

Where the final day of the period allowed for service of notice of non-payment of a payment order or Giro cheque 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 current law states that no payment may be demanded and no protest may be made shall be treated as equivalent to public holidays.

Unless they pay the bill of exchange and the expenses of the notice and, if appropriate, the cheque protest, drawees of bills of exchange who receive such a notice must return the bill of exchange to the huissier who serves the notice. The huissier shall immediately draw up a non-payment protest in relation to the bill of exchange.

If the drawee shall not return the bill of exchange, a deed of protest must immediately be registered, recording the failure to return the bill. A third party bearer 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 L511-42

The bearer must give notice of non-acceptance or non-payment to the endorser within four working days of the date of the protest or of presentation where there is a free return clause.

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 two working days of the date on which the notice is received, notify the next endorser back, indicating the names and addresses of the persons who served the previous notices, and so on back to the drawer.

The above-mentioned periods shall begin to run on receipt of the previous notice.

Where, in accordance with the preceding sub-paragraph, notice is served on the signatory of a bill of exchange, the same notice must be given to the said signatory's guarantor within the same time limit.

Where an endorser has not indicated an address or has done so illegibly, it shall be sufficient that notice has been served on the previous endorser.

Any person having a notice to serve may do so in any form, even by simply returning the bill of exchange. It must be proved that notice was served within the relevant time limit.

The said time limit shall be considered to have been observed if a letter giving notice was posted within the said period.

Persons who fail to serve notice within the time limit indicated above shall not be liable to forfeiture of rights; they shall be liable, if applicable, for any loss or damage caused by their negligence, but the amount of damages awarded shall not exceed the amount of the bill of exchange.

Article 511-43

The drawer or an endorser or guarantor may exempt the bearer from the requirement that a non-acceptance or non-payment protest must be issued to enable the bearer to exercise the appropriate remedies, by endorsing a "free return" or "no protest required" clause or any other equivalent clause on the instrument and signing the said endorsement.

Such a clause shall not exempt the bearer from presenting the bill of exchange within the legal time limits nor from serving notice.

The burden of proving failure to observe the time limits shall fall to the person pleading the said failure against the bearer.

Where the clause is endorsed by the drawer, it shall bind all signatories; where endorsed by an endorser or guarantor, it shall bind only the latter. A bearer who issues a protest notwithstanding the clause endorsed by the drawer shall be responsible for the expenses thereof.

Where the clause emanates from an endorser, or a guarantor, the expenses of the protest, if one is issued, may be recovered against all signatories.

Article 511-44

All persons who shall have drawn, accepted, endorsed or guaranteed a bill of exchange shall be jointly and severally liable to the bearer.

The bearer shall be entitled to bring an action against all the said persons, individually or collectively, without being constrained to observe the order in which they assumed their obligations.

Any signatory of a bill of exchange who shall have repaid the same shall be entitled to the same rights.

An action against one of the obligees shall not prevent an action from being brought against any of the others, even if their obligations were assumed later in time than those of the defendant to the original action.

Article L511-45

I. - Bearers may claim the following sums from parties against whom they exercise their remedies:

1. The amount of the non-accepted or unpaid bill of exchange, together with interest, if stipulated;
2. Interest at the legal rate from the expiration date;



3. The expenses of the protest and notices served, and any other expenses.

II.- Where the remedy is exercised before the expiration date, a discount shall be deducted from the amount of the bill. The said discount shall be calculated according to the official discount rate fixed by the Bank of France as it exists at the date of the exercise of the remedy at the bearer's address.

Article L511-46

Persons who shall have repaid a bill of exchange may claim the following sums from their sureties:

1. The full amount of the sum paid;
2. Interest on the said sum, calculated at the legal rate, from the date on which repayment was made;
3. Any expenses incurred.

Article L511-47

Any obligee against whom a remedy shall be exercised or who shall be exposed to the exercise of a remedy may demand the return of the bill of exchange against payment, with the protest and an acknowledgement of due discharge.

Endorsers who shall have repaid a bill of exchange may delete their endorsement and those of any subsequent endorsers.

Article L511-48

Should a remedy be exercised following partial acceptance, the person repaying the sum for which the bill was not accepted may demand that a note of the said repayment be endorsed on the letter and that an acknowledgement of receipt be given. The bearer must further deliver a certified copy of the bill and the protest so that any subsequent remedies may be exercised.

Article L511-49

I.- On the expiration of the periods fixed:

1. For the presentation of a bill of exchange at sight or a certain length of time after sight;
2. For the issue of a non-acceptance or a non-payment protest;

3. For presentation for payment where the bill contains a free return clause, the bearer's rights against endorsers, the drawer and any other obligees except the acceptor shall lapse.

II.- Nevertheless, rights against the drawer shall not lapse unless the latter proves having made provision for lapse. 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. - Bearers who fail to present the bill for acceptance within the time limit stipulated by the drawer shall forfeit their right of action for default on payment or default on acceptance, unless it is apparent from the terms of the stipulation that the drawer was intended to be exonerated only from the acceptance guarantee.

IV. - Where a time limit for presentation is stipulated in an endorsement, only the endorser may rely on it in law.

Article L511-50

Where the presentation of a bill of exchange or the issue of a protest within the legal time limits is prevented by an insurmountable obstacle such as the legal rules of any State or any other case of force majeure, the said periods shall be extended.

The bearer must immediately give the immediate endorser notice of a case of force majeure and endorse a note of the said notice, signed and dated, on the bill of exchange or a rider thereto. The provisions of Article 511-42 shall apply in all other respects.

As soon as the case of force majeure shall disappear, the bearer must present the bill for acceptance or payment, and register a protest if necessary.

Where a case of force majeure persists for more than thirty days from the expiration date, remedies may be exercised without the need for either presentation or the registration of a protest, unless the said remedies are suspended for a longer period, pursuant to Article L.511-61.

For bills of exchange payable at sight or a certain length of time after sight, the thirty-day period shall begin on the date on which the bearer gave notice of a case of force majeure to his endorser, even if this was done before the end of the period allowed for presentation. For bills of exchange payable a certain length of time after sight, the period after sight indicated in the bill of exchange shall be added to the thirty-day period.

Events that are purely personal to the bearer, or to any person instructed by the bearer to present the bill or issue the protest, shall in no circumstances be considered cases of force majeure.

Article L511-51

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.



L511-61

Subsection 1
Forms

Articles L511-52 to
L511-55

Article L511-52

Non-acceptance or non-payment protests must be drawn by a notary or a huissier. The protest must consist of a single writ served:

1. At the address for service or last known address of the person on whom the bill of exchange was payable;
2. At the address for service of the persons indicated by the bill of exchange for payment in case of necessity;
3. At the address for service of the third party who intervened to accept the bill.

In the event of a false address being given, the protest must be preceded by a search.

Article L511-53

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 formal notice 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 L511-54

No deed executed by the bearer of the bill of exchange may replace a deed of protest, save as provided by Articles L.511-32 to L.511-37 and Articles L.511-40 and L.511-41.

Article L511-55

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 to the Clerk of the Tribunal de commerce or Tribunal de grande instance having jurisdiction in commercial matters for the area in which the debtor's address for service is located, or send true copies of protests of non-payment of accepted bills of exchange and promissory notes to the said Clerk by registered letter with recorded delivery. This formality must be completed within two weeks of the date of the deed.

Subsection 2
Publication

Articles L511-56 to
L511-60

Article L511-56

The Clerk of the Tribunal de commerce shall keep a duly updated register, by name and debtor, of protests of 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 Giro cheques issued by Giro banks. The said register shall consist of statements a list of which shall be fixed by decree.

Article L511-57

On the expiration of a month from the date of the protest or certificate of non-payment of a Giro cheque and for a period of a year from the same date, any applicant may obtain from the Clerks of the aforementioned Courts an extract from the list of names referred to in Article L.511-56, at his own expense.

Article L511-58

On the deposit by the debtor of the instrument and the protest of non-payment of a postal order, or a receipt for payment of the order, against an acknowledgement for receipt, the Clerk of the Tribunal de commerce 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 a year referred to in Article L.511-57, after which the Clerk of the Court shall be discharged from responsibility for the same.

Article L511-59

Any publication, in whatever form, of the lists drawn up pursuant to the provisions of this sub-section is prohibited, subject to liability for damages.

Article L511-60

A decree approved by the Conseil d'Etat shall determine the methods of application of the provisions of this sub-section. It shall in particular fix the amount of the remuneration payable to huissiers and Clerks of the Tribunaux de commerce for the various formalities for which they are responsible.

Subsection 3



Extension of deadlines

Article L511-61

Article L511-61

In the event of mobilisation of the armed forces, national calamity or public disaster, or interruption of services operated by the Government or under Government control, the deadlines by which protests 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 French territory by an Order of the Council of Ministers.

The expiration dates of negotiable instruments may be extended in similar circumstances and subject to the same conditions.

SECTION X

Replacement

Articles L511-62 to
L511-64

Article L511-62

Any person entitled to exercise a remedy may, unless otherwise stipulated, obtain reimbursement by means of a replacement bill known as a *retraite* drawn at sight on one of its guarantors and payable to the latter's account.

In addition to the sums specified in Articles L.511-45 and L.511-46, replacement bills shall include a broker's fee and the stamp duty payable on the replacement.

Where a replacement bill is drawn by the bearer, the amount thereof shall be fixed according to the rate for a sight bill drawn at the place where the original bill was payable on the guarantor's place of residence. Where a replacement bill is drawn by the endorser, the amount thereof shall be fixed according to the rate for a sight bill drawn at the place of residence of the drawer of the replacement bill on the guarantor's place of residence.

Article L511-63

The following fees shall be charged for replacement bills issued in mainland France: 0.25% on chefs-lieux [cities or towns comprising seats of local government] of departments, 0.50% on chefs-lieux of districts and 0.75% anywhere else.

No replacement shall on any account take place in the same department.

Article L511-64

Replacement bills may not be accumulated.

No endorser or drawer shall be required to bear more than one replacement bill.

SECTION XI

Honour

Articles L511-66 to
L511-65

Article L511-65

The drawer, an endorser or a guarantor may appoint a person to accept or pay a bill should the need arise.

Bills of exchange may be accepted or paid, in accordance with the conditions hereinafter determined, by a person intervening for any debtor against whom a remedy may be exercised.

The intervenor may be a third party or even the drawee, or a person already under obligation by virtue of the letter of exchange, other than the acceptor.

Intervenors shall be required to give notice of their intervention to the party on whose behalf they have intervened within two working days. Should this time limit not be observed, they shall be liable for any loss or damage that may be caused by their negligence, but any damages awarded shall not exceed the amount of the bill of exchange.

Subsection 1

Acceptance for honour

Article L511-66

Article L511-66

Acceptance for honour may take place in all cases in which remedies are open to the bearer of an acceptable bill of exchange before the expiration date.

Where a bill of exchange indicates a person to accept or pay it in case of need in lieu of payment, bearers shall not exercise their rights of action against the person who endorsed the said indication on the bill or any subsequent signatories before the expiration date, unless they shall have presented the bill of exchange to the person so designated and the said person shall have refused acceptance, and the refusal shall not have been recorded by means of a protest.

In other cases of honour, bearers may refuse acceptance for honour.

Nevertheless, if they agree to such acceptance, they shall forfeit their rights of action before the expiration date against the person on whose behalf the acceptance was given and subsequent signatories.

A note of acceptance by intervention must be endorsed on the bill of exchange; it must be signed by the intervenor. It must name the person on whose behalf it takes place; in the absence of any such indication, acceptance shall be



deemed to have been given on behalf of the drawer.

Acceptors by honour shall be obliged to the bearer and endorsers subsequent to the person on whose behalf they shall have intervened, in the same way as the latter.

Notwithstanding the fact of acceptance for honour, the person on whose behalf it took place and that person's sureties may demand that the bearer deliver the latter of exchange, the protest and a discharge of account, if appropriate, against payment of the sum specified in Article L.511-45.

Subsection 2

Payment on behalf of a third party

Articles L511-67 to
L511-71

Article L511-67

Payment on behalf of a third party may take place in all cases where rights of action are open to the bearer, whether on or before the expiration date.

Payment must comprise the whole sum which the person on whose behalf intervention takes place would have had to pay.

It must be effected by no later than the last day allowed for the issue of a non-payment protest.

Article L511-68

Where a bill of exchange has been accepted by intervenors whose place of residence is in the place of payment or where persons whose place of residence is in the same place have been indicated to pay should the need arise, the bearer must present the bill to all the said persons and, if necessary, issue a non-payment protest by no later than the day following the final date allowed for a protest to be issued.

If no protest is issued within the said period, the person who indicated the need, or on whose behalf the bill was accepted, and any subsequent endorsers shall cease to be under obligation.

Article L511-69

Bearers who refuse payment on behalf of a third party shall forfeit their rights of action against those persons who would thereby have been discharged.

Article L511-70

Payment on behalf of a third party must be recorded by a formal discharge endorsed on the bill of exchange, with an indication of the person on whose behalf it is made. In the absence of any such indication, payment shall be deemed to have been made on the drawer's behalf.

The bill of exchange and protest, if any, must be delivered to the person paying on behalf of a third party.

Article L511-71

Person paying by intervention shall acquire the rights arising from the bill of exchange against the person on whose behalf they paid it and those obliged to the latter by virtue of the bill of exchange. They may not, however, further endorse the bill of exchange.

Endorsers subsequent to the signatory on whose behalf payment took place shall be discharged.

In the event of simultaneous honour by more than one person, the intervenor discharging the largest sum shall take priority. Intervenors who knowingly contravene this rule shall forfeit their rights of action against the persons discharged thereby.

SECTION XII

Multiple originals and copies

Articles L511-72 to
L511-76

Subsection 1

Multiple originals

Articles L511-72 to
L511-74

Article L511-72

Bills of exchange may be drawn in a number of identical originals.

The said originals must be numbered in the wording of the heading itself, failing which each of them shall be considered as a separate bill of exchange.

Bearers of bills of exchange that do not indicate that only one original thereof has been drawn may request the issue of more than one copy at their own expense. To that end, they must approach their immediate endorser, who shall be required to assist them by acting against their own endorser, and so on back to the drawer. Endorsers must reproduce their endorsements on all further originals.

Article L511-73



Payment made on one of the said original shall have the effect of a discharge, even where it is not stipulated that such payment shall cancel the effect of the other originals. Nevertheless, the drawee shall be bound on the basis of each copy accepted and not returned.

An endorser who shall have transferred the originals to more than one person, and any subsequent endorsers, shall be proportionately bound by all originals bearing their signatures and not returned.

Article L511-74

Any person who shall have sent one of the originals for acceptance must indicate the name of the person holding the original in question on the other originals. The said holder must deliver it to the legitimate bearer of another original. If the holder refuses, the bearer may exercise the appropriate remedies only after recording by means of a protest:

1. That the original sent for acceptance was not delivered on demand;
2. That it has not been possible to obtain payment on another original.

Subsection 2

Copies

Articles L511-75 to
L511-76

Article L511-75

Every bearer of a bill of exchange shall be entitled to make copies thereof.

Copies must be exact reproductions of the original with any endorsements and other notes that appear on it. They must indicate where they stop.

They may be endorsed and guaranteed in the same way and with the same effects as the original.

Article L511-76

Copies must indicate the holder of the original instrument. The latter must deliver the original to the legitimate bearer of the copy.

If the latter refuses, the bearer shall be entitled to exercise the appropriate rights of action against the persons who have endorsed or guaranteed the copy only after recording by means of a non-payment protest that the original has not been delivered on demand.

Where, after the last endorsement made before the copy was taken, the original instrument bears the clause "from this point on, endorsements are valid only on the copy" or any other equivalent wording, any endorsement on the original signed subsequently shall be void.

SECTION XIII

Alterations

Article L511-77

Article L511-77

In the event of any alteration of the wording of a bill of exchange, signatories subsequent to the said alteration shall be bound by the wording as amended; prior signatories shall be bound by the original wording.

SECTION XIV

Prescription

Article L511-78

Article L511-78

Any actions against an acceptor arising from a bill of exchange must be brought within three years of its expiration date.

Actions by the bearer against endorsers and the drawer must be brought within a year of the date of a protest issued within the legal time limit or the expiration date, in the case of a bill with a free return clause.

Actions by endorsers against one another and against the drawer must be brought within six months of the date on which the endorser repaid the bill or 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.

The interruption of the running of time shall take effect only against the person in respect of whom the act having the effect of interruption was interposed.

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 XV

General provisions

Articles L511-79 to
L511-81

Article L511-79

Payment of a bill of exchange the expiration date of which falls on a public holiday shall not be enforceable until the



first working day thereafter. Similarly, any other acts in the law relating to a bill of exchange, particularly presentation for acceptance and protests, may be effected only on a working day.

Where any such act must be effected within a certain period of time the last day of which is a public holiday, the said period shall be extended until the first working day thereafter. Intervening public holidays shall be included when calculating the period of limitation.

Article L511-80

Days on which no payment may be enforced nor any protest issued according to the current laws shall be treated as equivalent to public holidays.

Article L511-81

COMMERCIAL CODE

Statutory or agreed limitation periods shall not include the day on which they begin to run.

No legal or judicial days of grace shall be permitted save in the cases referred to in Articles L.511-38 and L.511-50.

CHAPTER II

Promissory note

Articles L512-1 to
L512-8

Article L512-1

I.- Promissory notes must contain:

1. The order clause or name of the instrument inserted in the actual text and expressed in the language used for the wording of the instrument;

2. A pure and simple promise to pay a specific sum of money;

3. An indication of the payment date;

4. An indication of the place of payment;

5. The name of the person to whom or to whose order payment is to be made;

6. An indication of the date and place where the note is subscribed;

7. The signature of the person issuing the instrument, known as the subscriber.

II.- Promissory notes in which the payment date is not indicated shall be deemed to be payable at sight.

III.- In the absence of any specific indication, the place of creation of the instrument shall be deemed to be the place payment and, at the same time, the subscriber's place of residence.

IV.- Promissory notes in which the place of creation is not indicated shall be deemed to be subscribed at the place indicated next to the name of the subscriber.

Article L512-2

Any instrument lacking one of the items listed in Article 512-1-I shall not be valid as a promissory note, save in the cases specified in Article 512-1-II to IV.

Article L512-3

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 L512-4

The provisions of Article L.511-21 relating to guarantees shall also apply to promissory notes. In the circumstances referred to in the sixth sub-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 L512-5

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 protests of non-payment of a promissory note.

Article L512-6

The subscriber of a promissory note shall be under a similar obligation to that assumed by the acceptor of a bill of exchange.

Article L512-7

Promissory notes payable a certain length of time after presentation must be presented for approval by the subscriber within the time limits laid down in Article 511-15. The period for presentation shall run from the date on which the subscriber's approval is endorsed on the note and signed. If the subscriber refuses to endorse it with such approval and date it a protest must be registered, the date of which shall serve as that on which the period from presentation shall



begin to run.

Article L512-8

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 shall not have 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 sub-paragraphs of Article L.511-15. Any stipulation to the contrary shall be deemed non-existent.

TITLE II

Guarantees

Articles L521-1 to
L526-4

CHAPTER I

General provisions on the commercial security

Articles L521-1 to
L521-3

Article L521-1

Security 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 notice to third parties.

Negotiable instruments may also be charged by way of security by means of an endorsement in the appropriate form, indicating that the instruments have been charged by way of security.

With regard to company and partnership shares and registered bonds issued by financial, industrial or commercial companies or civil-law partnerships, transferable by transfer registered in the company or partnership's records, and also to nominative entries in the Public Debt Register, security 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 2075 of the Civil Code regarding rights to receive movable assets, where third parties are able to exercise a right of attachment against the transferee only by notice of assignment served on the debtor.

Commercial instruments charged as security shall be recoverable by the secured creditor.

Article L521-2

All rights of priority shall in all cases be extinguished in respect of security where the same shall have been placed and shall remain in the possession of the creditor, or of a third party by agreement between the parties.

Creditors shall be deemed to have the goods in their possession where the same are at their disposal in their stores or vessels, in a Customs warehouse or public depository, or where they are put in possession before the arrival thereof by means of a bill of lading or a waybill.

Article L521-3

If payment is not made in the due date, the creditor may, eight days after simple notice served on the debtor and any third party holding a landlord's lien for rent, may sell the articles held as security at public auction.

Sales other than those conducted by suppliers of investment services must be effected by brokers. Nevertheless, the Presiding Judge of the Tribunal de commerce may at the parties' request appoint another type of public government official 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.

Any clause purporting to authorise the creditor to appropriate or dispose of the security without observing the aforementioned formalities shall be void.

CHAPTER II

Deposits in bonded warehouses

Articles L522-1 to
L522-40

SECTION I

Approval, assignment and cessation of operation

Articles L522-1 to
L522-13

Article L522-1

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 L522-2

A prefectorial order deciding the application for approval shall be made after consultations with the professional and inter-professional bodies to be specified by the Order approved by the Conseil d'Etat issued for the implementation of this Chapter. The reasons for the decision must be stated.

Article L522-3

The assignment of a general warehouse shall be subject to authorisation by the prefect, granted in the same way..

Article L522-4

Any cessation of operation not followed by an assignment shall be subject to six months' prior notice, to be given by the operator to the prefect. On the expiration of the said period, if general commercial interests so require, a temporary receiver may be appointed by the Presiding Judge of the Tribunal de grande instance, by an order made in emergency interim proceedings, on an application by the Procureur de la République.

Article L522-5

It shall be prohibited for operators of general warehouses to carry on, either directly or indirectly, 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 L522-6

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 L522-7

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 shall have made an order deciding the application.

The prefect may either order that the authorisation remain in force according to the conditions laid down in Article 522-11, or order the withdrawal thereof in accordance with the provisions of Article 522-39.

Article L522-8

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, after consultation with the bodies referred to in Article L.522-2.

Article L522-9

Operators of authorised establishments need not apply for the licence referred to in the rules governing the creation, extension or transfer of establishments.

Article L522-10

Decrees or orders authorising establishments as general warehouses may include a licence for the operator to open a public wholesale trading room.

Article L522-11

I. - Companies that fail to comply with 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, by way of exception to the general rule, where it is recognised that commercial interests 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 security at least as regards the latter. The special security must be provided either in cash or by means of a bank guarantee authorised by the Tribunal de commerce in whose jurisdiction the establishment is situated.

Article L522-12

The prefectorial order authorising the opening of a general warehouse shall require the operator to provide security.

The establishments referred to in Article L.522-8 shall be subject to the same obligation.

The amount of the said security, which shall be proportionate to the surface area used for storage, shall be between two limits to be fixed by an Order approved by the Conseil d'Etat.

Article L522-13



Operating conditions for the said establishments shall be fixed by one or more standard regulations in the context of this Chapter and the Order approved by the Conseil d'Etat made to implement the said Chapter.

SECTION II

Obligations, responsibilities and guarantees

Articles L522-14 to
L522-19

Article L522-14

Any person depositing merchandise in a general warehouse must declare its nature and value to the operator.

Article L522-15

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 from cases of force majeure.

The standard and specific regulations laid down in Articles L.522-13 and L.522-17 shall specify the obligations of operators as regards the safe keeping of articles deposited.

Article L522-16

Merchandise capable of carrying a warranty must be insured against fire 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 shall arise 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 L522-17

Every establishment must have its own specific regulations in addition to the general provisions of the standard regulations, specifying conditions of operation in the light of the nature and situation of the warehouse.

Article L522-18

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 L522-19

Scales of charges must be notified to the prefect at least a month before the opening of a general warehouse.

Any change in the existing charges must be notified to the prefect and to the bodies referred to in Article L.522-2, 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 Government licence.

SECTION III

Operation and supervision

Articles L522-20 to
L522-23

Article L522-20

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 L522-21

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 L522-22

General warehouses shall be placed under Government control, according to conditions to be fixed by an Order approved by the Conseil d'Etat.

Article L522-23

The provisions of this chapter, the order implementing the said provisions, the scales of charges and the regulations must be displayed in the area of the warehouse offices to which the public has access.

SECTION IV



Receipts and warrants

Articles L522-24 to
L522-37

Article L522-24

One or more receipts shall be issued to each depositor. The said receipts shall state the name, occupation and address of the depositor and 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 of the bearer of the receipt shall be transferred to the merchandise substituted.

A receipt and a warrant may be issued on a consignment of fungible merchandise to be taken in a larger consignment.

Article L522-25

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 L522-26

Receipts and warrants may be transferred by endorsement, together or separately.

Article L522-27

Transferees of a receipt or warrant may demand that the endorsement in their favour be transcribed on the counterfoil registers from which they are extracted, with a note of their address.

Article L522-28

The endorsement of a warrant that has been separated from its receipt shall be treated as a charge on the merchandise in favour of the transferee of the warrant.

The endorsement of the receipt shall transfer the right to dispose of the merchandise to the transferee, 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 L522-29

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, as to capital and interest, of the debt secured, the payment date and the name, occupation and address of the creditor. The first

transferee 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 L522-30

The bearer of a receipt that has been separated from its warrant may, even before the expiration 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 expiration date, shall be placed on deposit with the management of the general warehouse, which shall be responsible for it. The said deposit shall discharge the merchandise.

Article L522-31

If the debt shall not be 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 Government 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 sell the merchandise, as mentioned in the preceding sub-paragraph, as against the bearer of the receipt, without notice eight days after the payment date.

Article L522-32

I. - Creditors shall have their debts repaid out of the price, directly and without any legal formality, by privilege and 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 of 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 L522-33

Bearers of warrants shall have no right of action against the borrower and the endorsers until they shall have exercised his 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 protest.

Article L522-34

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 L522-35

Public credit institutions may receive warrants as commercial paper, one of the signatures required by their Memorandum and Articles of Association being dispensed with.

Article L522-36

Any person losing a warrant or receipt may apply for 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 producing documentary evidence of ownership and providing security.

If in any such case the subscriber of the warrant shall not have made payment on the due date, a third party bearer whose endorsement shall have been transcribed in the record books of the general warehouse may be authorised by a Court order to have the merchandise secured sold in accordance with the conditions laid down in Article L.522-31, subject to the provision of security.

The protest referred to in the said Article must provide copies of the relevant entries in the register of the general warehouse.

Article L522-37

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 shall not have been claimed by a third party against the general warehouse.

In the event of a warrant being lost, the security shall be discharged on the expiration of a period of three years from the date of transcription of the endorsement.

SECTION V

Sanctions

Articles L522-38 to
L522-40

Article L522-38

It shall 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 be render the perpetrator liable to a fine of 40,000 F 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 appoint 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 L522-39

In the event of a breach by the operator of a general warehouse of the provisions of this Chapter, or of Orders approved by the Conseil d'Etat, the prefect may, having interviewed the operator and consulted the professional and inter-professional bodies referred to in Article L.522-2, make a temporary or permanent order for the withdrawal of that operator's authorisation.

In any such case, the Presiding Judge of the Court, sitting in emergency interim proceedings, shall, on an application by the Procureur de la République, appoint an interim manager and determine the said administrator's powers to operate the undertaking.

In the event of permanent withdrawal of the said authorisation, where the interests of local trade 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, after consultation with the professional



and inter-professional bodies, from undertakings that have ceased to operate as general warehouses or depositories for at least two years.

Article L522-40

The conditions of application of the provisions of this Chapter shall be fixed by an Order approved by the Conseil d'Etat.

CHAPTER III

Pledge of hotel equipment and furniture

Articles L523-1 to
L523-15

Article L523-1

Any hotel operator may borrow on the security of commercial fixtures and fittings, tools and equipment used for the purposes of its operation, while retaining custody of the same on the hotel premises.

Objects charged as security for the debt shall remain as security for the lender and the lender's successors in title until the sums advanced shall 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 successors in title.

Article L523-2

Hotel operators who are not owners or life tenants of the building in which they carry on their business must, before taking any loan, give extra-judicial notice to the owner or life tenant 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 Clerk 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 Clerk of the Court, who must approve and register it and send it on by registered business letter with recorded delivery.

The owner or life tenant 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 Clerk of the Court, where the borrower has not paid any outstanding rent in arrears, six months' current rent and six months' rent to become due.

The borrower may have the objection removed by paying the said rent.

If no reply by the owner or life tenant or their legal agent shall be received within the period fixed above it shall be considered that they have no objection to the loan.

The landlord's lien over the objects charged as security shall be reduced up to the amount of the sum advanced. It shall subsist in 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 right of priority of the bearer of a pledge of hotel equipment and furniture and that of a mortgagee, their rank shall be determined by the respective dates of transcription of the first endorsement of the warrant and the registration of the mortgages.

Article L523-3

A counterfoil register, which must be duly compared and initialled, shall be kept in every 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 pledge of hotel equipment and furniture.

Article L523-4

Pledges of hotel equipment and furniture shall be issued by the Clerk of the Tribunal de commerce of the jurisdiction within which the hotel is operated. A borrower who receives a pledge of hotel equipment and furniture shall give an acknowledgement of receipt for delivery of the certificate, by public credit institutions may receive pledges of hotel equipment and furniture as commercial paper, one of the signatures required according to their Memorandum and Articles of Association being dispensed with.

Article L523-10

Bearers of warrants shall have the same rights over the proceeds of insurance policies, in the event of a claim, as over the insured property.

Article L523-11

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 shall have the rights to enforce their security as though they were privileged 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 become 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 shall 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 L523-12

A debt owed to the bearer of a warrant shall be repaid directly out of the proceeds of sale, as a right of priority 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 Tribunal de commerce.

Article L523-13

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 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 embezzlement or abuse of trust, in Articles 313-1, 313-7, 313-8 or 314-1 and 314-10 of the Penal Code.

Article L523-14

The fees payable to the Clerk of the Court shall be fixed by Order approved by the Conseil d'Etat.

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 L523-15

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 pledges of hotel equipment and furniture, shall be considered null and void.

CHAPTER IV

Oil warrant

Articles L524-1 to
L524-21

Article L524-1

Operators and holders of stocks of crude oil or petroleum products may issue stock warrants as security for their borrowing, 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 L524-2

To create the document known as an "oil warrant", the Clerk of the Tribunal de commerce 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 L524-3

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 in the event of a claim as they have over the insured products.

Article L524-4

The Clerk of the Tribunal de commerce shall issue to any applicant a list of warrants registered for more than five years in the name of the borrower or a certificate confirming that there are no entries in the register.

Article L524-5

Registrations of warrants shall be cancelled 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 Clerk of the Tribunal de commerce. A note of the repayment or release shall be entered in the register referred to in Article 524-3. A certificate of



cancellation of the entry shall be issued to them.

Entries shall be automatically cancelled 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 L524-6

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 shall refuse 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 New Code of Civil Procedure. Offers must be made to the last known successor in title by notice to the Registry at the Tribunal de commerce, in accordance with Article L.524-8. On production of a sufficient legal receipt for the said deposit the Presiding Judge of the competent Tribunal de commerce 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 L524-7

Public credit institutions may receive warrants as commercial paper, one of the signatures required by their Memoranda and Articles of Association being dispensed with.

Article L524-8

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 be jointly and severally liable to the bearer.

A discounter or re-discounter of an oil warrant must give notice to the Registry of the Tribunal de commerce 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 sub-paragraph of Article L.524-6 shall not be applicable.

Article L524-9

Bearer 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 shall not receive payment within five days of the despatch 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 Tribunal de commerce, 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 Tribunal de commerce shall notify the endorsers of the said notice within a week thereafter, by registered letter with recorded delivery.

Article L524-10

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 civil servant or public Government official at public auction. Power to do so shall be conferred on the bearer by an order made by the Presiding Judge of the Tribunal de commerce 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 Tribunal de commerce, 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 L524-11

The public Government official 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 Tribunal de commerce of the district where the merchandise to which the warrant relates is located, made on an ex parte application.

Article L524-12

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 L524-13

Debts due to bearers of warrants shall be paid directly out of the sale proceeds, by right of priority and preference over all creditors, after deduction of the sale expenses, and with no formalities other than an Order of the Presiding Judge of the Tribunal de commerce.

Article L524-14

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 shall 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 a month from the date of sale of the merchandise to exercise their right of action against the endorsers.

Article L524-15

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 sub-paragraph of Article L.524-6, relating to the repayment of interest.

Article L524-16

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 sub-paragraph of Article 524-6 shall apply.

If the said demand shall not be 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 L524-17

Any borrower who shall have made a false declaration, or shall have constituted an oil warrant on products already charged under a warrant, without first notifying the new lender, or any borrower or depository who shall have 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 L524-18

Where it is necessary to make an application to a Judge sitting in emergency interim proceedings in order to enforce the provisions of this Chapter, the said proceedings shall be held before the Presiding Judge of the Tribunal de commerce of the district where the merchandise to which the warrant relates is located.

Article L524-19

The total fees payable to the Clerk of the Tribunal de commerce in respect of oil warrants shall be as fixed by the Decree governing oil 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 recommended business letters at the appropriate rate.

Article L524-20

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 L524-21

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.

CHAPTER V

Charge on tooling and equipment

Articles L525-1 to
L525-20

Article L525-1

Payment of the purchase price of professional tooling and equipment may be secured either by the seller, or by a lender who advances the necessary funds to pay the seller, by a restricted charge on the tooling or equipment so purchased.



Where the purchaser is a trader, the said charge 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 charge.

Where the purchaser is not a trader, the charge shall be governed by the provisions of Article L.525-16.

Article L525-2

The charge shall be created by deed or unattested document, registered at the fixed fee.

Where it is given to the seller, it shall be recorded in the sale document.

Where it is given to a lender who advances the necessary funds to pay the seller, the charge 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 void.

The assets purchased must be listed in the body of the deed 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 deed 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 or endorsers in the grant of loans for equipment shall be regarded as equivalent to lenders of funds. Such persons shall automatically be subrogated to the creditors' rights. The same rule shall apply to persons who endorse, discount, guarantee or accept bills created in representation of the said loans.

Article L525-3

Charges 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 void.

Similarly, charges shall be void if not registered within fifteen days of the execution of the deed of charge 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 shall not take place at the site originally agreed, registered debts shall become automatically enforceable unless the debtor shall have notified the secured creditor of the date or place of delivery within fifteen days thereafter.

A charge 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 secured creditor shall not have requested the Clerk of the Court where the charge is registered to note the said date or place in the margin against the relevant entry in the register.

Article L525-4

Assets charged pursuant to this Chapter may, furthermore, at the secured creditor's request, be clearly marked on an essential part with a permanently fixed notice indicating the place, date and registration number of the preferential charge to which they are subject.

The debtor must not impede the opposition 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 shall have been extinguished or cancelled.

Article L525-5

Any agreed subrogation to the benefit of the charge must be noted in the margin against the relevant entry in the register within fifteen days of the date of the deed or unattested document recording the same, on delivery to the Clerk of the Court of an original or office copy of the said deed.

Any conflicts that may arise between owners of successively registered charges shall be settled in accordance with Article 1252 of the Civil Code.

Article L525-6

The benefit of the charge shall be automatically transferred to the successive bearers of the bills thereby guaranteed, in accordance with Article 1692 of the Civil Code, whether the said bills shall have been subscribed or accepted to the order of the seller or a lender who has provided all or part of the price, or whether they more generally represent the mobilisation of a validly secured debt pursuant to the provisions of this Chapter.

Where more than one bill is created to represent the debt, the right of priority attached thereto shall be exercised by the first party to sue on it, on behalf of all and for the full amount.

Article L525-7

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 secured creditor, or, failing that, an Order made by a Judge of the Tribunal de commerce, sitting in emergency interim 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 secured creditor or those subrogated to his rights shall have the benefit if the right to follow the assets in order to exercise the preferential rights conferred by the



charge, as provided by Article L.143-12.

Article L525-8

The prior rights of a secured creditor holding a charge created pursuant to the provisions of this Chapter shall subsist if the asset secured becomes a fixed asset.

Article 2133 of the Civil Code shall not apply to assets so charged.

Article 2133 of the Civil Code shall not apply to assets so charged.

Article L525-9

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

I. - The lien of a secured creditor under the provisions of the present Chapter applies to encumbered property in preference to all other liens, with the exception of:

1. The lien in respect of court fees;
2. The lien in respect of the fees for safe custody of the property;
3. The lien granted to employees by Article L. 143-10 of the Labour Code.

II. - It is exercised, specifically, against any mortgagee and in preference to the lien of the Trésor public, to the lien referred to in Article L. 243-4 of the Social Security Code, to the lien of the vendor of a business which makes use of the encumbered property, and also to the lien of the secured creditor over the entirety of the said business.

III. - However, in order for his lien to be binding on the mortgagee, on the vendor of the business, and on the secured creditor in respect of 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 via an extrajudicial process 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 pledge being given.

Article L525-10

Subject to the exceptions specified in this Chapter, the rights of chargees 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 a business, the rights of the landlord of the building, the cancellation of the said rights of priority and the release formalities.

Article L525-11

Registration shall maintain the right of priority for five years from the date of completion of the charge.

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 L525-12

A certificate of existing entries in the register, issued pursuant to Article 32 of the Law of 17 March 1909 relating to sales and charges 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 L525-13

Notice of legal proceedings to obtain the enforced liquidation of certain assets of the business and goodwill to which assets subject to the prior rights of a seller or secured 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 rights of priority enforceable.

Article L525-14

In the event of non-payment on the due date, a creditor having the benefit of the rights of priority established by this Chapter may sue for the realisation of the asset charged therewith, in accordance with the conditions laid down in Article L.521-3. The public Government official responsible for the sale shall be appointed, at the said creditor's request, by the Presiding Judge of the Tribunal de commerce. The creditor must comply with the provisions of Article L.143-10 before the sale takes place.

Such a secured creditor shall be entitled to exercise the rights relating to the ten per cent overbid referred to in Article L.143-13.

Article L525-15

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 party to whom they are awarded 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 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 L525-16

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

If the buyer 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 clerk's office of the commercial court having jurisdiction at the place where the buyer of the encumbered property is domiciled.

If payment is not effected when due, the creditor holding the lien established by the present Chapter may arrange for the encumbered property to be sold at public auction pursuant to the provisions of Article L. 521-3.

Registrations are struck out either with the consent of the interested parties, or by virtue of a judgment with force of res judicata.

In the absence of a judgment, the registrar cannot effect a total or partial striking off unless a notarially recorded instrument 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 notation placed in the margin of the registration by the registrar.

Certification thereof is issued to the parties who so request.

Article L525-17

For the purposes of the provisions of this Chapter, Clerks shall be subject to the formalities and responsibilities fixed by regulation for the maintenance of the register of charges and the issue of statements and certificates on request.

Their fees shall be fixed as provided by the current regulations.

Article L525-18

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 L525-19

Any purchaser or holder of assets charged pursuant to this Chapter who shall destroy or attempt to destroy, embezzle or attempt to embezzle, or damage or attempt 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 fraudulent conversion in Articles 314-1 and 314-10 of the Penal Code.

Any fraudulent manoeuvres designed to frustrate a creditor's prior rights over the assets charged, or to reduce the extent of the said rights, shall be subject to the same penalties.

Article L525-20

The conditions of implementation of the provisions of this Chapter shall be determined by an Order approved by the Conseil d'Etat.

CHAPTER VI

Protection of the Individual Businessman and his Spouse

Articles L526-1 to
L526-4

Article L526-1

(inserted by Law No. 2003-721 of 1 August 2003 Article 8 Official Gazette of 5 August 2003)

Contrary to Articles 2092 and 2093 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 business may declare his rights over the real property which constitutes his principal place of residence to be exempt from seizure. The said declaration, which is published in the Mortgage Registry or, in the departments of Bas-Rhin, Haut-Rhin and Moselle, in the Land Registry, is effective only against creditors whose rights issue from the declarant's business activities subsequent to publication.

If the property houses the business premises as well as the living accommodation, the portion thereof used as the principal place of residence can be declared only if it is designated as such in a description of the division of the property.

Article L526-2

(inserted by Law No. 2003-721 of 1 August 2003 Article 8 Official Gazette of 5 August 2003)

The declaration, executed in the presence of a notary if it is not to be declared null and void, contains a detailed description of the property and an indication as to whether ownership thereof is separate, joint or undivided. The



document is published in the local Mortgage Registry or, in the departments of Bas-Rhin, Haut-Rhin and Moselle, in the Land Registry.

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 abstract of the declaration must be published in a periodical available in the department in which the business activity is conducted which carries official notices if that person is to avail himself 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 give rise to the payment to notaries of fees for which the ceiling is determined by decree.

Article L526-3

(inserted by Law No. 2003-721 of 1 August 2003 Article 8 Official Gazette of 5 August 2003)

In the event of the real property rights indicated in the initial declaration being sold, the sum received therefor shall remain exempt from seizure in regard to creditors whose debts issue from the declarant's business activities subsequent to publication of that declaration, on condition that the declarant reuses it within one year to acquire real property in which his principal place of residence is located.

If the title deed contains a reuse of funds declaration, the rights to the newly acquired principle place of residence remain exempt from seizure by the creditors referred to in the first paragraph in proportion to the sum reused.

The reuse of funds declaration is subject to the conditions of validity and enforceability provided for in Articles L. 526-1 and L. 526-2.

The declaration may, at any time, be the subject of a relinquishment subject to the same conditions of validity and enforceability.

The declaration remains effective after dissolution of the marriage settlement if the declarant is the recipient of the property. The decease of the declarant entails revocation of the declaration.

Article L526-4

(inserted by Law No. 2003-721 of 1 August 2003 Article 8 Official Gazette of 5 August 2003)

When a natural person married under a legal or contractual marriage settlement 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 stipulates the present Article's implementing provisions, inasmuch as this is required.

BOOK VI

Businesses in difficulty

Articles L611-1 to
L610-1

Article L610-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 2, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A Conseil d'Etat decree shall determine in each département (subdivision of France) the court or courts shall have jurisdiction to rule upon the proceedings provided for in this Book and the territorial jurisdiction in which these courts will exercise the powers attributed to them.

TITLE I

Prevention of businesses' difficulties

Articles L611-1 to
L612-5

CHAPTER I

Prevention of businesses' difficulties, special commission (mandat ad hoc) and composition procedure

Articles L611-1 to
L611-15

Article L611-1

(Act No 2003-721 of 1 August 2003, Article 10, Official Journal of 5 August 2003)

(Act No 2005-845 of 26 July 2005, Article 1, Article 3, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any person registered with the Register of Commerce and Companies or the craftsmen's register as well as private law entities may join a prevention group accredited by an order of the State representative in the region.

This group shall provide its members with a confidential analysis based on the economic, accounting and financial data that they must send it regularly.

Where the prevention group identifies signs of difficulty, it will inform the head of the business and may suggest that an expert provides assistance.



On motion of the State's 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 L611-2

(Act No 2005-845 of 26 July 2005, Article 1, Article 4, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I. - Where any deed, document or proceedings shows that a commercial company, an economic interest grouping or a sole ownership, running a trading or a craftsman's business, encounters difficulties that may undermine the continuation of its business operations, its managers may be summoned by the president of the Tribunal de commerce (Commercial court) 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 meeting, the president of the court may, notwithstanding any statutory or regulatory provision to the contrary, obtain information enabling him to know 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 president 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 president of the court may also enforce the provisions of the second paragraph of (I) above against the managers.

Article L611-3

(Act No 2005-845 of 26 July 2005, Article 1, Article 5, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The president of the Tribunal de commerce (Commercial court) or of the Tribunal de grande instance (High court) may, at the request of the business's representative, appoint a special commissioner (*mandataire ad hoc*) whose duties he shall set out.

Article L611-4

(Act No 2005-845 of 26 July 2005, Article 1, Article 5, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A composition procedure is instituted before the Tribunal de commerce (Commercial court) for the persons who carry out a commercial or craftsman's activity, who encounter an actual, or a 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 L611-5

(Act No 2005-845 of 26 July 2005, Article 1, Article 5, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The composition procedure shall be applicable, under the same conditions, to private law entities and to natural persons running an 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 (High court) shall have jurisdiction and its president shall have the same powers as those attributed to the president of the Tribunal de commerce (Commercial court).

The composition procedure shall not apply to farmers as they are subject to the procedure provided for in Articles L351-1 to L351-7 of the Rural Code (*règlement amiable*).

Article L611-6

(Act No 2005-845 of 26 July 2005, Article 1, Article 5, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The debtor shall file its case with the president of the court, stating therein its economic, employment and financial situation, financing needs and, if necessary, the means to tackle them.

In addition to the powers attributed to him by the second paragraph of Article L611-2 (I), the president of the court may 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.

The composition proceedings shall be commenced by the president of the court who shall appoint a conciliator 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. The debtor may propose a conciliator to be appointed by the president of the court. At the end of this period, the conciliator's duties and the proceedings shall come automatically to an end.



The order commencing the composition proceedings shall not be subject to appeal. It shall be notified to the Public prosecutor. 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.

The debtor may object to the conciliator under the conditions and in the time limits to be fixed by a Conseil d'Etat decree.

Article L611-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 6, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 business's difficulties. 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 president of the court shall transmit to the conciliator all information in his possession and, if applicable, the results of the investigation referred to under the second paragraph of Article L611-6.

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 L626-6 of this Code.

The conciliator shall inform the president 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 sued by a creditor, the judge who has commenced the proceedings may, at the debtor's request and after having been informed regarding the situation by the conciliator, apply Articles 1244-1 to 1244-3 of the Civil Code.

Where it is impossible to reach an agreement, the conciliator will promptly present a report to the president of the court, who shall terminate the conciliator's duties and the composition proceedings. The president's decision shall be notified to the debtor.

Article L611-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 7, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Upon the joint petition of the parties, the president 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.

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 does not harm the interests of non-signatory creditors, without prejudice to the application of Articles 1244-1 to 1244-3 of the Civil Code.

Article L611-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 7, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 conciliator and the Public prosecutor. 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 hearing that it deems useful.

Article L611-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 7, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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. The approval decision shall be subject to third-party proceedings within ten days from its publication. A decision to refuse to approve the agreement shall not be published. It shall be subject to appeal.

The approved agreement shall stay, during its performance period, all suits and actions filed by creditors individually



relating to movable property as well as immovable property of the debtor 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. Co-obligors and persons who are bound by a surety bond or an independent guarantee may avail themselves of the provisions of the approved agreement.

The approved agreement shall lead to the automatic removal of any prohibition from issuing cheques, imposed in compliance with Article L131-73 of the Monetary and Financial Code after rejection of a cheque issued prior to the commencement of the composition proceedings.

Upon a petition by one of the parties to the approved agreement, the court, if it observes non-performance of the obligations emanating from the agreement, shall pronounce the rescission of the latter as well as the loss of any grace period granted.

Article L611-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 8, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If safeguard proceedings, reorganization proceedings or liquidation proceedings as a result are commenced, those persons who, under the approved agreement referred to under Article L611-8 (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, according to their preferential lien before all other claims prior to the commencement of the composition proceedings, according to the rank fixed under Article L622-17(II) and Article L641-13(II). Under the same conditions, those persons who, in the approved agreement, supply new assets or services in order to ensure the continuation and long-term future of the business will be paid, for the amount of the price of the assets or services, according to their preferential lien before all claims born prior to the commencement of the composition proceedings.

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.

Article L611-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 9, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The commencement of safeguard, reorganization or liquidation proceedings shall automatically terminate the agreement recognised or approved in compliance with Article L611-8. In this case, the creditors will recover all their claims and guarantees, after deduction of sums received, without prejudice to the provisions of Article L611-11.

Article L611-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 10, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The duties of a special commissioner (mandataire ad hoc) or those of the conciliator 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 within the meaning of Article L233-16 (of the present Code), for whatever reason, directly or indirectly, other than remuneration or payment for a special commission (mandat ad hoc) or duties in connection with an amicable settlement or a composition carried out in favour of the same debtor or the same creditor. 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 (Commercial court) judge who is either in office or who has left office within the previous five years.

Article L611-14

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 10, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Having obtained the debtor's approval, the president 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 president of the court on completion of their duties.

Appeals against these decisions shall be filed with the First president of the court of appeal within a time limit to be fixed by a Conseil d'Etat decree.

Article L611-15

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 10, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.



CHAPTER II

Provisions applicable to not-for-profit private law entities engaged in economic activities Articles L612-1 to L612-5

Article L612-1

(Act No 2003-706 of 1 August 2003, Article 116, Official Journal of 2 August 2003)

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 11 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Not-for-profit private law entities engaged in economic activities whose number of employees, sales turnover net of tax or current revenues and total balance sheet assets or liabilities exceed(s), 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 agricultural co-operatives and common-interest agricultural companies not organised under commercial law, where they do not call on registered statutory auditors, this requirement may be met by using the services of an institution accredited under the provisions of Article L527-1 of the Rural Code. The conditions for the application of this provision shall be specified in a Conseil d'Etat decree.

The penalties provided for in Article L242-8 shall apply to the managers of the legal entities provided for in the first paragraph of this article who do not draw up an annual balance sheet, income statement and notes.

Even if the thresholds provided for in the first paragraph have not been reached, not-for-profit private law entities engaged in economic activities may appoint at least one statutory auditor and one deputy under the same conditions as in the second paragraph. In this case, the statutory auditor and his deputy 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 L612-2

(Act No 2005-845 of 26 July 2005, Article 1, Article 11 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Not-for-profit private law entities engaged in economic activities whose either the number of employees or the sales turnover net of tax or total balance sheet assets or liabilities exceed(s) the thresholds fixed by a Conseil d'Etat decree must draw up a statement of the quick assets, excluding inventories, and a statement of current liabilities, a forecast income statement, a cash flow statement and a financing plan.

The frequency, time limits and conditions 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 delegates, 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 will 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 L612-3

(Act No 2005-845 of 26 July 2005, Article 1, Article 11 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the statutory auditor of a legal entity referred to under Articles L612-1 and L612-4 discovers, in the course of his duties, facts that may undermine the continuation of the entity's activity, he will inform the managers of the legal entity under the conditions fixed in a Conseil d'Etat decree.

In the absence of a response within the time set in a Conseil d'Etat decree, or if the response does not guarantee the continuation of activity, the statutory auditor will direct the managers in writing, with a copy to the president of the Tribunal de grande instance (High court), to request the collegiate board of the legal entity to deliberate upon these facts. The statutory auditor shall be invited to 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 president of the Tribunal de grande instance (High court).

Where these provisions are not complied with, or where the statutory auditor observes that despite the decisions taken the continuation of the business's activity remains endangered, a members' general meeting will be summoned under the conditions and within the time limits fixed by a Conseil d'Etat decree. The statutory auditor shall draw up a special report, which shall be presented to this meeting. The 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 this general meeting, the statutory auditor observes that the decisions taken do not ensure the continuation of business's activity, he will inform the president of the court of the steps he has taken and submit the



results to him.

The provisions of this article shall not apply where composition or safeguard proceedings have been initiated by managers pursuant to Articles L611-6 and L620-1.

Article L612-4

(Act No 2003-706 of 1 August 2003, Article 116, Article 121, Official Journal of 2 August 2003)

(Act No 2005-845 of 26 July 2005, Article 1, Article 11 IV, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Order No 2005-856 of 28 July 2005, Article 5, Official Journal of 29 July 2005, in force on 1 January 2006)

Any association that has received one or more annual grants from public authorities, within the meaning of Article 1 of the Act of 12 April 2000, or from public bodies of an industrial or commercial nature, of which the total amount exceeds a threshold fixed by a decree must prepare an annual financial statement including a balance sheet, an income statement and notes; the manner of preparing these documents shall be defined by a decree. These associations must publish their annual financial statements and the statutory auditor's report, under conditions defined by a Conseil d'Etat decree.

These same associations shall be required to appoint at least one statutory auditor and one deputy.

N.B. Order 2005-856 2005-07-28, Article 9: Article 5 of this order shall apply to the financial years of associations and foundations commencing on or after 1 January 2006.

Article L612-5

(Act No 2001-420 of 15 May 2001, Article 112, Official Journal of 16 May 2001)

(Act No 2003-706 of 1 August 2003, Article 123 I 5°, Official Journal of 2 August 2003)

(Act No 2005-845 of 26 July 2005, Article 1, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The legal representative or the statutory auditor, if any, of a not-for-profit private-law entity engaged in economic activities or of an association referred to under Article L612-4 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 will apply to agreements entered into between this legal entity and a company 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 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 jointly and severally 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.

TITLE II

The safeguard procedure

Articles L621-1 to
L620-2

Article L620-1

(Act No 2005-845 of 26 July 2005, Article 1, Article 12, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

This article institutes a safeguard procedure to be commenced on the petition of the debtor who is mentioned in Article L620-2 that shows difficulties that it is unable to overcome on its own and that would lead to a cessation of payments. This purpose of this procedure is to facilitate the reorganization of the business in order to allow the continuation of the economic activity, the maintenance of employment and the settlement of liabilities.

The safeguard 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 L626-29 and L626-30.

Article L620-2

(Act No 2005-845 of 26 July 2005, Article 1, Article 13, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The safeguard procedure shall apply to traders, persons registered with the craftsmen's register, farmers, other 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.



New safeguard proceedings may not be commenced with respect to any person already subject to such proceedings or to reorganization or 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.

CHAPTER I

Commencement of the safeguard proceedings

Articles L621-1 to
L621-12

Article L621-1

(Act No 2005-845 of 26 July 2005, Article 1, Article 14, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 will 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 will gather information regarding the business's financial, economic and employment situation. This judge may apply the provisions of Article L623-2. He may be advised by any expert of his choice.

The hearing for the commencement of safeguard proceedings with respect to a debtor who benefits or has benefited from a special commission (mandat ad hoc) or from composition proceedings during the preceding eighteen months must be held in the presence of the Public prosecutor.

In this case, the Court may, of its own motion or on motion of the Public prosecutor, obtain all documents and deeds relating to the special commission (mandat ad hoc) or the composition proceedings, notwithstanding the provisions of Article L611-15.

Article L621-2

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 15, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The competent court will be the Tribunal de commerce (Commercial court) if the debtor is a trader or he is registered with the craftsmen's register. The Tribunal de grande instance (High court) shall be competent in other cases.

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.

Article L621-3

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 16, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The order shall commence an observation period not exceeding six months, which may be renewed once by a reasoned ruling on motion of the administrator, the debtor or the Public prosecutor. It may also be extended exceptionally, on motion of the Public 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 L621-4

(Act No 2005-845 of 26 July 2005, Article 1, Article 17, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the commencement order, the Court shall appoint the supervisory judge whose functions are specified in Article L621-9. It may, if need be, appoint several supervisory judges.

It shall invite the works council or, in the absence of a works council, the employee delegates to appoint a representative from among the employees of the business. In the absence of a works council or employee delegates, the employees will 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 head of the business.

In the same order, without prejudice to the possibility of appointing one or more experts for duties that it shall determine, the Court shall appoint two court nominees, that is, a court nominee and an administrator, whose duties are specified in Article L622-20 and Article L622-1 respectively. It may, on motion of the Public prosecutor, appoint several court nominees or administrators. In the situation provided for in the fourth paragraph of Article L621-1, the Public prosecutor may object to the appointment of a person who had previously been appointed as a commissioner



(mandataire ad hoc) or conciliator with regard to a special commission (mandat ad hoc) or composition proceedings with regard to the same debtor.

However, the Court will 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 issuance of the confirmation order of the plan, the Court may, on motion of the debtor, the court nominee or the Public prosecutor, decide to appoint an administrator.

For the purposes of taking inventory and the valuation required by Article L622-6, the Court shall appoint an auctioneer, a bailiff, a notary or an accredited commodity broker.

Article L621-5

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 17, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

No relatives or affines, up to the fourth degree included, of the head of the business or the managers, if the debtor is a legal entity, may be appointed to any one of the positions provided for in Article L621-4 except where this provision prohibits the appointment of an employees' representative.

Article L621-6

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 18, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The employees' representative and employees who take part in the appointment process must not have been convicted to one of the sentences provided for in Article L6 of the Electoral Code. The employees' representative must be at least eighteen years old.

The Tribunal d'instance (Magistrates' Court) that rules in final instance shall have jurisdiction on the objections raised against the appointment of the employees' representative.

Article L621-7

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 19, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The Court may, of its own motion or on the initiative of the supervisory judge or on motion of the Public prosecutor, replace the administrator, the expert or the court nominee.

The Court may appoint, under the same conditions, one or more administrators or court nominees in addition to those already appointed. The administrator, the court nominee 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 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, the creditors may request the replacement of the court nominee.

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 L621-8

(Act No 2002-73 of 17 January 2002, Article 122, Official Journal of 18 January 2002)

(Act No 2003-7 January 2003, Article 40, Official Journal of 4 January 2003)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 20, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The administrator and the court nominee shall inform the supervisory judge and the Public prosecutor of the progress of the proceedings on regular basis. The supervisory judge and the Public prosecutor may request the disclosure of all deeds and documents relating to the proceedings at any time.

The Public prosecutor shall 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 L621-9

Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 21, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L621-4 to appoint one or more experts. The terms for the remuneration of the expert shall be fixed by a Conseil d'Etat decree.

Article L621-10

(Act No 2003-7 of 3 January 2003, Article 41, Official Journal of 4 January 2003)

Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1, Article 22, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 manager 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, may 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, will act as controller as of right.

In this case, the supervisory judge may 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 on motion of the Public prosecutor.

Article L621-11

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1, Article 22, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The controllers shall assist the court nominee 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 nominee. They shall observe confidentiality. Controllers shall not be paid for their duties.

Article L621-12

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1, Article 22, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If it appears, after the commencement of the proceedings, that the debtor was already in a state of cessation of payments at the time of issuance of the commencement order, the Court will record this and fix the date of the cessation of payments under the conditions provided for under the second paragraph of Article L631-8. It shall convert the safeguard proceedings into reorganization proceedings. If necessary, it may modify the length of the remaining observation period.

The administrator, the court nominee or the Public prosecutor may apply to the Court which may also initiate a case of its own motion. It shall rule upon the case after having heard or duly summoned the debtor.

CHAPTER II

The business during the observation period

Articles L622-1 to
L622-33

Article L622-1

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 23, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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

II -Where the Court, in accordance with the provisions of Article L621-4, 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 the management.

III -In performing his duties, 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 on his motion or on motion of the court nominee or that of the Public prosecutor.



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 L622-2

(Act No 2003-7 of 3 January 2003, Article 45, Official Journal of 4 January 2003)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The debtor's statutory auditor may not avail himself of professional confidentiality rules in order not to meet the requests of the administrator's statutory auditor for information or documents concerning the operation, from the moment the administrator is appointed, of bank or Post Office accounts opened in the debtor's name.

Article L622-3

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L622-3 and L622-13, the daily management operations that the debtor performs alone shall be deemed valid with respect to third parties acting in good faith.

Article L622-4

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 the preservation of the business's interests against its debtors and to maintain the production capacity or do this himself as the case may be.

The administrator shall be entitled to take out, on behalf of the business, any mortgage, security, pledge or lien that the head of the business may have neglected to secure or renew.

Article L622-5

(Act No 2003-7 of 3 January 2003, Article 46, Official Journal of 4 January 2003)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

As of the issuance of the commencement order, all third party holders must hand over to the administrator or, in the absence of an administrator, to the court nominee, at the latter's request, all documents and books of account for examination.

Article L622-6

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1, Article 24, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

From the commencement of the proceedings, an inventory and a valuation of the debtor's estate and the guarantees encumbering it shall be made. The debtor shall add to the inventory to be given to the administrator and the court nominee a statement with respect to assets he holds that may be claimed by a third party.

The debtor shall give the administrator and the court nominee 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 nominee 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, provident institutions and social security, credit 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.

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 L622-7

(Act No 2005-845 of 26 July 2005, Article 1, Article 25, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Order No 2006-346 of 23 March 2006, Article 47, Official Journal of 24 March 2006)



The order commencing the proceedings shall automatically prohibit payment of claims arising prior to the issuance of the commencement order, except set-off payments of connected claims. It shall also automatically prohibit payment of claims arising after the issuance of the commencement order that are not referred to under Article L622-17, other than those claims related to the debtor's daily necessities of life and alimony claims. It shall at last forbid the conclusion and performance of a commissorial lex.

The supervisory judge may allow the head of the business or the administrator to carry out acts of disposition not included in the ordinary management of the business, to grant mortgages or collateral or to compromise or settle.

The supervisory judge may also allow them to pay debts arising prior to the issuance of the order, to withdraw a pledge or possession of a thing held lawfully, where this withdrawal is justified by the continuation of business operations.

All acts or payments carried out in violation of the provisions of this article shall be nullified on motion of any interested party or of the Public prosecutor to be submitted within a three-year period beginning with the performance of the act or the payment of the debt. Where the act has to be published, this period will run from the date of publication.

Article L622-8

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 26, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

When an asset encumbered with a special lien, a security or a mortgage 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 lien shall be paid out of the proceeds according to their priority and in compliance with Article L626-22 where they are subject to the time limits provided for 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 or the administrator may offer to creditors to substitute guarantees equivalent to those existing. In the absence of agreement, the supervisory judge may order this substitution. An appeal against this order may be filed with the Court of Appeal.

Article L622-9

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 27, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The business's activity shall be continued during the observation period, subject to the provisions of Articles L622-10 to L622-16.

Article L622-10

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 28, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The Court may order the partial cessation of the business's operations at any time during the observation period, on motion of the debtor, administrator, court nominee, one of the controllers, the Public prosecutor or, of its own motion.

Under the same conditions, it will convert the safeguard proceedings into reorganization proceedings if the conditions in Article L631-1 are satisfied or will order liquidation proceedings if the conditions of Article L640-1 are satisfied.

It shall rule upon the case after having heard or duly summoned the debtor, the administrator, the court nominee, the controllers, the works council, or, in the absence of a works council, the employee delegates and after having received the Public prosecutor's opinion.

When it converts the safeguard proceedings into reorganization proceedings, the Court may, if necessary, alter the length of the remaining observation period.

Article L622-11

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 28, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the Court pronounces the judicial liquidation it will terminate the observation period and the administrator's duties, subject to the provisions of Article L641-10.



Article L622-12

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 28, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 third paragraph of Article L622-10.

Article L622-13

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 29, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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. The contract shall automatically be terminated once a formal notice has been sent to the administrator that has remained unanswered within a 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.

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 forecast documents 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.

In the absence of payment under the conditions set out in the preceding paragraph or if the other party does not agree to continue the contractual relationship, the contract will automatically be cancelled and the Public prosecutor, the administrator, the court nominee or a controller may apply to the Court to terminate the observation period.

The other party must perform its obligations despite the non-performance by the debtor of the obligations entered into prior to the issuance of the commencement order. The non-performance of these obligations shall only give creditors a right to submission of claims.

If the administrator does not make use of his right to continue the contract or he terminates it as provided for by the second paragraph, the non-performance may give rise to damages that must be claimed as liabilities due to the other party. The other 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.

Notwithstanding any legal rule or contractual term to the contrary, the indivisibility, termination or rescission of the contract may not result from the commencement of safeguard proceedings alone.

The provisions of this article shall not apply to employment contracts.

Article L622-14

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 30, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The termination of the debtor's lease rights over immovable property used in the business's operations will be recorded or ordered:

1. if the administrator decides not to continue the lease and applies for its termination. In this case, the termination shall take effect on the day of the application.

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 issuance of the commencement order, as the lessor may take action only at the end of a three month period from the date of issuance of the order.

If the sums are paid before this period has elapsed, there is no cause for termination.

Notwithstanding any contractual term to the contrary, the absence of activity during the observation period in one or more of the properties leased by the business shall not cause the termination of the lease.

Article L622-15

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 31, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the lease is assigned, any clause imposing a solidary liability with the assignee on the assignor shall be deemed void.

Article L622-16

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 32, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the event of safeguard proceedings, the lessor shall have a preferential lien only on the rent of the last two years



preceding the issuance of the commencement order.

If the lease is terminated, the lessor will have, in addition, a preferential lien 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 issuance 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 susceptible to deteriorate or depreciate rapidly, that are expensive to preserve or whose sale does not undermine the existence of the business or the maintenance of sufficient guarantees for the lessor.

Article L622-17

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 33, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Claims arising in a proper manner after the issuance of the commencement order for the needs of the proceedings or the observation period or as consideration for goods and services provided to the debtor with respect to its professional or activity during this period, shall be paid as they fall due.

II - Where they are not paid as they fall due, these claims will be paid according to their preferential lien before all the other claims, whether these are secured or not by preferential liens or guarantees, except for those claims secured by a lien provided for in Articles L143-10, L143-11, L742-6 and L751-15 of the Labour Code, those claims secured by a lien for legal fees and those claims secured by the lien created by Article L611-11 of this Code.

III - Their payment shall be made in the following order:

1. claims of wages and salaries for which funds have not been advanced in compliance with Articles L143-11-1 to L143-11-3 of the Labour Code;

2. legal fees;

3. loans and claims arising from the performance of continued contracts according to the provisions of Article L622-13 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.

4. sums that have been advanced in application of Article L143-11-1 (3°) of the Labour Code;

5. other claims, according to their priority.

IV - Unpaid claims will lose the lien provided for by this article if they have not been notified to the court nominee and the administrator, where one has been appointed 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 L622-18

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any sum received by the administrator or court nominee, 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 nominee must pay interest on the unpaid amounts at the legal rate of interest plus five percent.

Article L622-19

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any sum received by the association referred to under Article L143-11-4 of the Labour Code in compliance with Articles L143-11-1 to L143-11-3 of the same Code shall be declared to the tax authority.

Article L622-20

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 34, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Only the court nominee appointed by the Court may act on behalf and in the general interest of the creditors.



However, if the court nominee 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 nominee 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.

Sums recovered following actions initiated by the court nominee or, if the court nominee 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 L622-21

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 35, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - The issuance of the commencement order shall stay or prohibit legal actions of all creditors whose claims are not referred to under Article L622-17 (I) aimed at obtaining:

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 - In addition, the order shall stay or prohibit all proceedings for enforcement filed by the creditors in respect of movable and immovable properties.

III - Hence, all time limits, to be observed under the penalty of loss or rescission of rights, shall be stayed.

Article L622-22

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 36, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Save the provisions of Article L625-3, any pending proceedings shall be stayed until the creditor who initiated it has filed its submission of claim. Then, they shall be resumed ipso jure for the sole purpose of verifying the claims and determining their amount after having duly summoned the court nominee and, as the case may be, the administrator or the plan performance supervisor appointed in compliance with Article L626-25.

Article L622-23

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Legal actions and proceedings for enforcement against the debtor other than those referred to under Article L622-21 shall be continued during the observation period after the administrator and the court nominee have been summoned or after the action is resumed at their own initiative.

Article L622-24

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 37, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

From the date of publication of the order, all creditors other than employees whose claims arose prior to the issuance of the commencement order shall submit their claims with the court nominee. Creditors who hold a published security or who are bound to the debtor by a published contract shall be informed personally 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 L351-21 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 L624-1, under the penalty of debarment.

Those institutions referred to under Article L143-11-4 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 issuance of the order commencing the proceedings.



Claims properly arising after the issuance of the commencement order, other than those referred to under Article L622-17(I) and alimony claims, 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 as of a final judgment determining the amount.

Article L622-25

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The submission of claim shall state the amount of the claim due on the date of issuance of the commencement order and the sums yet to fall due and their dates of maturity. It shall state the nature of the lien or security that secures the claim, if any.

Where the claim is expressed in a foreign currency, the conversion to euros shall be made at the exchange rate prevailing on the date of the issuance of the commencement order.

Unless it results from an order for enforcement, the submitted claim shall be certified 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 L622-26

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 38, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If they fail to submit their claims within the time limits provided for in a Conseil d'Etat decree, 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 provided for under the second paragraph of Article L622-6. They may then participate only in the distributions of dividends made after their request.

A motion to set aside a debarment may be filed only within a six-month period. This period shall run from the date of publication of the commencement order or, for those institutions referred to under Article L143-11-4 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 L622-27

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, II, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the event of a dispute over the whole or part of a claim other than those referred to under Article L625-1, the court nominee will inform 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 nominee's proposals.

Article L622-28

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 39, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The issuance 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 sureties, co-obligors or who are bound by an independent guarantee may benefit from the provisions of this paragraph.

The issuance of the commencement order shall stay any action against individuals who are sureties, co-obligors or who are bound by an independent guarantee, until the order confirming the plan or pronouncing the 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 L622-29

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 40, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The issuance of the commencement order shall not render unmatured claims mature on the day of the issuance of the order. Any clause to the contrary shall be deemed not to have been written.

Article L622-30

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 41, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

No mortgage, pledge or lien may be registered after the issuance of the commencement order. 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 issuance of the commencement order.

However, the Public Treasury shall not lose its lien for claims that it was not required to register on the date of the issuance of the commencement order and for claims to be collected after this date if these claims have been submitted under the conditions provided for in Article L622-24.

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

Article L622-31

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 42, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A creditor bearing obligations entered into, endorsed or guaranteed jointly and severally by two or more co-obligors subject to safeguard proceedings, may submit its claim for the par value of its claim in all cases of proceedings.

Article L622-32

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 42 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Co-obligors subject to safeguard 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 L622-33

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 42 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If a creditor, bearing obligations entered into solidarily by a debtor subject to safeguard proceedings, has received an advance payment on his claim from other co-obligors prior to the issuance 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.

CHAPTER III

Drafting an economic, employment and environmental plan

Articles L623-1 to
L623-3

Article L623-1

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 43, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 will be supplemented by a report on the



environmental situation that the administrator shall have drawn up under the conditions provided for by a Conseil d'Etat decree.

Based on this report, the administrator shall propose a safeguard plan, without excluding the application of the provisions of Article L622-10.

Article L623-2

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 44, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 as well as from bodies responsible for the centralisation of information on banking risks and payment incidents.

Article L623-3

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 45, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L611-8 of this code or in Article L351-6 of the Rural Code, the administrator will receive the expert's report provided for in Article L611-6 or, as the case may be, the expert's report and the report provided for in Articles L351-3 and L351-6 of the Rural Code.

The administrator shall consult court nominee 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 of this and consider the debtor's views and proposals.

He shall inform the court nominee as well as the works council or, in the absence of a works council, the employee delegates, of the progress of his duties. He shall consult them and the debtor about the measures he will propose based on the information and the offers received.

Where the debtor is an independent professional person with a statutory or regulated status or whose designation is protected, the administrator will consult the debtor's supervisory body or relevant authority, if any.

CHAPTER IV

Determination of the debtor's estate

Articles L624-1 to
L624-18

SECTION I

Verification and admission of claims

Articles L624-1 to
L624-4

Article L624-1

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 46, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Within the time limit fixed by the Court, and after having received the debtor's views, the court nominee 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 nominee may not be paid in respect of the submitted claims not appearing 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 L622-4.

Article L624-2

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Based on the proposals submitted by the court nominee, the supervisory judge shall decide on the admission or rejection of the claims or mention the existence of a pending legal action or his lack of jurisdiction in respect of the dispute.

Article L624-3



(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 47 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

An appeal against the decisions of the supervisory judge to be filed according to this Section shall be available to the creditor, the debtor or to the court nominee.

However, a creditor whose claim is contested in whole or in part and who has not replied to the court nominee within the time limit provided for in Article L622-27 may not appeal against the decision of the supervisory judge where the decision approves the proposal of the court nominee.

The terms and forms of the appeal provided for in the first paragraph shall be specified by a Conseil d'Etat decree.

Article L624-4

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 47 II, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The supervisory judge's decision will 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 jurisdiction of final judgement of the court that commenced the proceedings.

SECTION II

Rights of spouses

Articles L624-5 to

L624-8

Article L624-5

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 48, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The spouse of a debtor subject to safeguard proceedings shall specify the content of his/her personal property in compliance with the rules of the matrimonial regime under the conditions provided for in Article L624-9.

Article L624-6

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court nominee or the administrator may, if he proves by all means that the assets acquired by the debtor's spouse have been paid by money provided by the debtor, request the inclusion of these acquisitions in the debtor's assets.

Article L624-7

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Recovery of assets made in compliance with Article L624-5 may not be exercised except subject to debts and mortgages that lawfully encumber these assets.

Article L624-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 49, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The spouse of the debtor who was, at the time of the marriage, or who became, within one year of the marriage or within the following year, a trader, a person registered with the craftsmen register, a farmer or an independent professional person may not file within the safeguard proceedings any action based on benefits granted by one spouse to the other in the marriage contract or during the marriage. On the other hand, creditors may not exploit the granting of benefits by one of the spouses to the other.

SECTION III

Rights of sellers of movable property, recovery claim (revendication) and
restitution

Articles L624-9 to

L624-18

Article L624-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 50, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

For assets governed by an executory contract at the commencement of the proceedings, this period shall run as of the termination or expiry of the contract.



Article L624-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 51, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L624-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 52, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The lien and right of recovery created by Article 2102 (4) of the Civil Code in favour of the seller of chattels as well as the action for rescission of a contract may be exercised only within the limits of the provisions of Articles L624-12 to L624-18 of this Code.

Article L624-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 53, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Goods may be claimed when the sale contract was rescinded prior to the issuance 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 issuance 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 issuance of the commencement order.

Article L624-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 allowable if the goods have been resold, other than fraudulently, before their arrival, on the basis of correctly established invoices or transport documents.

Article L624-14

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L624-15

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L624-16

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 54, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Order No2006-346 of 23 March 2006, Article 48 I, Official Journal of 24 March 2006)

Goods held by the debtor on consignment or for sale on behalf of the owner 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 issuance of the commencement order. This clause must have been agreed upon in writing at the latest at the time of delivery. It may appear in a document governing a number of commercial operations entered into by the parties.

The recovery claim in kind may be brought under the same conditions with respect to movable assets incorporated in another asset where they may be removed without damaging them. A recovery claim in kind may also be made in relation to fungible items where the debtor or any person keeping them on his behalf has in his possession assets of a similar type and the same quality. In every instance, the asset may not be recovered, 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 debts referred to under Article L622-17(I).

Article L624-17

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 55 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Order No2006-346 of 23 March 2006, Article 48 II, Official Journal of 24 March 2006)



The administrator with the consent of the debtor or, in the absence of an administrator, the debtor with the consent of the court nominee may approve the recovery claim or restitution claim of assets dealt with under this Section. In 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 nominee.

Article L624-18

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 55 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Order No2006-346 of 23 March 2006, Article 48 III, Official Journal of 24 March 2006)

The price or portion of the price of the assets referred to under Article L624-16, which was not paid or settled in negotiable instruments or set off in the form of credit on a current account between the debtor and the purchaser on the issuance of the order commencing the proceedings, may be claimed. Insurance payouts for lost property subrogated to the property may be claimed under the same conditions.

CHAPTER V

Payment of claims resulting from employment contracts

Articles L625-1 to
L625-8

SECTION I

Verification of claims

Articles L625-1 to
L625-6

Article L625-1

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005 in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 56, Article 165 III, Official Journal of 27 July 2005 in force on 1 January 2006 subject to Article 190)

After verification, the court representative shall draw up, within the time limits provided for in Article L143-11-7 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 L625-2. 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 or the administrator, if he assumes management duties, shall be summoned.

Article L625-2

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005 in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 57, Article 165 III, Official Journal of 27 July 2005 in force on 1 January 2006 subject to Article 190)

The statements of claims resulting from an employment contract shall be handed over, for verification, to the employees' representative provided for in Article L621-4 by the court nominee. The court nominee must transmit all useful documents and information to him. Where problems are encountered, the employees' representative may turn to the administrator and, where appropriate, apply to the supervisory judge. He has a duty of discretion provided for in Article L432-7 of the Labour Code. The time spent in carrying out his duties as provided for by the supervisory judge shall automatically be regarded as working time and shall be paid by the employer, the administrator or the liquidator, as the case may be, at the normal due date.

Article L625-3

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 58 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any pending proceedings before the Labour Court on the date of the order commencing the safeguard proceedings shall be continued in the presence of the court nominee or after he has been duly summoned.

The court nominee shall inform the court hearing the case and the employees party to it of the commencement of the safeguard proceedings within ten days.



Article L625-4

(Act No 2005-845 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005 Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the institutions referred to under Article L143-11-4 of the Labour Code refuse on whatsoever ground to pay a claim mentioned on the statements of claims resulting from an employment contract, they will inform the court representative of their refusal and the court representative shall immediately inform the employees' representative and the employee concerned.

The employee concerned may bring his case before the Labour Court. The court representative, the head of the business or the administrator, when he is in charge of management duties, shall be summoned.

The employee may ask the employees' representative to assist him or to represent him before the Labour Court.

Article L625-5

(Act No 2005-845 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Litigation brought before the Labour Court in pursuant to Articles L625-1 and L625-4 shall be brought directly before the Labour Court judges.

Article L625-6

(Act No 2005-845 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005 Article 1 I, II Official Journal of 27 July 2005 in force on 1 January 2006 subject to Article 190)

Statements of claims resulting from an employment contract, signed by the Receiver Judge, as well as the decisions of the Labour Court shall be mentioned on the list of claims handed over to the clerk's office. Any interested person, other than those referred to in Articles L625-1, L625-3 and L625-4, may bring an action or third party proceedings under the conditions provided for in a Conseil d'Etat decree.

SECTION II

Employees' lien

Articles L625-7 to
L625-8

Article L625-7

(Act No 2005-845 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 58 II, Official Journal of 27 July 2005 in force, on 1 January 2006 subject to Article 190)

(Order n346-2006 : of 23 March 2006, Article 54, Official Journal of 24 March 2006)

Claims resulting from an employment contract shall be secured in the event of commencement of safeguard proceedings:

1. by the lien provided for by Articles L143-10, L143-11, L742-6 and L751-15 of the Labour Code, for the reasons and amounts defined in these articles;

2. by the lien provided for by Article 2331 (4) and Article 2375 (2) of the Civil Code.

Article L625-8

(Act No 2005-845 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 58 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Notwithstanding the existence of any other claim, claims secured by the lien provided for by Articles L143-10, L143-11, L742-6 and L751-15 of the Labour Code must be paid by the administrator upon the order of the supervisory judge, within ten days from the date of issuance of the order commencing the safeguard proceedings, if the administrator has the necessary funds.

However, before determining the amount of these claims, the administrator 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 exceeding the ceiling referred to in Article L143-10 of the Labour Code.

If there are insufficient funds available, the sums due under the terms of the two preceding paragraphs must be paid from the first funds received.



CHAPTER VI
The safeguard plan

Articles L626-2 to
L626-1

Article L626-1

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 59, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 safeguard 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. The court nominee shall carry out the duties entrusted to the liquidator under these provisions.

SECTION I

Drawing-up a draft plan

Articles L626-2 to
L626-8

Article L626-2

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 60, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 settlement of the liabilities and any performance guarantees that the head of the business must provide.

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 L626-3

(Order No 2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 61, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L225-99 and L228-35-6 or the general meetings of the general body provided for in Article L228-103 will be called under the conditions provided for by a Conseil d'Etat decree.

If owners' equity 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' equity 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 not to have been written.

Article L626-4

(Order No 2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 62, Official Journal of 27 July 2005, in force on 1 January 2006)



subject to Article 190)

Where the safeguard of the business so requires, the court, on motion of the Public prosecutor, may subject the confirmation of the plan to the replacement of one or more managers, except where the debtor is an independent professional person with a statutory or regulated status.

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 shall be exercised, for a period that it will determine, by a court nominee 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.

For the application of this article, the managers and representatives of the works council works council, the employee delegates shall be heard or duly summoned.

Article L626-5

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 63, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The administrator shall send the proposals for the settlement of debts, as they are being drafted and under the supervision of the supervisory judge, to the court nominee, the controllers as well as to the works council or, in the absence of a works council, to the employee delegates.

The court nominee must obtain the individual collective assent of the creditors who have submitted claim in compliance with Article L622-24 to the moratoriums and reductions proposed to them. In the event of consultation in writing, failure to reply within thirty days from receipt of the court nominee's letter shall amount to acceptance. These provisions shall apply to the institutions provided for in Article L143-11-4 of the Labour Code with respect to the amounts provided for in the fourth paragraph of Article L622-24, even if their claims have not yet been submitted.

Article L626-6

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 63, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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, simultaneously with the efforts agreed to by other creditors, to cancel all or part of the debtor's debts on similar terms 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 cancellation of debts shall be determined by a Conseil d'Etat decree.

Creditors referred to under the first paragraph may also decide to transfer the priority of their lien or mortgage or to abandon these guarantees.

Article L626-7

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1, Article 63, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court nominee shall record the creditors' replies. This statement shall be sent to the debtor and to the administrator to enable him to prepare his report, as well as to the controllers.

Article L626-8

(Order No 2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 64, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The debtor, the works council or, in the absence of a works council, the employee delegates, the controller (s) and the court nominee shall be informed of and consulted on the report presenting the economic and employment situation and the draft plan sent to them by the administrator.

This report shall be sent at the same time to the competent employment authorities. The report of the meeting of



which the agenda 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 shall receive a copy of the report.

SECTION II

Order confirming the plan and implementation of the plan

Articles L626-9 to
L626-28

Article L626-9

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 65, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

After having heard or duly summoned the debtor, the administrator, the court nominee, 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 make its decision based on the administrator's report, after having received the opinion of the Public prosecutor. If the proceedings are commenced with respect to a debtor whose the 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.

Article L626-10

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 66, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The plan shall state the persons bound to implement it and all of their commitments necessary for the safeguard of 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 arising prior to the issuance of the commencement order 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 L626-3 and L626-16.

Article L626-11

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 67, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The order confirming the plan shall make its provisions binding on anyone.

Except for legal entities, co-obligors and persons who are bound by a surety bond or an independent guarantee may avail themselves of the provisions of the plan.

Article L626-12

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 68, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Without prejudice to the application of the provisions of Article L626-18, 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 L626-13

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 69, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The confirmation of the plan by the court shall lead to the automatic lifting of the prohibition to issue cheques, ordered on rejection of a cheque issued prior to the issuance of the commencement order, in compliance with Article L131-73 of the Monetary and Financial Code.

Article L626-14

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to



Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 70, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

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 on motion of any interested party or of the Public prosecutor filed within three years from the date of the conclusion of the contract. Where the act is subject to publication formalities, the time limit shall run from the date of publication.

Article L626-15

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 71, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The plan shall state the modification of the articles of association necessary for the reorganization of the company.

Article L626-16

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 72, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where necessary, the order confirming the plan shall give a power of attorney to the administrator to convene, under the conditions provided for by a Conseil d'Etat decree, the competent meeting to put into effect the modifications provided for in the plan.

Article L626-17

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 moratoriums.

Article L626-18

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 73, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court shall take cognizance of the moratoriums and cancellations accepted by the creditors in the manner provided for in the second paragraph of Article L626-5 and Article L626-6. These moratoriums and cancellations may, if necessary, be reduced by the court. For other creditors, the court shall impose uniform payment terms, subject to, regarding claims for future settlement, longer payment terms than those stipulated by the parties prior to the commencement of the proceedings, which may exceed the period of the plan.

The first payment may not be scheduled more than one year hence.

After the second year, the amount of each annuity stipulated by the plan may not, except in the case of an agricultural activity, be less than 5% of the admitted liabilities.

For finance lease contracts, these payment terms will come to an end if, before their expiry, the finance lessee exercises its purchase option. This may not be exercised if, subject to the deduction of accepted cancellation, all sums contractually due have not been paid.

Article L626-19

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 74, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

Article L626-20

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I -By way of exception to the rules provided for in Articles L626-18 and L626-19, debt cancellations and moratoriums shall not apply to:

1. claims secured by the lien provided for in Articles L143-10, L143-11, L742-6 and L751-15 of the Labour Code;
2. claims resulting from a contract of employment secured by the lien provided for in Article 2331, 4° and Article 2375, 2° of the Civil Code where the amount of the claims has not been advanced by the institutions referred to under Article L143-11-4 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 provided for by a 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 L626-21

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 75, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Inclusion of a claim in the plan and the granting of cancellations or moratoriums by the creditor shall not affect the definitive admission of the claim in the liabilities.

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.

Article L626-22

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 76, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the event of a sale of an asset encumbered with a special lien, a security or a mortgage, 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 general lien shall be paid out of the proceeds after payment of those claims secured by the lien provided for in Articles L143-10, L143-11, L742-6 and L751-15 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 encumbered with a special lien, a security or a mortgage, another guarantee may be substituted for this, where necessary, if it grants equivalent benefits. In the absence of agreement, the court may order this substitution.

Article L626-23

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 77, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the event of a partial assignment of assets, the proceeds shall be paid to the debtor except where Article L626-22 applies.

Article L626-24

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 78, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court may charge the administrator with carrying out acts necessary to implement the plan to be determined by him:

The court nominee shall remain in office during the time necessary for the verification and drawing up of the definitive list of claims.

Article L626-25

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 79, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court shall appoint the administrator or the court nominee as plan performance supervisor for the period provided for in Article L626-12. The court may appoint several supervisors, if necessary.



Litigations initiated prior to the issuance of the order confirming the plan and to which the administrator or the court nominee is a party shall be pursued by the plan performance supervisor or, if he is no longer in office, by a court nominee 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 president of the court and the Public prosecutor 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 percent.

The plan performance supervisor may be replaced by the court of its own motion or on motion of the Public prosecutor.

Article L626-26

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 80, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Substantial modifications of the goals or means of the plan may be made only by the court, on motion of the debtor and based on the report of the plan performance supervisor.

The court shall rule upon the case after having received the opinion of the Public prosecutor 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 L626-27

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 81, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - 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 non-performance results from a failure by the debtor to pay dividends and the court have not ordered the rescission of the plan, the plan performance supervisor shall recover these dividends in accordance with the provisions of 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 pronounce the judicial liquidation.

The order pronouncing the rescission of the plan shall stay its implementation and lapse all moratoriums granted.

II - In the cases provided for under (I), a creditor, the plan performance supervisor or the Public prosecutor 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 L626-28

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 82, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where it is established that the commitments stated in the plan or ordered by the court have been performed, the court, on motion of the plan performance supervisor, the debtor or any interested party, will record that the plan has been implemented.

SECTION III

Committees of creditors

Articles L626-29 to
L626-35

Article L626-29

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 83, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

On motion of the debtor or the administrator, the supervisory judge may allow the application of this Section where this threshold is not reached.

Article L626-30

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 83, Official Journal of 27 July 2005, in force on 1



January 2006 subject to Article 190)

Credit institutions and main suppliers of goods or services shall be grouped into two committees of creditors by the administrator within thirty days from the commencement order. 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 5% of the total claims of suppliers. The other suppliers may be members of this committee on invitation by the administrator.

The debtor shall present its proposals for the drawing up of the draft plan provided for in Article L626-2 to the committees of creditors within two months from the date on which the committees are formed, which may be extended once for two more months by the supervisory judge on motion of the debtor or the administrator.

After discussion with the debtor and the administrator, the committees will vote on the draft plan, modified if necessary, at the latest within thirty days after the proposals have been sent by the debtor. The decision shall be made by each committee by a majority vote of its members, representing at least two-thirds of the total amount of the claims of all the members of the committee of creditors as indicated by the debtor and certified by its statutory auditor(s) or, where none has been appointed, prepared by its public accountant.

The draft plan adopted by the committees of creditors shall be subject neither to the provisions of Article L626-12 nor to those in the second and third paragraphs of Article L626-18. Local authorities and their public bodies may not be members of the committee of main suppliers.

Article L626-31

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 83, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the draft plan has been adopted by the committee of creditors according to the provisions of Article L626-30, the court will ensure that the interests of all of the creditors are sufficiently protected. 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 L626-26, 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.

Article L626-32

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 83, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where there are bondholders, the administrator shall summon representatives of the body of bondholders, if any, within fifteen days from the date the draft plan is sent to the committees in order to outline it to them.

Representatives of the bondholders shall thereafter convene a general meeting of bondholders within fifteen days in order to decide on the draft. However, the failure to act or the absence of any representative of the bondholders is properly recorded by the supervisory judge, the administrator will convene the general meeting of bondholders.

The decision may relate to the total or partial abandonment of the bondholders' claims.

Article L626-33

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 83, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Creditors who are not members of the committees of creditors formed in compliance with Article L626-30 shall be consulted in the manner provided for under Articles L626-5 to L626-7. The administrator shall perform to this end the duties entrusted to the court nominee by these provisions.

The provisions of the plan regarding the creditors who are not members of the committees of creditors formed in compliance with Article L626-30 shall be confirmed in the manner provided for under Articles L626-12 and L626-18 to L626-20.

Article L626-34

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 83, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where one or other of the committees of creditors has not ruled upon the draft plan within the set time limits, where a committee of creditors has rejected the proposals presented to it by the debtor or where the court has not adopted the plan in compliance with Article L626-31, the proceedings will be resumed to prepare a plan in the manner provided for in Articles L626-5 to L626-7 in order to adopt it in the manner provided for under Articles L626-12 and L626-18 to L626-20. The proceedings will be resumed in the same manner where the debtor has not presented any proposals for a plan to the committees of creditors within the set time limits.

Article L626-35

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 83, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A Conseil d'Etat decree shall determine the conditions for the application of this Section.

CHAPTER VII



Special provisions in the absence of an administrator

Articles L627-1 to
L627-4

Article L627-1

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 84, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of this Chapter will apply where no administrator has been appointed by court according to the penultimate paragraph of Article L621-4. The other provisions of this Title shall apply to the extent that they do not conflict with the provisions of this Chapter.

Article L627-2

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 85, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The debtor shall, with the consent of the court nominee, exercise the power given to the administrator to assume executory contracts in compliance with Article L622-13. In the event of disagreement, the supervisory judge will hear the petition of any interested party.

Article L627-3

(Act No 2001-1275 of 28 December 2001, Article 152, 2002 Finance Act, Official Journal of 29 December 2001)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 86, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

During the observation period, the debtor, who may be assisted by an expert appointed by the court, shall prepare a draft plan.

The debtor shall send his proposals for the payment of the liabilities provided for in Article L626-5 to the court nominee and the supervisory judge and carry out the information and consultation formalities as provided for under Articles L623-3 and L626-8.

For the implementation of Article L626-3, a shareholders' extraordinary general meeting or a partners' meeting as well as, where their approval is necessary, the special meetings referred to under Articles L225-99 and L228-35-6 or the general meetings of the bodies referred to under Article L228-103, 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 L627-4

(Order No 200-916 of September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)

(Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 87, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

CHAPTER VIII

Provisions applicable to the departments of Haut-Rhin, Bas-Rhin and Moselle

Articles L628-1 to
L628-8

Article L628-1

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

(Law No 2003-710 of 1 August 2003 Article 37 Official Gazette of 2 August 2003)

The provisions of the present Title apply to natural persons domiciled in the Departments of Haut-Rhin, Bas-Rhin and Moselle, and to their successors, who are neither shopkeepers nor persons listed in the trade register, and are not farmers, if they have acted in good faith but are manifestly insolvent.

Before a decision to initiate proceedings is taken, the court shall, if it considers it appropriate, appoint a competent person whose name appears on the list of approved professionals to gather full information regarding the debtor's financial and social position.

The forfeitures and prohibitions which result from personal bankruptcy do not apply to such persons.

The present Article's terms of implementation are determined by decree.



Article L628-2

(Law No 2003-710 of 1 August 2003 Article 39 Official Gazette of 2 August 2003)

(Law No 2003-710 of 1 August 2003 Article 39 Official Gazette of 2 August 2003)

Unless the insolvency judge grants an exemption, an inventory shall be made of the property of the persons referred to in Article L. 628-1.

Article L628-3

(Law No 2003-710 of 1 August 2003 Article 38 (I) Official Gazette of 2 August 2003)

(Law No 2003-710 of 1 August 2003 Article 39 Official Gazette of 2 August 2003)

Contrary to Article L. 621-102, no verification of debts is carried out in connection with compulsory liquidation if it appears that the proceeds from realisation of the assets would be entirely consumed by the legal costs, unless the insolvency judge decides otherwise

Article L628-4

(Law No 2003-710 of 1 August 2003 Article 40 Official Gazette of 2 August 2003)

When the compulsory liquidation operations have been completed, the court may, in exceptional cases, compel the debtor to make a regular contribution towards settlement of the liabilities in the amount that it determines. In such judgments, the court appoints a commissioner to oversee execution of that obligation.

In determining the level of the contribution, the court takes the debtor's ability to pay into account in the light of his resources and his fixed expenses. The court shall reduce the level of the contribution if the debtor's resources decrease or his expenses increase.

Payment thereof must be completed within two years.

The present Article's terms of implementation are determined by decree.

Article L628-5

(Law No 2003-710 of 1 August 2003 Article 41 Official Gazette of 2 August 2003)

In addition to the cases referred to in Article L. 622-32, the creditors also recover their right to bring an individual action against the debtor when the court, at its own initiative or at the behest of the insolvency judge, pronounces non-fulfilment of the obligation referred to in Article L. 628.4.

Article L628-6

(Law No 2003-710 of 1 August 2003 Article 42 Official Gazette of 2 August 2003)

Details of the judgment ordering compulsory liquidation remain in the file referred to in Article L. 333-4 of the Consumer Code for a period of eight years and are no longer entered in the debtor's police record.

Article L628-7

(Law No 2003-710 of 1 August 2003 Article 38 (I) Official Gazette of 2 August 2003)

The basis of assessment and the payment arrangements for the tax on legal expenses in cases of insolvency or compulsory liquidation are provisionally determined pursuant to the provisions of the local laws.

Article L628-8

(Law No 2003-710 of 1 August 2003 Article 38 (I) Official Gazette of 2 August 2003)

The provisions of Article 1 of Law No. 75-1256 of 27 December 1975 relating to certain real-property sales in the Departments of Haut-Rhin, Bas-Rhin and Moselle cease to be applicable to the forced sale of real property included in the assets of a debtor who has been the subject of administration proceedings brought subsequent to 1 January 1986.

TITLE III

The reorganization procedure

Articles L631-1 to
L631-22

CHAPTER I

Commencement and conduct of the reorganization procedure

Articles L631-1 to
L631-22

Article L631-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 88, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

This article institutes a reorganization procedure available to any debtor referred to under Articles L631-2 or L631-3 which, being unable to pay its accrued liabilities with its quick assets, is in a state of cessation of payments.

The purpose of the reorganization procedure 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 L626-29 and L626-30.



Article L631-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 88, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The reorganization procedure shall apply to traders, persons registered with the craftsmen's register, 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.

No new reorganization proceedings may be commenced with respect to any person already subject to such proceedings or liquidation proceedings, for as long as the operations of the plan resulting from it have not been terminated or the liquidation proceedings have not been closed.

Article L631-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 88, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Likewise, the reorganization procedure will apply to those persons referred to under the first paragraph of Article L631-2 after the end of their professional activity if all or part of their liabilities arises from it.

Where any trader, any person registered with the craftsmen's register, any farmer, 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. 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 it with no time limit.

Article L631-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 89, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 reorganization proceedings if it appears from the conciliator's report that the debtor is in a state of cessation of payments.

Article L631-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 89, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where there are no conciliation proceedings pending, the court may also initiate a case of its own motion or on motion of the Public prosecutor for the purpose of commencing reorganization 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 Register of Commerce and Companies. 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 registered with the craftsmen's register, 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.

In addition, 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 (High court), prior to the writ of summons, for the appointment of a conciliator in compliance with the provisions of Article L351-2 of the Rural Code.

Article L631-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 89, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 of any fact showing the debtor is in a state of cessation of payments.

Article L631-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 89, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)



Articles L621-1, L621-2 and L621-3 shall apply to reorganization proceedings.

Article L631-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 89, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 issuance of the order recognizing it.

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 issuance of the order recognizing the cessation of payments. 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 L611-8 (II).

An action may be filed with the court by the administrator, the court nominee or the Public prosecutor to that effect. The court shall judge the case after hearing or duly summoning the debtor.

The petition for modifying this date must be filed with the court within a year following the issuance of the commencement order.

Article L631-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 89, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Articles L621-4 to L621-11 shall apply to the reorganization proceedings. The court may initiate an action of its own motion for the purposes referred to under the third and fourth paragraphs of Article L621-4.

Article L631-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 90, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

As of the date of the commencement order, the de jure or de facto managers, whether remunerated or not, may transfer shares in the company, equity instruments or securities giving rights to the capital representing their corporate rights in the entity to which the commencement order applies only in the manner provided for by the court, under the penalty of nullity.

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 of the managers in the legal entity's registers.

Article L631-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 91, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The supervisory judge will 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.

Article L631-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L621-4 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, on his motion or on motion of the court nominee or that of the Public prosecutor 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 L131-72 or L163-6 of the Monetary and Financial Code.

Article L631-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1



January 2006 subject to Article 190)

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 L631-14

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Articles L622-2 to L622-9 and L622-13 to L622-33 shall apply to reorganization proceedings.

II - However, natural persons that are co-obligors and those who have consented to a joint or an independent guarantee may not avail themselves of the provisions provided for in the first paragraph of Article L622-28.

Article L631-15

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - At the latest within two months from the date of issuance of the commencement order, the court shall order the observation period to be continued if it appears to the court that the business 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, on motion of the debtor, the administrator, the court nominee, one of the controllers, the Public prosecutor or of its own motion may order the partial cessation of the activity or will pronounce its liquidation, if the conditions of Article L640-1 are fulfilled.

It shall rule upon the case after hearing or duly summoning the debtor, administrator, court nominee, controllers, and works council or, in the absence of a works council, the employee delegates and after having received the opinion of the Public prosecutor.

Where the court pronounces the liquidation of the debtor, it will terminate the observation period and the duties of the administrator subject to the provisions of Article L641-10.

Article L631-16

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If it appears, during the observation period, that the debtor has enough money to pay off the creditors and the fees and related costs of the proceedings, the court may terminate the proceedings.

It shall rule upon the case on motion of the debtor in the manner provided for by the second paragraph of Article L631-15 (II).

Article L631-17

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 consult the works council or, in the absence of a works council, the employee delegates in the manner provided for by Article L321-9 of the Labour Code and shall inform the competent public authority referred to under Article L321-8 of the same Code. He shall attach, in support of the motion 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.

Article L631-18

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - The provisions of Chapters III, IV and V of Title II of this Book shall apply to reorganization proceedings.

II - However, the appeal provided for in the first paragraph of Article L624-3 will also be available to the administrator where he is assigned to manage the business.

For the application of Article L625-1, the court nominee who is summoned to appear before the Labour or, otherwise, the claimant shall summon the institutions referred to under Article L143-11-4 of the Labour Code to appear before the Labour Court.

In addition, for the application of Article L625-3 of this Code, the institutions referred to under Article L143-11-4 of the Labour Code shall be summoned by the court nominee or, otherwise, by the petitioning employees, within ten days from the issuance of the commencement order of the reorganization proceedings or from the issuance of the order



converting safeguard proceedings into reorganization proceedings. Likewise, pending cases before the Labour court on the date of issuance of the commencement order will be continued in the presence of the administrator where he is assigned to manage the business, or after having duly summoned the administrator.

Article L631-19

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - The provisions of Chapter VI of Title II shall apply to the reorganization plan.

II - Where the plan provides for dismissals on economic grounds, the plan may be confirmed by the court only after having consulted the works council or, in the absence of a works council, the employee delegates in the manner provided for in Article L321-9 of the Labour Code and only after the competent public authority referred to under Article L321-8 of the same Code has been informed.

The plan shall state in particular the dismissals that must be made within one month following the date of issuance of the order. 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.

Article L631-20

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

By way of exception to the provisions of Article L626-11, co-obligors and those who have consented to a joint or independent guarantee may not avail themselves of the provisions of the plan.

Article L631-21

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of Chapter VII of Title II shall apply to the reorganization plan.

During the observation period, the business operations shall be carried on by the debtor, which exercises the powers granted to the administrator by Article L631-17 and carries out the notifications provided for in the second paragraph of II of Article L631-19.

The court nominee shall perform the powers granted to the administrator by the second and third paragraphs of Article L631-10.

Article L631-22

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 92, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Based on the report of the administrator, the court may order the assignment of all or part of the business as a going concern if the debtor is unable to reorganize the business on its own. Except for Article L642-2 (I), the provisions of Section I of Chapter II of Title IV shall apply to this assignment. The court nominee 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.

TITLE IV

The liquidation procedure

Articles L640-1 to
L644-6

PRELIMINARY CHAPTER

Commencement and conduct of liquidation proceedings

Articles L640-1 to
L640-6

Article L640-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 97, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

This article institutes a liquidation procedure available to any debtor mentioned in Article L640-2 that is in a state of cessation of payments and whose reorganization is manifestly impossible.

The purpose of the 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 L640-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 97, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The liquidation procedure shall apply to all traders, persons registered with the craftsmen's register, 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.



No other liquidation proceedings may be commenced with respect to a person already subject to proceedings that have not yet been closed.

Article L640-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 97, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The liquidation procedure will also be available to those persons referred to under the first paragraph of Article L640-2 once they have ceased their professional activity if all or part of their liabilities arises from it.

Where a trader, a person registered with the craftsmen's register, a farmer or any other person running an independent professional activity, including an independent professional person with a statutory or regulated status or whose designation is protected, dies 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. 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 L640-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 97, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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

In the event of failure of the conciliation proceedings, if the court notes, while ruling according to the second paragraph of Article L631-4, that the conditions referred to under Article L640-1 are satisfied, it will commence liquidation proceedings.

Article L640-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 97, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where there are no conciliation proceedings pending, the court may also initiate a case of its own motion or on motion of the Public prosecutor for the purpose of commencing 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 Register of Commerce and Companies. 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 registered with the craftsmen's register, 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.

In addition, 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 (High court), prior to the writ of summons, for the appointment of a conciliator in compliance with the provisions of Article L351-2 of the Rural Code.

Article L640-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 97, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 of any fact showing the debtor is in a state of cessation of payments.

CHAPTER I

Liquidation order

Articles L641-1 to
L641-15

Article L641-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 98, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Articles L621-1 and L621-2 shall apply to liquidation proceedings.

II - In the order commencing the liquidation proceedings, the court shall appoint the supervisory judge and, as liquidator, a registered court nominee or a person chosen according to the first paragraph of Article 812-2 (II). The court



may, at the initiative of the supervisory judge, on motion of the Public prosecutor or of its own motion, replace the liquidator, or appoint one or more assistant liquidators. The debtor or the creditor may ask the supervisory judge to apply to the court to this end.

Where the debtor runs an independent professional activity with a statutory or regulated status or a person whose designation is protected, the supervisory body or authority, if any, may apply to the Public prosecutor for the purposes referred to under the first paragraph.

An employees' representative shall be appointed in the manner provided for by the second paragraph of Article L621-4. He shall be replaced in the manner provided for by the fifth paragraph of Article L621-7. He shall perform the duties provided for in Article L625-2.

The controllers shall be appointed and carry out their functions in the same manner as those provided for in Title II.

III - Where the liquidation is pronounced during the observation period of safeguard or reorganization proceedings, the court will appoint the court nominee as liquidator. However, the court may, through a reasoned order, on motion of the administrator, a creditor, the debtor or the Public prosecutor, appoint another person as liquidator under the conditions provided for by Article L812-2.

The court may replace the liquidator or appoint one or more assistant liquidators in accordance with the rules provided for in (II) of this article.

Where the debtor runs an independent professional activity with a statutory or regulated status or a person whose designation is protected, the supervisory body or authority, if any, may apply to the Public prosecutor for the purposes referred to under the first two paragraphs of III.

IV - The date of the cessation of payments shall be fixed in the manner provided for in Article L631-8.

Article L641-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 99, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The liquidator will draw up a report on the debtor's situation within a month of his appointment except where the court pronounces the liquidation during the observation period. The provisions of the second paragraph of Article L621-9 shall apply.

The simplified liquidation procedure provided for under Chapter IV of this Title will be applicable if it appears that the debtor's assets include no immovable property, that 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.

Article L641-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 100, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The order commencing the liquidation proceedings shall have the same effect as those provided for safeguard proceedings in the first and fourth paragraphs of Article L622-7 and in Articles L622-21, L622-22, L622-28 and L622-30.

The creditors shall submit their claims to the liquidator in the manner provided for in Articles L622-24 to L622-27 and L622-31 to L622-33.

Article L641-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 101, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 nominee.

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 secured claims, unless, in the case of a legal entity, there is a reason for holding the de jure or de facto managers liable for all or part of the liabilities pursuant to Articles L651-2 and L652-1.

The liquidator shall carry out the duties entrusted to the administrator and the court nominee under Articles L622-6, L622-20, L622-22, L622-23, L624-17, L625-3, L625-4 and L625-8.

For the purpose of drawing up the inventory referred to under Article L622-6, the court shall appoint an auctioneer, a bailiff, a notary or an accredited commodity broker.

An estimate of the debtor's assets shall be made by the persons referred to under the fourth paragraph.

The dismissals made by the liquidator pursuant to the decision pronouncing the liquidation shall be subject to the provisions of Articles L321-8 and L321-9 of the Labour Code.

Article L641-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 102, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the liquidation is pronounced during the observation period of safeguard proceedings or of reorganization



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 issuance of the liquidation order by the administrator or by the court nominee and may initiate new legal actions that are within the competence of the court nominee.

Article L641-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

No relatives or affines, up to the fourth degree included, of the head of the business or of the managers if the debtor is a legal entity, may be appointed as liquidator.

Article L641-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 103, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The liquidator shall inform the supervisory judge, the debtor and the Public prosecutor of the progress of the proceedings, at least every three months.

Article L641-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 percent.

Article L641-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 104, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - The order commencing or pronouncing the liquidation shall also give rise, from its date of issuance, 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 liquidation proceedings. The debtor's rights and rights of action over its estate shall be exercised by the liquidator during the liquidation proceedings.

However, the debtor may initiate or join the case as a civil party with the aim of holding the perpetrator of a crime or a misdemeanour of which the debtor has been a victim liable.

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 issuance of the liquidation order shall remain in office, unless the articles of association or a resolution passed by a shareholders' or partners' general meeting provide otherwise. In case of need, a representative may be appointed in their place by order of the president of the court on motion of any interested party, the liquidator or the Public prosecutor.

The registered office shall be deemed to be fixed at the domicile 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 L640-2, during the liquidation proceedings.

Article L641-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 105, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 on motion of the Public prosecutor 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 provisions of Article L641-13 shall apply to claims arising during this period.

The liquidator shall manage the business. He may require the performance of executory contracts and exercise the powers conferred on the administrator by Article L622-13.

He may dismiss employees under the conditions provided for in Article L631-17.

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 thresholds to be fixed by a Conseil d'Etat decree or, where necessary, the court will appoint an administrator to manage the business. In this case, by way of exception to the preceding paragraphs, the administrator shall be subjected to the provisions of Article L622-13. He shall prepare the assignment plan, carry out the acts necessary to implement the plan and, under the



conditions provided for in Article L631-17, 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 nominee, as the case may be, by Articles L622-4 and L624-6.

Article L641-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 106, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The supervisory judge shall perform the duties entrusted to him by Articles L621-9, L623-2 and L631-11, the first paragraph of Article L622-13 and the fourth paragraph of Article L622-16.

Information held by the Public prosecutor shall be transmitted to him according to the rules provided for in the second paragraph of Article L621-8.

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 L641-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 107, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Judicial liquidation shall not automatically lead to the termination of leases of immovable properties used for the business operations.

The liquidator or the administrator may continue the lease or assign it under the conditions stipulated in the agreement entered into with the lessor with all the rights and obligations attached therein. In the event of assignment of lease, the provisions of Article L622-15 shall apply.

If the liquidator or the administrator decides not to continue the lease, it will be terminated upon request. The termination shall take effect on the date of the request.

The lessor may request the termination of the lease by court order or have its automatic termination recorded for reasons existing prior to the issuance of the order commencing the liquidation proceedings or, where the latter has been pronounced following safeguard or reorganization proceedings, for reasons existing prior to the issuance 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 liquidation proceedings.

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 issuance of the commencement order of the liquidation proceedings, under the conditions provided for in the third, fourth and fifth paragraphs of Article L622-14.

The lessor's lien shall be determined according to the first three paragraphs of Article L622-16.

Article L641-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 108, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Claims arising regularly after the issuance of the order commencing or pronouncing the judicial liquidation or, in the latter case, after the issuance of the commencement order of the safeguard or reorganization proceedings prior to the judicial liquidation, for the needs of the proceedings or for the needs, as the case may be, of the former observation period, or because of goods or services provided to the debtor with respect to its professional activity subsequent to one of these orders, shall be paid as they fall due.

II - If they are not paid as they fall due, they will be paid according to their preferential lien before all other claims, except for the claims secured by the lien provided for in Articles L143-10, L143-11, L742-6 and L751-15 of the Labour Code, those that are secured by the lien for legal fees, those that are secured by the lien provided for in Article L611-11 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 - Their payment shall be made in the following order:

1°. claims of wages and salaries for which funds have not been advanced in compliance with Articles L143-11-1 to L143-11-3 of the Labour Code;

2°. legal fees;

3°. loans and claims arising from the performance of continued contracts according to the provisions of Article L622-13 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 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 the application of this article.

4°. sums that have been advanced in application of Article L143-11-1 (3°) of the Labour Code;



5°. other claims according to their priority order.

IV - Unpaid claims will lose the lien provided for by this article if they have not been notified to the court nominee or the administrator, where one has been appointed, or the liquidator, within 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 L641-14

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 109, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 his Book on the nullity of certain acts shall apply to liquidation proceedings.

However, for the application of Article L625-1, the liquidator summoned before the Labour court or, the petitioner shall summon the institutions referred to under Article L143-11-4 of the Labour Code before the Labour court.

To implement Article L625-3 of this Code, the institutions referred to under Article L143-11-4 of the Labour Code shall be summoned by the liquidator or by the petitioning employees, within ten days from the issuance of the commencement order of the liquidation proceedings or of the order pronouncing the same. Likewise, the proceedings pending before the Labour court on the day of issuance of the commencement order shall be carried on in the presence of the administrator, where one has been appointed, or after he has been duly summoned.

Article L641-15

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 110, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the course of the 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.

The supervisory judge may allow the liquidator 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 will not apply.

CHAPTER II

Realisation of assets

Articles L642-1 to
L642-25

SECTION I

Assignment of the Business as a going concern

Articles L642-1 to
L642-17

Article L642-1

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Act No 2006-11 of 5 January 2006, Article 14 V, Official Journal of 6 January 2006)

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 concern a group of 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 L642-2, L642-4 and L642-5. Provisions relating to the exercise of control over agricultural businesses (*contrôle des structures des exploitations agricoles*) shall not apply. However, if several offers have been received, the court will take into account the provisions of Article L331-3 (1°) to (4°) and (6°) to (9°) of the Rural Code.

Where a debtor, who is a natural person is an independent professional person with a statutory or regulated status or whose designation is protected, the assignment may only relate to tangible assets. However, where a public or law official is concerned, the liquidator may perform the debtor's right to present a successor to the Keeper of the Seals, the Minister of Justice.



Article L642-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Where the court deems that the total or partial assignment of the business as a going concern may be considered, it will 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 L631-13 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 in writing and 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 forecasts 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 them with the court clerk's office 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 L642-1, nor withdrawn. It shall be binding on the offeror until the issuance 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 L642-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The debtor, the de jure or de facto manager of the legal entity subject to 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 in the liquidation proceedings, as well as from buying stock or shares in the capital of any company or partnership having, directly or indirectly, as part of its assets, 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. In the other cases, the court, on motion of the Public prosecutor, may allow the assignment to one of the persons referred to under the first paragraph, excluding the controllers, 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 on motion of any interested party or of the Public prosecutor, filed within three years from the date of the conclusion of the act. Where the act is subject to publication formalities, the time limit will run from the date of publication.

Article L642-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L642-3.

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 L642-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)



After having received the opinion of the Public prosecutor 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 where the proceedings relate to a natural person or a legal entity 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.

Where the plan provides for dismissals on economic grounds, it may be confirmed by the court only after having consulted the works council or, in the absence of a works council, the employee delegates under the conditions provided for in Article L321-9 of the Labour Code and having informed the competent public authority referred to under Article L321-8 of the same Code. The plan shall state in particular the dismissals that must be made within one month starting from the date of issuance of the order. 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.

Article L642-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Substantial modifications in the aims or means of the plan may be made only by the court, on motion 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.

However, the amount of the price of the assignment as determined in the order confirming the plan may not be modified.

Article L642-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190 Correction JORF 22 October 2005)

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 L642-13.

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.

Article L642-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 assignee's motion and under its responsibility, with the management of the business assigned.

Where the assignment includes the goodwill, no increase in price (surenchère) will be allowed.

Article L642-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

Any substitution of the assignee must be allowed by the court in the order confirming the plan, without prejudice to



the implementation of the provisions of Article L642-6. The person whose offer has been accepted by the court shall be a solidary guarantor 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 motion of any interested party or of the Public prosecutor, filed within three years from the date of the conclusion of the act. Where the act is subject to publication formalities, the time limit will run from the date of publication.

Article L642-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court may attach a clause to the assignment plan providing that all or part of the assets assigned may not be alienated, for a time fixed by the court.

The publication of this clause shall be carried out under the conditions provided for in a Conseil d'Etat decree.

Any act entered into in violation of the provisions of the first paragraph shall be declared void on motion of any interested party or of the Public prosecutor, filed within three years from the date of the conclusion of the act. Where the act is subject to publication formalities, the time limit will run from the date of publication.

Article L642-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 motion either of the Public prosecutor, 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 L642-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the assignment includes assets encumbered with a special lien, security or a mortgage, 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 immovables and movables 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.

Article L642-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 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 and after having received the opinion of the Public prosecutor.

Article L642-14

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of Articles L144-3, L144-4 and L144-7 on trading lease agreements shall not apply.

Article L642-15

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)



In the event of a trading lease agreement, the business must be effectively assigned within the two years following the date of issuance of the order confirming the plan.

Article L642-16

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The liquidator may require the lessee-manager [locataire-gérant] to hand all documents and information over to him that are necessary to perform its 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 on motion of the liquidator or of the Public prosecutor, may order the termination of the trading lease agreement and the rescission of the plan.

Article L642-17

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 111, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 on motion of the liquidator or the Public prosecutor, 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 L642-15. The court shall rule upon the case before the expiry of the leasing contract, after having received the opinion of the Public prosecutor 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 II

Assignment of the debtor's assets

Articles L642-18 to
L642-21

Article L642-18

(Act No 2005-845 of 26 July 2005, Article 1 I, Article 112, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

(Order No 2006-461 of 21 April 2006, Article 14, Official Journal of 22 April 2006, in force at the latest on 1 January 2007)

The sale of immovable property shall be carried out under the conditions provided for seizure of immovable property. However, the supervisory judge shall, after having received the remarks of the controllers, and after having heard or duly summoned the debtor and the liquidator, determine the upset price, the main terms of the sale and the terms and conditions of publication.

Where an action to seize immovable property initiated prior to the commencement of safeguard, reorganization or 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.

Under the same conditions, 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 case of a voluntary public auction, higher bids (*surenchère*) may always be made.

Auctions carried out pursuant to the preceding paragraphs shall entail the discharge of mortgages.

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 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.

N.B. Order 2006-461 2006-04-21 Article 23: This order shall enter into force at the entry into force of the Conseil d'Etat decree referred to under Article 23 and, at the latest on 1 January 2007.

Article L642-19

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 113, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

After having received the opinion of the controllers, the supervisory judge shall order the sale at public auction or allow a private sale of the debtor's other assets, the latter having been heard or duly summoned. Where the sale takes



place at public auction, it will be carried out as provided for, as the case may be, by the second paragraph of Article L322-2 or by Articles L322-4 or L322-7.

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 L642-20

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 114, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of Article L642-3 shall apply to the assignment of assets implemented in compliance with Articles L642-18 and L642-19. In this case, the powers of the court shall be performed by the supervisory judge.

Article L642-21

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 114, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the provisions of Article L631-22 have been applied and the debtor may not obtain court the confirmation of a reorganization plan in court, the provisions of this Title shall apply. Assets not included in the assignment plan shall be disposed of under the conditions provided for under this Section.

SECTION III

Common Provisions

Articles L642-22 to
L642-25

Article L642-22

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 115, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L642-23

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 116, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Before any sale or destruction of the debtor's archives, the liquidator will inform the competent public authority for the conservation of archives. The authority has a pre-emptive right.

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 L642-24

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 115, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

Article L642-25

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 117, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

On payment of the debt, the liquidator so authorised by the supervisory judge may take back assets given as pledge by the debtor or as a retained assets.

If the liquidator does not do this, he must, within six months of the date of issuance of the order of the liquidation proceedings, request the supervisory judge for permission to sell this asset. 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 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.

CHAPTER III

Settlement of liabilities

Articles L643-1 to
L643-8



SECTION I
Paying creditors

Articles L643-1 to
L643-8

Article L643-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 118, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The order commencing or pronouncing the liquidation proceedings shall render all unmatured claims 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 not yet fallen due will become due on the date of issuance of the order of assignment.

Where these claims are expressed in a currency other than that of the country where the liquidation is pronounced, they will be converted into the currency of this country at the exchange rate on the date of issuance of the order.

Article L643-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 119, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Creditors holding a special lien, a pledge or a mortgage and the Public Treasury with respect to its secured claims 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 encumbered property within three months from the date of issuance of the order commencing or pronouncing the liquidation proceedings.

Where the court has fixed a time limit in compliance with Article L642-2, 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 L642-18 will apply. Where an action for seizure of immovable property has been initiated prior to the date of issuance of the commencement order, the creditor holding a mortgage will be relieved, upon resumption of separate actions, from any acts and formalities carried out before the issuance of the order.

Article L643-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 120, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The supervisory judge may, of his own motion or on motion 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 lien 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 L643-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If one or more distributions of sums occur prior to the distribution of the proceeds upon sale of immovable property, admitted lien creditors and mortgagees 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 mortgagees and secured creditors, 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 L643-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The rights of mortgagees 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 mortgages. 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 mortgages and shall be included in those sums to be distributed to unsecured creditors.

Article L643-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Lien creditors or mortgagees, 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 L643-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, II Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of Articles L643-4 to L643-6 shall apply to creditors secured by a special security over a movable property, subject to the third paragraph of Article L642-25.

Article L643-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The proceeds of the assets will be divided among all creditors in proportion to their admitted claims once have been deducted the court fees and expenses incurred in the course of the liquidation proceedings, the subsidies granted to the head of the business or managers and their families and sums paid to lien creditors.

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 for as long as no ruling made on their case, will be kept in reserve.

SECTION II

Closing of judicial liquidation operations

CHAPTER IV

Simplified liquidation procedure

Articles L644-1 to
L644-6

Article L644-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 125, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The simplified liquidation procedure shall be governed by the rules applicable to normal liquidation proceedings, subject to the provisions of this chapter.

Article L644-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 124, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

By way of exception to the provisions of Article L642-19, where the court decides to apply this chapter, it will determine those assets of the debtor that may be sold in a private sale. The liquidator shall implement this within three months following the date of issuance of the order.

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

Article L644-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 125, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

By way of exception to the provisions of Article L641-4, 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 L644-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 125, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

After having carried out the verification and admission of claims and sold the assets, the liquidator shall draw up a draft distribution plan, which he files with the court clerk's office for consultation by any interested party and for publication.

Any interested party may dispute the draft distribution plan before the supervisory judge within a time limit to be determined by a Conseil d'Etat decree.

The supervisory judge shall rule upon the disputes through a ruling, which shall be published and notified to interested creditors. An appeal may be filed within a time limit to be determined by a Conseil d'Etat decree.

The liquidator shall carry out the distribution according to the draft or the order given.

Article L644-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 125, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

One year at the latest after the commencement of the procedure, the court shall pronounce the closing of the liquidation proceedings after 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 L644-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 125, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

At any time, the court may decide, by way of a specially reasoned ruling, to cease applying the exceptions of this chapter.

TITLE V

Liabilities and sanctions

Articles L651-1 to
L650-1

Article L643-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 121, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the order commencing or pronouncing the liquidation proceedings, the court shall determine the time limit at the end of which the closing of the case will be examined. If the closing cannot be pronounced at the end of this time limit, the court may extend the term by a reasoned ruling.

Where there are no due liabilities anymore, or where the liquidator has sufficient sums at his disposal to satisfy the creditors or where the pursuit of the 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 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 issuance of the order commencing the 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 L643-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The liquidator shall submit his accounts. He will answer for documents given to him in the course of the proceedings for five years beginning with the submission of his accounts.

Article L643-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 122, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 guarantor 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 or a legal entity of which he was a manager has been submitted to previous 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 within the meaning of 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 closing of the proceedings after having heard or duly summoned the debtor, the liquidator and the controllers. It may take its decision after the closing of the proceedings, on motion of any interested party, under the same conditions.

V -Creditors who recover their individual rights of action under this article may, if their claims have been admitted, obtain an enforcement order by a ruling of the president of the court or, if the claims have not been verified, ask for enforcement under the terms of general law.

Article L643-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 123, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The closing of the liquidation proceedings shall stay the effects of the prohibition to issue cheques, imposed on the debtor in compliance with Article L65-3 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 issuance of the commencement order.

If the creditors recover their individual rights of action, this prohibition will resume its effect beginning with the



issuance of the enforcement order provided for in Article L643-11.

Article L643-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 124, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If the closing of the 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 or any interested creditor may apply to the court. The court may also initiate a case 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 court clerk's office. 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 sum of money, the proceedings provided for in Chapter IV of this Title shall automatically apply.

Article L650-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 126, Article 163, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Creditors may not be held liable for harm in relation to credits granted, except in cases of fraud, indisputable interference in the management of the debtor or if the guarantees obtained for the loans or credits are disproportionate.

If the liability of a creditor is established, the guarantees obtained for the loans will be declared void.

CHAPTER I

Liability for excess of liabilities over assets

Articles L651-1 to
L651-4

Article L651-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 127, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of this chapter and those of Chapter II of this Title 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.

N.B. It has not been possible to make the amendments provided in Article 163 of the Act No 2005-845 of 26 July 2005, the expression "of reorganization" not being present in Article L651-1.

Article L651-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 128, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the rescission of a safeguard or of a reorganization plan or the liquidation 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, who have contributed to the management fault. If there are several managers, the court may, by way of a reasoned ruling, declare them jointly and severally liable.

The right of action shall be barred after three years from the date of issuance of the order pronouncing the liquidation proceedings or the rescission of the plan.

Sums paid by the managers in compliance with the first paragraph shall form part of the debtor's assets. These sums shall be distributed to all creditors on a pro rata basis.

Article L651-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 129, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court nominee, the liquidator or the Public prosecutor may apply to the court in the case provided for in Article L651-2.

Where the court nominee entitled to bring them has not applied for the actions 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 not sit in judgement nor participate in consideration of the case provided for in the first paragraph.

Legal fees that the managers are ordered to pay shall be paid in priority out of the sums that are paid to make up for liabilities.

Article L651-4



(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 130, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

For applying the provisions of Article L651-2, of his own motion or on motion of one of the persons referred to under Article L651-3, 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 L651-1, from the public authorities and bodies, provident institutions, social security bodies and credit institutions.

The president of the court may, under the same conditions, order any useful protective measure in relation to the assets of the managers or their representatives referred to under the preceding paragraph.

The provisions of this article shall also apply to members of or partners in the legal entity submitted to the safeguard, reorganization or liquidation proceedings, where they are jointly and severally liable for its debts.

CHAPTER II

Liability for the debts of the company

Articles L652-1 to
L652-5

Article L652-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 131, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the course of the liquidation proceedings, the court may decide that one of the de jure or de facto managers of the legal entity shall bear all or part of the latter's debts if it is proven against this manager that one of the faults referred below has contributed to the cessation of payments :

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, 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. In the cases provided for in this article, the provisions of Article L651-2 shall not apply.

Article L652-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 131, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the presence of several liable managers, the court will take into account the fault of each manager in order to determine the portion of the debts of the company to be borne by each. It may declare them jointly and severally liable by a reasoned ruling.

Article L652-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 131, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Sums recovered shall be used to pay off creditors according to the order of their secured claims.

Article L652-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 131, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The right of action shall be barred after three years from the issuance of the order pronouncing the liquidation proceedings.

Article L652-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 131, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of Articles L651-3 and L651-4 shall apply to the right of action provided for in this chapter.

CHAPTER III

Personal disqualification and other prohibitions

Articles L653-1 to
L653-11

Article L653-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 132, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)



I - Where reorganization or liquidation proceedings are commenced, the provisions of this chapter shall apply to:

1°. natural persons who are traders, farmers, persons registered with the craftsmen's register, and to 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 issuance of the order pronouncing the commencement of the proceedings provided for under (I).

Article L653-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 133, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Personal disqualification shall entail a prohibition from running, managing, administering or controlling, directly or indirectly, any commercial or craftsman's business, any agricultural activity or any business operating any other independent activity and any legal entity.

Article L653-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 134, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court may pronounce the personal disqualification of any person referred to under Article L653-1 (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 proved:

1°. abusively operating an unprofitable business activity that would necessarily lead to cessation of payments; 2°.

[abrogated];

3°. embezzling or concealing all or part of his assets or fraudulently increasing his liabilities.

Article L653-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 135, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court may pronounce the personal disqualification of any de jure or de facto manager of a legal entity who has committed one of the faults referred to under Article L652-1.

Article L653-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 136, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A court may pronounce the personal disqualification of any person provided for in Article L653-1 against whom any of the following facts has been proved:

1°. running a commercial, craftsman's or agricultural activity or holding 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 reorganization or 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 good 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, manifestly incomplete or irregular with respect to the applicable provisions.

Article L653-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The court may pronounce the personal disqualification of the manager of a legal entity who has not paid the latter's debts put at his expense.

Article L653-7

The court nominee, the liquidator or the Public prosecutor may apply to the court in the cases provided for in Articles L653-3 to L653-6 and L653-8.

Where the court nominee entitled to bring them has not applied for the actions provided for in these articles 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 at any time during the proceedings.

The supervisory judge may not sit in judgement nor participate in consideration of the same cases provided for in the first paragraph.

Article L653-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 138, Article 165, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the cases provided for under Articles L653-3 to L653-6, a court may pronounce, instead of personal disqualification, a prohibition from managing, running, administrating 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 provided for in Article L653-1 who, in bad faith, has not given to the court nominee, the administrator or the liquidator, information he is bound to disclose to them in compliance with Article L622-6 within the month following the date of issuance of the commencement order.

The same prohibition may also be pronounced against any person provided for in Article L653-1 who has omitted to file, within the time limit of forty-five days, a statement of cessation of payments, without having otherwise filed for the commencement of conciliation proceedings.

Article L653-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The voting rights of managers under personal disqualification or under a prohibition provided for in Article L653-8 shall be exercised in the meetings of legal entities submitted to safeguard, reorganization or liquidation proceedings by a court nominee appointed by the court for this purpose on motion 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 nominee, 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 L653-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 139, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 will inform the interested party of his ineligibility, which shall take effect on the date of notice.

Article L653-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 140, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where a court pronounces the personal disqualification or the prohibition provided for in Article L653-8, 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 enforcement of the liability for the debts of the entity imposed on him by court, return all rights to the head of the business or 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 L653-8, he may be relieved of it if he presents guarantees showing his capacity to manage or control one or more businesses or legal entities provided for in that article.

Where a complete relief from any loss of rights, prohibition and ineligibility is pronounced, the court's decision will entail rehabilitation.

CHAPTER IV

Criminal bankruptcy and other offences

Articles L654-1 to
L654-20



SECTION I
Criminal Bankruptcy

Articles L654-1 to
L654-7

Article L654-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 141, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The provisions of this section shall apply to:

1°. traders, farmers, natural persons registered with the craftsmen's register and natural persons 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 L654-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 142, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where reorganization or liquidation proceedings are commenced, any person referred to under Article L654-1 shall be guilty of criminal bankruptcy where any of the following offences is proved against them:

1°. purchasing for resale at below market prices or using ruinous means to obtain funds with the intention of avoiding or delaying the commencement of the reorganization 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 L654-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 142 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Criminal bankruptcy shall be punishable by five years' imprisonment and a fine of €75,000. The same penalties shall be incurred by the accomplices of the criminal bankrupt, even if they are not traders, farmers or craftsmen and do not manage a private law entity, directly or indirectly, de jure or de facto.

Article L654-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

Article L654-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 142 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Natural persons found guilty of those offences provided for in Articles L654-3 and L654-4 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, for a maximum period of five years, from occupying a public office, from running the professional or corporate activity in the exercise of which, or while being exercised, the offence was committed unless a Civil or High court has already imposed such a sanction by a decision that has become final;

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 L654-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 143, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The Criminal court that finds one of the persons referred to under Article L654-1 guilty of criminal bankruptcy may, in addition, pronounce the latter's personal disqualification or the prohibition provided for in Article L653-8 unless a Civil or High court has already imposed such a sanction by a decision that has become final.



Article L654-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Legal entities may be declared guilty, according to the conditions provided for in Article 121-2 of the Penal Code, for those offences provided for in Articles L654-3 and L654-4.

II - The penalties to be incurred by legal entities shall be:

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.

III - 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 II

Other offences

Articles L654-8 to
L654-15

Article L654-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 144, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Two years' imprisonment and a fine of €30, 000 shall apply to:

1°. any person referred to under Article L654-1 who, during the observation period, grants a mortgage or a pledge or carries out an act of disposition without the permission provided for in the second paragraph of Article L622-7 or who pays, in whole or in part, a debt in breach of the prohibition referred to under the first paragraph of that article;

2°. any person referred to under Article L654-1 who makes a payment in breach of the terms and conditions for the payment of liabilities provided for in the safeguard plan or reorganization plan, who carries out an act of disposition without the permission provided for in the second paragraph of Article L626-14 or who sells an asset excluded from sale under the terms of an assignment plan, in compliance with Article L642-10.

3°. any person who, during the observation period or while the safeguard plan or reorganization plan is being implemented, while being aware of the debtor's situation, concludes with the latter one of the acts referred to at (1°) and (2°) or receives from him an irregular payment.

Article L654-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 145, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The penalties provided for in Articles L654-3 to L654-5 shall apply to any person who:

1°. in the interest of the persons referred to under Article L654-1, removes, illegally holds or conceals all or part of the movable and immovable property belonging to these persons, without prejudice to the application of Article 121-7 of the Penal Code;

2°. fraudulently submits alleged claims in safeguard, reorganization or liquidation proceedings, either in his name or by using an agent;

3°. while running a commercial, craftsman's or agricultural activity 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 L654-14.

Article L654-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 146 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A spouse, descendant, ancestor or collateral relatives or affines of the persons referred to under Article L654-1 who embezzles, conceals or illegally holds assets included in the insolvency estate of a debtor subject to safeguard or reorganization proceedings, shall incur the penalties provided for in Article 314-1 of the Penal Code.

Article L654-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 146 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L654-12

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 146 III, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)



I - The penalties provided for under Article 314-2 of the Penal Code shall apply to any administrator, court nominee, 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 nominee, 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 L654-13

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 163, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A creditor, who, after the issuance of the order commencing the safeguard, reorganization or 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 L654-14

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, II Article 163, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The penalties provided for in Articles L654-3 to L654-5 shall apply to those persons referred to under Article L654-1 (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 safeguard, reorganization or 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.

Article L654-15

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, II Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any one who runs a professional activity or holds a position in violation of any prohibition, loss of rights or incapacity provided for in Articles L653-2 and L653-8, shall be punished by two years' imprisonment and a fine of €375 000.

SECTION III

Procedural Rules

Articles L654-16 to
L654-20

Article L654-16

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 146 IV, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 issuance of the commencement order of safeguard, reorganization or liquidation proceedings where the incriminating facts have arisen before this date.

Article L654-17

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 146 V, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The case shall be filed with the Criminal court either by the action of the Public prosecutor or by an action for damages as a civil party initiated by the administrator, the court nominee, 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 nominee 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 L654-18

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The Public prosecutor may require the administrator or the liquidator to hand over all contracts and documents held by them.

Article L654-19

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 165 III, Official Journal of 27 July 2005, in force on 1



January 2006 subject to Article 190)

The legal fees of the cases filed by the administrator, the court nominee, 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 liquidation proceedings.

Article L654-20

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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.

TITLE VI

General procedural provisions

Articles L661-1 to
L663-4

CHAPTER I

Means of redress

Articles L661-1 to
L661-11

Article L661-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 147, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Appeal or appeal in cassation may be filed against:

1° decisions ruling upon the commencement of safeguard, reorganization and liquidation proceedings by the debtor, the petitioning creditor as well as the Public prosecutor even if he did not act as the principal party;

2° - decisions ruling upon the liquidation proceedings, confirming or rejecting the safeguard plan or the reorganization plan by the debtor, the administrator, the court nominee, the works council or, in the absence of a works council, the employee delegates as well as by the Public prosecutor even if he did not act as the principal party;

3- decisions modifying the safeguard plan or the reorganization plan by the debtor, the plan performance supervisor, the works council or, in the absence of a works council, by the employee delegates as well as the Public Prosecutor even if he did not act as the principal party.

II - The appeal by the Public prosecutor has a suspensive effect, except with respect to decisions ruling upon the commencement of safeguard or reorganization 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 L661-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 148 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The decisions ruling upon the commencement of proceedings 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 L661-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 148 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The decisions confirming or modifying the safeguard plan or the reorganization 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.

Article L661-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 149, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The orders relating to the appointment or the replacement of the supervisory judge shall not be subject to any redress.

Article L661-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 150, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Only the Public prosecutor may bring an appeal and appeal in cassation against judgements ruling upon petitions for redress of orders of the supervisory judge given in compliance with Articles L642-18 and L642-19.



Article L661-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 151, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Only the Public prosecutor may appeal even if he did not act as the principal party against:

1° - orders relating to the appointment or the replacement of the administrator, the court nominee, 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, the Public prosecutor even if he did not act as the principal party, the assignee or the contracting party referred to under Article L642-7 may appeal against orders 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 L642-7 may appeal only against the section of the order which relates to the assignment of the contract.

III - Only the Public prosecutor even if he did not act as the principal party or the assignee within the limits referred to under the preceding paragraph, may appeal against orders modifying the assignment plan.

IV - The appeal by the Public prosecutor shall have a suspensive effect.

Article L661-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Third-party proceedings or appeal to the court of cassation may not be initiated against court of appeal judgements delivered in compliance with Article L661-6 (I).

Only the Public prosecutor may file an appeal in cassation against court of appeal judgements delivered in compliance with Article L661-6 (II) and (III).

Article L661-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 163, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Where the Public prosecutor must be kept informed about safeguard, reorganization or 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 L661-9

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 152, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the event of invalidation of the ruling that gives rise to the transfer of the case to the first-degree court, the court of appeal 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 safeguard or reorganization plan and when the provisional enforcement is halted, the observation period will be prolonged until the court of appeal judgement.

Article L661-10

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 L661-11

(inserted by Act No 2005-845 of 26 July 2005, Article 1, Article 153, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The decisions delivered in compliance with Chapters I, II and III of Title V shall be subject to appeal by the Public prosecutor, even if he did not act as the principal party.

The appeal of the Public prosecutor shall have a suspensive effect.

CHAPTER II

Other provisions

Articles L662-1 to
L662-6

Article L662-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

No opposition or proceedings for enforcement of any nature concerning the sums paid into the Caisse des dépôts et consignations shall be admissible.



Article L662-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 154, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 court of appeal, to hear safeguard, reorganization or liquidation proceedings, under the conditions to be fixed by a decree. The court of Cassation, to which the case is referred in the same manner, may refer the case to a court within the territorial jurisdiction of another court of appeal.

Article L662-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 156, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Hearings before the Tribunal de commerce (High court) and the Tribunal de grande instance (High court) 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 nominee, the administrator, the liquidator, the employees' representative or the Public prosecutor 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, II and III of Title V shall take place in public. The president of the court may decide that they will take place in the judge's chambers if the debtor requests it before the commencement of the hearing.

Article L662-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 157, Article 165 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

Any dismissal of the employees' representative referred to under Articles L621-4 and L641-1, planned by the administrator, the employer or the liquidator, as the case may be, shall obligatorily be presented to the works council, which shall give its opinion on the planned dismissal.

The dismissal may occur only after the permission of the Inspector of Labour who supervises the establishment. When there is no works council in the establishment, the case will be referred directly to the Inspector of Labour.

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 L625-2 will cease when all sums paid to the court nominee by the institutions referred to under Article L143-11-4 of the Labour Code, in compliance with the tenth paragraph of Article L143-11-7 of the aforesaid code, are transferred by the court nominee 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 reorganization proceedings.

Article L662-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The funds held by the "syndics" (administrator/liquidator) 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" (administrator) must pay interest on the unpaid sums at the legal rate of interest plus five percent.

Article L662-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 159, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The clerk's office of the Tribunal de commerce (Commercial court) and that of the Tribunal de grande instance (High court) shall draw up at the end of every six-month period the list of court-appointed administrators and court nominees appointed by the court and the other people to whom a commission related to the proceedings governed by this Book is given by the aforementioned 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 Conseil d'Etat decree. They shall state in an annexe the amount of its sales turnover, during the previous six-month period, resulting from the exercise of the commissions entrusted to him by the court.

This information shall be disclosed to the Keeper of the Seals, Minister of Justice, to the Public prosecutor of the territorial jurisdiction concerned and to the authorities responsible for the control and the inspection of the administrator and the court nominees, according to the terms and conditions determined by a Conseil d'Etat decree.



CHAPTER III

Legal fees of proceedings

Articles L663-1 to
L663-4

Article L663-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 158 I, Article 163 Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

I - Where the debtor's available funds are not immediately sufficient, the Public Treasury, upon a reasoned ruling of the supervisory judge or that of the president of the Court, will advance funds to pay fees, taxes, royalties or emoluments due to by the court clerk, fixed disbursements and emoluments due to the solicitors before appeal courts (*avoués*) and 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, related to:

1. the decisions pronounced in the course of safeguard, reorganization or 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 L653-3 to L653-6.

The agreement of the Public prosecutor shall not be necessary for the advance payment of the remuneration of the public officials appointed by the court in compliance with Article L621-4, to carry out the inventory provided for under Article L622-6 and the valuation provided for under Article L641-4.

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 lien applicable to legal fees.

Article L663-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 158 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

A Conseil d'Etat decree shall specify the conditions of remuneration of administrators, court nominees, 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 L663-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 158 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

If the proceeds of the sale of the business's assets do not allow the liquidator or the court nominee to obtain, as remuneration due to him pursuant to the provisions of Article L663-2, a sum at least equal to a threshold fixed by a Conseil d'Etat decree, the case will be declared impecunious by court order, on proposal of the supervisory judge and based on the supporting documents presented by the liquidator or the court nominee.

The same decision shall determine the sum corresponding to the difference between the remuneration actually received by the liquidator or the court nominee and the threshold specified in the first paragraph.

The sum paid to the court nominee 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 L622-18, L626-25 and L641-8. This portion shall be specially assigned to a fund managed by the Caisse des dépôts et consignations under the control of an administration committee. The conditions for application of this paragraph shall be fixed by a Conseil d'Etat decree.

Article L663-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The supervisory judge shall have his travelling expenses reimbursed from the debtor's assets.

TITLE VII

Provisions specific to the departments of Moselle, Bas-Rhin and Haut-Rhin

Articles L670-1 to
L670-8

Article L670-1

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 160 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 traders, nor persons registered with the craftsmen's



register, nor farmers, nor persons running 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 organizations, 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.

The conditions for the application of this article shall be specified by a decree.

Article L670-2

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 160 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The supervisory judge may order exemption from carrying out an inventory of the assets of the persons referred to under Article L670-1.

Article L670-3

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 160 III, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In the event of 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 L670-4

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

On issuance of the final decree closing operations of the 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.

His payment must be made within a time limit of two years.

The conditions for the application of this Article shall be specified by a decree.

Article L670-5

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Article 160 IV, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

In addition to the cases provided for in Article L643-11, the creditors will also recover their right to initiate individual proceedings against the debtor where the court ascertains, of its own motion or on motion by the supervisor, the non-performance of the contribution provided for in Article L670-4.

Article L670-6

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The order pronouncing the liquidation proceedings shall be recorded for a period of eight years in the records provided for in Article L333-4 of the Consumer Code and shall no longer be mentioned in the interested party's criminal record.

Article L670-7

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

The tax base and assessment of the tax on legal fees for reorganization or liquidation proceedings shall temporarily be settled in accordance with the provisions of local laws.

Article L670-8

(inserted by Act No 2005-845 of 26 July 2005, Article 1 I, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)

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 reorganization proceedings commenced after 1 January 1986.

BOOK VII

Organisation of commerce

Articles L711-1 to



L740-3

TITLE I

Chambers of commerce and industry

Articles L711-1 to
L713-18

CHAPTER I

Organisation and powers

Articles L711-1 to
L711-10

Article L711-1

Chambers of commerce and industry are agencies which work closely with the public authorities to serve commercial and industrial interests in their district.

They are public economic establishments.

Article L711-2

Chambers of commerce and industry are responsible for:

1. Giving the government the opinions and information requested from them on industrial and commercial matters.
2. Presenting their views on how to increase the prosperity of industry and commerce.

3. Ensuring, subject to the authorisation for which provision is made in Articles L. 711-6 and L. 711-8, that the works and the administration of the services necessary to the interests for which they are responsible are carried out.

Article L711-3

The opinion of chambers of commerce shall be requested on:

1. Regulations relating to commercial practice.
2. The creation of new chambers of commerce and industry, marine brokers, tribunaux de commerce, conseils de prud'hommes, bonded warehouses and auction rooms for new and wholesale merchandise in their district
3. Taxes to remunerate transport services franchised by the public authorities in their district.
4. Any matters regulated by law or special regulations, especially the advisability of public works to be carried out in their district and the taxes and tolls to be levied in order to meet the cost of such works.
5. Labour tariffs for work in prisons.

Article L711-4

In addition to opinions which the government is always entitled to ask of them, chambers of commerce and industry may issue opinions at their own initiative on:

1. Planned changes to commercial, customs and economic legislation.
2. Customs tariffs.
3. Tariffs and regulations for transport services franchised by the public authorities outside their jurisdiction but affecting their district.
4. Tariffs and regulations for commercial establishments opened in their district under an administrative permit.

Article L711-5

Articles L. 121-4 to L. 121-6 of the Town Planning Code reproduced below define the powers of chambers of commerce and industry to establish master plans for locating commercial and artisan installations.

"Article L. 121-4. - Once professional bodies have been consulted, chambers of commerce and industry and the trade chambers shall be involved, if they so request, in establishing master plans.

The reports attached to master plans shall stipulate the projected size of and location for preferred zones for locating various commercial and artisan installations.

Article L. 121-5. - The economic studies needed in order to prepare documents on the planned commercial and artisan infrastructure may be carried out at the initiative of chambers of commerce and industry and trade chambers.

"Article L. 121-6. - Chambers of commerce and industry and trade chambers shall be involved, if they so request, in drawing up land use plans for commercial and artisan installations and shall be responsible for links with the professional associations affected."

Article L711-6

Chambers of commerce and industry may be authorised to found and administer establishments for commercial use such as bonded warehouses, auction rooms, depots, weapon testing grounds, packaging and titration offices, permanent exhibitions and commercial museums, business schools, vocational schools and courses in commercial and industrial subjects.

The administration of such establishments founded by private initiative may be handed over to chambers of commerce and industry at the request of the subscribers or donors.

The administration of similar establishments created by the state, the department or the municipality may be



delegated to them for similar establishments created by the state, the department or the municipality.

The authorisation referred to in this Article shall be granted to chambers of commerce and industry by decision of the minister in charge of their administrative supervision unless the nature of the establishment is such that a decree or law is needed.

Regulations and maximum tariffs shall be approved by the minister subject to the same reservation. The actual taxes and prices payable shall be approved by the prefect, unless the deed of institution requires a ministerial decision.

Chambers of commerce and industry may acquire or construct buildings for their own premises or premises for commercial establishments subject to ministerial authorisation.

Article L711-7

Chambers of commerce and industry and trade chambers may create training funds for traders and artisans as defined in and for the purposes of Article L. 961-10 of the Employment Code, in liaison with professional associations.

Article L711-8

Chambers of commerce and industry may be appointed as franchisees of public works or to take charge of public services.

Article L711-9

Chambers of commerce and industry or trade chambers may act as town planning project managers in agreement with the local authority or the project agency in order to install any form of new commercial and artisan installation in the economic and social interest, for the benefit of traders and artisans and to help them set up, convert or relocate their business.

More importantly, they may help traders and artisans acquire ownership [illegible] premises without any initial capital contribution.

They may also be delegated a pre-emptive town planning right or hold or be delegated the pre-emptive right established in deferred planning zones in order to set up any form of commercial and artisan installation.

Loans contracted by chambers of commerce and industry and trade chambers in order to carry out the operations referred to above may be guaranteed by the local authority. Chambers of commerce and industry, trade chambers and their permanent assemblies may contract loans from the Consignments office and the local authority facility aid fund.

Article L711-10

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The chambers of commerce and industry are reorganised as regional chambers of commerce and industry. Without prejudice to the right, which the chambers of commerce and industry retain, to form groups in order to defend special interests which some of them have in common, the regional chambers of commerce and industry constitute the consultative bodies for the regional interests of commerce and industry in their dealings with the public authorities.

The regional chambers of commerce and industry are public institutions with legal personality.

The regrouping of the chambers of commerce and industry into regional chambers of commerce and industry, and the remits, organisation and administrative and financial workings of those regional chambers of commerce and industry are determined in a Conseil d'Etat decree.

CHAPTER II

Financial administration

Articles L712-1 to
L712-3

Article L712-1

The ordinary expenses of chambers of commerce and industry shall be covered by a tax in addition to the business tax.

Article L712-2

Chambers of commerce and industry may allocate all or some of their surplus revenue from the management of their ordinary services to a reserve fund for emergency or contingent expenses. The amount contained in this fund, which must be reported in the services accounts and budget, shall not under any circumstances exceed half the total annual resources of the said budget.

Article L712-3

The chambers of commerce and industry referred to in Article L. 711-1, the regional chambers of commerce and industry, cross-trade groups and the assembly of the French chambers of commerce and industry shall appoint at least one auditor and one deputy from the list referred to in Article L. 225-219, who shall perform their duties in accordance with the terms of Book II, subject to the regulations applicable to them.

The provisions of Article L. 242-27 shall apply to them.

The sanctions for which provision is made in Article L. 242-8 shall apply to directors who fail to draw up a balance



sheet, income statement and notes to the accounts every year. The provisions of Articles L. 242-25 and L. 242-28 shall likewise apply to them.

CHAPTER III

Election of members of the chambers of commerce and industry and trade representatives

Articles L713-1 to L713-18

Article L713-1

(Order No. 2003-1067 of 12 November 2003 Art. 1 Official Journal of 13 November 2003 effective 1 January 2004)
(Order No. 2004-328 of 15 April 2004 Art. 2 I Official Journal of 17 April 2004)

I. - The members of the 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 shall not serve as chairman of that chamber for more than three terms of office, regardless of their effective duration; (1)

II. - The following participate in the election of members of the chambers of commerce and industry:

1. Personally:

a) Traders entered in the register of companies in the constituency of the chamber of commerce and industry, without prejudice, for members who are partners in a partnership or a partnerships limited by shares, to the provisions of III of Article L. 713-2;

b) Company directors registered in the trade register and the register of companies in the constituency;

c) The spouses of the persons indicated in a) or b) above who have declared, in the register of companies, that they are actively engaged in their spouse's business and have no other gainful employment;

2. Through 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 constituency;

b) (by virtue of an establishment which is the subject of an additional entry or a secondary registration in the constituency, unless exempted therefrom by the applicable laws and regulations) The natural persons referred to in a) and b) of 1 and the legal entities referred to in a) of the present 2, regardless of the constituency in which those persons exercise their own voting rights;

c) Companies of a commercial nature whose registered office is situated outside France and which have an establishment in the constituency which is entered in the register of companies.

NB (1): These provisions shall apply only to terms of office commencing after the elections organised in 2004.

Article L713-2

(Order No. 2003-1067 of 12 November 2003 Art. 2 Official Journal of 13 November 2003 effective 1 January 2004)
(Order No. 2004-328 of 15 April 2004 Art. 2 I Official Journal of 17 April 2004)

I. - By virtue of their registered office and all their establishments situated in the constituency of the chamber of commerce and industry, the natural persons or legal entities referred to in 1 and 2 of II of Article L. 713-1 have:

1. One additional representative, when they employ between ten and forty-nine employees in the constituency of the chamber of commerce and industry;

2. Two additional representatives, when they employ between fifty and one hundred and ninety-nine employees in the constituency;

3. Three additional representatives, when they employ between two hundred and four hundred and ninety-nine employees in the constituency;

4. Four additional representatives, when they employ between five hundred and one thousand nine hundred and ninety-nine employees in the constituency;

5. Five additional representatives, when they employ two thousand or more employees in the constituency.

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 constituency of the chamber of commerce and industry.

III. - 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 I above.

Article L713-3

(Order No. 2003-1067 of 12 November 2003 Art. 3 Official Journal of 13 November 2003 effective 1 January 2004)
(Order No. 2004-328 of 15 April 2004 Art. 2 I, Art. 15 Official Journal of 17 April 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 IV Official Journal of 10 December 2004)

I. - The representatives referred to in Articles L. 713-1 and L. 713-2 must perform the functions of chairman and managing director, chairman or member of the board of directors, chief executive, chairman or member of the executive board, chairman of the supervisory board, chief executive, chairman 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 referred to in 1 of II of Article L. 713-1 and the representatives of the natural persons or legal entities referred to in 2 of II of that same article must be citizens of a European Community member state or a European Economic Area 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;

2. bis Not have been declared personally bankrupt or made subject to a prohibition or forfeiture order as provided for in Chapter V of Part II of Book VI of the present code, Part VI of Act No. 85-98 of 25 January 1985 relating to the judicial receivership or liquidation of companies or, under the scheme which preceded that law, Part II of Act No. 67-563 of 13 July 1967 relating to judicial settlement, judicial liquidation, personal bankruptcy and other forms of bankruptcy, a prohibition order described in Article L. 625-8 of the present code or a prohibition on conducting commercial business;

3. Not have had sentences, forfeitures or sanctions imposed on them under legislations in force in European Community member states or European Economic Area member states equivalent to those referred to in 2 and 2 bis.

Article L713-4

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 I II Official Journal of 17 April 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 IV Official Journal of 10 December 2004)

I. - The following may become members of a 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. The personal electors referred to in 1 of II of Article L. 713-1 who are entered in the electoral register of the relevant constituency and able to show that they have had an entry in the register of companies 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 constituency and can show that the company that they represent has been conducting its business for at least two years.

II. - Any member of a 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, 2 bis and 3 of II of Article L. 713-3.

Article L713-5

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 I II Official Journal of 17 April 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 IV Official Journal of 10 December 2004)

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 records that fact in a decree and organises 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.

Article L713-6

(Order No. 2003-1067 of 12 November 2003 Art. 4 Official Journal of 13 November 2003 effective 1 January 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II III, Art. 3 Official Journal of 17 April 2004)

Consular delegates are elected for five years in the constituency of each chamber of commerce and industry.

No consular delegate is elected, however, in a constituency or part of a constituency situated within the jurisdiction of a court competent to hear commercial cases which does not have any elected judges.

Article L713-7

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II III, Art. 3 Official Journal of 17 April 2004)

The following participate in the election of consular delegates:

1. Personally:

a) Traders entered in the register of companies in the constituency of the chamber of commerce and industry, without prejudice, for members who are partners in a partnership or a partnerships limited by shares, to the provisions of III



of Article L. 713-2;

- b) Company directors registered in the trade register and the register of companies in the constituency;
- c) The spouses of the persons indicated in a) or b) above who have declared, in the register of companies, 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 constituency, inshore pilots working in a port situated in the constituency, aviation pilots domiciled in the district who command an aircraft registered in France;
- e) Sitting members of the commercial courts, and former members of such courts having requested an entry in the electoral register;

2. Through 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 constituency;
- b) (by virtue of an establishment which is the subject of an additional entry or a secondary registration in the constituency, unless exempted therefrom by the applicable laws and regulations) The natural persons referred to in a) and b) of 1 and the legal entities referred to in a) of the present 2, regardless of the constituency in which those persons exercise their own voting rights;
- c) Companies of a commercial nature whose registered office is situated outside France and which have an establishment in the constituency which is entered in the register of companies.

3. Executives who, being employed in the constituency by electors referred to in 1 or 2, perform functions which involve commercial, technical or administrative management responsibilities in the company or institution.

Article L713-8

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II III, Art. 4 Official Journal of 17 April 2004)

The representatives referred to in 2 of Article L. 713-7 must perform the functions of chairman and managing director, chairman or member of the board of directors, chief executive, chairman or member of the executive board, or chairman of the supervisory board of a company, or chief executive, chairman 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 L713-9

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II, III, Art. 4 Official Journal of 17 April 2004)

(Act No. 2004-1343 of 9 December 2004 Art. 78 XIX Official Journal of 10 December 2004)

Those voting personally and the executives referred to in 1 and 3 of Article L. 713-7 and the representatives of the natural persons or legal entities referred to in 2 of that same article must 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 facts having given rise to a criminal conviction for dishonourable conduct, lack of integrity or an offence against public decency;
- 2. bis Not have been declared personally bankrupt or made subject to one of the prohibition or forfeiture measures provided for in Chapter V of Part II of Book VI of the present code, Part 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, Part II of Act No. 67-563 of 13 July 1967 relating to judicial settlement, judicial liquidation, personal bankruptcy and other forms of bankruptcy, a prohibition order described in Article L. 625-8 of the present code or a prohibition on conducting commercial business;
- 3. Not have had sentences, forfeitures or sanctions imposed on them under legislations in force in European Community member states or European Economic Area member states equivalent to those referred to in 2 and 2 bis.

Article L713-10

(Order No. 2003-1067 of 12 November 2003 Art. 5 Official Journal of 13 November 2003 effective 1 January 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II III, Art. 5 Official Journal of 17 April 2004)

Persons belonging to the college of electors as defined in Article L. 713-7 are eligible for the functions of consular delegate.

Article L713-11

(Order No. 2003-1067 of 12 November 2003 Art. 6 Official Journal of 13 November 2003 effective 1 January 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)



(Order No. 2004-328 of 15 April 2004 Art. 2 II IV Official Journal of 17 April 2004)

The electors of consular delegates and of members of the chambers of commerce and industry are distributed in each administrative constituency 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 either the size of the company or its specific activities.

Article L713-12

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II IV Official Journal of 17 April 2004)

The number of consular-delegate seats, which shall not be below sixty or above six hundred, is determined in relation to the size of the constituency's consular electoral body, the number of elected members of the chamber of commerce and industry and the number of commercial courts in that chamber's constituency.

The number of seats of a chamber of commerce and industry is twenty-four to fifty for chambers of commerce and industry having a constituency of fewer than 30,000 electors, thirty-eight to seventy for those having a constituency of 30,000 to 100,000 electors and sixty-four to one hundred for those having a constituency of more than 100,000 electors.

Article L713-13

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II IV Official Journal of 17 April 2004)

The distribution of the seats between professional categories and sub-categories is 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 L713-14

(Order No. 2003-1067 of 12 November 2003 Art. 7 Official Journal of 13 November 2003 effective 1 January 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II IV Official Journal of 17 April 2004)

The electoral lists for the commercial court's jurisdictional area are drawn up by a committee chaired by the judge responsible for supervision of the register of companies and are 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 L713-15

(Order No. 2003-1067 of 12 November 2003 Art. 8 Official Journal of 13 November 2003 effective 1 January 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II Official Journal of 17 April 2004)

(Order No. 2004-328 of 15 April 2004 Art. 2 II IV, Art. 6 Official Journal of 17 April 2004)

In elections of members of the chambers of commerce and industry, each elector has as many votes as he has elector entitlements pursuant to Article L. 713-1.

In elections of consular delegates, each elector has only one vote.

The right to vote in elections of members of the chambers of commerce and industry and elections of consular delegates is exercised by correspondence or by e-voting. In the event of an elector using both voting methods for the same entitlement, only the e-vote shall be deemed to be valid.

Article L713-16

(inserted by Order No. 2004-328 of 15 April 2004 Art. 2 II IV Official Journal of 17 April 2004)

Consular delegates and members of the chambers of commerce and industry are elected via a single-ballot uninominal election. If several candidates obtain the same number of votes, the oldest is declared the winner.

Article L713-17

(inserted by Order No. 2004-328 of 15 April 2004 Art. 2 II IV, Art. 7 Official Journal of 17 April 2004)

The procedures for electing consular delegates and members of the chambers of commerce and industry are organised on the same day by the administrative authority and, under its supervision, by the 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 that same code.

A committee chaired by the Prefect or his representative is responsible for ensuring the lawfulness of the ballot and for announcing the results.

Appeals against elections for consular delegates and members of the chambers of commerce and industry are brought before the administrative court in the same way as for municipal elections.

Article L713-18

(inserted by Order No. 2004-328 of 15 April 2004 Art. 2 II IV Official Journal of 17 April 2004)

A Conseil d'Etat decree determines the implementing provisions for Articles L. 713-1 to L. 713-14. Inter alia, the said decree determines how the seats of consular delegates and members of a chamber of commerce and industry are distributed between the professional categories and sub-categories.



TITLE II

Commercial amenities

Articles L720-1 to
L720-11

Article L720-1

(Act No. 2004-804 of 9 August 2004 Art. 18 I Official Journal of 11 August 2004)

New business ventures, expansion, relocation of existing businesses and business sector changes by commercial and handicraft 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 zones and restore the balance in built-up areas by developing trade in town centres and in urban regeneration zones.

They must also contribute to the modernisation of the commercial amenities, the adaptation and development of consumption patterns and marketing techniques, the enhancement of the consumer's buying experience and an improvement in the employees' working conditions.

The national programme for development and modernisation of commercial and handicraft activities referred to in Article 1 of Act No. 73-1193 of 27 December 1973 on commerce and the craft industries sets out the guiding principles for the commercial amenities required to implement the objectives defined above.

Article L720-2

The authorities shall facilitate groupings of commercial and artisan undertakings and new common services which allow them to enhance their productivity and competitiveness and, possibly, to provide their customers with additional services.

Article L720-3

(Act No. 2000-1208 of 13 December 2000 Art. 97 Official Journal of 14 December 2000)

(Act No. 2004-804 of 9 August 2004 Art. 18 II Official Journal of 11 August 2004)

I. - A Departmental Commercial Amenities Committee shall decide on the applications for authorisation submitted to it by virtue of the provisions of Articles L. 720-5 and L. 720-6.

II. - Applying the principles defined in Articles L. 720-1 and L. 720-2, the committee decides on the basis of the following issues:

1. The overall supply and demand for each business sector in the trading area concerned; -
The overall impact of the project on private-car and delivery-vehicle flows;
- The quality of the public transport services or potential alternative means;
- The accommodation capacities for goods loading and unloading;
2. The density of supermarket and hypermarket outlets in that area;
3. The project's potential impact on the commercial and handicraft structures in that area and in the local towns, and on the balance sought between the different types of traders. When the project involves the creation or extension of a shopping complex composed mainly of shops specialising in the selling of discounted branded goods, the said project's potential impact is also evaluated independently of the specificity of that type of outlet's commercial policy;
4. The project's likely impact in terms of salaried and unsalaried employment;
5. How competition operates within the commercial and handicraft trades;
6. The readiness of applicants wishing to open retail outlets selling mainly food items to open outlets of the same type in urban regeneration zones, or rural territories designated for priority development, having a sales area under 300 square metres and occupying at least 10% of the space applied for.

III. - The decisions of the Departmental Committee make reference to the activities of the Departmental Commercial Amenities Monitoring Centre.

IV. - The Departmental Commercial Amenities Monitoring Centre collates the elements required for preparation of the commercial development plans pursuant to the guidelines set out in Article L. 720-1. It takes into consideration, where applicable, the guidelines of the territorial development directives referred to in Article L. 111-1-1 of the Planning Code and the regional planning and territorial development plans referred to in Article 34 of Act No. 83-8 of 7 January 1983 relating to the division of responsibilities between the communes, the Departments, the regions and the State.

V. - The commercial development plans are drawn up and published as determined in a Conseil d'Etat decree.

VI. - Moreover, when the project envisaged concerns an urban area in which the procedures referred to in Article L. 303-1 of the Building and Housing Code and Article L. 123-11 of the Planning Code are implemented, the committee takes account of actions intended to ensure the maintenance or establishment of local outlets, tradesmen or handicraft activities.

VII. - Only plans which are accompanied by an indication of the trade name of the future operator(s) of the establishments and whose sales area is equal to or greater than a threshold determined by decree shall be examined by the committee.

VIII. - Applications relating to the creation of a retail outlet or a shopping complex as described in Article L. 720-6 having a sales area greater than 6,000 square metres are accompanied by the conclusions of a public inquiry which addresses the economic, social and regional development aspects of the proposed project in the manner determined in a



Conseil d'Etat decree. The said inquiry is conducted in conjunction with the public inquiry carried out pursuant to Article 1 of Act No. 83-630 of 12 July 1983 relating to the democratisation of public inquiries and environmental protection when this is relevant to the examination of the planning application.

Article L720-4

(Law No 2003-660 of 21 July 2003 Article 56 Official Gazette of 22 July 2003)

In the overseas departments, unless a founded derogation from the Departmental Equipment Commission stipulates otherwise, the authorisation requested cannot be granted when it appears that it would have the effect of taking the total selling space of primarily food retailing outlets with a selling space greater than 300 square metres beyond a threshold of 25% for the department as a whole, or of increasing it if it is already above that threshold, whether this involves the plan as a whole or only a part thereof, when that space:

1. Belongs to a single trading group;
2. Belongs a single company, or to one of its subsidiaries, or to a company in which that company has an equity participation of between 10% and 15%, or a company controlled by that single company within the meaning of Article L. 233-3;
3. Is controlled directly or indirectly by at least one partner which exerts an influence on it within the meaning of Article L. 233-16, or has a common manager in law or in fact.

Article L720-5

(Act No. 2005-157 of 23 February 2005 Art. 40, Art. 49 Official Journal of 24 February 2005)

(Act No. 2006-10 of 5 January 2006 Art. 37 Official Journal of 6 January 2006)

I. - Plans for the following projects shall require a trader's licence:

- 1 The creation of a retail outlet having a sales area of more than 300 square metres in a new building or through the conversion of an existing building;
- 2 The extension of the sales area of a retail outlet having already reached the threshold of 300 square metres or which would exceed it through implementation of the plan. The additional use of any space, covered or otherwise, fixed or mobile, which does not come within the purview of Article L310-2 is deemed to constitute an extension;
- 3 The creation or extension of a shopping complex, as defined in Article L720-6, having a total sales area of more than 300 square metres or which would exceed that threshold through implementation of the plan;
- 4 The creation or extension of any retail fuel distribution installation, regardless of its sales area, attached to a retail outlet referred to in 1 above or a shopping complex referred to in 3 above which is not located in the public realm of motorways and expressways.
The provisions relating to fuel distribution installations are specified by decree;
- 5 The reuse for retail selling purposes of a sales area of more than 300 square metres released via an authorisation to create a shop through the transfer of an existing business, regardless of the date on which the said transfer was authorised;
- 6 The reopening to the public, on the same site, of a retail outlet having a sales area of more than 300 square metres in premises which have not been exploited for two years, which period, in the event of judicial settlement proceedings having being brought against the operator, shall run from the day on which the owner recovered full vacant possession of the premises;
- 7 New buildings, or extensions or conversions of existing buildings, entailing the creation of hotels having a capacity of more than thirty rooms outside the Ile-de-France region and more than fifty within it.

When ruling on such applications, the Departmental Commission for Commercial Equipment seeks the prior opinion of the Departmental Commission for Touristic Development through the Regional Tourism Delegate, who attends the meeting. In addition to the criteria specified in Article L720-3, it takes the density of hotel provision in the zone concerned into consideration;

8 Any change in the business sector of an outlet having a sales area of more than 2,000 square metres is also subject to the trader's licence provided for in the present article. This threshold is reduced to 300 square metres if the outlet's new business relates mainly to foodstuffs.

For nurserymen and horticulturists, the sales area referred to 1 is the area devoted to the retail selling of products other than their own produce, as determined by decree.

II. - The combining of the sales areas of neighbouring outlets, without creation of additional sales areas, up to 1,000 square metres, or 300 square metres if the new business relates mainly to foodstuffs, does not require a trader's licence.

III. - Pharmacies do not require a trader's licence and do not come within the scope of 3 of I above.

IV. - Retail markets, covered or otherwise, established on public land whose creation is decided by the municipal council, outlets located in airports restricted to ticket-bearing travellers, and public land allocated to railway stations covering a maximum area of 1,000 square metres do not require a trader's licence.

V. - The creation or extension of garages or motor vehicle distributorships having a maintenance and repairs workshop and a total area of less than 1,000 square metres does not require a trader's licence.

VI. - When required, the trader's licence must be issued prior to the granting of a building permit, or before implementation of the plan if a building permit is not required.



Licences are granted per square metre of sales area or per unit.

A new application is required if substantial changes are made to the nature of the outlet or the sales areas during preparation or implementation of the plan. The same shall apply in the event of any change to the signage specified by the applicant.

The prior approval required for the creation of retail outlets is not transferable.

VII. - The provisions of 7 of II do not apply to the overseas departments.

Article L720-6

I. - Outlets on the same site:

1. which were designed during the same development project, irrespective of whether it was completed in one or more stages;
2. which have arrangements allowing the same customers to access various establishments;
3. certain operating elements of which are jointly managed, mainly by creating collective services or using joint standard practices or advertising;
4. which are linked by a common legal structure directly [illegible] 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 L720-7

Subject to specific provisions applicable to territorial authorities and local mixed economy companies, all contracts concluded by public or private persons for the purpose of a project authorised under Articles L. 720-5 and L. 720-6 shall be notified by each contracting party to the prefect and the Tribunal de grande instance of auditors, as stipulated by decree.

This obligation shall also apply to contracts which predate the licence, 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, within two months of the licence.

Any person who infringes the provisions of this Article shall be liable to a fine of 15,000 euros.

Article L720-8

I. - The departmental commercial facilities committee shall be chaired by the prefect who, without taking part in the vote, shall report to the committee on the content of the national programme for which provision is made in Article 720-1 and on the commercial development plans referred to in Article L. 720-3.

II. - In departments other than Paris it shall consist of:

1. The following three elected persons:
 - a) the mayor of the municipality in which the site is located;
 - b) the chairman of the public inter-municipal cooperation establishment responsible for space 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 town 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 town.
2. The following three persons:
 - a) the chairman of the chamber of commerce and industry whose district includes the municipality in which the site is located, or his deputy;
 - b) the chairman of the chamber of trades whose district includes the municipality in which the site is located, or his deputy;
 - c) a representative of the consumer association in the department.

Where the mayor of the municipality in which the site is located or the mayor of the most densely populated municipality referred to above is also the general councillor of the canton, the prefect shall appoint the mayor of one of the municipalities in the town or district in question to replace him.

III. - In Paris it shall consist of:

1. The following three elected persons:
 - a) the mayor of Paris;
 - b) the mayor of the district in which the site is located;



- c) a district councillor appointed by the Paris council.
- 2. The following three persons:
 - a) the chairman of the Paris chamber of commerce and industry or his deputy;
 - b) the chairman of the Paris chamber of trades or his deputy;
 - c) a representative of the consumer associations in the department.

IV. - Every member of the departmental commercial facilities committee shall notify the prefect of their financial interests and business functions.

Members of the committee 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.

V. - The heads of decentralised government departments in charge of installations, competition, consumer affairs and employment shall attend committee meetings.

VI. - In the region of Ile-de-France, the representative of the prefect of the region shall also attend committee meetings.

Applications for licences shall be processed by the decentralised government departments.

VII. - Applications for licences shall be filed as stipulated by decree of the Conseil d'Etat. Applications resulting in sales surfaces of no more than 1,000 square metres shall be subject to a simplified procedure.

VIII. - Members of the committee shall be appointed and shall serve in office as stipulated by decree of the Conseil d'Etat.

Article L720-9

The departmental commercial facilities committee shall authorise projects for which four members have voted in favour using the procedure set by decree. The minutes shall record how each member voted.

Article L720-10

The departmental commercial facilities committee shall rule on the applications for licences referred to in Article L. 720-5 within four months of the date on which the application was filed and its decisions shall be reasoned mainly with reference to the provisions of Articles L. 720-1 and L. 720-3. The licence shall be deemed to have been granted on expiration of this deadline. Members of the committee shall be given at least one month's notice of applications before ruling on them.

The decision of the departmental committee may be referred for appeal to the national commercial facilities committee for which provision is made in Article L. 720-11 within two months of notification, at the initiative of the prefect, two members of the committee, one of whom shall be elected, or the applicant. The national commercial facilities committee shall rule on the appeal within four months.

The committees shall authorise or reject projects in their entirety.

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 commercial facilities committee before the deadline for appeal expires or, in the event of an appeal, before the decision at appeal is returned by the national committee.

If the application for a licence is rejected on substantive grounds by the aforementioned national committee, 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 committee.

Article L720-11

I. - The national commercial facilities committee shall consist of eight members appointed by decree for single term of office of six years at the proposal of the minister for trade. Half the committee may be reappointed every three years.

II. - The committee 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 chairman.
- 2. A member of the court of auditors appointed by the first president of the court of auditors.
- 3. A member of the tax inspectorate appointed by the chief tax inspector.
- 4. A general inspector appointed by the vice chairman of the general council of bridges and roads.

5. Four persons appointed for their knowledge of distribution, consumer affairs, town and country planning or employment, to be appointed (one each) by the president of the national assembly, the president of the Senate, the minister for trade and the minister for employment.

II. - In the event of a tied vote, the chairman of the committee shall have the casting vote.

III. - The members of the committee shall notify the chairman of their financial interests and business functions.

IV. - Members of the committee 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.

V. - The mayor of the municipality in which the site is located and who sits on the departmental committee against whose decision an appeal has been filed shall be heard by the national committee if he so requests.

VI. - A government commissioner appointed by the minister for trade shall attend committee meetings and be given a copy of the files.

VII. - The members and chairman of the committee shall be appointed and shall serve as stipulated by decree of the



Conseil d'Etat.

TITLE III

National interest markets

Articles L730-1 to
L730-17

Article L730-1

(Order No. 2004-274 of 25 March 2004 Art. 34 Official Journal of 27 March 2004)

National-interest markets are public market management facilities. Access to them is restricted to producers and traders who contribute to the organisation and productivity of the distribution channels for agricultural products and foodstuffs, the promotion of competition in those economic sectors and public food safety.

The classification of an agricultural products and foodstuffs market as a national-interest market, or the creation of such a market, is pronounced by decree on a proposal from the regional council.

Such markets may be established in the public domain, 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 of Trade and the Minister of 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 a general organisation pursuant to the provisions of Article L. 730-15.

Article L730-2

(Order No. 2004-274 of 25 March 2004 Art. 35 Official Journal of 27 March 2004)

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 communes of the territory in which they are established, or by groups of interested communes, or through the designation of a public or private legal entity. In the latter case, the legal entity is designated after opening to competition in the manner determined in Article L. 1411-1 of the General Territorial Authorities Code.

The said communes, or groups of communes, may nevertheless confer the power to designate on the region or, in Corsica, on the territorial authority of Corsica.

Article L730-3

(Order No. 2004-274 of 25 March 2004 Art. 36 I, II Official Journal of 27 March 2004)

The licence fees collected from permit holders and any other contributions to its operating costs made by its users are 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 (1) 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 the balance.

(1) NB - These provisions shall apply with effect from the first financial year commenced after publication of the present order (see III of Article 45 of order 2004-274).

Article L730-4

(Order No. 2004-274 of 25 March 2004 Art. 37 Official Journal of 27 March 2004)

A protective perimeter may be placed around a national-interest market under a Conseil d'Etat decree.

The protective perimeter enforces the prohibitions referred to in Article L. 730-5.

The prohibitions implemented apply to sales of and services pertaining to products which, in each case, are listed by order of the ministers in charge.

The decree referred to in the first paragraph determines 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 L730-5

(Order No. 2004-274 of 25 March 2004 Art. 38 Official Journal of 27 March 2004)

The decree instituting the protective perimeter prohibits therein the extension, relocation or creation of any establishment in which a natural person or legal entity makes sales, other than retail sales, of products listed by interministerial order as provided for in Article L. 730-4, or provides services pertaining to such sales.

This prohibition does not apply to producers and groups of producers in respect of products deriving from business operations located within the protective perimeter.

A change of ownership of an establishment is not treated as a new business venture.

"Extension of an establishment" shall be understood to mean either the creation of new activities or an extension of the commercial premises.



The implementing regulations for the provisions of the present article are determined in a Conseil d'Etat decree.

Article L730-6

The decree establishing the protective perimeter may prohibit activities by any natural person or legal person involving non-retail sales of or ancillary transactions pertaining to products listed by joint ministerial decree in accordance with Article L. 730-4 in all or one or more parts of the territory which it encompasses.

This ban shall enter into force on the date stipulated by the decree referred to in the preceding sub-paragraph, irrespective of the state of progress reached in compensation proceedings on the said date.

This ban shall not apply to producers or groups of producers for products from shares located within the zone(s) affected by the aforementioned ban.

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

Article L730-7

(Order No. 2004-274 of 25 March 2004 Art. 39 Official Journal of 27 March 2004)

Where a port zone is included within a national-interest market's protective perimeter, non-retail sales of listed products within the meaning of Article L. 730-4 made in that zone shall be subject to the following provisions.

The prohibitions referred to in Article L. 730-5 shall not apply to products shipped directly to or from that port by sea which are sold in batches above the size limits set by joint order of the ministers in charge of the national-interest markets and the minister for ports.

The decree instituting the protective perimeter may either prohibit sales of products not transported there by sea or authorise them only in batches above certain limits and subject to conditions which it determines.

Article L730-8

(Order No. 2004-274 of 25 March 2004 Art. 40 Official Journal of 27 March 2004)

By way of exception, the relevant administrative authority may grant derogations from the prohibitions referred to in Articles L. 730-5 and L. 730-7, as determined in a Conseil d'Etat decree.

Article L730-9

Where necessary, retail sales be defined by decree of the ministers in charge for the purpose of Articles L. 730-5, L. 730-6 and L. 730-7.

Article L730-10

(Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-274 of 25 March 2004 Art. 41 Official Journal of 27 March 2004)

Offences against the prohibitions of Articles L. 730-5 and L. 730-7 and the provisions introduced pursuant to those articles are established and prosecuted as provided for in the first paragraph of Article L. 450-1 and Articles 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 L730-11

I. - Compensation payable in reparation for losses incurred as a result of the application of the bans for which provision is made in Article L. 730-6 shall comply with the system of compensation for compulsory purchases.

II. - Compensation shall be awarded by:

1. Allocating each trader affected by the aforementioned ban an equivalent pitch to the pitch abolished within the precinct of the market of national interest.

The pitch offered shall be deemed to be equivalent if it is such that a similar business of a similar size to the average business on the old pitch over the last three years can be conducted. If it is acknowledged that the first offer is unsatisfactory, the promoter offering the compensation shall notify the applicant of a new offer. If the judge again finds this new offer to be unsatisfactory, he shall set the balance to be paid by the promoter.

Where a trader's acknowledged right to be allocated a pitch is larger or smaller than one or more full pitches in the market of national interest, the promoter offering the compensation shall meet his obligations by offering to allocate the interested party the unit(s) which represent the pitch which is the nearest in size to the pitch to which he is entitled, whereby:

a) if the full pitch unit(s) allocated exceed the trader's rights, the trader shall pay a balance equal to the sum of the right of first accession to the part of the pitch which exceeds the part allocated as equivalent. However, the trader may ask to be allocated a pitch which is one size smaller than his rights and, if his request is satisfied, he shall receive a balance equal to the amount of the right of first accession to the part of the pitch renounced;

b) if the pitch offered and actually allocated to the interested party pursuant to the foregoing provisions is one size smaller than his rights, he shall again receive a balance calculated as described above.

2. Reimbursing the amount of the right of first accession owed by the trader for the pitch allocated, less the value of the tangible and intangible assets assigned or retained by him, up to the right of first accession.

3. Compensating for the loss of non-transferable assets and relocation expenses.

III. - However, compensation may be paid in specie in lieu of the offer of pitches for which provision is made in II (1) where traders prove that they are unable, for personal reasons or because of the particular nature of their trade, to set



up elsewhere within the market precinct.

Compensation in specie shall only be paid to beneficiaries who sign a commitment limiting the activities which they may exercise in time and space.

IV. - The terms of application of the provisions of this Article shall be laid down by decree of the Conseil d'Etat.

Article L730-12

(Order No. 2004-274 of 25 March 2004 Art. 42 Official Journal of 27 March 2004)

The right to occupy a private plot held by a trader established in a national-interest market is likely to be included in any pledge of that trader's assets.

Article L730-13

Tenants of premises housing a business affected by the ban for which provision is made in Article L. 730-6 may exercise a business for which no provision is made in the lease or transfer the lease so that a third party may exercise such business on the demised premises, any agreement to the contrary notwithstanding, including agreements concluded previously.

Tenants or persons to whom the lease is transferred shall notify the owner of the business which they intend to exercise by extrajudicial deed.

The owner may object to the exercise of the said business within one month of service of the said deed if it will cause greater inconvenience to the building, its inhabitants or the neighbourhood than the business abolished.

Disagreements shall be referred to the Tribunal de grande instance which may uphold the tenant's request and amend the rent, by way of exception from the provisions of Articles L. 145-37 to L. 145-39.

Article L730-14

Business tenants who cease trading pursuant to a decision imposing a ban in accordance with the provisions of this chapter may terminate the lease without paying compensation to the owner, provided that they give the owner at least three months' notice by extrajudicial deed.

Article L730-15

(Order No. 2004-274 of 25 March 2004 Art. 43 Official Journal of 27 March 2004)

The laws and regulations relating to the organisation and functioning of markets for agricultural products and foodstuffs do not apply to national-interest markets.

The general organisation of the national-interest markets is determined in a Conseil d'Etat decree.

Boundary changes to, and relocation of, national-interest markets without a protective perimeter are unrestricted.

Article L730-16

(Order No. 2004-274 of 25 March 2004 Art. 44 Official Journal of 27 March 2004)

The Prefect exercises policing powers within the boundaries of a national-interest market. Within the protective perimeter, he ensures that the laws and regulations governing the market are applied and reports any breaches thereof to the public prosecutor. When a market with a protective perimeter is spread across several Departments, the aforementioned powers are exercised by the Prefect designated by the Minister of the Interior.

Article L730-17

A government commissioner shall be designated and seconded to the market manager. The method of designation and the powers granted to the commissioner shall be defined by decree of the Conseil d'Etat.

TITLE IV

Commercial exhibition

Articles L740-1 to
L740-3

Article L740-1

(inserted by Order No. 2004-274 of 25 March 2004 Art. 30 Official Journal of 27 March 2004)

An exhibition centre is a permanent, enclosed and independent real-property complex with appropriate installations 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. 720-5.

Exhibition centres are registered with the relevant administrative authority. The programme of commercial events which it hosts each year are the subject of a prior declaration made to the relevant administrative authority.

Article L740-2

(inserted by Order No. 2004-274 of 25 March 2004 Art. 30 Official Journal of 27 March 2004)

A trade show is a commercial event devoted to the promotion of a series of commercial activities to invited visitors only. The only goods offered for sale on site are intended for the buyer's personal use and their value cannot exceed a ceiling determined by decree.

All trade shows are the subject of a prior declaration made to the relevant administrative authority.



Article L740-3

(inserted by Order No. 2004-274 of 25 March 2004 Art. 30 Official Journal of 27 March 2004)

The implementing regulations of the present Part are determined in a Conseil d'Etat decree.

BOOK VIII

Certain regulated professions

Articles L811-1 to
L822-16

TITLE I

Court-appointed receivers, legal agents in the winding-up of undertakings and corporate analysis experts

Articles L811-1 to
L814-11

CHAPTER I

Court-appointed receivers

Articles L811-1 to
L811-16

SECTION I

Tasks, conditions of access and performance and incompatibilities

Articles L811-1 to
L811-10

Subsection 1

Tasks

Article L811-1

Article L811-1

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 1 and Art. 13 Official Journal of 4 January 2003)



(Act No. 2005-845 of 26 July 2005 Art. 158 V, Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Court-appointed receivers 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 therefor.

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 L663-2.

Subsection 2

Conditions of access to the profession

Articles L811-2 to
L811-5

Article L811-2

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 2 and Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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.

By way of exception, however, the court may, via an expressly reasoned decision and after seeking the advice of the public 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 1 to 4 of Article L811-5.

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 L233-16, 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 administrator whose name has been removed from the registers pursuant to Articles L811-6, L811-12 and L812-4. 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 perform receivership functions 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 L811-5, 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 L814-10.

When the court appoints a legal entity, it designates one or more natural persons within it to represent it in regard to performance of the assignment entrusted to it.

Article L811-3

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 3 and Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The national register is divided into sections corresponding to the jurisdiction of each court of appeal.

Article L811-4

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 4 and Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The composition of the national committee referred to in Article L811-2 is as follows:

- a judge of the Court of Cassation, acting as chairman, appointed by the presiding judge of the Court of Cassation;
- an officer of the National Audit Office appointed by the chairman of the National Audit Office;
- a member of the Inspectorate of Public Finances appointed by the Finance Minister;
- an appeal court judge appointed by the presiding judge of the Court of Cassation;
- a higher commercial court judge appointed by the presiding judge of the Court of Cassation;
- a professor 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;
- three registered court-appointed receivers elected by their peers as determined in a Conseil d'Etat decree.

In the event of a tied vote, the chairman has a casting vote.

The chairman 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 L811-5

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 5, Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 facts giving rise to a criminal conviction for dishonourable conduct or lack of integrity;
- 3 Not have been the perpetrator of facts 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 Part II of Book VI of the present code, Part 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, Part 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 vocational development programme, completed that programme and passed the receivership aptitude examination.

Only persons who hold diplomas or other qualifications determined by decree may take the entrance examination for the vocational 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 vocational development programme. The committee may, moreover, exempt such persons, as provided for in a Conseil d'Etat decree, from part of the vocational development programme and from all or part of the receivership aptitude examination.

Registered legal entities may only exercise administration 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 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, without prejudice to them having 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

Articles L811-6 to
L811-10

Article L811-6

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 6 and Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The national committee, on its own initiative or at the request of the Minister of Justice, the chairman of the National Council of Court-Appointed Administrators and Court-Appointed Receivers, the government representative or the public prosecutor in whose jurisdiction the receiver is established, may, through a reasoned decision and after instructing the party concerned to present its observations, delete from the list referred to in Article L811-2 a receiver who, on account of his physical or mental state, is unable to perform his functions in the normal way, or a receiver who has shown himself to be incapable of performing his functions in the normal way.

Deregistration shall not prevent disciplinary proceedings from being brought against the receiver if the offences were committed in the performance of his duties.

Article L811-7



(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Court-appointed administrators may create civil-law professional partnerships governed by Act No. 66-879 of 29 November 1966 relating to civil-law professional partnerships in order to practice their profession collectively. They may also practice 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 Part 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 L811-8

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 7, Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 receiver remains bound by the provisions of Articles L811-10 to L811-16, L814-1 and L814-5.

Article L811-9

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Registered persons are free to practice their profession throughout France.

Article L811-10

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 8 and Art. 13 Official Journal of 4 January 2003)

(Act No. 2005-845 of 26 July 2005 Art. 164 II, Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Registered court-appointed receiver status is incompatible with the practising of any other profession, save for that of avocat.

It is also incompatible with:

1 All commercial activities, whether carried out directly or through an intermediary;

2 The status of partner in a general partnership, financing partner in a limited partnership or a partnership limited by shares, managing director of a limited liability company, chairman of the board of directors, executive board member, general manager or chief executive of a public limited company, chairman or chief executive of a simplified joint-stock company, supervisory board member or director of a commercial company, managing partner of a civil partnership, unless those entities are engaged in administration activities or the acquisition of premises for that purpose. An administrator may also be the managing partner of a civil partnership having as its sole objective the management of family interests.

Registered court-appointed administrator status does not impede engagement in consultancy activities in matters pertaining to qualification of the person concerned or performance of the duties of ad hoc representative or mediator provided for in Articles L611-3 and L611-6 of the present code and Article L351-4 of the Rural Code, commissioner for execution of the plan, amicable administrator or liquidator, legal expert and amicable or court-appointed receiver. These activities and duties, save for those of ad hoc representative, mediator and commissioner for execution of the plan, may only be undertaken subsidiarily.

With the exception of the fourth paragraph, the conditions of the present article apply to registered legal entities.

Subsection 4

Incompatibilities

Article L811-10

Article L811-10

(Law No 2001-420 of 15 May 2001 Article 113 (I) (1) Official Gazette of 16 May 2001)

(Law No 2003-7 of 3 January 2003 Article 8 and Article 13 Official Gazette of 4 January 2003)

The status of listed court-appointed receiver is incompatible with the practising 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 general partnership, of financing partner in a limited partnership or a partnership limited by shares, of manager of a limited company, of chairman of the board of directors, of member of the executive board, of general manager or assistant general manager of a public limited company, of chairman or chief executive of a simplified joint-stock company, of member of the supervisory board or board of directors of a commercial company, and of manager of a non-commercial partnership, 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. Moreover, a receiver may perform management duties within a non-commercial partnership whose sole purpose is the administration of family interests.

The status of listed court-appointed receiver 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 Article L. 611-3 of the present Code and in Article 351-4 of the Rural Code, or those of commissioner for execution of the plan, 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 ad hoc administrator, arbitrator and commissioner for execution of the plan, shall only be conducted subsidiarily.

With the exception of the fourth paragraph, the conditions of the present Article are applicable to listed legal entities.

SECTION II

Monitoring, inspection and discipline

Articles L811-11 to
L811-16

Subsection 1

Monitoring and inspection

Articles L811-11 to
L811-11-2

Article L811-11

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 9 and Art. 13 Official Journal of 4 January 2003)

(Act No. 2005-845 of 26 July 2005 Art. 155, Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Court-appointed receivers are placed under the supervision of the public prosecutor. 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 L814-2, court-appointed receivers 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 a receiver 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 L814-2, 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.

NB: Act 2005-845 2005-07-26 Art. 190: The last paragraph of Article L811-11 of the Commercial Code shall become effective upon publication of the act, i.e. 27 July 2005.

Article L811-11-1

(Order No. 2005-1126 of 8 September 2005 Art. 2 Official Journal of 9 September 2005)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Court-appointed receivers 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 receivers 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 Part II of Book VI and which operate under the sole signature of the administrator 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 L811-11-2

(inserted by Order No. 2005-1126 of 8 September 2005 Art. 2 Official Journal of 9 September 2005)

As stipulated in a Conseil d'Etat decree, the auditors inform the authorities entrusted with supervision of the inspections and audits of court-appointed receivers and their findings and call attention to any anomalies or irregularities which have come to their notice in the performance of their assignment.

Subsection 2
Discipline

Articles L811-12 A to
L811-16

Article L811-12 A

(Act No. 2003-7 of 3 January 2003 Art. 10 and Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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, results in disciplinary proceedings being brought against the receiver responsible.

Article L811-12

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 11 and Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The disciplinary action is brought by the Minister of Justice, the Public Prosecutor of the court of appeal in whose jurisdiction the facts were committed, the government representative or the chairman 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 public prosecutor's duties thereon. 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 facts committed, 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 those facts to be determined.

Article L811-13

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 Official Journal of 4 January 2003)

(Act No. 2004-130 of 11 February 2004 Art. 69 3 Official Journal of 12 February 2004)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Any receiver 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 receiver 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 receiver.

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 being imposed.

Article L811-14

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 Official Journal of 4 January 2003)



(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Disciplinary action lapses after ten years.

Article L811-15

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

A barred, deregistered or suspended receiver shall cease all professional acts.

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. 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 L811-16

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 12, Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

No person may claim court-appointed administrator status beyond the assignment entrusted to him by virtue of the second paragraph of Article L811-2 or the second paragraph of Article L811-8 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.

CHAPTER II

Legal agents in the winding-up of undertakings

Articles L812-1 to
L812-10

SECTION I

Tasks, conditions of access and performance and incompatibilities

Articles L812-1 to
L812-8

Subsection 1

Tasks

Article L812-1

Article L812-1

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 14 Official Journal of 4 January 2003)

(Act No. 2004-130 of 11 February 2004 Art. 69 1 Official Journal of 12 February 2004)

(Act No. 2005-845 of 26 July 2005 Art. 158 V, Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 Part 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 therefor.

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 referred to in Article L663-2.

Subsection 2

Conditions of access to the profession

Articles L812-2 to
L812-3

Article L812-2

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 15 Official Journal of 4 January 2003)

(Act No. 2004-130 of 11 February 2004 Art. 69 2 Official Journal of 12 February 2004)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without



prejudice to Art. 190)

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 administrator.

II. - By way of exception, however, the court may, via an expressly reasoned decision and after seeking the advice of the public prosecutor, appoint as a court-appointed 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 1 to 4 of Article L812-3.

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 a natural person or legal entity who is the subject of court-ordered receivership or 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 L233-16, 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 administrator whose name has been removed from the registers pursuant to Articles L811-6, L811-12, L812-4 and L812-9. 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 act as court-appointed administrators on a regular basis.

Upon assuming their functions, persons appointed pursuant to the first paragraph of the present indent II must give a sworn statement to the effect that they meet the conditions determined in 1 to 4 of Article L812-3, 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 L814-10.

III. - When the court appoints a legal entity, it designates one or more natural persons within it to represent it in regard to performance of the assignment entrusted to it.

Article L812-2-1

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 16 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The register referred to in Article L812-2 is divided into sections corresponding to the jurisdiction of each court of appeal.

Article L812-2-2

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 16 Official Journal of 4 January 2003)

(Act No. 2004-130 of 11 February 2004 Art. 53 II 1 Official Journal of 12 February 2004)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The composition of the national committee referred to in Article L812-2 is as follows:

- a judge of the Court of Cassation, acting as chairman, appointed by the presiding judge of the Court of Cassation;
- an officer of the National Audit Office appointed by the chairman of the National Audit Office;
- a member of the Inspectorate of Public Finances appointed by the Finance Minister;
- an appeal court judge appointed by the presiding judge of the Court of Cassation;
- a higher commercial court judge appointed by the presiding judge of the Court of Cassation;
- a professor 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;
- three registered court-appointed receivers elected by their peers as determined in a Conseil d'Etat decree. One of them is replaced by a person chosen from a register of organisational diagnostics experts when, pursuant to the provisions of the last paragraph of Article L813-1, the committee gives an opinion on the inclusion in the register of an expert in this specialism, or his deregistration or withdrawal.

In the event of a tied vote, the chairman has a casting vote.

The chairman 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 L812-3

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 17 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

All persons registered by the committee must:



- 1 Be French nationals or citizens of a Member State of the European Community or the European Economic Area;
 - 2 Not have been the perpetrator of facts giving rise to a criminal conviction for dishonourable conduct or lack of integrity;
 - 3 Not have been the perpetrator of facts 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 Part II of Book VI of the present code, Part VI of the aforementioned Act No. 85-98 of 25 January 1985 or, under the scheme which preceded that law, Part II of the aforementioned Act No. 67-563 of 13 July 1967;
 - 5 Have passed the entrance examination for the vocational development programme, completed that programme and passed the receivership aptitude examination.
- Only persons who hold diplomas or other qualifications determined by decree may take the entrance examination for the vocational 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 vocational development programme. The committee may, moreover, exempt such persons, as provided for in a Conseil d'Etat decree, from part of the vocational 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 liquidator 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, without prejudice to them having 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

Articles L812-4 to
L812-7

Article L812-4

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 18 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The national committee, on its own initiative or at the request of the Minister of Justice, the chairman of the National Council of Court-Appointed Administrators and Court-Appointed Receivers, the government representative or the public prosecutor in whose jurisdiction the receiver is established, may, through a reasoned decision and after instructing the party concerned to present its observations, delete from the list referred to in Article L812-2 a receiver who, on account of his physical or mental state, is unable to perform his functions in the normal way, or a court-appointed administrator who has shown himself to be incapable of performing his functions in the normal way.

Deregistration shall not prevent disciplinary proceedings from being brought against the court-appointed liquidator if the offences were committed in the performance of his duties.

Article L812-5

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Court-appointed receivers may create civil-law professional partnerships governed by Act No. 66-879 of 29 November 1966 relating to civil-law professional partnerships in order to practice their profession collectively. They may also practice 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 Part 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 L812-6

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 19 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 of him ceasing 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 L812-8 to L812-10, L814-1 and L814-5.

Article L812-7

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 20 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Registered persons are free to practice their profession throughout France.

Subsection 4

Incompatibilities

Article L812-8

Article L812-8

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 21 Official Journal of 4 January 2003)

(Act No. 2005-845 of 26 July 2005 Art. 164 II, Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Registered court-appointed administrative receiver status is incompatible with the practising of any other profession. It is also incompatible with:

1 All commercial activities, whether carried out directly or through an intermediary;

2 The status of partner in a general partnership, financing partner in a limited partnership or a partnership limited by shares, managing director of a limited liability company, chairman of the board of directors, executive board member, general manager or chief executive of a public limited company, chairman or chief executive of a simplified joint-stock company, supervisory board member or director of a commercial company, and managing partner of a civil partnership, unless those entities are engaged in administrative receivership activities 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 impede engagement in consultancy activities in matters pertaining to qualification of the person concerned or performance of the duties of ad hoc representative or mediator provided for in Articles L611-3 and L611-6 of the present code and Article L351-4 of the Rural Code, commissioner for execution of the plan, amicable administrator or liquidator, legal expert and amicable or court-appointed receiver. These activities and duties, save for those of ad hoc representative, mediator and commissioner for execution of the plan, may only be undertaken subsidiarily.

With the exception of the fourth paragraph, the conditions of the present article apply to registered legal entities.

SECTION II

Monitoring, inspection and discipline

Articles L812-9 to L812-10

Article L812-9

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 22 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The provisions relating to the supervision, inspection and discipline of court-appointed administrators set forth in Articles L811-11 to L811-15 apply to court-appointed receivers.

The national registration committee sits as a disciplinary committee. The government representative performs the public prosecutor's duties thereon.

Article L812-10

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 23 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

No person may claim court-appointed receiver status beyond the assignment entrusted to him by virtue of the first paragraph of II of Article L812-2 and the second paragraph of Article L812-6 unless his name appears in a register of court-appointed receivers.

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 receiver" which



could create a misunderstanding in the public perception.

CHAPTER III

Corporate analysis experts

Article L813-1

Article L813-1

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 24 Official Journal of 4 January 2003)

(Act No. 2004-130 of 11 February 2004 Art. 53 I 1 and 2 Official Journal of 12 February 2004)

(Order No. 2005-845 of 26 July 2005 Art. 165 I Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Organisational diagnostics experts 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 protection proceedings or judicial reorganisation proceedings, or to assist the drawing up of such a report pertaining to protection proceedings or judicial reorganisation 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 fulfil the obligations enumerated in the previous paragraph.

Such experts may be chosen from those in this specialism 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 court of appeal 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. They are listed in a national register of court-appointed experts once the national committee created in Article L812-2 has deliberated thereon.

CHAPTER IV

Common provisions

Articles L814-1 to
L814-11

SECTION I

Appeals against decisions of registration committees and representation before
the public authorities

Articles L814-1 to
L814-2

Subsection 1

Appeals against decisions of registration committees

Article L814-1

Article L814-1

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 26 Official Journal of 4 January 2003)

(Act No. 2004-130 of 11 February 2004 Art. 69 4 Official Journal of 12 February 2004)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Appeals against the decisions made in regard to registration, withdrawal and discipline by the national committees are brought before the Paris Court of Appeal.

Such appeals have suspensive effect.

Subsection 2

Representation of the professions before the public authorities

Article L814-2

Article L814-2

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 26 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 is also responsible for ensuring that the members of those professions meet their obligations, for organising their professional training, for ensuring that they meet their obligation to maintain and improve their knowledge, for overseeing their studies and for drawing up an annual report thereon for 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 II

Guarantee of the representation of businesses, professional civil liability and remuneration Articles L814-3 to L814-11

Subsection 1

liability Guarantee of the representation of businesses and professional civil liability Articles L814-3 to L814-5

Article L814-3

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13, Art. 27 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 2021 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 L814-4

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13 and Art. 28 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 L814-5

(Act No. 2001-420 of 15 May 2001 Art. 113 I 1 Official Journal of 16 May 2001)

(Act No. 2003-7 of 3 January 2003 Art. 13, Art. 29 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

An unregistered court-appointed administrator, designated as provided for in the second paragraph of Article L811-2, and an unregistered court-appointed receiver, designated as provided for in the first paragraph of II of Article L812-2, 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.

Subsection 2

Remuneration

Articles L814-6 to L814-11

Article L814-6



(Law No 2001-420 of 15 May 2001 Article 113 I (1) Official Gazette of 16 May 2001)

The Conseil d'Etat shall issue a decree stipulating the terms of remuneration of court-appointed receivers, irrespective of whether or not they are registered on the national list, and of legal agents for winding up companies, together with the rules for paying remuneration to persons called, at their request, to carry out certain technical tasks for the benefit of the company not included in their brief.

Article L814-7

(inserted by Law No. 2003-7 of 3 January 2003 Article 13 and Article 34 (I) Official Gazette of 4 January 2003)

When the proceeds from realisation of the company's assets are insufficient to enable the liquidator or the creditors' representative to receive, by way of the remuneration due to him pursuant to the provisions of Article L. 814-6, a sum at least equal to the threshold set in a Conseil d'Etat decree, a decision of the court declares that case to be impecunious on the basis of a proposal from the insolvency judge and in the light of the elements of proof produced by the liquidator or the creditors' representative.

That same decision determines the sum corresponding to the difference between the remuneration actually received by the liquidator or the creditors' representative and the threshold referred to in the previous paragraph.

The sum paid to the creditors' representative or the liquidator is deducted from a portion of the interest paid by the Caisse des dépôts et consignations on the funds deposited with it pursuant to Articles L. 621-33, L. 621-64 and L. 622.8. That portion is allocated to a special fund managed by the Caisse des dépôts et consignations under the control of an administration committee. The present paragraph's terms of application are determined in a Conseil d'Etat decree.

Article L814-8

(Act No. 2003-7 of 3 January 2003 Art. 13, Art. 30, Art. 31 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 antepenultimate paragraphs of Articles L811-10 and L812-8 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 L814-9

(Act No. 2003-7 of 3 January 2003 Art. 13, Art. 30, Art. 32 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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 L814-2.

Article L814-10

(Act No. 2003-7 of 3 January 2003 Art. 13, Art. 30 and Art. 35 Official Journal of 4 January 2003)

(Act No. 2005-845 of 26 July 2005 Art. 164 III, Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Unregistered court-appointed administrators and court-appointed receivers instructed as provided for in the second paragraph of Article L811-2 or the first paragraph of II of Article L812-2 are placed under the supervision of the public prosecutor 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 L811-12 A, the public 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 L814-11

(Act No. 2003-7 of 3 January 2003 Art. 13, Art. 30 and Art. 36 Official Journal of 4 January 2003)

(Order No. 2005-845 of 26 July 2005 Art. 165 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

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.

TITLE II

Auditors

Articles L820-1 to
L822-16

PRELIMINARY CHAPTER

General provisions

Articles L820-1 to
L820-7

Article L820-1

(Law No 2001-420 of 15 May 2001 Article 113 (I) (2) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 99, Article 110 (1) Official Gazette of 2 August 2003)

Notwithstanding any provision to the contrary, Articles L. 225-227 to L. 225-242, as well as the provisions of the present Title, are applicable to auditors appointed in all legal entities regardless of the scope of their remit. They are also applicable to those persons, without prejudice to the specific rules which apply to them, regardless of their legal status.

The obligations imposed on chairmen of boards of directors, managing directors, directors, members of the executive board and managers of commercial companies are applicable to the management of legal entities which are required to have an auditor.

Article L820-2

(Law No 2001-420 of 15 May 2001 Article 113 (I) (2) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 99, Article 110 (2) Official Gazette of 2 August 2003)

No person who fails to meet the conditions laid down in Articles L. 225-227 to L. 225-242 and the provisions of the present Title may claim to be an auditor.

Article L820-3

(Law No 2001-420 of 15 May 2001 Article 113 (I) (2) Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 99, Article 109 Official Gazette of 2 August 2003)

Prior to his appointment, the auditor shall write to the entity whose accounts he proposes to audit to tell it that he is a member of a national or international network which is not solely devoted to the legal auditing of accounts and whose members have a common financial interest. If applicable, he shall also inform it of the total amount of fees received by that network for services unconnected with auditing which were provided by that network to an entity controlled by or which controls, within the meaning of subparagraphs I and II of Article L. 233-3, the entity whose accounts the said auditor is proposing to audit. This information is included in the documents made available to shareholders pursuant to Article L. 225-108. After annual updating by the auditor, that information is made 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 is 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 L820-4

(Law No 2001-420 of 15 May 2001 Article 113 (I) (2) Official Gazette of 16 May 2001)

(Law No 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)

(Law No 2003-706 of 1 August 2003 Article 99 Official Gazette of 2 August 2003)

Notwithstanding any provision to the contrary:

1. A penalty of two years' imprisonment and a fine of 30,000 euros (criminal penalties) are imposed on any executive of a legal entity required to have an auditor who fails to organise such an appointment or who fails to invite the auditor to any general meeting;

2. A penalty of five years' imprisonment and a fine of 75,000 euros are 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 mission and, in particular, any contracts, books, accounting documents and minute books.

Article L820-5

(Law No 2001-420 of 15 May 2001 Article 113 (I) (2) Official Gazette of 16 May 2001)

(Law No 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)

(Law No 2003-706 of 1 August 2003 Article 99 Official Gazette of 2 August 2003)

A penalty of one years' imprisonment and a fine of 15,000 euros (criminal penalties) are 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 subparagraph I of Article L. 225-219, and has not taken an oath in the manner stipulated in Article L. 225-223;

2. Illegally practises as an auditor in breach of the provisions of subparagraph I of Article L. 225-219 and Article L. 225-223 or those of any temporary ban or suspension.

Articles 226-3 and 226-14 of the Penal Code, relating to professional secrecy, are applicable to auditors.

Article L820-6

(Law No 2001-420 of 15 May 2001 Article 113 (I) (2) Official Gazette of 16 May 2001)

(Law No 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)

(Law No 2003-706 of 1 August 2003 Article 99 Official Gazette of 2 August 2003)

A penalty of six months' imprisonment and a fine of 7,500 euros (criminal penalties) are 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 L820-7

(Law No 2001-420 of 15 May 2001 Article 113 (I) (2) Official Gazette of 16 May 2001)

(Law No 2000-916 of 19 September 2000 Article 3 Official Gazette of 22 September 2000 effective 1 January 2002)

(Law No 2003-706 of 1 August 2003 Article 99 Official Gazette of 2 August 2003)

A penalty of five years' imprisonment and a fine of 75,000 euros (criminal penalties) are imposed on any person who, either on his own account, or as a partner in an auditing firm, 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 Public Prosecutor.

CHAPTER I

Organisation and Monitoring of the Profession

Articles L821-1 to
L821-12

Article L821-1

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

A High Council for Auditorship 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 Auditorship 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;

- in its capacity as an appeals authority for decisions of the regional commissions referred to in Article L. 822-2, to effect registration of auditors;

- to determine the content of and framework for the periodic inspections provided for in Article L. 821-7 and to supervise their implementation and monitoring pursuant to Article L. 821-9;

- in its capacity as an appeals authority for decisions of the regional chambers referred to in Article L. 822-6, to deal with disciplinary issues relating to auditors.

Article L821-2

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

The opinion referred to in subparagraph six of Article 281-1 is accepted by the Minister of Justice after consultation with the Financial Markets Authority, the Banking Commission and the Supervisory Commission for general insurance companies, mutual insurance companies and provident societies whenever it pertains to their specific areas of responsibility.

Article L821-3

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

The composition of the High Council for Auditorship is as follows:

1. Three law officers, one of whom is a judge at the Court of Cassation, as chairman, a senior official of the Cour des Comptes, and a second Judge;

2. The chairman of the Financial Markets Authority or his representative, a representative of the Minister for the Economy and a university professor specialising in law, economics or finance;

3. Three persons qualified in economics and finance; two of whom are chosen for their expertise in the field of corporate public issues; 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 of auditing the accounts of entities which launch public issues or appeals for public generosity.



The decisions are taken on a majority of the votes cast. In the event of a tied vote, the chairman has a casting vote.

The chairman and the members of the High Council for Auditorship are appointed by decree for renewable periods of six years. The composition of the High Council for Auditorship is renewed by half every three years.

The High Council for Auditorship forms specialised advisory committees from among its members to prepare its decisions and recommendations. Those committees may co-opt experts if necessary.

Article L821-4

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

The Minister of Justice appoints a government representative to the High Council for Auditorship. He sits on the Council with a right of discussion only. The government representative does not attend 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 L821-5

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

The funds required to operate the High Council are charged to the budget of the Ministry of Justice.

Article L821-6

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

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 proper practises in the profession, supervision thereof and the protection of the honour and independence of its members.

A Regional Company of Auditors having legal personality is instituted within the territorial jurisdiction of each court of appeal. The Minister of Justice may nevertheless constitute groupings based on a proposal from the National Company after the latter has consulted the Regional Companies concerned.

The resources of the National Company and the Regional Companies are provided mainly by an annual subscription collected from the auditors.

Article L821-7

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

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 on by the national company or the regional companies.

Article L821-8

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

The Minister of Justice may launch immediate inspections and request the assistance of the Financial Markets Authority, the National Company of Auditors, the Banking Commission or the Commission for general insurance companies, mutual insurance companies and provident societies in connection therewith.

The Financial Markets Authority may immediately launch any inspection of an auditor of an entity which makes public issues or of a collective investment undertaking and request the assistance of the National Company of Auditors in connection therewith, and also, if appropriate, that of the authorities enumerated in subparagraph 2 of Article L. 621-9-2 of the Monetary and Financial Code. Neither the chairman 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 L821-9

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

The checks referred to in subparagraphs b) and c) of Article L. 821-7 are carried out by the national company or the regional companies.

When such checks relate to the auditors of entities that make public issues or of collective investment undertakings, they are carried out by the National Company with the assistance of the Financial markets Authority.

Article L821-10

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

When particularly serious facts come to light which would justify criminal or disciplinary penalties, the Minister of Justice may, from the inception of proceedings, when the urgent nature and the public interest warrant it, and when the person concerned has had an opportunity to present his observations, pronounce the temporary suspension of an auditor (natural person). The chairman of the Financial Markets Authority and the chairman 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 L821-11

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

The implementing provisions for Articles L. 821-3 and L. 821-6 to L. 821-10 are determined in a Conseil d'Etat decree.

Article L821-12

(inserted by Law No. 2003-706 of 1 August 2003 Article 100 Official Gazette of 2 August 2003)

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 professional secrecy.

CHAPTER II

Auditors' status

Articles L822-1 to
L822-16

SECTION I

Registration and discipline

Articles L822-1 to
L822-8

Subsection 1

Registration

Articles L822-1 to
L822-5

Article L822-1

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

No person shall practice as an auditor without prior registration on a list established for that purpose.

Article L822-2

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

A Regional Registration Commission is established at the main facility of each court of appeal. It compiles and revises the list referred to in Article L. 822-1.

Each Regional Registration Commission is composed of:

1. A judge acting as chairman;
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 chairman and members of the Regional Registration Commission, and their deputies, are appointed by a decree of the Minister of Justice for a renewable period of three years.

The decisions are taken on a majority of the votes cast. In the event of a tied vote, the chairman has a casting vote.

Appeals against the decisions of the Regional Registration Commissions are brought before the High Council for Auditorship.

Article L822-3

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

Every auditor must go before the court of appeal within whose jurisdiction he practices to swear to fulfil the duties of his profession with honour, probity and independence, and to respect, and impose respect for, the laws.

Article L822-4

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

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 part-time training course before accepting an auditing mission.

Article L822-5

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

The implementing provisions of the present subsection are determined in a Conseil d'Etat decree.

Subsection 2

Discipline

Articles L822-6 to



Article L822-6

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

The Regional Registration Commission, sitting as a Regional Disciplinary Chamber, is competent to judge 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 L822-7

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

Cases may be referred to the Regional Disciplinary Chamber by the Minister of Justice, the Public Prosecutor, the Chairman of the National Company of Auditors or the chairman of the Regional Company.

In addition to the persons determined in a Conseil d'Etat decree, the chairman of the Financial Markets Authority may refer cases pertaining to disciplinary action to the Principal State 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 Auditorship 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 Principal State Prosecutor's Office or the Public Prosecutor's 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 L822-8

(inserted by Law No. 2003-706 of 1 August 2003 Article 101, Article 102, Article 103, Official Gazette of 2 August 2003)

- The disciplinary penalties are:

1. A warning;
2. A reprimand;
3. A temporary ban of up to five years;
4. Removal from the list.

Honorary titles may also be withdrawn.

A warning, a reprimand or a temporary ban may be accompanied by the additional penalty of ineligibility for membership of professional bodies for a maximum of ten years.

A temporary ban may be pronounced with suspended 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 penalty being pronounced, this shall, barring a reasoned decision to the contrary, give rise to execution of the first penalty without any prospect of concurrency with the second.

When they pronounce 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 through carrying out the inspections or verifications which enabled the penalised misconduct to be established.

SECTION II

Ethics and Independence of Auditors

Articles L822-9 to
L822-16

Article L822-9

(inserted by Law No. 2003-706 of 1 August 2003 Article 104 (I) Official Gazette of 2 August 2003)

The auditing profession is practised by natural persons or by firms created by such persons in whatever form.

Three quarters of an auditing firm's capital shares must be held by auditors. When an auditing firm has an equity interest in another auditing firm, shareholders or partners who are not auditors cannot hold more than 25% of the total of the two firms' capital shares. The posts of chief executive, chairman of the board of directors or of the executive board, chairman of the supervisory board and general manager must be held by auditors. At least three quarters of the members of the management, administrative and supervisory structures and at least three quarters of the shareholders or partners must be auditors. The permanent representatives of auditing firms, whether partners or shareholders, must be auditors.

In registered auditing firms, the auditing functions are performed, on behalf of the firm, by natural-person auditors who are partners, shareholders or executives of that firm. Those 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 limitation in terms of number or conditions of seniority being applied to employee status.

In the event of the decease 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 is subject to prior approval which, under the terms and conditions of the memorandum and articles of association, 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, 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 L822-10

(inserted by Law No. 2003-706 of 1 August 2003 Article 104 (I) Official Gazette of 2 August 2003)

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 practising of his profession or occupy a remunerated post in an auditing firm or an accounting firm;
3. Any commercial activity, whether conducted directly or through an intermediary.

Article L822-11

(inserted by Law No. 2003-706 of 1 August 2003 Article 104 (II) Official Gazette of 2 August 2003)

I - An 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 subparagraphs I and II of Article L. 233-3.

Without prejudice to the provisions of the present Book or those of Book II, the code of ethics referred to in Article L. 822-16 defines the concomitant or prior personal, financial and professional connections which are incompatible with the auditor's mission. It specifies, among other things, the situations in which the auditor's independence is affected when he belongs to a national or international multidisciplinary network whose members have a common economic interest through the provision of services to an entity which is controlled by or which controls, within the meaning of subparagraphs I and II of Article L. 233-3, the entity whose accounts are audited by the said auditor. 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 subparagraphs 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.

When 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 Auditorship pursuant to the third paragraph of Article 821-1.

Article L822-12

(inserted by Law No. 2003-706 of 1 August 2003 Article 104 (II) Official Gazette of 2 August 2003)

Individual auditors and signing members of an auditing firm 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 subparagraphs I and II of Article L. 233-3, by the company whose accounts they audited.

Article L822-13

(inserted by Law No. 2003-706 of 1 August 2003 Article 104 (II) Official Gazette of 2 August 2003)

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 L822-14

(inserted by Law No. 2003-706 of 1 August 2003 Article 104 (II) Official Gazette of 2 August 2003)

Individual auditors and signing members of auditing firms are prohibited from auditing the accounts of legal entities which make public issues for more than six consecutive financial years.

This provision also applies to the legal 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 generosity.

Article L822-15



(Act No. 2003-706 of 1 August 2003 Art. 104 II Official Journal of 2 August 2003)

(Act No. 2005-845 of 26 July 2005 Art. 162 V Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Without prejudice to the provisions of Article L225-240 and the specific legislative provisions, the auditors and their employees and experts are bound by professional secrecy in respect of all facts, actions and information of which they have knowledge on account of their functions. They are nevertheless released from professional secrecy in regard to the presiding judge of the commercial court 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 professional secrecy. These provisions also apply when an entity draws up combined accounts.

Article L822-16

(inserted by Law No. 2003-706 of 1 August 2003 Article 104 (II) Official Gazette of 2 August 2003)

A Conseil d'Etat decree approves a code of ethics for the profession after seeking the advice of the High Council for Auditorship and, for the provisions which apply to auditors who act for entities that make public issues, the Financial Markets Authority.

BOOK IX

Provisions relating to overseas

Articles L911-1 to
L950-7

TITLE I

Provisions specific to Saint-Pierre-et-Miquelon

Articles L911-1 to
L910-5

Article L910-1

(Order No. 2004-328 of 15 April 2004 Art. 8 Official Journal of 17 April 2004) (Act No. 2004-1343 of 9 December 2004 Art. 78 XIX Official Journal of 10 December 2004) (Act No. 2005-842 of 26 July 2005 Art. 11 III Official Journal of 27 July 2005)

The following articles do not apply in Saint Pierre and Miquelon:

1 L125-3, L126-1;

2 L225-245-1, L229-1 to L229-15, L238-6, L244-5 and L252-1 to L252-13; 3
L470-6;

4 L522-1 to L522-40 and L524-20;



5 L711-5, L711-9, L713-6 to L713-10, L713-11 to L713-17 insofar as they relate to consular delegates; L720-1 to L730-17.

Article L910-2

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 "court of first instance".
2. "Tribunal de commerce" or "lay commercial judge" by "court of first instance ruling on commercial matters".
3. "Department" or "district" by "territorial authority".
4. "Official Gazette of Civil and Commercial Announcements" by "Records of administrative deeds of the territorial authority".

Article L910-3

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 L910-4

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 L910-5

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.

CHAPTER I

Provisions Amending Book I

Articles L911-1 to
L911-14

Article L911-1

(Order No. 2004-279 of 25 March 2004 Art. 6 Official Journal of 27 March 2004)

In Article L. 122-1, the words "by the Prefect of the Department in which he envisages conducting his business initially" are replaced by the words "by the prefect of the territory if the foreign national is to conduct his business there initially".

Article L911-2

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 L911-3

In Article L. 133-7, the words "customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.

Article L911-4

Registration with the registry of the court of first instance ruling on commercial matters shall exempt deeds and declarations submitted to it in application of Article L. 141-5 from the need to be formally recorded.

Article L911-5

For the purpose of Articles L. 141-15, L. 143-7 and L. 145-28, a magistrate of the court of first instance may be delegated by the president.

Article L911-6

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 laws".

Article L911-7

In Article L. 144-5, the words "Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Public Health Code" shall be replaced by the words "the Articles of the public health Code applicable locally to hospitalisation or confinement with or without the consent of the interested party".



Article L911-8

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

Article L. 145-2 is modified as follows:

I. - In 4, the words:"to the State, to the departments, to the communes, to the public institutions"are replaced with the words"to the State, to the territorial authorities and to the public institutions";

II. - In 6, the words"to the social security fund of the Maison des Artistes et reconnus auteurs d'œuvres graphiques et plastiques, as defined in Article 71 of Annex III of the General Tax Code"are replaced with the words"to the local social security fund for the creators of graphic and plastic arts, as defined in the tax code applicable in the territory".

Article L911-9

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. 313-3 and L. 313-4 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 L911-10

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 residential leases and farming leases"shall be deleted.

Article L911-11

The second sub-paragraph of Article L. 145-18 shall be worded 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 set 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 owners who may but need not have form a freeholders' association, in which case the owner or owners shall be specially authorised to do so on terms laid down by the state representative, who shall stipulate the commitments which owners must make as to the type and extent of the work.

Buildings acquired by developers shall only be assigned by mutual agreement, once they have been restored, in accordance with the type specifications approved by the state representative."

Article L911-12

In Article L. 145-26, the words"and the territorial authority"shall be inserted after the words"to the state, the departments, the municipalities".

Article L911-13

The first sub-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 when the lease for renewal takes effect, 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. This index shall be calculated in accordance with the terms of an order issued by the state representative. If there is no clause in the contract stipulating the reference quarter for the index, the variation in the local quarterly construction index set for the purpose by the aforementioned order shall be used."

Article L911-14

Article L. 145-35 shall be amended as follows:

I. - In the first sub-paragraph, the word"departmental"shall be deleted. II. - The final sub-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."

CHAPTER II



Provisions Amending Book II

Articles L912-1 to
L912-6

Article L912-1

(Order No. 2004-274 of 25 March 2004 Art. 46 II Official Journal of 27 March 2004)

In Articles L. 223-18, L. 225-36 and L. 225-65, the words "in the same Department or an adjacent department" are replaced by the words "in the territory".

Article L912-2

The final sub-paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

Article L912-3

In the second sub-paragraph of Article L. 225-102, 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 L912-4

(Order No. 2004-604 of 24 June 2004 Art. 59 Official Journal of 26 June 2004)

In Article L. 225-115 (5), the words "payments made pursuant to 1 and 4 of Article 238 bis of the General Tax Code" are 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 L912-5

In Article L. 225-196 IV, the words "calculating national insurance contributions" shall be replaced by the words "calculating national insurance contributions payable under the local social security system".

Article L912-6

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 for money consideration of securities and corporate rights".

CHAPTER III

Provisions Amending Book III

Article L913-1

Article L913-1

The second sub-paragraph of Article L. 322-9 shall be worded as follows:

"They shall comply with the provisions of the local tax Code applicable to public sales and auctions."

CHAPTER IV

Provisions Amending Book IV

Articles L914-1 to
L914-2

Article L914-1

In the second sub-paragraph of Article L. 442-2 the word "any" shall be inserted before the words "turnover taxes".

Article L914-2

Article L. 443-1 shall be amended as follows:

I. - In no. 3, the words "Article 403 of the General Tax Code" shall be replaced by the words "by the provisions of the local tax Code".

II. - No. 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".

CHAPTER V

Provisions Amending Book V

Articles L915-1 to
L915-5

Article L915-1

The second sub-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 L915-2

The first sub-paragraph of Article L. 524-19 shall be worded as follows:

"The duty to be collected by the clerk of the court of first instance ruling on commercial matters shall be set by

decree."

Article L915-3

In the first sub-paragraph of Article L. 525-2, the words "according to local regulations" shall be inserted after the words "the fixed duty".

Article L915-4

In Article L. 525-9 II, the words "the preferential right referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words "the preferential right organised for the benefit of the social welfare fund of the territorial authority".

Article L915-5

Article L. 525-18 shall be amended as follows:

I. - In no. 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. - No. 2 shall be worded as follows:

"Ocean-going ships."

CHAPTER VI

Provisions Amending Book VI

Article L916-1

Article L916-1

(inserted by Act No. 2005-845 of 26 July 2005 Art. 193 I Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

4 of III of Article L643-11 is not applicable in Saint Pierre and Miquelon.

CHAPTER VI

Provisions Amending Book VI

Articles L917-1 to
L917-4

Article L917-1

In Articles L. 711-2 and 711-4, the word "government" shall be replaced by the words "state representative to the authority".

Article L917-2

In the third sub-paragraph of Article L. 711-6, the words "or the municipality" shall be replaced by the words "the municipality or authority".

Article L917-3

In Article L. 711-7, the words "as defined in and for the purpose of Article L. 961-10 of the Employment Code" shall be deleted.

Article L917-4

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 local tax Code".

TITLE II

Provisions applicable to Mayotte

Articles L921-1 to
L920-7

Article L920-1

(Act No. 2003-710 of 1 August 2003 Art. 38 II Official Journal of 2 August 2003)

(Order No. 2005-43 of 20 January 2005 Art. 3 I Official Journal of 22 January 2005 effective 1 February 2005) (Act No. 2005-842 of 26 July 2005 Art. 11 III Official Journal of 27 July 2005)

Without prejudice to the amendments made in the following chapters, the following provisions of the present code are applicable in Mayotte:

1 Book I, with the exception of Articles L125-3 and L126-1;

2 Book II, with the exception of Articles L225-245-1, L229-1 to L229-15, L238-6, L244-5 and L252-1 to



L252-13; 3 Book III, with the exception of Articles L321-1 to L321-38;
4 Book IV, with the exception of Articles L441-1, L442-1 and L470-6;
5 Book V, with the exception of Articles L522-1 to L522-40, L524-12, L524-20 and
L524-21; 6 Book VI, excluding Articles L622-19, L625-9 and L670-1 to L670-8;
7 Part I of Book VII, with the exception of Articles L711-5 and L712-1 and the provisions relating
to consular delegates;
8 Book VIII.

Article L920-2

The terms set out below shall be replaced as follows for the purpose of the application of this Code to the authority:

1. "Tribunal de grande instance" or "Tribunal d'instance" by "court of first instance".
2. "Tribunal de commerce" or "lay commercial judge" by "court of first instance ruling on commercial matters".
3. "Conseil de prud'hommes" by "employment tribunal".
4. "Department" or "district" by "territorial authority".

4. "Official Gazette of Civil and Commercial Announcements" by "Records of administrative deeds of the territorial authority".

Article L920-3

References in the provisions of this Code applicable to Mayotte 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 L920-4

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 L920-5

References in the provisions of this Code applicable to Mayotte to provisions of the Employment Code shall only apply there if there is a provision applicable locally which serves the same purpose.

Article L920-6

References to registration in the trades register shall be replaced by references to registration in accordance with regulations applicable to Mayotte.

Article L920-7

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.

CHAPTER I

Provisions Amending Book I

Articles L921-1 to
L921-14

Article L921-1

(Order No. 2004-279 of 25 March 2004 Art. 7 I Official Journal of 27 March 2004)

In Article L. 122-1, the words "by the Prefect of the Department in which he envisages conducting his business initially" are replaced by the words "by the Prefect of Mayotte if the foreign national is to conduct his business there initially".

Article L921-2

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 L921-3

In Article L. 133-6, the words "those which derive from the provisions of Article 1269 of the New 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 L921-4

In Article L. 133-7, the words "customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.



Article L921-5

For the purpose of Articles L. 141-15, L. 143-7, L. 144-1 to L. 144-13 and L. 145-28, a magistrate of the court of first instance may be delegated by the president.

Article L921-6

In Article L. 141-13, the words "of the return prescribed by Articles 638 and 653 of the General Tax Code" shall be replaced by the words "of the return prescribed by the provisions of local tax laws".

Article L921-7

In Article L. 144-5, the words "Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Public Health Code" shall be replaced by the words "the Articles of the public health Code applicable in the authority to hospitalisation or confinement with or without the consent of the interested party".

Article L921-8

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

Article L. 145-2 is modified as follows:

I. - In 4, the words: "to the State, to the departments, to the communes, to the public institutions" are replaced with the words "to the State, to the territorial authorities and to the public institutions";

II. - In 6, the words "to the social security fund of the Maison des Artistes et reconnus auteurs d'œuvres graphiques et plastiques, as defined in Article 71 of Annex III of the General Tax Code" are replaced with the words "to the local social security fund for the creators of graphic and plastic arts, as defined in the tax code applicable in the territory".

Article L921-9

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. 313-3 and L. 313-4 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 L921-10

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 residential leases and farming leases" shall be deleted.

Article L921-11

The second sub-paragraph of Article L. 145-18 shall be worded 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 set 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 owners who may but need not have form a freeholders' association, in which case the owner or owners shall be specially authorised to do so on terms laid down by the state representative, who shall stipulate the commitments which owners must make as to the type and extent of the work.

Buildings acquired by developers shall only be assigned by mutual agreement, once they have been restored, in accordance with the type specifications approved by the state representative."

Article L921-12

In Article L. 145-26, the words "and the territorial authority" shall be inserted after the words "to the state, the departments, the municipalities".

Article L921-13

The first sub-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 when the lease for renewal takes effect, 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. This index shall be calculated in accordance with the terms of an order issued by the state representative. If there is no clause in the contract stipulating the reference quarter for the index, the



variation in the local quarterly construction index set for the purpose by the aforementioned order shall be used."

Article L921-14

Article L. 145-35 shall be amended as follows:

I. - In the first sub-paragraph, the word "departmental" shall be deleted. II. - The final sub-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."

CHAPTER II

Provisions Amending Book II

Articles L922-1 to
L922-10

Article L922-1

(Order No. 2004-604 of 24 June 2004 Art. 56 II Official Journal of 26 June 2004)

In Articles L. 225-177, L. 225-179 and L. 233-11, the words "the publication date of Act No. 2001-420 of 15 May 2001" are 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 L922-2

(Order No. 2004-274 of 25 March 2004 Art. 47 III Official Journal of 27 March 2004)

In Articles L. 223-18, L. 225-36 and L. 225-65, the words "in the same Department or an adjacent Department" are replaced by the words "in the territory".

Article L922-3

The final sub-paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

Article L922-4

(Order No. 2004-604 of 24 June 2004 Art. 60 II Official Journal of 26 June 2004)

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" are replaced by the words "tax deductions under the provisions of the local tax law 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 L922-5

(Order No. 2004-604 of 24 June 2004 Art. 56 II Official Journal of 26 June 2004)

In Articles L. 225-105, L. 225-230 and L. 225-231, the words "the works council" are replaced by the words "the staff delegates".

Article L922-6

In Articles L. 225-231, L. 232-3, L. 232-4, L. 234-1 and L. 234-2, the words "works council" shall be replaced by the words "staff delegates".

Article L922-7

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 for money consideration of securities and corporate rights".

Article L922-8

The final sub-paragraph of Article L. 228-36 shall be deleted.

Article L922-9

In Article L. 233-24, the words "or of Article 97 VII" shall be deleted.

Article L922-10

The second sub-paragraph of Article L. 251-7 shall be deleted.

CHAPTER III

Provisions Amending Book III

Articles L923-1 to
L923-2

Article L923-1



In Article L. 322-1, the words "Article 53 of Law No 91-650 of 9 July 1991 on the reform of enforcement procedures and Article 945 of the Code of Civil Procedure" shall be replaced by the words "the provisions of civil procedure applicable in the territory to the sale of inherited chattels".

Article L923-2

The second sub-paragraph of Article L. 322-9 shall be worded as follows:

"They shall comply with the provisions of the tax Code applicable in the authority to public sales and auctions."

CHAPTER IV

Provisions Amending Book IV

Articles L924-1 to
L924-6

Article L924-1

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

In the first paragraph of Article L. 430-2, the word "three" is replaced by the word "two". The fourth and fifth paragraphs of the said article are deleted.

Article L924-2

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

In Article L. 430-3, the last sentence of the first paragraph is deleted. In the third paragraph of that same article, the words ", or the total or partial referral of an operation of community-wide dimensions," are deleted.

Article L924-3

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

The last paragraph of Article L. 441-2 is 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, or at the request of the public prosecutor or as a matter of course. 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 judgment of nonsuit or acquittal is returned.

Rulings on applications for the lifting of orders may be appealed against before the appellate court of next instance, depending on whether they were made by an investigating judge or the court to which the proceedings were referred.

The appellate court of next instance shall rule within ten days of receiving the evidence."

Article L924-4

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

(Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

In the second paragraph of Article L. 442-2, the word "any" is inserted before the words "turnover tax".

Article L924-5

(inserted by Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

The last paragraph of Article L. 442-3 is 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, or at the request of the public prosecutor or as a matter of course. 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 judgment of nonsuit or acquittal is returned.



Rulings on applications for the lifting of orders may be appealed against before the appellate court of next instance. The appellate court of next instance shall rule within ten days of receiving the evidence."

Article L924-6

(inserted by Order No. 2004-823 of 19 August 2004 Art. 3 II 1 Official Journal of 21 August 2004)

Article L. 443-1 is amended as follows:

I. - In 1, the words "referred to in Articles L. 326-1 to L. 326-3 of the Rural Code" are replaced by the words "pursuant to the provisions of the Rural Code applicable in the territory";

II. - In 3, the words "in Article 403 of the General Tax Code" are replaced by the words "by the provisions of the Tax Code applicable in the territory";

III. - 4 is worded as follows:

"4. Seventy-five days after the date of delivery for purchases of alcoholic beverages subject to consumption duty under the Tax Code applicable in the territory."

CHAPTER V

Provisions Amending Book V

Articles L925-1 to
L925-6

Article L925-1

The second sub-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 L925-2

In Articles L. 523-8 and L. 524-6, the words "Articles 1426 to 1429 of the New Code of Civil Procedure" shall be replaced by the words "provisions of civil procedure applicable locally to offers of payment and consignations".

Article L925-3

The first sub-paragraph of Article L. 524-19 shall be worded as follows:

"The duty to be collected by the clerk of the court of first instance ruling on commercial matters shall be set by decree."

Article L925-4

In the first sub-paragraph of Article L. 525-2, the words "according to local regulations" shall be inserted after the words "the fixed duty".

Article L925-5

In Article L. 525-9 II, the words "the preferential right referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words "the preferential right organised for the benefit of the social welfare fund of the territorial authority".

Article L925-6

Article L. 525-18 shall be amended as follows:

I. - In no. 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. - No. 2 shall be worded as follows:

"Ocean-going ships and inland waterway boats."

CHAPTER VI

Provisions Amending Book VI

Articles L926-1 to
L926-7

Article L926-1

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L625-2, the words "referred to in Article L432-7 of the Labour Code" are replaced by the words "in regard to information of a confidential nature provided as such".

Article L926-2



(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Article L622-24, the bodies referred to in Article L351-21 of the Labour Code are the local bodies

responsible for allocating unemployment benefit and collecting contributions.

Article L926-3

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Articles L622-24, L622-26, L626-5 to L626-7, L626-20, L625-3, L625-4 and L662-4, the institutions referred to in Article L143-11-4 of the Labour Code are the local institutions responsible for implementing the

insurance scheme covering the risk of non-payment of wages and salaries in the event of court-ordered receivership or liquidation proceedings.

Article L926-4

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Articles L626-5 to L626-7, the institutions governed by Book IX of the Social Security Code are the local occupational, supplemental or occupational benefits pensions institutions which are linked to the national insurance and welfare schemes and are covered by the provisions applicable in the municipality.

Article L926-5

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L626-14, the reference to Article 28 of decree No. 55-22 of 4 January 1955 reforming real-property advertising is replaced by the reference to the provisions applicable in the municipality relating to the advertising of real-property rights other than liens and mortgages.

Article L926-6

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L642-1, the obligation placed on the court to take account of the provisions of 1, 2, 3 and 4 of Article L331-3 of the Rural Code entails the following:

"Observance of the order of priority established between settlement of young farmers and enlargement of farms, bearing in mind the economic and social interest of maintaining the autonomy of the farm to which the application relates;

When farms are enlarged or combined, to take account of the prospects of settlement on a viable farm, the location of the land concerned in relation to the applicant's or applicants' principal place(s) of business, the area of the property covered by the application and the areas already developed by the applicant(s), and by the sitting tenant;

To take into consideration the personal situation of the applicant(s): age, family and business situation and, if applicable, those of the sitting tenant, as well as the number and nature of the jobs involved;

To take account of the registered plan of the farms concerned, either in relation to the principal place of business or with a view to preventing changes of ownership from compromising developments made with the aid of public funds."



Article L926-7

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 194 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

4 of III of Article L643-11 is not applicable.

CHAPTER VII

Provisions Amending Book VII

Article L927-1

Article L927-1

(inserted by Order No. 2005-43 of 20 January 2005 Art. 3 III Official Journal of 22 January 2005 effective 1 February 2005)

For application of Article L711-6 in Mayotte, the government representative in Mayotte is empowered to grant the authorisation provided for in this article to the chamber of commerce and industry of Mayotte through a permanent delegation from the minister in charge of the chambers of commerce and industry.

TITLE III

Provisions applicable in New Caledonia

Articles L931-1 to
L930-7

Article L930-1

(Act No. 2003-706 of 1 August 2003 Art. 116 Official Journal of 2 August 2003)

(Act No. 2003-710 of 1 August 2003 Art. 38 II Official Journal of 2 August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 57 III Official Journal of 26 June 2004)

(Act No. 2005-842 of 26 July 2005 Art. 11 III Official Journal of 27 July 2005)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Without prejudice to the amendments made in the following chapters, the following provisions of the present code are applicable in New Caledonia:

1 Book I, with the exception of Articles L124-1 to L126-1, L131-1 to L131-6, L131-9, L134-1 to L134-17, L145-34 to L145-36, L145-38 and L145-39;

2 Book II, with the exception of Articles L225-245-1, L229-1 to L229-15, L238-6, L244-5 and L252-1 to L252-13; 3 Book III, with the exception of Articles L310-4, L321-1 to L321-38, L322-7 and L322-10;

4 Book V, with the exception of Articles L522-1 to L522-40, L524-12, L524-20 and L524-21;

5 Book VI, with the exception of Articles L622-19, L625-9 and L670-1 to L670-8;

6 Part II of Book VIII.

Article L930-2

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" or "Tribunal d'instance" by "court of first instance".
2. "Tribunal de commerce" or "lay commercial judge" by "joint Tribunal de commerce".
3. "Conseil de prud'hommes" by "employment tribunal".
4. "Official Gazette of Civil and Commercial Announcements" by "Official Gazette of New Caledonia".
5. "Department" or "district" by "New Caledonia" or "province".
6. "Prefect" or "sub-prefect" by "state representative in New Caledonia".

Article L930-3

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 L930-4

Where no changes are made, references in 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 L930-5

References in the provisions of this Code applicable to New Caledonia to provisions of the Employment Code shall only apply there if there is a provision applicable locally which serves the same purpose.

Article L930-6

References to registration in the trades register shall be replaced by references to registration in accordance with regulations applicable in New Caledonia.

Article L930-7

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.

CHAPTER I

Provisions Amending Book I

Articles L931-1 to
L931-19

Article L931-1

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 New Caledonian authority with jurisdiction".

Article L931-2

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 L931-3

In Article L. 131-11, the words "If registered, he shall be struck off from and may not be reinstated on the list of brokers drawn up in accordance with regulations" shall be deleted.

Article L931-4

For the purpose of Article L. 133-6:

1. The words "those which derive from the provisions of Article 1269 of the New 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".

2. The provisions of the final sub-paragraph shall apply in the event of transportation effected on behalf of New Caledonia.

Article L931-5

In Article L. 133-7, the words "customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.

Article L931-6

For the purpose of Articles L. 141-15, L. 143-7, L. 144-1 to L. 144-13 and L. 145-28, a magistrate of the court of first instance may be delegated by the president.

Article L931-7

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 L931-8

In Article L. 144-5, the words "Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Public Health Code" shall be replaced by the words "the Articles of the public health Code applicable in New Caledonia to hospitalisation or confinement with or without the consent of the interested party".

Article L931-9

Article L. 144-11 shall be worded as follows:

"Article L. 144-11. - If, under local regulations, the real estate management contract contains a sliding scale clause, a rent review may be demanded in accordance with the terms of a decision by the local authority with jurisdiction, any agreement to the contrary notwithstanding 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 law."

Article L931-10

Article L. 144-12 shall be worded as follows:



"Article 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 sliding scale 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 L931-11

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

Article L. 145-2 is modified as follows:

I. - In 4, the words:"to the State, to the departments, to the communes, to the public institutions"are replaced with the words"to the State, to the territorial authorities and to the public institutions";

II. - In 6, the words"to the social security fund of the Maison des Artistes et reconnus auteurs d'œuvres graphiques et plastiques, as defined in Article 71 of Annex III of the General Tax Code"are replaced with the words"to the local social security fund for the creators of graphic and plastic arts, as defined in the tax code applicable in the territory".

Article L931-12

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. 313-3 and L. 313-4 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 L931-13

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 residential leases and farming leases"shall be deleted.

Article L931-14

The second sub-paragraph of Article L. 145-18 shall be worded 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 set 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 owners who may but need not have form a freeholders' association, in which case the owner or owners shall be specially authorised to do so on terms laid down by the local authorities with jurisdiction, which shall stipulate the commitments which owners must make as to the type and extent of the work.

Buildings acquired by developers shall only be assigned by mutual agreement, once they have been restored, in accordance with the type specifications approved by the said authorities."

Article L931-15

In Article L. 145-26, the words"the departments"have been replaced by the words"New Caledonia, the provinces".

Article L931-16

Article L. 145-37 shall be worded as follows:

"Article 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 authority of New Caledonia with jurisdiction."

Article L931-17

Article L. 145-43 shall be worded as follows:

"Article L. 145-43 - Traders or artisans who are tenants of premises on which their business is located and who have been accepted on a diversification or promotion traineeship in accordance with the provisions of the Employment Code applicable in New Caledonia shall be released from the obligation to run the business during the said traineeship."



Article L931-18

The third sub-paragraph of Article L. 145-47 shall be deleted.

Article L931-19

In Article L. 145-56, the words "and procedural" shall be deleted.

CHAPTER II

Provisions Amending Book II

Articles L932-6 to
L932-17

Article L932-6

(Order No. 2004-604 of 24 June 2004 Art. 57 III Official Journal of 26 June 2004)

In Articles L. 225-177, L. 225-179 and L. 233-11, the words "the publication date of Act No. 2001-420 of 15 May 2001 relating to the new economic regulations" are 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 L932-7

(Order No. 2004-274 of 25 March 2004 Art. 48 V Official Journal of 27 March 2004)

In Articles L. 223-18, L. 225-36 and L. 225-65, the words "in the same Department or an adjacent Department" are replaced by the words "in New-Caledonia".

Article L932-8

The final sub-paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

Article L932-9

Article 225-67 IV (4) and Article L. 225-77 III (4) shall be deleted.

Article L932-10

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 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 L932-11

(Order No. 2004-604 of 24 June 2004 Art. 57 III Official Journal of 26 June 2004)

In Articles L. 225-105, L. 225-230 and L. 225-231, the words "or failing this the staff delegates" are inserted after the words "the works council".

Article L932-12

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 L932-13

Article L. 225-239 shall be worded as follows:

"Article L. 225-239 - The auditors' fees shall be borne by the company and shall be set as determined by decision of congress."

Article L932-14

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 tax Code applicable in New Caledonia to net capital gains from disposals for money consideration of securities and corporate rights".

Article L932-15

The final sub-paragraph of Article L. 228-36 shall be deleted.

Article L932-16

In Article L. 233-24, the words "or of Article 97 VII" shall be deleted.

Article L932-17

The second sub-paragraph of Article L. 251-7 shall be deleted.

CHAPTER III

Provisions Amending Book III

Articles L933-1 to
L933-8



Article L933-1

The second and third sub-paragraphs of Article L. 310-1 shall be deleted.

Article L933-2

The second and third sub-paragraphs of Article L. 310-2 I and II shall be deleted.

Article L933-3

The second sub-paragraph of Article L. 310-3 I shall be deleted.

Article L933-4

Article L. 310-5 (1), (2) and (3) shall be deleted.

Article L933-5

In Article L. 322-1, the words "Article 53 of Law No 91-650 of 9 July 1991 on the reform of enforcement procedures and Article 945 of the Code of Civil Procedure" shall be replaced by the words "the provisions of civil procedure applicable in New Caledonia to the sale of inherited chattels".

Article L933-6

Article L. 322-11 shall be worded as follows:

"Article 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 L933-7

Article L. 322-15 shall be worded as follows:

"Article 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 officer other than a sworn broker to proceed therewith."

Article L933-8

Article L. 322-16 shall be worded as follows:

"Article 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."

CHAPTER V

Provisions Amending Book V

Articles L935-1 to
L935-9

Article L935-1

In Article L. 511-55, the word "destitution" shall be deleted.

Article L935-2

Article L. 511-60 shall be worded as follows:

"Article L. 511-60 - The method of application of the provisions of this sub-section, 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 responsible, shall be determined by decree of the Conseil d'Etat."

Article L935-3

In Article L. 511-61, the words "or the territorial authorities" shall be replaced by the words "the municipalities, the provinces or New Caledonia".

Article L935-4

The second sub-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 L935-5

In Articles L. 523-8 and L. 524-6, the words "Articles 1426 to 1429 of the New Code of Civil Procedure" shall be replaced by the words "provisions of civil procedure applicable locally to offers of payment and consignations".

Article L935-6

The first sub-paragraph of Article L. 524-19 shall be worded as follows:



"The duty to be collected by the clerk of the joint Tribunal de commerce shall be set by decree."

Article L935-7

In the first sub-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 L935-8

In Article L. 525-9 II, the words "the preferential right referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words "the preferential right organised for the benefit of the social welfare fund of the territory".

Article L935-9

Article L. 525-18 shall be amended as follows:

I. - In no. 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. - No. 2 shall be worded as follows:

"Ocean-going ships and inland waterway boats."

CHAPTER VI

Provisions Amending Book VI

Articles L936-1 to
L936-13

Article L936-1

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The implementing measures provided for in Articles L621-4, L625-1, L626-3, L626-6, L626-14 and L626-16 are determined by the proper authority in New Caledonia.

Article L936-2

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In the first paragraph of Article L611-1, "the order of the government representative in the region" is replaced by "a decision of the government of New Caledonia".

Article L936-3

For application of Article L612-1, the auditors and their deputies are appointed under, and are subject to, the locally applicable regulations.

Article L936-4

The third paragraph of Article L612-1 is deleted.

Article L936-5

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L621-2, the words "in each department", are replaced by the words "in New Caledonia".

Article L936-6

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L625-2, the words "referred to in Article L432-7 of the Labour Code" are replaced by the words "in regard to information of a confidential nature provided as such".

Article L936-7

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Article L622-24, the bodies referred to in Article L351-21 of the Labour Code are the New Caledonian bodies responsible for allocating unemployment benefit and collecting contributions.



Article L936-8

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Articles L622-24, L622-26, L625-3, L625-4, L626-5 to L626-7, L626-20 and L662-4, the institutions referred to in Article L143-11-4 of the Labour Code are the New Caledonian institutions responsible for implementing the insurance scheme covering the risk of non-payment of wages and salaries in the event of court-ordered receivership or liquidation proceedings.

Article L936-9

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Articles L626-5 to L626-7, the institutions governed by Book IX of the Social Security Code are the occupational, supplemental or occupational benefits pensions institutions which are linked to the national insurance and welfare schemes and are covered by the provisions applicable in New Caledonia.

Article L936-10

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L621-72, the reference to Article 28 of decree No. 55-22 of 4 January 1955 reforming real-property advertising is replaced by the reference to the locally applicable provisions relating to the advertising of real-property rights other than liens and mortgages.

Article L936-11

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L642-1, the obligation placed on the court to take account of the provisions of 1, 2, 3 and 4 of Article L331-3 of the Rural Code entails the following:

"Observance of the order of priority established between settlement of young farmers and enlargement of farms, bearing in mind the economic and social interest of maintaining the autonomy of the farm to which the application relates;

When farms are enlarged or combined, to take account of the prospects of settlement on a viable farm, the location of the land concerned in relation to the applicant's or applicants' principal place(s) of business, the area of the property covered by the application and the areas already developed by the applicant(s), and by the sitting tenant;

To take into consideration the personal situation of the applicant(s): age, family and business situation and, if applicable, those of the sitting tenant, as well as the number and nature of the jobs involved;

To take account of the registered plan of the farms concerned, either in relation to the principal place of business or with a view to preventing changes of ownership from compromising developments made with the aid of public funds."

Article L936-12

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

4 of III of Article L643-11 is not applicable.

Article L936-13



(Law No 2003-7 of 3 January 2003 Article 49 (I) Official Gazette of 4 January 2003)

The first paragraph of Article L. 622-2 is supplemented by a sentence worded as follows: "One or more liquidators may be appointed in the same way to assist him."

CHAPTER VIII

Provisions Amending Book VIII

Article L938-1

Article L938-1

(inserted by Order No. 2004-604 of 24 June 2004 Art. 57 III Official Journal of 26 June 2004)

For application of Articles L. 822-2 to L. 822-7 in New-Caledonia, the terms enumerated below are replaced as follows:

- 1."regional registration committee"by"territorial registration committee";
- 2."regional court of accounts"by"territorial court of accounts";
- 3."regional disciplinary committee"by"territorial disciplinary committee".

TITLE IV

Provisions applicable in French Polynesia

Articles L941-1 to
L940-8

Article L940-1

(Act No. 2003-706 of 1 August 2003 Art. 116 Official Journal of 2
August 2003)

(Act No. 2003-710 of 1 August 2003 Art. 38 II Official Journal of 2
August 2003)

(Order No. 2004-604 of 24 June 2004 Art. 66 Official Journal of 26
June 2004)

Without prejudice to the adaptations referred to in the following Chapters, the following provisions of the present code are applicable 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. 822-1 to L. 822-10, 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, 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.

The foregoing provisions are those in force on the publication date of incorporating act 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 incorporating act.

Article L940-2

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"court of first instance".
2. "Tribunal de commerce"or"lay commercial judge"by"joint Tribunal de commerce".
3. "Conseil de prud'hommes"by"employment tribunal".
4. "Official Gazette of Civil and Commercial Announcements"by"Official Gazette of French Polynesia".
5. "Department"or"district"by"territory of French Polynesia".
6. "Prefect"or"sub-prefect"by"state representative in the territory".

Article L940-3

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 L940-4

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 L940-5

References in the provisions of this Code applicable to French Polynesia to provisions of the



Employment Code shall only apply there if there is a provision applicable locally which serves the same purpose.

Article L940-6

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The referrals to provisions of a regulatory nature made by the provisions of the present code which are applicable in French Polynesia are replaced by referrals to deliberations of the competent authority in French Polynesia, without prejudice to the provisions of the following Chapters.

Article L940-7

References to registration in the trades register shall be replaced by references to registration in accordance with regulations applicable in French Polynesia.

Article L940-8

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.

CHAPTER I

Provisions Amending Book I

Articles L941-1 to
L941-19

Article L941-1

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 National Intellectual Property Institute.

Article L941-2

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 council of ministers of French Polynesia".

Article L941-3

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 L941-4

For the purpose of Article L. 133-6:

1. The words "those which derive from the provisions of Article 1269 of the New 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".

2. The provisions of the final sub-paragraph shall apply in the event of transportation effected on behalf of French Polynesia.

Article L941-5

In Article L. 133-7, the words "customs duty, tax, expenses and fines connected with a transport operation" shall be deleted.

Article L941-6

For the purpose of Articles L. 141-15, L. 143-7, L. 144-1 to L. 144-13 and L. 145-28, a magistrate of the court of first instance may be delegated by the president.

Article L941-7

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 French Polynesia".

Article L941-8

In Article L. 144-5, the words "Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Public Health Code" shall be replaced by the words "the Articles of the public health Code applicable in the territory to hospitalisation or confinement with or without the consent of the interested party".

Article L941-9

Article L. 144-11 shall be worded as follows:

"Article L. 144-11. - If, under local regulations, the real estate management contract contains a sliding scale clause, a rent review may be demanded in accordance with the terms of a decision of the assembly of French Polynesia, any agreement to the contrary notwithstanding 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 law."



Article L941-10

Article L. 144-12 shall be worded as follows:

"Article 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 sliding scale 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 L941-11

Article L. 145-2 shall be amended as follows:

1. In no. 4, the words "to the state, departments, municipalities and public establishments" shall be replaced by the words "to the state, territorial authorities and public establishments".

II. In no. 6, the words "to the social security fund of the centre of artists and recognised authors of graphic and plastic works as defined in Article 71 of Annex II to the General Tax Code" shall be replaced by the words "to the national insurance fund and recognised authors of graphic and plastic works as defined in the tax Code applicable in the territory".

Article L941-12

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. 313-3 and L. 313-4 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 L941-13

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 residential leases and farming leases" shall be deleted.

Article L941-14

The second sub-paragraph of Article L. 145-18 shall be worded 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 set 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 owners who may but need not have formed a freeholders' association, in which case the owner or owners shall be specially authorised to do so on terms laid down by the local authorities with jurisdiction, which shall stipulate the commitments which owners must make as to the type and extent of the work.

Buildings acquired by developers shall only be assigned by mutual agreement, once they have been restored, in accordance with the type specifications approved by the said authorities."

Article L941-15

In Article L. 145-26, the words "the departments" have been replaced by the words "French Polynesia, the provinces".

Article L941-16

Article L. 145-37 shall be worded as follows:

"Article 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 L941-17

Article L. 145-43 shall be worded as follows:

"Article L. 145-43 - Traders or artisans who are tenants of premises on which their business is located and who have been accepted on a diversification or promotion traineeship in accordance with the provisions of the Employment Code applicable in French Polynesia shall be released from the obligation to run the business during the said traineeship."



Article L941-18

The third sub-paragraph of Article L. 145-47 shall be deleted.

Article L941-19

In Article L. 145-56, the words "and procedural" shall be deleted.

CHAPTER II

Provisions Amending Book II

Articles L942-1 to
L942-15

Article L942-1

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 L942-2

For the purpose of Book II, auditors and their deputies shall be selected and shall perform their duties in accordance with regulations in force in French Polynesia.

Article L942-3

Article L. 225-21 III (4) and (5) shall be deleted:

Article L942-4

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 undertakings for collective investment in transferable securities creating joint private debt funds shall be deleted.

Article L942-5

In Articles L. 225-36 and L. 225-65, the words "in the same department or a neighbouring department" shall be replaced by the words "in French Polynesia".

Article L942-6

The final sub-paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

Article L942-7

Article 225-67 IV (4) and Article L. 225-77 III (4) shall be deleted.

Article L942-8

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 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 L942-9

In Article L. 225-230, the words "or, where there is none, the staff delegates" shall be inserted after the words "works council".

Article L942-10

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 L942-11

The second sub-paragraph of Article L. 225-239 shall be deleted.

Article L942-12

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 tax Code applicable in the territory to net capital gains from disposals for money consideration of securities and corporate rights".

Article L942-13

The final sub-paragraph of Article L. 228-36 shall be deleted.

Article L942-14

In Article L. 233-24, the words "or of Article 97 VII" shall be deleted.

Article L942-15

The second sub-paragraph of Article L. 251-7 shall be deleted.



CHAPTER III
Provisions Amending Book III

Articles L943-1 to
L943-8

Article L943-1

The second and third sub-paragraphs of Article L. 310-1 shall be deleted.

Article L943-2

The second and third sub-paragraphs of Article L. 310-2 I and II shall be deleted.

Article L943-3

The second sub-paragraph of Article L. 310-3 I shall be deleted.

Article L943-4

Article L. 310-5 (1), (2) and (3) shall be deleted.

Article L943-5

In Article L. 322-1, the words "Article 53 of Law No 91-650 of 9 July 1991 on the reform of enforcement procedures and Article 945 of the Code of Civil Procedure" shall be replaced by the words "the provisions of civil procedure applicable locally to the sale of inherited chattels".

Article L943-6

Article L. 322-11 shall be worded as follows:

"Article 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 L943-7

Article L. 322-15 shall be worded as follows:

"Article 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 officer other than a sworn broker to proceed therewith."

Article L943-8

Article L. 322-16 shall be worded as follows:

"Article 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."

CHAPTER IV
Provisions Amending Book IV

Articles L945-1 to
L945-9

Article L945-1

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 L945-2

In Article L. 511-55, the word "destitution" shall be deleted

Article L945-3

Article L. 511-60 shall be worded as follows:

"Article L. 511-60 - The method of application of the provisions of this sub-section shall be determined by decree of the territorial authority with jurisdiction."

Article L945-4

In Article L. 511-61, the words "or the territorial authorities" shall be replaced by the words "or the municipalities or French Polynesia".

Article L945-5

The second sub-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 L945-6

In Articles L. 523-8 and L. 524-6, the words "Articles 1426 to 1429 of the New Code of Civil Procedure" shall be replaced by the words "provisions of civil procedure applicable locally to offers of payment and consignations".

Article L945-7

In the first sub-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 L945-8

In Article L. 525-9 II, the words "the preferential right referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words "the preferential right organised for the benefit of the social welfare fund of the territory".

Article L945-9

Article L. 525-18 shall be amended as follows:

I. - In no. 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. - No. 2 shall be worded as follows:

"Ocean-going ships and inland waterway boats."

CHAPTER V

Provisions Amending Book V

Articles L946-1 to
L946-13

Article L946-1

By way of exception from Article L. 940-6, the reference to provisions of a regulatory nature referred to in Article L. 621-5 shall be maintained.

Article L946-2

Article L. 611-1 shall be amended as follows:

"I - In the first sub-paragraph, the order of the state representative in the region shall be replaced by a decision by the government of French Polynesia.

II - In the fourth sub-paragraph, 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 L946-3

For the purpose of Article L. 621-1, auditors and their deputies shall be selected and shall perform their duties in accordance with local regulations.

Article L946-4

The third sub-paragraph of Article L. 612-1 shall be deleted.

Article L946-5

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 L946-6

In Article L. 621-5, the words "in each department" shall be replaced by the words "in French Polynesia".

Article L946-7

In Article L. 621-36, the words "referred to in Article L. 432-7 of the Employment Code" shall be replaced by the words "with respect to information of a confidential nature and data per se".

Article L946-8

For the purpose of Article L. 621-43, the agencies referred to in Article L. 351-21 of the Employment Code shall be local agencies in charge of the service responsible for paying unemployment benefit and recovering contributions.

Article L946-9

For the purpose of Articles L. 621-43, L. 621-46, L. 621-60, L. 621-78, L. 621-126, L. 621-127 and L. 627-5, the institutions referred to in Article L. 143-11-4 of the Employment 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 administrative order or court-ordered winding-up.

Article L946-10

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 L946-11

In Article L. 621-72, 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 preferential rights and mortgages.

Article L946-12

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 Code shall be extended to include the following requirements:

"To observe the order of priority established between installing young farmers and extending shares, taking account of the economic and social benefits of maintaining the independence of the holding to which the application refers.

To take account, where shares 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 shares 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 L946-13

(Law No 2003-7 of 3 January 2003 Article 49 (I) Official Gazette of 4 January 2003)

The first paragraph of Article L. 622-2 is supplemented by a sentence worded as follows: "One or more liquidators may be appointed in the same way to assist him."

TITLE V

Provisions applicable in the islands of Wallis and Futuna

Articles L951-1 to
L950-7

Article L950-1

(Act No. 2003-710 of 1 August 2003 Art. 38 II Official Journal of 2 August 2003)

(Act No. 2004-130 of 11 February 2004 Art. 53 II 2 Official Journal of 12

February 2004) (Order No. 2004-274 of 25 March 2004 Art. 49 V Official Journal of 27 March 2004)

(Act No. 2005-842 of 26 July 2005 Art. 11 III Official Journal of 27 July 2005)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Without prejudice to the amendments made 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 L124-1 to L126-1;

2 Book II, with the exception of Articles L225-245-1, L229-1 to L229-15, L238-6, L244-5 and L252-1 to L252-13; 3 Book III, with the exception of Articles L321-1 to L321-38;

4 Book IV, with the exception of Articles L441-1, L442-1 and L470-6;

5 Book V, with the exception of Articles L522-1 to L522-40, L524-12, L524-20 and L524-21; 6 Book VI, with the exception of Articles L622-19, L625-9, L653-10 and

L670-1 to L670-8; 7 Book VII, with the exception of Articles L711-5, L711-9 and L720-1 to L740-3.



8 Book VIII, with the exception of Articles L812-1 to L813-1.

Article L950-2

(Order No. 2004-274 of 25 March 2004 Art. 49 VI Official Journal of 27 March 2004)

For application of the present code in the Wallis and Futuna Islands, the terms enumerated below are replaced as follows:

1. "Tribunal de grande instance" or "Tribunal d'instance" by "court of first instance";
2. "Commercial Court" or "justice consulaire" by "court of first instance ruling on commercial matters";
3. "conseil de prud'hommes" by "industrial tribunal";
4. "Bulletin officiel des annonces civiles et commerciales" by "Official Journal of the Territory";
5. "Department" or "arrondissement" by "territory";
6. "prefect" or "sub- prefect" by "government representative in the territory";
7. "mayor" by "constituency leader".

Article L950-3

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 L950-4

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 to it shall be replaced by references to local provisions which serve the same purpose.

Article L950-5

References in the provisions of this Code applicable to the Wallis and Futuna Islands to provisions of the Employment Code shall only apply there if there is a provision applicable locally which serves the same purpose

Article L950-6

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 L950-7

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.

CHAPTER I

Provisions Amending Book I

Articles L951-1 to
L951-14

Article L951-1

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 L951-2

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 L951-3

In Article L. 133-6, the words "those which derive from the provisions of Article 1269 of the New 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 L951-4

For the purpose of Articles L. 141-15, L. 143-7, L. 144-1 to L. 144-13 and L. 145-28, a magistrate of the court of first instance may be delegated by the president.

Article L951-5

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 in the territory".

Article L951-6

In Article L. 144-5, the words"Articles L. 3211-2 and L. 3212-1 to L. 3212-12 of the Public Health Code"shall be replaced by the words"the Articles of the public health Code applicable in the territory to hospitalisation or confinement with or without the consent of the interested party".

Article L951-7

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

Article L. 145-2 is modified as follows:

I. - In 4, the words:"to the State, to the departments, to the communes, to the public institutions"are replaced with the words"to the State, to the territorial authorities and to the public institutions";

II. - In 6, the words"to the social security fund of the Maison des Artistes et reconnus auteurs d'œuvres graphiques et plastiques, as defined in Article 71 of Annex III of the General Tax Code"are replaced with the words"to the local social security fund for the creators of graphic and plastic arts, as defined in the tax code applicable in the territory".

Article L951-8

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. 313-3 and L. 313-4 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 L951-9

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 residential leases and farming leases"shall be deleted.

Article L951-10

The second sub-paragraph of Article L. 145-18 shall be worded 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 set 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 owners who may but need not have form a freeholders' association, in which case the owner or owners shall be specially authorised to do so on terms laid down by the state representative, who shall stipulate the commitments which owners must make as to the type and extent of the work. Buildings acquired by developers shall only be assigned by mutual agreement, once they have been restored, in accordance with the type specifications approved by the state representative."

Article L951-11

In Article L. 145-26, the words"the territory"shall be inserted after the words"the state, the departments, the municipalities".

Article L951-12

(Order No. 2004-604 of 24 June 2004 Art. 58 III Official Journal of 26 June 2004)

The first paragraph of Article L. 145-34 is 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 government 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 L951-13

Article L. 145-35 shall be amended as follows:

I. - In the first sub-paragraph, the word "departmental" shall be deleted. II. - The final sub-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 L951-14

Article L. 145-43 shall be worded as follows:

"Article L. 145-43 - Traders or artisans who are tenants of premises on which their business is located and who have been accepted on a diversification or promotion traineeship in accordance with the provisions of the Employment Code applicable in the territory shall be released from the obligation to run the business during the said traineeship."

CHAPTER II

Provisions Amending Book II

Articles L952-1 to
L952-10

Article L952-1

(Order No. 2004-604 of 24 June 2004 Art. 58 III Official Journal of 26 June 2004)

In Articles L. 225-177, L. 225-179 and L. 233-11, the words "the publication date of Act No. 2001-420 of 15 May 2001 relating to the new economic regulations" are 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 L952-2

(Order No. 2004-274 of 25 March 2004 Art. 49 VII Official Journal of 27 March 2004)

In Articles L. 223-18, L. 225-36 and L. 225-65, the words "in the same Department or an adjacent Department" are replaced by the words "in the territory".

Article L952-3

The final sub-paragraph of Article L. 225-43 and of Article L. 225-91 shall be deleted.

Article L952-4

(Order No. 2004-604 of 24 June 2004 Art. 62 II Official Journal of 26 June 2004)

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" are replaced by the words "tax deductions under the provisions of the tax code applicable in the territory relative 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 L952-5

(Order No. 2004-604 of 24 June 2004 Art. 58 III Official Journal of 26 June 2004)

In Articles L. 225-105, L. 225-230 and L. 225-231, the words "the works council" are replaced by the words "the staff delegates".

Article L952-6

In Articles L. 225-231, L. 232-3, L. 232-4, L. 234-1 and L. 234-2, the words "works council" shall be replaced by the words "staff delegates".

Article L952-7

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 tax Code applicable in the territory to net capital gains from disposals for money consideration of securities and corporate rights".

Article L952-8

The final sub-paragraph of Article L. 228-36 shall be deleted.

Article L952-9

In Article L. 233-24, the words "or of Article 97 VII" shall be deleted.

Article L952-10



The second sub-paragraph of Article L. 251-7 shall be deleted.

CHAPTER III
Provisions Amending Book III

Articles L953-1 to
L953-3

Article L953-1
(Order No. 2004-274 of 25 March 2004 Art. 49 VIII Official Journal of 27
March 2004)
(Order No. 2004-274 of 25 March 2004 Art. 49 VIII Official Journal of 27
March 2004)
III of Article L. 310-2 and 6 of Article L. 310-5 are deleted.

Article L953-2
(Order No. 2004-274 of 25 March 2004 Art. 49 VIII Official Journal of 27
March 2004)
(Order No. 2004-274 of 25 March 2004 Art. 49 VIII Official Journal of 27
March 2004)

In Article L. 322-1, the words "to Article 53 of Act No. 91-650 of 9 July 1991 relating to the reform of the enforcement procedures and Article 945 of the Code of Civil Procedure" are replaced by the words "to the civil provisions applicable in the territory to the sale of personal property deriving from an inheritance".

Article L953-3
(inserted by Order No. 2004-274 of 25 March 2004 Art. 49 VIII Official Journal of 27 March 2004)

The second paragraph of Article L. 322-9 is worded as follows:

"They shall comply with the provisions of the tax Code applicable in the territory to public sales and auctions."

CHAPTER IV
Provisions Amending Book IV

Articles L954-1 to
L954-7

Article L954-1
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21
August 2004)
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21
August 2004)

In the first paragraph of Article L. 430-2, the word "three" is replaced by the word "two". The fourth and fifth paragraphs of the said article are deleted.

Article L954-2
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21
August 2004)
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21
August 2004)

In Article L. 430-3, the last sentence of the first paragraph is deleted. In the third paragraph of that same article, the words ", or the total or partial referral of an operation of community-wide dimensions," are deleted.

Article L954-3
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21
August 2004)
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21
August 2004)

The last paragraph of Article L. 441-2 is 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, or at the request of the public prosecutor or as a matter of course. 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 judgment of nonsuit 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 L954-4

(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21 August 2004)
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21 August 2004)

In the second paragraph of Article L. 442-2, the word "any" is inserted before the words "turnover tax".

Article L954-5

(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21 August 2004)
(Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21 August 2004)

The last paragraph of Article L. 442-3 is 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, or at the request of the public prosecutor or as a matter of course. 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 judgment of nonsuit 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 L954-6

(inserted by Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21 August 2004)

In Article L. 442-7, the words "or in-house purchasing facility for the benefit of staff" are deleted.

Article L954-7

(inserted by Order No. 2004-823 of 19 August 2004 Art. 3 II 2 Official Journal of 21 August 2004)

Article L. 443-1 is amended as follows:

I. - In 1, the words "referred to in Articles L. 326-1 to L. 326-3 of the Rural Code" are replaced by the words "as provided for in the rural law applicable in the territory";

II. - In 3, the words "in Article 403 of the General Tax Code" are replaced by the words "by the provisions of the Tax Code applicable in the territory."

III. - 4. is worded as follows:

"4. Seventy-five days after the date of delivery for purchases of alcoholic beverages subject to consumption duty under the Tax Code applicable in the territory".

CHAPTER V

Provisions Amending Book V

Articles L955-1 to
L955-7

Article L955-1

In Article L. 511-61, the words "or the territorial authorities" shall be replaced by the words "or the Wallis and Futuna Islands".

Article L955-2

The second sub-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 the Wallis and Futuna Islands."

Article L955-3

In Articles L. 523-8 and L. 524-6, the words "Articles 1426 to 1429 of the New Code of Civil Procedure" shall be replaced by the words "provisions of civil procedure applicable locally to offers of payment and consignations".

Article L955-4

The first sub-paragraph of Article L. 524-19 shall be worded as follows:

"The sum in duty to be collected by the clerk of the court of first instance ruling on commercial matters shall be set by decree."

Article L955-5

In the first sub-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 L955-6

In Article L. 525-9 II, the words "the preferential right referred to in Article L. 243-4 of the Social Security Code" shall be replaced by the words "the preferential right organised for the benefit of the social welfare fund of the territory".

Article L955-7

Article L. 525-18 shall be amended as follows:

I. - In no. 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. - No. 2 shall be worded as follows:

"Ocean-going ships and inland waterway boats."

CHAPTER VI

Provisions Amending Book VI

Articles L956-1 to
L956-9

Article L956-1

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The implementing measures provided for in Articles L625-1, L626-3, L626-5 to L626-7, L626-14 and L626-16 are determined by the territorial assembly.

Article L956-2

(Act No. 2005-845 of 26 July 2005 Art. 195 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L625-2, the words "referred to in Article L432-7 of the Labour Code" are replaced by the words "in regard to information of a confidential nature provided as such".

Article L956-3

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Article L622-24, the bodies referred to in Article L351-21 of the Labour Code are the local bodies responsible for allocating unemployment benefit and collection of contributions.

Article L956-4

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Articles L622-24, L622-26, L625-3, L625-4, L626-5 to L626-7, L626-20 and L662-4, the institutions referred to in Article L143-11-4 of the Labour Code are the local institutions responsible for implementing the insurance scheme covering the risk of non-payment of wages and salaries in the event of court-ordered receivership or liquidation proceedings.

Article L956-5

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

For application of Articles L626-5 to L626-7, the institutions governed by Book IX of the Social Security Code are

the local occupational, supplemental or occupational benefits pensions institutions which are linked to the national insurance and welfare schemes and are covered by the provisions applicable in the Wallis and Futuna Islands.

Article L956-6

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without



prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L626-14, the reference to Article 28 of decree No. 55-22 of 4 January 1955 reforming real-property advertising is replaced by the reference to the provisions applicable in the territory relating to the advertising of real-property rights other than liens and mortgages.

Article L956-7

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

In Article L642-2, the obligation placed on the court to take account of the provisions of 1, 2, 3 and 4 of Article L331-3 of the Rural Code entails the following:

"Observance of the order of priority established between settlement of young farmers and enlargement of farms, bearing in mind the economic and social interest of maintaining the autonomy of the farm to which the application relates;

When farms are enlarged or combined, to take account of the prospects of settlement on a viable farm, the location of the land concerned in relation to the applicant's or applicants' principal place(s) of business, the area of the property covered by the application and the areas already developed by the applicant(s), and by the sitting tenant;

To take into consideration the personal situation of the applicant(s): age, family and business situation and, if applicable, those of the sitting tenant, as well as the number and nature of the jobs involved;

To take account of the registered plan of the farms concerned, either in relation to the principal place of business or with a view to preventing changes of ownership from compromising developments made with the aid of public funds."

Article L956-8

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

The following sentence is inserted after the first sentence of the first paragraph of II of Article L641-1: "He may likewise be assisted by one or more liquidators."

Article L956-9

(Act No. 2003-7 of 3 January 2003 Art. 49 III Official Journal of 4 January 2003)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

4 of III of Article L643-11 is not applicable.

CHAPTER VII

Provisions Amending Book VII

Articles L957-1 to
L957-3

Article L957-1

In Articles L. 711-2 and 711-4, the word "government" shall be replaced by the words "state representative in the territory".

Article L957-2

In the third sub-paragraph of Article L. 711-6, the words "or the municipality" shall be replaced by the words "or the territory".

Article L957-3

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 tax Code applicable in the Wallis and Futuna Islands".

CHAPTER VIII



Provisions Amending Book VIII

Articles L958-1 to
L958-2

Article L958-1

(Act No. 2005-845 of 26 July 2005 Art. 196 II Official Journal of 27 July 2005 effective 1 January 2006 without prejudice to Art. 190)

Articles L814-1 to L814-5 are applicable insofar as they concern court-appointed administrators.

Article L958-2

(inserted by Order No. 2004-604 of 24 June 2004 Art. 58 III Official Journal of 26 June 2004)

For 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 committee" by "territorial registration committee";
2. "regional court of accounts" by "territorial court of accounts of New-Caledonia";
3. "regional disciplinary committee" by "territorial disciplinary committee".