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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

Problems for undertakings

**Articles L611-1 to
L620-2**

TITLE I

Prevention and amicable settlement of problems for undertakings

**Articles L611-1 to
L612-5**

CHAPTER I

Approved prevention groups and amicable settlement

Articles L611-1 to
L611-6

Article L611-1

Any commercial company and any legal person governed by private law may join an approved prevention group formed by order of the Government representative in their region.

The object of such a group is to supply its members with a confidential analysis of certain accounting and financial information which they undertake to send to it on a regular basis.

Where the group notes signs of difficulty, it shall inform the head of the undertaking and may suggest expert intervention.

At the request of the Government representative, the competent Government authorities shall provide assistance to approved prevention groups. The Bank of France may also be asked to give an opinion on the financial situation of member undertakings, according to agreed terms and conditions. Approved prevention groups may also obtain direct or indirect assistance from local government authorities, particularly pursuant to Articles 5, 48 and 66 of Law no. 82-213 of 2 March 1982 (as amended) relating to the rights and liberties of municipalities, departments and regions.

Approved prevention groups shall be empowered to enter into agreements, particularly with credit institutions and insurance companies, for the benefit of their members.

Article L611-2

Where it becomes apparent from any deed, document or procedure that a commercial company, economic interest group or individual, commercial or artisanal undertaking is in difficulties of such a nature as to threaten its continued operation, its directors or managers may be summoned by the Presiding Judge of the Tribunal de commerce to consider measures to rectify the situation.

At the end of the meeting, the Presiding Judge may, notwithstanding any law or regulation to the contrary, obtain such information from the auditors, staff members and representatives, public Government authorities, social security and welfare organisations and departments responsible for the centralisation of banking risks and payment issues as shall provide him with precise information regarding the debtor's economic and financial situation.

Article L611-3

Without prejudice to the power of the Presiding Judge of the Tribunal de commerce to appoint a special representative whose duties he shall determine, an amicable settlement procedure is hereby instituted which shall be open to any commercial or artisanal undertaking which, while not insolvent, is in legal, economic or financial difficulties or has needs that cannot be covered by such financing as would be appropriate to the means and prospects of the undertaking in question.

The representative of the undertaking must refer the matter to the Presiding Judge of the Tribunal de commerce with a statement of its financial, economic and social situation, its financing requirements and the means at its disposal.

In addition to the powers attributed to him by the second sub-paragraph of Article L.611-2, the Presiding Judge may instruct an expert of his choice to draw up a report on the undertaking's financial, economic and social situation and, notwithstanding any law or regulation to the contrary, obtain from banking or financial institutions all such information as shall provide him with precise information regarding the financial, economic and social situation of the undertaking in question.

The Presiding Judge shall open the settlement proceedings and shall appoint a mediator for a period not exceeding three months, which may, however, be extended by a maximum of a month at the mediator's request.

Article L611-4

I. - The Presiding Judge shall instruct the mediator, with the object of enabling the undertaking to continue operating and seek an agreement with the creditors.

II. - The Presiding Judge shall pass on the information in his possession, and the results of the expert examination referred to in the third sub-paragraph of Article L.611-3, if appropriate, to the mediator.

III. - If he considers that a temporary stay of proceedings would assist in reaching an agreement, the mediator may apply to the Presiding Judge accordingly. The Judge may, after consulting the principal creditors, make an Order that the proceedings be stayed for a period not exceeding the term of appointment of the mediator.

IV. - Such an Order shall suspend or prevent any legal action by any creditors whose debts came into being before the said decision for:

1. An order that the debtor pay a sum of money;
2. The rescission of a contract on grounds of non-payment of a sum of money.

V. - It shall likewise suspend or prevent any execution of a judgment by the said creditors against movable or fixed assets.

VI. - The periods of time on the expiration of which rights lapse or are rescinded shall consequently be suspended.

VII. - Except with the leave of the Presiding Judge, the Order for the temporary suspension of the proceedings shall prohibit the debtor from paying any debt whatsoever that shall have arisen prior to the said decision, or to repay any security that would discharge any debts incurred prior thereto, or dispose of any property in any way other than would be normal in the course of the business of the undertaking, or to grant any mortgage or charge; any such act on the part of the debtor shall be void. The said prohibition of payment shall not apply to debts arising from a contract of employment.

VIII. - Where an agreement is entered into with the creditors, it must be approved by the Presiding Judge of the Tribunal de commerce and lodged at the Court Registry. Where an agreement is entered into with the principal creditors, the Presiding Judge may likewise approve it and grant the debtor time to pay as provided in Article 1244-1 of the Civil Code for debts not included in the agreement.

IX. - The agreement shall suspend any legal proceedings or individual action for distraint against the debtor's movable or immovable assets with the object of obtaining payment of the debts to which the said proceedings relate, as long as the agreement is in process of implementation. It shall suspend the time limits after which the rights of creditors shall lapse or be rescinded.

X. - In the event of non-performance of the obligations assumed under the terms of the agreement, the Court shall order the rescission thereof and the cancellation of any grant of time to pay.

Article L611-5

The representative of any legal person governed by private law may similarly make an application to the Presiding Judge of the Tribunal de grande instance in the circumstances specified in Articles L.611-2, L.611-3 and L.611-4, who shall exercise the same powers as those attributed by the provisions hereof the Presiding Judge of the Tribunal de commerce.

Article L611-6

Person required to enter into an amicable settlement or having knowledge of the same by reason of their duties shall be bound to maintain professional secrecy, according to the conditions and subject to the penalties laid down in Articles 226-13 and 226-14 of the Penal Code.

Article L612-1

Non-trading legal persons governed by private law which have an economic activity, for which any two of the following criteria: total number of employees, pre-tax turnover, resources or balance-sheet total - exceed a threshold specified by an Order approved by the Conseil d'Etat, must draw up an annual balance sheet, profit and loss account and schedule. The methods to be used to prepare the said documents shall be specified by decree.

The said legal persons must appoint at least one auditor and one deputy auditor from the list referred to in Article L.215-219, who shall carry out their duties according to the conditions laid down in Book II, Titles I and II, subject to the rules that apply to them. The provisions of Article L.242-27 shall apply.

For non-commercial agricultural co-operatives and collectives that do not use registered auditors, this obligation shall be satisfied by the use of the services of an organisation approved pursuant to Article 527-1 of the Rural Code. The conditions of application of this provision shall be specified by an order approved by the Conseil d'Etat.

The penalties laid down by Articles L.242-8 shall apply to any directors of legal persons referred to in the first sub-paragraph of this Article who fail to draw up an annual balance sheet, profit and loss account and schedule.

The penalties laid down by Articles L.242-25 and L.242-28 shall likewise apply to such directors.

Even if the thresholds referred to in the first sub-paragraph are not attained, non-trading legal persons governed by private law which have an economic activity may appoint an auditor and a deputy auditor according to the same conditions as those specified in the second sub-paragraph. In any such case, the auditor and deputy auditor shall be subject to the same obligations and liabilities and shall exercise the same powers as if they had been appointed pursuant to the first sub-paragraph.

Article L612-2

Non-trading legal persons governed by private law which have an economic activity whose total number of employees or pre-tax turnover exceeds a threshold specified by an Order approved by the Conseil d'Etat shall be required to draw up a statement of realisable and disposable assets (excluding current assets) and enforceable debts, a provisional profit and loss account and financing table and a financing plan.

The frequency and time limits that shall apply to the preparation of the said documents, and the methods to be used, shall be fixed by decree.

The said documents shall be analysed in written reports on the evolution of the legal person, drawn up by the body responsible for its management. The said documents and reports must be simultaneously sent to the auditor, the works committee and the supervisory body, where one exists.

In the event of non-observance of the provisions of the preceding sub-paragraphs, or if the information contained in the reports referred to in the preceding sub-paragraph shall give rise to any observations on their part, the auditors must indicate the same in a written report which they must send to the body responsible for its management or direction. The said report must also be sent to the works council. Details thereof must be disclosed at the next meeting of the decision-taking body.

Article L612-3

Where during the course of their duties the auditors of a legal person of the type referred to in Article L.612-1 note the existence of facts of such a nature as to threaten the continued operation of the said person, they must inform the directors of the person according to conditions laid down by an Order approved by the Conseil d'Etat.

If no reply is received within fifteen days, or if the reply does not provide any assurance as to continued operation, the auditors must issue a written request to the directors to call a meeting of the governing body of the entity to take a decision on the facts in question. The auditors shall be called to attend the said meeting. The decision of the governing body must be notified to the works council. The auditors must inform the Presiding Judge of the said decision.

In the event of non-observance of these provisions, or if they find that the continued operation of the undertaking remains in jeopardy notwithstanding the decisions taken, the auditors shall draw up a special report which shall be presented at the next general meeting. The said report must be sent to the works council.

If, at the end of the general meeting, the auditors find that the decisions taken do not guarantee continued operation, they shall inform the Presiding Judge of the steps they have taken and shall notify him of the results.

Article L612-4

Any association that shall have received from the Government or its public institutions or local government authorities a subsidy, the amount of which shall be fixed by decree, must draw up an annual balance sheet, profit and loss account and schedule according to methods to be specified by decree.

The said associations must appoint at least one auditor and one deputy auditor from the list referred to in Article L.215-219, who shall carry out their duties according to the conditions laid down in Book II, Titles I and II, subject to the rules that apply to them. The provisions of Article L.242-27 shall apply.

The auditors of the said associations may draw the directors' attention to any fact they may have noted in the course of their duties that is of such a nature as to threaten the continued activity of the association. They may request the chairman to call a meeting of the governing body of the association. The auditors shall be called to attend the said meeting.

In the event of non-observance of these provisions, or if they find that the continued operation of the undertaking

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remains in jeopardy notwithstanding the decisions taken, the auditors shall draw up a special report. They may request that the report be sent to the members of the association or presented at the next general meeting.

Article L612-5

(Law No 2001-420 of 15 May 2001 Article 112 Official Gazette of 16 May 2001)

(Law No 2003-706 of 1 August 2003 Article 123 (I) (5) Official Gazette of 2 August 2003)

The legal representative or, if there is one, the auditor of a non-commercial private-law corporation having a business activity or of an association of the type referred to in Article L. 614-4 shall present to its deliberative body or, if there is no deliberative body, shall attach to the documents sent to its members a report on any agreements entered into, either directly or through an intermediary, between the legal entity and one of its directors or one of its executives.

The same applies to agreements entered into between that legal entity and a company having an indefinitely liable partner, a manager, a director, a general manager, an assistant general manager, a member of the executive board or the supervisory board or a shareholder holding a fraction of the voting rights greater than 10% who is concurrently a director or an executive of the said legal entity.

The deliberative body gives a decision on that report.

A Conseil d'Etat decree lays down the requirements for that report.

An agreement which is not approved nevertheless produces its effects, and the director or the person acting as general manager may be held liable for any consequences of such an agreement which are prejudicial to the legal entity.

The provisions of the present Article are not applicable to current agreements entered into under normal terms and conditions which, given their objective or their financial implications, are of no significance to any of the parties.

TITLE II

Administrative order and winding-up proceedings of undertakings

Articles L621-1 to L620-2

Article L620-1

An administrative order procedure is hereby instituted to safeguard undertakings and enable them to maintain their activities and jobs and calculate their liabilities.

Administrative order shall be effected according to a plan drawn up pursuant to a Court order on completion of a period of observation. The said plan shall provide either for the continuation of the undertaking or for the sale thereof.

An administrative order may be made without a period of observation where the undertaking has ceased all activity or where recovery is clearly impossible.

Article L620-2

The provisions relating to administrative order and liquidation shall apply to any trader, any person registered in the trades register, any farmer and any legal person governed by private law.

Natural persons or legal persons with a maximum of fifty employees and a pre-tax turnover below a threshold to be fixed by an Order approved by the Conseil d'Etat shall have the benefit of the simplified procedure provided for in Section 5 of Chapter I.

CHAPTER I

Administrative order

Articles L621-1 to L621-134

SECTION I

Observation period

Articles L621-1 to L621-61

Subsection 1

Commencement of the procedure

Articles L621-1 to L621-15

Article L621-1

The administrative order procedure shall be open to any undertaking mentioned in Article L.620-2 that shall be unable to meet its liabilities out of its disposable assets.

The debtor must apply for the commencement of the said procedure by no later than fifteen days after becoming insolvent as defined in the preceding sub-paragraph.

Article L621-2

The procedure may likewise be commenced on a summons by a creditor, whatever the nature of the debt. Nevertheless, subject to Articles L.621-14 and L.621-15, the said procedure shall not be commenced against an agricultural undertaking not incorporated in the form of a commercial company unless an application shall first have been made to the Presiding Judge of the Tribunal d'instance for the appointment of a mediator, pursuant to Article L.351-2 of the Rural Code.

The Court may also take charge of the procedure ex officio, or on an application may be made by the Procureur de la République.

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The works council or, if none, the personnel delegates may notify the Presiding Judge or the Procureur de la République of any fact proving that the undertaking is insolvent.

Article L621-3

In the event of default on financial obligations assumed under an amicable settlement as provided either by Article L.611-4 hereof or by Article 351-6 of the Rural Code, the procedure may be commenced on an application by the Procureur de la République, the debtor or a creditor who is a party to the agreement. The Court shall order the rescission of the agreement. The creditors shall recover their debts and security in full, after the deduction of any sums already received.

Article L621-4

The Court shall decide whether the procedure shall be commenced after hearing the debtor and the representatives of the works council, or, if none, the personnel delegate, or duly summoning them to a hearing of the Court in chambers.

It may also hear any person whose statement appears to it to be of assistance.

In the circumstances mentioned in Article L.621-3, it shall give its decision after hearing or duly summoning the mediator in whose presence the agreement was made.

Article L621-5

The competent Court shall be the Tribunal de commerce where the debtor is a trader or registered in the trades register. The Tribunal de grande instance shall have jurisdiction in all other cases. If it is found that the procedure commenced should be extended to one or more other persons, the Court in which the procedure was originally commenced shall remain competent.

An order approved by the Conseil d'Etat shall determine the Court or Courts of each department appointed to hear administrative order proceedings applicable to persons other than those mentioned in the second sub-paragraph of Article L.620-2, and the jurisdiction within which the said Courts shall exercise the powers devolved on them.

Article L621-6

On the making of an administrative order a period of observation shall commence with the object of drawing up a financial and social balance sheet and proposals to enable the undertaking to continue trading or to sell it. If neither of these solutions appears possible, the Court shall make a compulsory liquidation order.

The maximum duration of the observation period, which may be renewed once by decision of the Court, which must state its reasons, on an application by the receiver, the debtor, the Procureur de la République or the Court itself acting ex officio, shall be fixed by an Order approved by the Conseil d'Etat. It may further be extended by the Court as an exceptional measure, stating its reasons, on an application by the Procureur de la République, for a period to be fixed by an Order approved by the Conseil d'Etat.

The Court must draw up the scheme or make a compulsory liquidation order before the end of the observation period it fixes.

Article L621-7

If appropriate, the Court shall fix the date on which the company became insolvent. If the said date cannot be determined, the company shall be deemed to have become insolvent on the date of the judgment holding it so. It may be postponed one or more times, but must not be more than eighteen months earlier than the date of the decision to commence insolvency proceedings.

The date shall be determined ex officio or on an application by the receiver, the creditors' representative, the liquidator or the Procureur de la République. Any application for the date to be changed must be submitted to the Court before the expiration of a period of fifteen days from the date on which the report referred to in Article L.621-141, or the declaration of debts, if a liquidation order is made, is submitted.

Article L621-8

(Law No 2002-73 of 17 January 2002 Article 122 Official Gazette of 18 January 2002)

(Law No 2003-7 of 3 January 2003 Article 40 Official Gazette of 4 January 2003)

In the initial judgment, the court appoints the insolvency judge and two legal agents to act as the administrator and the creditors' representative. It invites the works council or, failing that, the workers' delegates or, failing that, the employees, to designate a representative from among the employees. The employees elect their representative via a one-round secret ballot for a single candidate.

Either at its own initiative, or at the behest of the Public Prosecutor, the court may appoint several administrators and creditors' representatives.

The court-appointed receiver may request the appointment of one or more experts.

The court-appointed receiver shall send the mayor of the commune and the chairman of the public undertaking for intercommunal cooperation, if one exists, a recorded-delivery registered letter? informing them that judicial administration proceedings have been initiated against a company having its registered office in the commune.

When proceedings are brought against a legal entity, no relative of the chief executive or a senior manager, up to the fourth degree inclusive, shall be appointed to any of the functions provided for in the present Article unless such a provision would prevent the appointment of a staff representative.

If no staff representative can be appointed, the chief executive shall draft a report to that effect.

If there is no works council and no workers' delegate, the staff representative shall exercise the functions entrusted to them by the provisions of the first chapter.

Article L621-9

The employees' representative and the employees who appoint him must not have incurred any of the penalties laid down in Articles L.5 and L.6 of the Electoral Code. The employees' representative must be at least eighteen years old.

Any disputes relating to the appointment of the employees' representative shall be referred to the Tribunal d'instance, the decision of which shall be final.

Article L621-10

(Law No 2002-73 of 17 January 2002 Article 122 Official Gazette of 18 January 2002)

(Law No 2003-7 of 3 January 2003 Article 40 Official Gazette of 4 January 2003)

In the initial judgment, the court appoints the insolvency judge and two legal agents to act as the administrator and the creditors' representative. It invites the works council or, failing that, the workers' delegates or, failing that, the employees, to designate a representative from among the employees. The employees elect their representative via a one-round secret ballot for a single candidate.

Either at its own initiative, or at the behest of the Public Prosecutor, the court may appoint several administrators and creditors' representatives.

The court-appointed receiver may request the appointment of one or more experts.

The court-appointed receiver shall send the mayor of the commune and the chairman of the public undertaking for intercommunal cooperation, if one exists, a recorded-delivery registered letter? informing them that judicial administration proceedings have been initiated against a company having its registered office in the commune.

When proceedings are brought against a legal entity, no relative of the chief executive or a senior manager, up to the fourth degree inclusive, shall be appointed to any of the functions provided for in the present Article unless such a provision would prevent the appointment of a staff representative.

If no staff representative can be appointed, the chief executive shall draft a report to that effect.

If there is no works council and no workers' delegate, the staff representative shall exercise the functions entrusted to them by the provisions of the first chapter.

Article L621-11

The receiver and the creditors' representative must keep the insolvency judge and the Procureur de la République informed of the progress of the proceedings. The latter may at any time demand to see any deeds or documents relating to the procedure.

The Procureur de la République must provide the insolvency judge with all such information in his possession as may be of assistance to the proceedings, on demand or ex officio, notwithstanding any laws to the contrary.

Article L621-12

The insolvency judge shall be responsible for ensuring that the proceedings are heard rapidly and that all the relevant interests are protected.

Article L621-13

The insolvency judge shall appoint from one to five supervisors from among such of the creditors as shall apply to him for such an appointment. Where he appoints more than one supervisor, he must ensure that at least one of them is chosen from among the secured creditors and another from among the unsecured creditors.

No relative of the head of the undertaking, or of the directors in the case of a legal person, by blood or marriage to the fourth degree of kinship may be appointed as a supervisor or representative of a legal person appointed as a supervisor.

Supervisors shall assist creditors' representatives in the performance of their duties and the insolvency judge in his task of supervising the administration of the company. They may inspect any documents sent to the receiver and the creditors' representative. They shall be bound by the rules of professional secrecy, subject to the penalties laid down in Article L.226-13 of the Penal Code.

Supervisors shall receive no payment for the performance of their duties. They may be represented by one of their agents or employees, or by a avocat. Supervisors may be dismissed by the Court on the proposal of the insolvency judge or the creditors' representative. They shall be liable for gross negligence only.

Article L621-14

Where a trader, a person registered in the trades register or a farmer dies while insolvent, an application for insolvency proceedings must be made to the Court within a year from the date of death, either on a declaration by an heir, or on a summons by a creditor.

The Court may likewise take charge of the matter ex officio or on an application by the Procureur de la République within the same period of time, having first heard interviewed the heirs or duly summoned them to a hearing.

Article L621-15

I. - The following matters may be referred to the Court only within a year of one of the events hereinafter mentioned, where the said event takes place after the debtor has become insolvent:

1. Deletion from the Register of Commerce and Companies; in the case of a legal person, time shall begin to run from the moment of deletion following publication of the completion of the liquidation proceedings;
2. Cessation of trading, in the case of a person registered in the trades register or a farmer;
3. Publication of the completion of liquidation, in the case of a corporate entity not subject to registration.

II. - An action for the commencement of administrative order or liquidation proceedings against a person, being a member or shareholder of a legal person with unlimited joint and several liability for its debts, may only be commenced

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within a year of the date on which the defendant's withdrawal from the Register of Commerce and Companies is recorded where the legal person became insolvent before the date on which the said withdrawal was recorded.

III. - In all such cases, the Court shall hear the matter ex officio or in accordance with the conditions laid down in Article L.621-2.

Subsection 2 Undertaking during the observation period

Articles L621-16 to
L621-53

Article L621-16

Immediately upon taking up their post, receivers must instruct the head of the undertaking to carry out all such acts as are necessary to protect its rights against its debtors and maintain its production capacity, or must take the appropriate measures themselves if necessary.

Receivers shall be empowered to register on behalf of the undertaking any mortgages, charges, securities or privileges that the head of the company may have omitted to register or renew.

Article L621-17

With effect from the decision to commence insolvency proceedings, any third party holding property belonging to the bankrupt or the insolvent undertaking must on demand send to the receiver, or, failing that, to the creditors' representative, all the accounting documents and books for examination.

Article L621-18

An inventory shall be made of the capital assets at the date of opening of the proceedings.

The absence of an inventory shall not bar actions for the establishment of ownership or for recovery.

Article L621-19

With effect from the decision to commence insolvency proceedings, no director de jure or de facto, whether paid or not, may sell any shares, shares, certificates of entitlement to pecuniary or voting rights, representing their rights in the company in respect of which the decision to commence insolvency proceedings is given, save according to conditions to be fixed by the Court.

Shares and certificates of entitlement to pecuniary or voting rights must be transferred to a special frozen account, opened by the receiver in the owner's name and held by the company or the financial intermediary, as the case may be. No movement on the account may take place without the leave of the insolvency judge.

The receiver shall if appropriate enter a note in the registers of the legal person that directors' shares are frozen.

Article L621-20

During the observation period, the insolvency judge may order that letters addressed to the debtor be sent to the receiver.

The debtor must be informed and may be present when the letters are opened.

Nevertheless, the receiver must immediately return any letters of a personal nature to the debtor.

Article L621-21

The insolvency judge shall fix the remuneration for the duties carried out by the head of the undertaking or the directors of the company.

In the absence of any remuneration, the persons mentioned in the preceding sub-paragraph may obtain subsidies, to be fixed by the insolvency judge, for themselves and their families out of the assets.

Article L621-22

I. - Apart from the powers hereby conferred on them, the duties of the receiver or receivers shall be fixed by the Court.

II. - The Court shall instruct them, jointly or separately:

1. Either to supervise the management operations;
2. Or to assist the debtor in all acts relating to management, or certain of them;
3. Or to administer the undertaking themselves, in whole or in part.

III. - In the course of their duties, receivers must observe and perform the legal and contractual obligations undertaken by the head of the undertaking.

IV. - The Court may at any time vary the receivers' instructions at their own request, or at that of the creditors' representatives or the Procureur de la République, or ex officio.

V. - Receivers may operate under their signature any bank or Giro accounts owned by the debtor where the latter is subject to the prohibitions set out in Articles 65-2 and 68, third sub-paragraph, of the Decree of 30 October 1935 unifying the law relating to cheques.

Article L621-22-1

(inserted by Law No. 2003-7 of 3 January 2003 Article 42 Official Gazette of 4 January 2003)

The debtor's auditor shall not be entitled to raise the issue of professional secrecy against the court-appointed receiver's auditor in connection with the provision of all information or documents relating to the movements in the bank or post office accounts opened in the name of the debtor.

Article L621-23

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The debtor shall continue to carry out such acts of disposal and administration of assets and to exercise such rights and actions as shall not be within the remit of the receiver.

Furthermore, subject to the provisions of Articles L.621-24 and L.621-28, acts of ordinary management by the debtor alone shall be deemed valid vis-à-vis third parties acting in good faith.

Article L621-24

The judgment commencing the proceedings shall automatically prohibit payment of any debts arising prior thereto. The said prohibition shall not prevent the off-setting of inter-related debts.

The insolvency judge may grant the head of the firm or the receiver leave to carry out an act of disposal not forming part of the ordinary management of the undertaking, to grant a mortgage or charge or to enter into settlements or amicable settlements.

The insolvency judge may also grant them leave to pay debts arising before the date of the judgement, to withdraw a security or an article legitimately retained, where the said withdrawal is required to enable the undertaking to continue trading.

Any act or payment in breach of the provisions of this Article shall be cancelled at the request of any interested party if submitted within three years of the completion of the said act or payment of the said debt. Where the act is published, the said period shall begin to run from the date of publication.

Article L621-25

In the event of a sale of an article subject to a special privilege, charge or mortgage, the proportion of the price representing the debts secured by the same must be placed on deposit with the Consignments office. On the adoption of the recovery plan, or in the event of liquidation, creditors having the benefit of such securities or holders of a general privilege shall be paid out of the sale proceeds according to their order of priority and in accordance with Article L.621-80 where they are subject to the time limits specified in the recovery plan.

The insolvency judge may order provisional payment to secured creditors of all or part of their debt. Save in case of a decision made by the insolvency judge for special reasons, or where he intervenes for the benefit of the Treasury or the social security or similar institutions, such provisional payment shall be subject to the submission by the beneficiary of a guarantee issued by a credit institution.

The debtor or the receiver may propose to creditors that their securities be replaced by equivalent securities. If they do not agree, the insolvency judge may order their replacement. Any appeal against such an order must be brought in the Cour d'appel.

Article L621-26

The activity of the undertaking shall be continued during the observation period, subject to the provisions of Articles L.621-27 to L.621-35.

Article L621-27

The Court may at any time, on an application by the receiver, the creditors' representative, a supervisor, the debtor or the Procureur de la République, or ex officio on a report by the insolvency judge, make an order for total or partial cessation of activity or compulsory liquidation.

The Court shall take its decision after interviewing or duly calling to a hearing in chambers the debtor, the receiver, the creditors' representative, a supervisor and the representatives of the works council, or, if none, the personnel delegates.

A liquidation order by the Court shall put an end to the observation period and the receiver's duties.

Article L621-28

The receiver alone shall have power to perform existing contracts by supplying the service promised to the debtor's other contracting party. The contract shall be automatically terminated where notice to the receiver shall have produced no response within a month. Before the expiration of the said period, the insolvency judge may give the receiver a shorter period or grant a longer one, not exceeding two months, to make the position clear.

Where the consideration consists of payment of a sum of money, the said sum must be paid in cash, unless the receiver obtains the agreement of the other party to the debtor's contract to accept payment by instalments. In the light of the documents in their possession, receivers must ensure when applying for enforcement that they will be holding the necessary funds. Where the contract provides for performance by stages or payment by instalments, the receiver must terminate it if it appears that the necessary funds will not be held to fulfil the obligations of the next stage.

In the event of failure to pay in accordance with the conditions defined in the preceding sub-paragraph and in the absence of the other contracting party's agreement to continue the contractual relations, the contract shall be automatically rescinded and the Parquet, the receiver, the creditors' representative or a supervisor may apply to the Court for an order ending the period of observation.

The other contracting party must perform the relevant obligations notwithstanding the non-performance by the debtor of obligations arising before the decision to commence insolvency proceedings. Non-performance of the said obligations shall entitle creditors only to a declaration that the same are included in the debtor's liabilities to them.

If the receiver shall not exercise the right to continue the contract, non-performance may give rise to an award of damages the amount of which shall be included in the liabilities for the benefit of the other party. The latter may nevertheless defer the repayment of any surplus sums paid by the debtor in performance of the contract until a decision has been given on the award of damages. Notwithstanding any legal or contractual provision, no joint liability, rescission or termination of the contract shall result from the mere fact that proceedings for an administrative order have been

commenced.

The provisions of this Article shall not apply to contracts of employment.

Article L621-29

With effect from the decision to commence insolvency proceedings, a lessor may apply for the termination, by Court order or operation of law, of any lease of property used by the company as business premises on grounds of non-payment of rent and related outgoings during the period of occupation following the said decision. Such an action may not be brought less than two months after the decision to commence insolvency proceedings.

Notwithstanding any to the contrary, the fact that no trading takes place on one or more properties rented by the business shall not result in the termination of the lease.

Article L621-30

Where the lease is assigned, no clause making the transferee jointly and severally liable with the assignor shall be binding on the receiver.

Article L621-31

In the event of an administrative order, the lessor shall have rights of priority only as to rent for the last two years before the decision to commence insolvency proceedings.

Where the lease is terminated, the lessor shall have further rights of priority for the current year, in all matters relating to the performance of the lease and as to any damages the Court may award.

Where the lease is not terminated, the lessor shall not be entitled to demand payment of rent still to become due where the security provided on the signature of the agreement is maintained in effect or where any provided since the decision to commence insolvency proceedings is considered sufficient.

The insolvency judge may grant the debtor or the receiver, as the case may be, leave to sell any fixtures and fittings on the rented property that are liable to rapid deterioration or imminent loss of value, or expensive to maintain, or where the sale thereof will not affect either the business and goodwill or the maintenance of sufficient security for the lessor.

Article L621-32

I. - Debts legally arising after the decision to commence insolvency proceedings shall be paid when they become due where trading is continued. Where the whole of the undertaking is sold or, if trading is continued, where the debts are not paid on becoming due, they shall be paid with priority over all other debts, whether or not privileged or secured, except the privileged debts specified in Articles L.143-10, L.143-11, L.742-6 and L.751-15 of the Employment Code.

II. - In the event of compulsory liquidation, they shall be paid with priority over all other debts except the privileged debts specified in Articles L.143-10, L.143-11, L.742-6 and L.751-15 of the Employment Code, legal expenses, debts secured by specific charges of real or personal property accompanied by a lien or right to remain in possession, or those constituted pursuant to Book 5, Title II, Chapter V.

III. - The said debts shall be paid in the following order:

1. Outstanding wages and salaries the amount of which shall not have been advanced pursuant to Articles L.143-11-1 to L.143-11-3 of the Employment Code;

2. Legal expenses;

3. Loans granted by credit institutions and those resulting from the performance of contracts maintained in force pursuant to the provisions of Article L.621-28, where the other contracting party agrees to accept deferred payment; such loans and deferred payment shall be authorised by the insolvency judge within such limits as shall be necessary to enable trading to be continued

during the observation period and shall be publicly announced. Where a contract that has been legally maintained in force is terminated, any compensation or penalties shall be excluded from this provision;

4. Any sums advanced pursuant to Article L.143-11.1.3 of the Employment Code;

5. Other debts as they rank in priority.

Article L621-33

Any sum paid to the receiver or the creditors' representative and not credited to the debtors bank or Giro account for the requirements of continued trading must immediately be placed on deposit with the Consignments office.

In the event of delay, the receiver or the creditors' representative shall be liable to pay interest at a rate equivalent to the legal rate plus five per cent for any sums remaining unpaid.

Article L621-34

The Court may, on an application by the Procureur de la République and after consultation with the works council, or, if none, the personnel delegates, grant leave during the observation period for a real estate management agreement to be entered into, even where any clause to the contrary exists, particularly in the lease of the building, where the closure of the business would seriously effect the national or regional economy.

Such an agreement shall be entered into for a maximum term of two years. The duration of the observation period shall be extended until the end of the contractual term.

The provisions of Articles L.144-3, L.144-4 and L.144-7 shall not apply.

Article L621-35

The receiver shall ensure that all the obligations of the tenant-manager are duly observed and performed.

Should the tenant-manager commit an act of such a nature as to damage the property taken under the terms of the real estate management agreement, or reduce the security provided, the Court may order, either ex officio or on an

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application by the receiver, the creditors' representative or the Procureur de la République, after consultation with the works council, or, if none, the personnel delegates, that the agreement be rescinded.

Article L621-36

A declaration of debts arising from contracts of employment must be submitted by the creditors' representative for verification by the employees' representative mentioned in Article L.621-8. The creditors' representative must send the representative all relevant documents and information. Should any difficulty arise, the employees' representative may approach the receiver and, if necessary, make an application to the insolvency judge. The representative shall be bound by the confidentiality mentioned in Article L.432-7 of the Employment Code. Time spent by the representative in pursuance of the duties specified by the insolvency judge shall be automatically considered as working hours to be paid by the employer, the receiver or the liquidator, as the case may be, on the normal dates.

Article L621-37

Where redundancies for economic reasons become urgent, inevitable and indispensable during the observation period, the insolvency judge may grant the receiver leave to declare the said redundancies. Before applying to the insolvency judge, the receiver must consult the works council, or, if none, the personnel delegates, in accordance with the conditions laid down in Article 321-9 of the Employment Code, and must inform the competent Government authority in accordance with the conditions laid down in Article L.321-8 of the said Code. In support of the

application to the insolvency judge, the receiver must annex to it the notice received and a declaration of the reasons for taking the said measures in order to facilitate the compensation and relocation of employees.

Article L621-38

Any sum paid by an association such as is mentioned in Article L.143-11-4 of the Employment Code pursuant to Articles L.143-11-1 to L.143-11-3 thereof must be declared to the tax authority.

Article L621-39

Without prejudice to the rights attributed to supervisors, the creditors' representative appointed by the Court shall alone have power to act on behalf and in the interests of the creditors.

The creditors' representative shall notify the insolvency judge and the Procureur de la République of any observations that may be received from the supervisors at any point during the procedure.

Any sums recovered as a result of actions by the creditors' representative shall be attributed to the debtor's assets and, where trading is continued, shall be allocated according to the procedure laid down for calculating the liabilities.

Article L621-40

I. - The decision to commence insolvency proceedings shall suspend or prevent any legal action by any of the creditors whose debts arose before the date of the said decision for:

1. An order for payment by the debtor of a sum of money;
2. The rescission of a contract on grounds of non-payment of a sum of money.

II. - It shall likewise suspend or prevent any application by the said creditors for execution against either real or personal property.

III. - The running of the periods of time within which an action must be brought, and on the expiration of which the right to do so lapses or becomes forfeit, shall therefore be suspended.

Article L621-41

Subject to the provisions of Article 621-126, any current applications to the Court shall be suspended until the creditor making the same shall have made a declaration as to the debt owed. They shall then be automatically resumed, after the creditors' representative and, if appropriate, the receiver shall have been duly summoned to a hearing, but only for the purpose of recording and fixing the amount of the debts.

Article L621-42

Any legal actions and applications for enforcement other than those mentioned in Article L.621-40 shall be pursued against the debtor during the observation period after the receiver and the creditors' representative shall have been joined to the action or after the proceedings shall have been resumed on their initiative.

Article L621-43

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

Upon publication of the judgment, all the creditors whose debt originated prior to the initial judgment, with the exception of the employees, shall send their declaration of debt to the creditors' representative. Creditors who hold a published lien or a published leasing contract shall be informed personally and, where applicable, at their elected domicile.

The declaration of debt can be made by the creditor or by any employee or representative he chooses.

Debts must be declared, even when they are not documented. Debts owed to the Trésor public, to provident societies and to social security establishments, and likewise those recovered by the institutions referred to in Article L. 351-21 of the Labour Code, which were not the subject of an enforceable instrument when declared are accepted on a provisional basis for the amount declared. Moreover, the declarations made by the Trésor public and by social security establishments are without prejudice to any taxes and other debts which were not established on the date on which the declaration was made. Without prejudice to any ongoing legal or administrative proceedings, definitive determination thereof must be effected within the timeframe laid down in Article L. 621-103, under pain of foreclosure.

The institutions referred to in Article L. 143-11-4 of the Labour Code are subject to the provisions of the present

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Article in regard to the sums advanced by them which are repaid to them under the terms stipulated for debts originating before the initial judgment.

Article L621-44

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

The declaration shows the total due on the date of the initial judgment, along with an indication of the sums yet to fall due and their due dates. It specifies the nature of any preferential right or lien associated with the debt.

When debts are expressed in foreign currency, the conversion to euros is effected at the exchange rate that applied on the date of the initial judgment.

Unless it derives from an enforceable instrument, the declared debt is certified as sincere by the creditor. The insolvency judge may request the auditor's or, failing that, the accountant's, signature on the declaration of debt. Any refusal to sign must be explained.

Article L621-45

The debtor must send the creditors' representative a certified list of creditors and the total amount of the debts owed.

Article L621-46

Should they fail to submit a declaration of debt within the time limits to be laid down by an Order approved by the Conseil d'Etat, the creditors shall not be included in any distributions of assets or dividends unless the insolvency judge shall waive the lapse of their rights, where they prove that they were prevented from doing so by circumstances beyond their control. In any such case, they shall be entitled to be included only in any distributions effected after the date of their application.

Lapse of rights may not be pleaded against the creditors mentioned in Article L.621-43, first sub-paragraph, second sentence unless notice shall have been served on them personally.

An action for waiver of lapse of rights may be brought only within a period of a year of the decision to commence insolvency proceedings or, for the institutions mentioned in Article L.143-11-4 of the Employment Code, the expiration of the period during which debts arising from a contract of employment are secured by the said institutions. Any appeal against the insolvency judge's decision on the waiver of lapse of rights must be brought in the Cour d'appel.

Where lapse of rights shall not have been waived, any undeclared debts shall be extinguished.

The said extinction shall be equivalent to a decision on an interlocutory application for payment for the purposes of Article 65-3 of the Decree of 30 October 1935 unifying the law on cheques and payment cards.

Article L621-47

Where there is any query regarding the whole or part of a debt other than those mentioned in Article L.621-125, the creditors' representative must notify the interested creditors and request them to explain their position. Failure to reply within thirty days shall disqualify them from contesting any proposal by the creditors' representative at any time thereafter.

Article L621-48

A decision to commence administrative order proceedings shall suspend the accrual of legal or agreed interest and any late interest or surcharges, unless the interest arises from loan agreements entered into for a term of a year or more or agreements involving the deferment of payment for a year or more. Securities and persons jointly and severally liable with the debtor shall not be entitled to rely on the provisions of this sub-paragraph.

A decision to commence administrative order proceedings shall suspend any action against personal sureties who are themselves natural persons until a decision is given to draw up a recovery scheme or a liquidation order is made. The Court may then grant them up to two years to pay or agree that they may pay by instalments over up to two years.

Creditors having the benefit of such sureties may take preventive measures.

Article L621-49

A decision to commence administrative order proceedings shall not render enforceable any debts not due and payable at the date on which it is given. Any clause to the contrary shall be deemed non-existent.

Article L621-50

Mortgages, charges and rights of priority may no longer be registered after a decision to commence administrative order proceedings.

Nevertheless, the Exchequer shall retain its privilege in respect of debts it was not obliged to register at the date of the said decision and for debts for which recovery proceedings shall have been commenced after that date where a declaration of the said debts shall have been submitted as provided in Article L.621-43.

By way of exception to the provisions of the preceding sub-paragraph, a seller of the business and goodwill may register a privilege.

Article L621-51

A creditor holding signed debt instruments, jointly and severally endorsed by two or more persons jointly and severally liable with the debtor and subject to administrative order proceedings, may declare the debt due at the nominal value of the instrument in each action.

Article L621-52

Persons jointly and severally liable and subject to administrative order proceedings shall have no right of action

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against one another unless the total of all the sums paid under each procedure exceeds the total amount of the debt, as to principal and other monies; in any such case, the said surplus shall be repaid to those of the persons jointly and severally liable for whom the others are sureties, in order of priority of obligations.

Article L621-53

Creditors holding signed debt instruments subscribed by a debtor subject to administrative order proceedings, with whom two or more persons are jointly and severally liable, who shall have received a payment on account of the debt before the decision to commence insolvency proceedings, must deduct the amount of the said payment when declaring their debts, retaining their rights against the person jointly and severally liable with the debtor or the surety as regards the balance due to them.

Persons jointly and severally liable with the debtor or sureties who have made a partial payment may declare any sum paid in discharge of the debtor as their own debt.

Subsection 3

Preparation of the economic and social balance sheet and the draft recovery plan for the undertaking

Articles L621-54 to L621-61

Article L621-54

(Law No 2003-699 of 30 July 2003 Article 24 Official Gazette of 31 July 2003)

The administrator, with the debtor's cooperation and the assistance of one or more experts, if necessary, is responsible for drawing up a statement of the company's affairs. In the light of that statement of affairs, the administrator will propose either a reorganisation plan or compulsory liquidation.

The statement of affairs specifies the cause, extent and nature of the company's problems.

If the company is operating one or more classified installations within the meaning of Title I of Book V of the Environmental Code, the statement of affairs is supplemented with an environmental statement which the administrator commissions in the manner prescribed in a Conseil d'Etat decree.

The draft reorganisation plan for the company determines the potential for reorganisation on the basis of the commercial possibilities and facilities, the state of the market and the available means of financing.

It defines the arrangements for settling the liabilities and any guarantees the chief executive must provide in order to ensure performance.

The said draft plan sets out and explains the employment levels and prospects, as well as the corporate structure envisaged for maintenance of the business. If the plan envisages redundancies, it itemises the measures already taken and defines the actions to be implemented in order to facilitate the redeployment and compensation of the employees whose jobs are threatened.

The plan takes account of the tasks enumerated in the environmental statement.

Article L621-55

Notwithstanding any law or regulation to the contrary, the insolvency judge may obtain from the auditors, personnel members and representatives, public Government authorities and institutions, welfare and social security institutions, credit institutions and organisms responsible for centralising banking risks and interlocutory applications for payment all such information as shall provide accurate information on the firm or company's economic and social situation.

Article L621-56

The insolvency judge shall send the receivers all such information and documents as may be of assistance in the performance of their duties and those of the experts.

Where the proceedings are commenced pursuant to Article L.621-3, the receivers shall be sent the expert report mentioned in Article L.611-3 or, if appropriate, the expert report and account referred to in Articles L.351-3 and L.351-6 of the Rural Code.

Receivers must consult the debtor and the creditors' representative and must interview any person able to provide information on the firm or company's situation and prospects of recovery, ways and means of settling liabilities and social conditions for the continuation of trading.

Receivers must keep the debtor, the creditors' representative and the works council or, if none, the personnel delegates informed as to the progress of their work, and must consult them on any measures they propose to suggest in the light of information and offers received.

Article L621-57

Immediately upon the commencement of insolvency proceedings, third parties shall be permitted to make offers to the receiver with the object of maintaining the activity of the firm or company by one or more of the methods defined in Section 2 of this Chapter.

Any offer so made cannot be amended or withdrawn after the date on which the receiver's report is submitted. Offerors shall remain bound thereby until the decision of the Court drawing up the plan, provided that the said decision is given within a month of the submission of the report. They shall not be bound thereafter, particularly in the event of an appeal, unless they so agree.

Offers must be annexed to the report by the receiver who examines them.

Neither the directors of a legal person in compulsory administration nor any relatives by blood or marriage of the said directors or of the debtor, up to and including the second degree of kinship, may submit an offer, either directly or through an intermediary. In the case of an agricultural undertaking, the Court may agree to waive the prohibition relating

to relatives.

Article L621-58

Where the receiver proposes to suggest to the Court a recovery plan that involves a variation in the company's capital, the board of directors, management or managers, as the case may be, shall be requested to call an special shareholders' meeting or partners' meeting. If need be, the receiver may call such a meeting. The meeting must be called by methods and within time limits to be specified by an order approved by the Conseil d'Etat.

If, as a result of losses recorded in the accounting documents, the equity capital represents less than half the share capital, the meeting must first be requested to restore the said capital sums to the amount suggested by the receiver, which must not be less than half the share capital. It may also be requested to decide to reduce and increase the capital in favour of one or more persons who undertake to implement the plan.

The enforcement of any obligations assumed by the shareholders or partners or by new subscribers shall be subject to the acceptance of the plan by the Court.

Any approval clauses shall be deemed non-existent.

Article L621-59

Where required for the survival of a company, the Court may, on an application by the receiver or the Procureur de la République or ex officio, make the recovery plan for company subject to the replacement of one or more directors.

To that end and in accordance with the same conditions, the Court may freeze shares, shares or certificates of pecuniary or voting rights held by one or more directors de jure or de facto, whether paid or not, and decide that the voting right attached thereto shall be exercised, for a period of time to be fixed by the Court itself, by a representative appointed by the Court for that purpose. It may also order the sale of the said shares or shares, the sale price being fixed according to an expert valuation.

For the purposes of this Article, directors and representatives of the works council or, if none, the personnel delegates must be interviewed or duly summoned to a hearing.

Article L621-60

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

During the various stages of their formulation, and under the supervision of the insolvency judge, the administrator sends the debt-settlement proposals to the creditors' representative, the controllers and the works council, or, failing the latter, to the workers' delegates.

The creditors' representative secures the agreement, either individually or collectively, of all the creditors who declared their debt pursuant to Article L. 621-43, concerning the time limits and reductions proposed to them. If written consultation is used, failure to reply within thirty days of receiving the letter from the creditors' representative is deemed to constitute acceptance. These provisions apply to the institutions referred to in Article L. 143-11-4 of the Labour Code in regard to the sums advanced by them pursuant to the third paragraph of Article L. 621-43, even if their debts have not yet been declared.

For debts owed to the Trésor public, to social security establishments and to institutions governed by Book IX of the Social Security Code, reductions may be granted under the terms stipulated in a Conseil d'Etat decree. The same applies to transfers of preferential rights or the relinquishment of such security.

The creditors' representative prepares a statement based on the creditors' replies. That statement is sent to the administrator to assist him with the preparation of his report.

Article L621-61

The debtor, the works council or, if none, the personnel delegates, a supervisor or the creditors' representative must be informed and consulted on the report sent to them by the receiver.

The said report must simultaneously be sent to the competent Government employment law authority. The minutes of the meeting the agenda for which includes the consultation of the personnel representatives must be sent to the Court and the Government authority referred to above.

A report must be sent to the Procureur de la République if he so requests.

SECTION II

Continuation or assignment plan for the undertaking

Articles L621-62 to
L621-101

Subsection 1

Judgment determining the plan

Articles L621-62 to
L621-69

Article L621-62

After interviewing or duly calling to a hearing the debtor, the receiver, the creditors' representative, a supervisor and the representatives of the works council or, if none, the personnel delegates, the Court shall give a decision in the light of the receiver's report and shall draw up a recovery plan or make a winding-up order.

The said plan shall organise either the continued trading of the undertaking, or the sale thereof, or continued trading together with a partial sale.

A plan organising the sale of the whole or part of the undertaking may include a period of real estate management in respect of all or part of the business and goodwill. In any such case, the real estate management agreement must

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include an undertaking for purchase on the expiration of the term thereof.

Article L621-63

The plan must appoint the persons required to implement it and must mention all such undertakings given by the said person as are necessary to enable the firm or company to recover. The said undertakings shall relate to the future of the business, ways and means of maintaining and financing it, the settlement of any liabilities arising before the decision to commence insolvency proceedings and, if appropriate, any security for implementation that may have been provided.

The plan must state and give reasons for the level and prospects of employment and the social conditions envisaged for continued trading.

The persons who shall implement the plan, even as partners, shall not be liable for any expenses other than such obligations as they shall have assumed in the course of preparation thereof, subject to the provisions of Articles L.621-58, L.621-74, L.621-88, L.621-91 and L.621-96.

Article L621-64

Where the plan provides for redundancies on economic grounds, the Court shall not be empowered to order the implementation thereof until the works council, or if none the personnel delegates, and the competent Government authority have been informed and consulted in accordance with the provisions of Articles L.321-8 and L.321-9 of the Employment Code.

The plan shall in particular specify any redundancies due to occur within a month of the date of the judgement. Within that period, such redundancies shall be effected on simple notice given by the receiver, without prejudice to the rights of notice provided by law, private contract or collective labour agreement.

Article L621-65

The judgment determining the plan shall render the provisions thereof binding on all parties.

Nevertheless, joint and several securities and other persons jointly and severally liable with the debtor shall not be entitled to rely thereon.

Article L621-66

Without prejudice to the provisions of Article L.621-76, the Court shall fix the duration of the plan. The said period may be extended by that resulting from Article L.621-100 below. It shall not exceed ten years. Where the debtor is a farmer, it shall not exceed fifteen years.

Article L621-67

The Court shall decide the receiver's duties and confer the necessary powers to implement the plan.

The mandate of the creditors' representative shall continue for such time as shall be necessary to verify the debts.

Article L621-68

(Law No 2003-7 of 3 January 2003 Article 43 Official Gazette of 4 January 2003)

The court appoints a commissioner for execution of the plan for the term specified in Article L. 621-66, which period may be extended pursuant to the provisions of Article L. 621-100 hereunder. The administrator or the creditors' representative may be appointed to this function. The court may replace the commissioner for execution of the plan, either at its own initiative, or at the behest of the Public Prosecutor.

Actions brought, either by the administrator or by the creditors' representative, before the judgment finalising the plan is pronounced shall be dealt with by the commissioner for execution of the plan.

The commissioner for execution of the plan can demand that all documents and information conducive to his task be provided to him.

He is answerable to the presiding judge and to the Public Prosecutor for any nonfeasance of the plan, and shall inform the works council, or failing that, the workers' delegates thereof.

Any sum received by the commissioner for execution of the plan shall be immediately paid into a deposit account with the Caisse des dépôts et consignations. Should there be any delay, the commissioner for execution of the plan shall pay interest at the legal rate plus five percentage points on the sums he has not paid into an account.

Article L621-69

Only the Court may decide to make any substantial change in the objectives and means of implementation of the plan, on an application by the head of the firm or company and on a report by the implementation commissioner.

The Court shall give its decision after interviewing or duly calling to a hearing the parties, the representatives of the works council or, if none, the personnel delegates and any interested person.

Nevertheless, in the event of the sale of the company, the amount of the price as fixed in the judgment determining the plan shall not be subject to any variation.

Subsection 2

Continuation of the undertaking

Articles L621-70 to
L621-82

Article L621-70

The Court shall decide, on the receiver's report, that an undertaking shall be continued if it has serious possibilities of recovery and settlement of its debts.

Such continuation shall be accompanied, where appropriate, by the cessation, addition or sale off of certain

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branches of activity. Sales pursuant to this Article shall be subject to the provisions of Articles L.621-84 to L.621-93 and L.621-96.

Article L621-71

Where the debtor is subject to a prohibition on the issue of cheques under Article 65-3 of the Decree-Law of 30 October 1935 unifying the law on cheques and payment cards, made as a result of the rejection of a cheque issued prior to the decision to commence insolvency proceedings, the Court may order that the effects of the said measure be suspended for a period not exceeding those laid down pursuant to Article L.621-76 or Article L.621-77, as the case may be.

A decision of the Court ordering the cancellation of the plan pursuant to Article 621-82 shall automatically end the suspension of the effects of the prohibition.

The due observance of the payment dates and methods specified by the plan shall have the effect of regularising the situation for the purposes of the aforementioned Article 65-3 of the Decree of 30 October 1935.

Article L621-72

In a judgment determining or amending the plan, the Court may decide that such assets as it considers indispensable to continued trading by the undertaking may not be sold without its leave for such period of time as it shall fix.

A temporary ban on the sale of real property must be published at the Court Registry, in accordance with the provisions of Article 28 of Decree no. 55-22 of 4 January 1955 amending public notices of dealings with land and movable equipment, and with conditions to be laid down by an Order approved by the Conseil d'Etat.

Any deed made in breach of the provisions of the first sub-paragraph hereof shall be rendered void on an application by any interested party made within three years of the execution of the deed. Where publication of the deed is required, time shall begin to run from the date of publication.

Article L621-73

The plan shall state any amendments that need to be made to the Memorandum and Articles of Association of an undertaking to enable it to continue trading.

Article L621-74

The judgment determining the plan shall empower the receiver to call such meeting as shall be competent to implement the amendments provided by the plan.

Article L621-75

Partners or shareholders must pay the share capital they subscribe within a period of time fixed by the Court. In the event of immediate payment, they may be granted a right of set-off up to the amount of the debts admitted as due to them and within the limit of any reduction to which they may be subject in the plan, in the form of discount or time to pay.

Article L621-76

The Court shall take judicial note of any time to pay or discount granted by creditors according to the conditions specified in the second and third sub-paragraphs of Article L.621-60. Any such time to pay or discount may be reduced by the Court if appropriate. For other creditors, the Court shall impose uniform time limits for payment, subject, with regard to long term debts, to any longer time limits stipulated by the parties before the commencement of the proceedings.

The periods in question may exceed the duration of the plan. The first payment must take place within a year.

For leasing agreements, the said periods shall be terminated where the lessee exercises the purchase option before they expire. The said option may not be exercised unless the full amount of the sums due under the agreement shall have been paid, after deduction of any agreed discount.

Article L621-77

The plan may offer a choice to creditors consisting of payment within shorter uniform time limits but with a proportionate reduction in the total amount of the debt.

In any such case the time limits shall not exceed the duration of the plan.

The reduction of the debt shall not become unconditional until the final instalment provided for by the plan shall have been paid within the time limit fixed by it.

Article L621-78

I. - By way of exception to the provisions of Articles L.621-76 and L.621-77, the following debts shall not be subject to any discount or time to pay:

1. Privileged debts as specified in Articles L.143-10, L.143-11, L.742-6 and L.751-15 of the Employment Code;

2. Privileged debts arising from a contract of employment, as specified in Article 2101 (4) and Article 2104 (2) of the Civil Code, where the total amount thereof has not been advanced by the institutions mentioned in Article L.143-11-4 of the Employment Code or subrogated.

II. - Within a limit of 5% of the estimated liabilities, lesser debts, taken in ascending order as to the amount thereof, which shall not exceed a sum to be fixed by decree, shall be repaid without discount or time to pay. This provision shall not apply where the total amount of the debts owed to any one person exceeds one tenth of the aforementioned percentage or where subrogation has been agreed or a payment made by a person other than the debtor.

Article L621-79

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The registration of a debt and the grant of discount or time to pay shall be without prejudice to the final admission of the debt to the liabilities.

Sums to be distributed in respect of any disputed debts shall not be paid until the said debts are finally admitted to the liabilities. Nevertheless, the Court hearing the dispute may decide that the creditor shall participate on a provisional basis in any distributions effected before final admission.

In the absence of any law or provision in the plan to the contrary, the payments specified by the plan shall be payable at the creditor's residence or place of business.

Article L621-80

On the sale of an asset that is subject to a special privilege, charge or mortgage, creditors secured thereby or holders of a general privilege shall be paid out of the sale proceeds after payment of the privileged debts specified in Articles L.143-10, L.143-11, L.742-6 and L.751-15 of the Employment Code.

They shall receive dividends due in accordance with the plan, reduced according to any advance payments, in their own order of priority.

Where an assets is subject to a privilege, charge or mortgage, another security may replace it if necessary, if it provides equivalent benefits. In the absence of agreement, the Court may order such replacement.

Article L621-81

In the event of a partial sale of assets, the sale proceeds shall be paid to the undertaking subject to the provisions of Article 621-80 where applicable.

Article L621-82

If the debtor shall not discharge the relevant obligations within the time limits fixed by the plan, the Court may, ex officio or on an application by a creditor, having first consulted the implementation commissioner, order the cancellation of the plan and the commencement of compulsory liquidation proceedings.

An application may also be made to the Court by the implementation commissioner or the Procureur de la République.

Creditors subject to the plan must declare all their debts and securities, after deducting any sums received.

Subsection 3

Assignment of the undertaking

Articles L621-83 to
L621-101

Article L621-83

In the light of the receiver's report, the Court may order the assignment of the undertaking.

The object of such an assignment shall be to ensure that activities capable of independent operation and some or all the jobs related to the same shall continue in existence, and that the liabilities of the undertaking shall be calculated.

All or part of the undertaking may be assigned. In the latter case, the assignment shall relate to a package of operating elements forming one or more complete and independent classes of activity.

In the absence of a plan for continued trading by the undertaking, any assets not included in the assignment thereof shall be sold separately and the debtor's rights and actions shall be exercised by the implementation commissioner according to the terms and conditions laid down in Chapter II.

Article L621-84

An assignment shall not be ordered unless it relates to one or more packages as defined by Article L.621-83.

The Court shall decide the composition of the said packages.

Where a package essentially consists of an agricultural tenancy, the Court may, subject to the outgoing lessee's right to compensation, but notwithstanding any other provisions of the lease, either grant the lessor or the lessor's spouse or one of the lessor's descendants leave to take over and operate the business, or award the lease to another lessee proposed by the lessor, or, if none, to any prospective lessee from whom an offer has been received in accordance with the conditions laid down in Articles L.621-85, L.621-86 and L.621-87. Where, however, more than one offer has been received, the Court shall take the provisions of Article L.337-7 (1), (2), (3) and (4) into account. In all cases, the provisions relating to the supervision of agricultural structures shall not apply.

Article L621-85

I. - Any offers must be notified to the receiver within such time limit as the latter shall have fixed and notified to the creditors' representative and the supervisors. Unless otherwise agreed between the debtor, the employees' representative, the creditors' representative and the supervisors, there must be a minimum period of fifteen days between the receipt of an offer by the receiver and the hearing at which the Court considers the same. Any offer must include an indication of:

1. Business and financing proposals;
2. The sale price and terms and conditions of payment;
3. The date of completion of the sale;
4. The level and prospects of employment offered by the activity under consideration;
5. The security provided for the completion of the purchase;
6. Proposals for the sale of assets during the two years following the sale.

II. - The insolvency judge may call for additional information.

III. - The receiver must inform the persons mentioned in the first sub-paragraph of the contents of any offers

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received.

Article L621-86

The receiver must provide the Court with any information required to enable it to verify that the offer is serious and that the offeror is a third party.

Article L621-87

The Court shall accept the offer that makes it possible to maintain the jobs attached to the package sold for the longest foreseeable time and to ensure payment of the creditors.

Article L621-88

The Court shall determine any leasing or tenancy agreements or contracts for the supply of goods and services required to maintain the activity in the light of any observations by the other parties to contracts made with the debtor that may be notified to it by the receiver.

The judgment determining the plan shall include the assignment of the said contracts even where the sale is preceded by business management-leasing as mentioned in Article L.621-97.

The said agreements and contracts must be performed in accordance with the conditions in force at the date of commencement of the proceedings, notwithstanding any clause to the contrary, subject to any time limits for payment that the Court may impose, after consulting or duly calling the other contracting party to a hearing, in order to ensure continued trading.

On the sale of a leasing agreement, the said periods shall end if the lessee exercises the right of purchase before they expire. The said option may not be exercised unless any outstanding sums are paid, within the limit of the value of the asset as fixed by mutual agreement between the parties, or, in the absence of any such agreement, by the Court at the date of sale.

Article L621-89

The receiver shall execute all such deeds as shall be necessary to complete the sale in the implementation of the plan drawn up by the Court.

Pending the implementation thereof, receivers may, under their own liability, entrust the management of the undertaking assigned to the transferee.

Article L621-90

By way of exception to Article L.621-68, the duties of the implementation commissioner shall continue until the purchase price shall have been paid in full.

Article L621-91

Until the purchase price shall have been paid in full, the transferee may not lease or dispose of any tangible or intangible assets acquired, except stocks.

The Court may grant leave for them to be sold in whole or in part, charged as security, leased or let under a real estate management agreement after considering a report by the implementation commissioner, who must first consult the works council or, if none, the personnel delegates. The Court must take into account any security offered by the transferee.

Any breach of the provisions of the provisions of this Article shall be rendered void on an application by any interested party made within three years of the conclusion of the act. Where publication of the act is required, time shall begin to run from the date of publication.

The transferee must report to the implementation commissioner on the application of the provisions laid down for the sale plan at the end of each financial year thereafter. If the transferee fails to perform the relevant obligations in that respect, the Court may order the cancellation of the plan ex officio or on an application by the Procureur de la République, the implementation commissioner, the creditors' representative or a creditor.

Article L621-92

The Court may make the sale plan subject to a clause preventing the transferee from disposing of all or any of the assets sold within such period of time as it may fix.

The said clause must be published according to conditions to be fixed by an Order approved by the Conseil d'Etat.

Article L621-93

Should the transferee fail to pay the purchase price, the Court may appoint a special administrator, whose duties it shall determine, on an application by the implementation commissioner, the Procureur de la République or any interested party.

Article L621-94

A judgment determining a plan for the sale of the whole of an undertaking shall render enforceable any debts still to become due.

Article L621-95

Where the whole of an undertaking is sold, the Court shall order the closure of operations on the execution of the sale deeds, payment of the price and the liquidation of any assets not included in the plan.

The sale proceeds shall be distributed by the implementation commissioner between the creditors according to priority.

On the making of the closure order, the creditors shall recover their individual right of action within the limits laid

Article L621-96

Where a sale relates to assets subject to a special lien, charge or mortgage, a proportion of the sale proceeds shall be allocated by the Court to each such asset for the distribution of the sale proceeds and the exercise of the preferential right.

Payment of the purchase price shall prevent the exercise by creditors of any rights registered in respect of the said assets against the transferee.

Nevertheless, the responsibility for real and personal property charged as security for the repayment of a loan advanced to the undertaking to enable it to finance an asset to which the said securities relate shall be transferred to the transferee, who must then pay the creditor on the dates agreed with him any sums that remain outstanding at the date of the transfer of ownership or, in the case of business management-leasing, at the date on which possession is given, subject to any time limits for payment that may be agreed in accordance with the conditions laid down in the third sub-paragraph of Article L.621-88. An exception may be made to the provisions of this sub-paragraph by agreement between the transferee and the secured creditors.

Until any charges registered against the assets comprised in the sale are discharged, upon payment of the price in full, creditors having the benefit of a right to follow the security into the hands of a purchaser shall not be entitled to exercise the same unless the asset sold by the transferee is re-sold.

Article L621-97

In a judgment determining a sale plan, the Court may authorise a business management-leasing agreement in accordance with the conditions laid down in Article L.621-62, even where there is any clause to the contrary, particularly in the lease of the property, for the benefit of the person who has submitted the purchase offer that makes it possible to maintain the jobs attached to the package sold for the longest foreseeable time and to ensure payment of the creditors.

Article L621-98

The implementation commissioner may obtain from the tenant-manager any documents that may be of assistance, and must report to the Court any damage to assets taken under the real estate management agreement and any breach or non-performance of the lessee's obligations.

The Court may order the rescission of the real estate management agreement and the cancellation of the plan, ex officio or on an application by the implementation commissioner or the Procureur de la République.

Cancellation of the plan shall entail the commencement of fresh proceedings for an administrative order against the lessor. Creditors invited to participate in the distribution of the sale proceeds shall recover their debts and securities in full, after deduction of any sums already received.

Article L621-99

The provisions of Articles L.144-3, L.144-4 and L.144-7 shall not apply.

Article L621-100

In the event of a real estate management agreement, the undertaking must actually be sold within two years of the date of the judgment determining the plan.

Article L621-101

If the tenant-manager fails to comply with the obligation to purchase in accordance with the conditions and time limits laid down by the plan, administrative order proceedings shall be commenced on an application by the implementation commissioner, the Procureur de la République or any interested party. No formal declaration of insolvency shall be required.

Nevertheless, tenant-managers who can prove that they are unable to purchase on the terms and conditions originally stipulated for reasons beyond their control may apply to the Court, before the expiration of the term of the leasing agreement and after consultation with the implementation commissioner, for variation of the conditions, save as to the amount of the price.

SECTION III **Capital assets**

Articles L621-102 to
L621-124

Subsection 1 **Verification and admission of claims**

Articles L621-102 to
L621-106

Article L621-102

In the event of assignment or court-ordered winding-up, unsecured claims shall not be verified if it is clear that the proceeds from realising the assets will not exceed legal expenses and preferential claims unless, in the case of a legal person, there is cause to charge all or some of the liabilities to the paid or unpaid de jure or de facto company directors in accordance with Article L. 624-3.

Article L621-103

The creditors' representative shall consult the debtor before drawing up a list of declared creditors, together with his recommendations as to their admission, rejection or referral to the court with jurisdiction, by the deadline set by the

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court, and shall send the said list to the court-appointed receiver.

The creditors' representative shall not be paid on the basis of declared claims not included on the list by the aforementioned deadline.

Article L621-104

The court-appointed receiver shall examine the recommendations made by the creditors' representative and shall decide whether to admit or reject the claims or to confirm either that proceedings are under way or that the dispute does not come within his jurisdiction.

Article L621-105

Appeals against decisions taken by the court-appointed receiver in application of this sub-section may be filed by the creditor, the debtor, the administrator, where charged with administration, or the creditors' representative.

However, creditors whose claims are wholly or partially disputed and who fail to respond to the creditors' representative by the deadline referred to in Article L. 621-47 may not appeal against the decision by the court-appointed receiver if it upholds the recommendation made by the creditors' representative.

The terms of and the procedure for appeals for which provision is made in the first sub-paragraph shall be set by decree of the Conseil d'Etat.

Article L621-106

The court-appointed receiver shall rule at last instance in the cases for which provision is made in this sub-section where the value of the claim in principal does not exceed the jurisdiction at last resort of the court in which the proceedings were instituted.

Subsection 2

Nullity of certain instruments

Articles L621-107 to
L621-110

Article L621-107

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

- I. - The following acts are null and void if performed by the debtor after the date on which insolvency was declared:
1. All free transfers of moveable or immoveable property;
 2. Any commutative contract in which the debtor's obligations substantially exceed those of the other party;
 3. Any payment, howsoever effected, of debts not due on the date of payment;
 4. Any payment for debts due made other than in cash, negotiable instruments, bank transfers, the transfer vouchers referred to in Law No. 81-1 of 2 January 1981 facilitating corporate credit, or any other method of payment generally accepted in business dealings;
 5. Any depositing and any consignment of funds made pursuant to Article 2075-1 of the Civil Code, failing a judicial decision having res judicata status;
 6. Any contractual mortgage, any mortgage ordered by the court, or any statutory mortgage between spouses, and any hypothecation right registered on the debtor's property for debts previously contracted;
 7. Any protective measure, unless the registration or the distraining order predates the declaration of insolvency.
- II. - The court may also cancel any free transfers of property of the types indicated in subparagraph I, 1, made during the six months preceding the declaration of insolvency.

Article L621-108

Payments made against matured debts after the date on which payments were suspended and instruments for money consideration concluded after the said date may be annulled if the parties transacting with the debtor knew that payments had been suspended.

Article L621-109

The provisions of Articles L. 621-107 and L. 621-108 shall not invalidate payment of a bill of exchange, a promissory note or a cheque.

However, the administrator or the creditors' representative may institute restoration proceedings against the person who drew the bill of exchange or, if it is drawn on account, against the principal or against the payee of a cheque and the first endorser of a promissory note if it is ascertained that they knew that payments had been suspended.

Article L621-110

Invalidity proceedings may be instituted by the administrator, the creditors' representative, the liquidator or the commissioner enforcing the plan. These proceedings shall restore the debtor's assets.

Subsection 3

Rights of the spouse

Articles L621-111 to
L621-114

Article L621-111

Spouses of debtors subject to an administrative order procedure shall establish their personal property in accordance with the rules of matrimonial estates.

Article L621-112

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The creditors' representative or the administrator may use any means to prove that property acquired by the debtor's spouse was acquired with funds provided by the debtor and may apply for the said acquisitions to be included in the assets.

Article L621-113

Property may only be recovered in accordance with Article L. 621-111 in exchange for the debts or mortgages with which they are legally encumbered.

Article L621-114

Spouses of debtors who were registered tradesmen or farmers on marriage or who become such within a year thereof may not take any action during compulsory administration on the grounds of the benefits granted by one spouse to another in the marriage contract or during the marriage. Nor may creditors claim benefits granted by one spouse to another.

Subsection 4

Rights of the seller of chattels and claims

Articles L621-115 to
L621-124

Article L621-115

Chattels may only be claimed within three months of publication of the judgment instituting an administrative order or immediate court-ordered winding-up.

Where property is governed by a contract under way on the day on which the administrative order commences, this deadline shall commence when the contract is cancelled or expires.

Article L621-116

Owners of a specific item of property need not have their right of ownership acknowledged if the contract governing the item in question was published.

Article L621-117

The preferential right, rescissory action and right of claim established in Article 2102 (4) of the Civil Code for the benefit of sellers of chattels may only be enforced within the limits of the provisions of Articles L. 621-118 to L. 621-124.

Article L621-118

Goods which exist wholly or partly in kind may be claimed if the sale thereof was rescinded prior to the judgment instituting an administrative order either by decision of the court or in application of a rescissory clause.

The claim must likewise be admitted even if the rescission of the sale was pronounced or established by decision of the court after the judgment instituting the administrative order if the seller instituted claim or rescission proceedings prior to the judgment instituting the administrative order on grounds other than default on payment of the price.

Article L621-119

Goods despatched to the debtor but not yet transferred to the debtor's outlets or the outlets of the commissioner instructed to sell them on the debtor's account may be claimed.

However, the claim shall not be admissible if the goods were resold, without fraud, on proper invoices or bills of lading prior to their arrival.

Article L621-120

The seller may retain goods not delivered or despatched to the debtor or to a third party acting on the debtor's account.

Article L621-121

Commercial paper or other unpaid securities handed over by their owners in order to be recovered or specially allocated to specific payments may be claimed provided they are still in the debtor's portfolio.

Article L621-122

Goods consigned to the debtor either as a deposit or to be sold on the owner's account may be claimed, provided that they still exist in kind.

Goods sold subject to a retention of ownership clause subjecting transfer of ownership to payment of the full price may be claimed provided that they still exist in kind when proceedings are instituted. The said clause, which may be entered on a document governing a set of commercial transactions agreed between the parties, must have been agreed between the parties in a document drafted no later than the time of delivery. Any clause to the contrary notwithstanding, the retention of ownership clause shall be binding on the purchaser and other creditors unless the parties have agreed in writing to waive or amend it.

Claims in kind for chattels which has been incorporated into other chattels but which may be recuperated without damaging the property itself or the property in which it has been incorporated may be enforced in like manner. Claims in kind may also be enforced on wasting assets if the purchaser is in possession of similar property of a similar quality.

Under no circumstances shall a claim accrue if the price is paid immediately. The court-appointed receiver may grant a deadline for settlement with the claimant's consent, in which case payment of the price shall be tantamount to payment of a claim which duly accrued after the judgment instituting proceedings.

Article L621-123

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The administrator or, where there is none, the creditors' representative or liquidator may admit a petition to claim or recover property governed by this section with the debtor's consent. If no consent is obtained or in the event of dispute, the petition shall be brought before the court-appointed receiver, who shall rule on the contract in the light of the observations made by the creditor, the debtor and the legal agent to whom the matter was previously referred.

Article L621-124

The price or part of the price for the property referred to in Article L. 621-122 which has not been paid, settled in value or offset between the debtor's and the purchaser's current account on the date of the judgment instituting the administrative order may be claimed.

SECTION IV

Settlement of claims resulting from the employment contract

Articles L621-125 to
L621-132

Subsection 1

Verification of claims

Articles L621-125 to
L621-129

Article L621-125

Once claims have been verified and the debtor has been heard or duly summoned, the creditors' representative shall draw up statements of claims pursuant to contracts of employment by the deadlines for which provision is made in Article L. 143-11-7 of the Employment Code. Statements of claims shall be submitted to the salaried employees' representative in accordance with the terms of Article L. 621-36. They must be initialled by the court-appointed receiver, filed with the court registry and published in accordance with the terms and conditions decreed by the Conseil d'Etat.

Salaried employees, all or part of whose claims are omitted from a statement, may refer to an conseil de prud'hommes within two months of the publication referred to in the preceding sub-paragraph, after which claims shall be out of time. They may ask the salaried employees' representative to assist them or represent them before the conseil de prud'hommes.

The creditors' representative named before the conseil de prud'hommes or, where there is none, the claimant shall call the institutions referred to in Article L. 143-11-4 of the Employment Code before the tribunal. The debtor or the administrator, where charged with administration, shall be questioned.

Article L621-126

Cases pending before the conseil de prud'hommes on the date of the judgment instituting an administrative order shall subsequently be attended by the creditors' representative and the administrator, where charged with administration, or they shall be duly summoned.

The creditors' representative shall notify the tribunal and the salaried employees party to the case that an administrative order has been instituted within ten days.

The institutions referred to in Article L. 143-11-4 of the Employment Code shall be questioned by the creditors' representative or, where there is none, the salaried employees making a claim, within ten days of the judgment instituting an administrative order.

Article L621-127

Where the institutions referred to in Article L. 143-11-4 of the Employment Code refuse for any reason to settle a claim on a list of claims pursuant to a contract of employment, they shall notify their refusal to the creditors' representative, who shall immediately inform the salaried employees' representative and the salaried employee in question.

The salaried employee in question may refer the case to an conseil de prud'hommes. The creditors' representative, the entrepreneur and the administrator, where charged with administration, shall be questioned.

Salaried employees may ask the salaried employees' representative to assist them or represent them before the conseil de prud'hommes.

Article L621-128

Litigation brought before an conseil de prud'hommes in application of Articles L. 621-125 and L. 621-127 shall be brought directly before the judgment committee.

Article L621-129

Statements of claims pursuant to a contract of employment initialled by the court-appointed receiver [illegible] awards returned by the conseil de prud'hommes shall be entered on the statement of claims filed with the court registry. Any interested party, with the exception of those referred to in Articles L. 621-125 to L. 621-127 may file an appeal or third party objection in accordance with the terms and conditions decreed by the Conseil d'Etat.

Subsection 2

Preferential right of employees

Articles L621-130 to
L621-131

Article L621-130

Claims pursuant to a contract of employment shall be guaranteed in the event of an administrative order or

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court-ordered winding-up:

1. by the preferential right established under Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code on the grounds and for the amounts defined therein and
2. by the preferential right established in Article 2101 (4) and Article 2104 (2) of the Civil Code.

Article L621-131

The existence of any other claim notwithstanding, claims guaranteed by the preferential right established in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the Employment Code shall be paid by the administrator on the orders of the court-appointed receiver within ten days of the date of the judgment instituting an administrative order or court-ordered winding-up, provided that the funds required are at the administrator's disposal.

However, before establishing the amount of the said claims, the administrator shall immediately make an interim payment to salaried employees equal to one month's unpaid salary, based on the most recent pay slip, but without exceeding the ceiling laid down in Article L. 143-10 of the Employment Code, provided that the court-appointed receiver so consents and the funds are available.

If no funds are available, the sums owing pursuant to the preceding two sub-paragraphs shall be paid with the first funds received.

Subsection 3

Guarantee of payment of claims resulting from the employment contract Article L621-132

Article L621-132

(Act No. 2002-73 of 17 January 2002 Art. 214 III, IV Official Journal of 21 January 2002)

(Act No. 2004-391 of 4 May 2004 Art. 57 Official Journal of 5 May 2004)

(Order No. 2004-602 of 24 June 2004 Art. 13 I Official Journal of 26 June 2004)

Without prejudice to the rules laid down in Articles L. 621-130 and L. 621-131, debts deriving from an employment contract or an indenture are guaranteed under the terms of Articles L. 143-10 to L. 143-11-9 and L. 143-13-1 of the Labour Code, reproduced hereunder:

"Art. L. 143-10. - When judicial receivership or liquidation proceedings are instituted, the remuneration of all kinds owed to employees and apprentices and the compensation, referred to in Article L. 980-11-1, owed by the employer to the recipients of a job-related induction course for the last sixty days of their work or training, must be paid, after deduction of the instalments already received, notwithstanding the existence of any other privileged debt, up to a monthly ceiling which is identical for all recipient categories.

The said ceiling, which is officially determined, shall not be less than double that used to calculate social security contributions.

The remuneration referred to in the first paragraph above includes not only actual wages, salaries or commissions, but also all incidental items and, inter alia, the compensation referred to in Article L. 122-3-4, the compensation for non-compliance with the notice period referred to in Article L. 122-8, the compensatory allowance referred to in Article L. 122-32-6 and the compensation referred to in Article L. 124-4-4, as well as the employer's contribution to the re-training for redeployment allowance due by virtue of the compensation referred to in Article L. 322-3.

Art. L. 143-11. - Moreover, when judicial receivership or liquidation proceedings are instituted, the holiday pay referred to in Articles L. 223-11 to L. 223-15 and R. 223-2 must be paid notwithstanding the existence of any other privileged debt, up to a ceiling identical to that established for a period of thirty days' remuneration by Article L. 143-9.

Art. L. 143-11-1. - Any employer having the status of trader, craftsperson, farmer or private-law legal entity who employs one or more employees must insure his employees, including salaried employees seconded abroad and expatriate salaried employees within the meaning of Article L. 351-4, against the risk of non-payment of the sums due to them under their employment contract in the event of judicial receivership or liquidation proceedings being instituted.

Such insurance covers:

1. Sums owed to the employees on the initial judgement date of any judicial receivership or liquidation proceedings;
2. Debts resulting from the termination of the contracts of employment during the observation period, during the month following the judgement approving the reorganisation plan, during the fifteen days following the liquidation judgement and during the provisional continuance of the business authorised by the liquidation judgement;
3. When the court orders judicial liquidation, the sums due during the observation period, the fifteen days following the liquidation judgement, or the month following the liquidation judgement for the representatives of the employees referred to in Articles L. 621-8 and L. 621-135 of the Commercial Code, and during the provisional continuance of the business authorised by the liquidation judgement, subject to a limit corresponding to one and a half months' work.

The cover for the sums and debts referred to in 1, 2 and 3 above includes social security contributions required by the law or under a contract imposed by the law.

The insurance covers the sums owed to the employees pursuant to Articles L. 122-9-1 and L. 122-3-4-1.

Art. L. 143-11-2. - The debts arising from dismissal of employees with special redundancy cover are covered by the insurance from the time when the administrator, the employer or the liquidator, as applicable, indicates, during the periods referred to in 2 of Article L. 143-11-1, his intention of terminating the employment contract.

Art. L. 143-11-3. - When they take the form of a lien on the company, the sums due by virtue of profit-sharing pursuant to the provisions of Articles L. 441-1 et seq, by virtue of the employees' participation in the benefits of expansion pursuant to the provisions of Articles L. 442-1 et seq, or to an agreement creating an employees' fund as provided for in Articles L. 471-1 et seq, are covered by the insurance referred to in Article L. 143-11-1.

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The early retirement pension instalments due to an employee or a former employee pursuant to a sectoral or multi-sector agreement, a collective labour agreement or a company agreement are also covered by the insurance. These provisions apply when the agreement provides for retirement at fifty-five years at the earliest. The cover provided by the present paragraph is limited in circumstances determined by decree.

The sums referred to in the first and second paragraphs are covered:

- if they are owed on the date of the initial judgement in the proceedings;
- if a plan for continued trading is implemented upon conclusion of the proceedings, in which case they become due as a consequence of termination of the employment contract, subject to the time limits indicated in 2 of Article L. 143-11-1;

- when a liquidation judgement or judgement approving a plan for total assignment of the company is pronounced.

The insurance referred to in Article L. 143-11-1 does not cover the sums paid out to compensate the prejudice caused by termination of the employment contract in the context of redundancy, under a company-level, establishment-level or group agreement, or a unilateral decision of the employer, when the agreement has been entered into and filed and the decision is notified less than eighteen months before the date of the initial judgement in the judicial receivership or liquidation proceedings.

Art. L. 143-11-4. - The insurance scheme referred to in Article L. 143-11-1 is implemented by an association created by the most representative national employers' organisations and approved by the Minister of Labour.

The said association enters into a management agreement with the institutions that manage the insurance scheme referred to in section 1 of Chapter I of Part V of Book III of the first part of the Labour Code.

If the said association is dissolved, the Minister of Labour entrusts the management of the insurance scheme instituted in Article L. 143-11-1 to the institutions referred to in the previous paragraph.

Art. L. 143-11-5. - The employee's rights are independent of compliance by the employer with the prescriptions of Articles L. 143-11-1 to L. 143-11-9 and the obligations which bind it in relation to the institutions referred to in Article L. 143-11-4.

Art. L. 143-11-6. - The insurance is financed by contributions from the employers based on the remuneration used to calculate the contributions to the unemployment insurance scheme described in section 1 of Chapter I of Part V of Book III of the present code.

The provisions of Article L. 351-6 are applicable to recovery of those contributions and the late payment penalties relating thereto.

Art. L. 143-11-7. - The creditors' representative draws up statements of debt as follows:

1. For the debts referred to in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15, within ten days of the pronouncement of the initial judgement in the proceedings;
2. For other debts also due on the date of the initial judgement in the proceedings, within three months of the pronouncement of the judgement;
3. For salaries and holiday pay covered pursuant to 3 of Article L. 143-11-1 and salaries covered pursuant to the last paragraph of that same article, within ten days of expiry of the guarantee periods indicated in 3 thereof, up to the ceiling referred to in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15.
4. For other debts, within three months of expiry of the guarantee period.

The statement of debt indicates the amount of the contributions referred to in the seventh paragraph of Article L. 143-11-1 due in respect of each of the employees concerned.

If the debts cannot be paid in whole or in part from the available funds before expiry of the time limits indicated above, the creditors' representative asks the institutions referred to in Article L. 143-11-4 to advance the necessary funds based on the statements.

The aforementioned institutions pay the creditors' representative the sums shown on the statements which remain unpaid:

1. Within five days of receipt of the statements referred to in 1 and 3 above;
2. Within eight days of receipt of the statements referred to in 2 and 4 above.

Contrary to the provisions of the previous three paragraphs, the employer's advance contribution to the financing of the allowances referred to in the second paragraph of Article L. 322-3 is paid directly to the management institutions referred to in Article L. 351-21.

The creditors' representative immediately pays the sums he has received to the employees and the creditor institutions, with the exception of the subrogated creditors, and informs the employees' representative thereof.

The aforementioned institutions must advance the sums shown in the statement, even in the event of a third-party challenge.

They must also advance the sums corresponding to debts which have been definitively established by a court decision, even if the guarantee periods have expired. In the event of the creditors' representative ceasing to exercise his functions, the court registrar or the supervisor of the plan, as applicable, sends an additional statement to the aforementioned institutions and is responsible for paying the sums received to the employees and creditor institutions.

Art. L. 143-11-8. - The guarantee of the institutions referred to in Article L. 143-11-4 is limited, for the total debt owed to employees, to the amount(s) determined by decree, and to the monthly ceiling used to calculate the contributions to the unemployment insurance scheme referred to in section 2 of Chapter I of Part V of Book III of the present code.

Art. L. 143-11-9. - The institutions referred to in Article L. 143-11-4 are subrogated in the rights of the employees for whom they have made advances in relation to the debts guaranteed by the privilege referred to in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 and the sums advanced by virtue of 3 of Article L. 143-11-1.

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Other sums, advanced to settle debts incurred prior to the initial judgement in the proceedings, are repaid to the aforementioned institutions as provided for in Part II of Book VI of the Commercial Code and benefit from the privileges attached to them.

Art. L. 143-13-1. - The foreign nationals referred to in Article L. 341-6-1 benefit from the provisions of the present section in respect of sums due to them pursuant to the said article."

SECTION V

Simplified procedure applicable to certain undertakings

Articles L621-135 to
L621-134

Article L621-133

The persons referred to in the second sub-paragraph of Article L. 620-2 shall benefit, subject to the provisions of Article L. 621-134 below, from the simplified procedure for which provision is made in this section. The remaining provisions of this title shall apply to them insofar as they do not contradict the provisions of this section.

Article L621-134

Pending the judgment setting out the plan, the court may decide, at the request of the debtor, the procureur de la République or ex officio, to apply the entire procedure for which provision is made in sections 1 to 4 of this chapter if it considers that this will help the company recover, in which case, the period of observation which has already passed shall be offset against the period for which provision is made in the second sub-paragraph of Article L. 621-6.

Subsection 1

Commencement judgment and observation period

Articles L621-135 to
L621-138

Article L621-135

The commencement judgment of the administrative order shall appoint the court-appointed receiver and a legal agent responsible for representing the creditors and shall invite the staff delegates or, where there are none, the salaried employees to appoint a salaried employees' representative within the company.

In undertakings which do not meet the terms of Article L. 421-1 of the Employment Code or in undertakings with no institutions to represent the staff, the salaried employees' representative shall exercise the functions which devolve upon these institutions pursuant to the provisions of sections 1 to 4 of this chapter.

Article L621-136

The maximum duration of the period of observation, which may be renewed once by reasoned decision of the court ruling on the matter either at the request of the debtor, the procureur de la République or the administrator, where one has been appointed, or ex officio, shall be set by decree of the Conseil d'Etat. In the case of a farm holding, the court may extend the period of observation to the end of the current growing season, taking account of standard practices specific to the crops in question.

The court-appointed receiver shall have the powers for which provision is made in Article L. 621-55.

Article L621-137

(Law No 2003-7 of 3 January 2003 Article 44 Official Gazette of 4 January 2003)

I. - During that period, the debtor continues to conduct his business unless it appears necessary for the court to appoint an administrator, either a receiver or a person chosen pursuant to the second paragraph of Article L. 811-2. In the latter case, the debtor is required either to step aside and be represented by the administrator, or to be assisted by the administrator.

II. - In the absence of an administrator:

1. The debtor exercises the functions devolved upon him by Article L. 621-37; he exercises the right conferred on him by Articles L. 621-122 and L. 621-28 if the insolvency judge authorises him to do so;

2. The creditors' representative exercises the functions devolved upon the administrator by Article L. 621-19;

3. For the purposes of Article L. 621-58, the extraordinary general meeting or the partners' meeting is convened at the behest of the insolvency judge, who also determines the amount of the capital increase proposed to the meeting to reconstitute the shareholders' equity.

Article L621-138

The court may decide either to allow the undertaking to continue to trade so that a draft recovery plan may be drawn up for the undertaking or to wind the undertaking up by order of the court in accordance with the provisions of Chapter II.

Subsection 2

Preparation of the recovery plan for the undertaking

Articles L621-139 to
L621-142

Article L621-139

During the period of observation, the debtor or the administrator, where one has been appointed, shall determine a draft recovery plan for the undertaking, if necessary with the help of an expert appointed by the court.

The debtor or the administrator shall send the creditors' representative and the court-appointed receiver the proposals for settling the liabilities for which provision is made in Article L. 621-60 and shall arrange for the information

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and consultations for which provision is made in the third sub-paragraph of Article L. 621-56 and Article L. 621-61.

Article L621-140

Where no administrator has been appointed, the offers of acquisition referred to in Articles L. 621-57 and L. 621-85 shall be sent to the court registry, which shall pass them on to the court-appointed receiver, the debtor and the creditors' representative.

The debtor's plan shall then include all offers, the admissibility of which has been verified by the court-appointed receiver.

Article L621-141

Where no administrator has been appointed, the debtor shall file the draft recovery plan for the undertaking with the court registry.

The court-appointed receiver shall then report and submit the draft plan to the court, together with a reasoned opinion.

Article L621-142

The court may order one of the measures for which provision is made in this Article at any time at the request of one of the persons referred to in Article L. 621-27 or ex officio.

Subsection 3

Implementation of the recovery plan for the undertaking

Article L621-143

Article L621-143

If there is no administrator, the commissioner responsible for implementing the plan shall assist the debtor with the instruments which need to be effected in order to implement the plan.

CHAPTER II

Court-ordered winding-up

Articles L622-1 to
L622-34

SECTION I

Winding-up judgment

Articles L622-1 to
L622-15

Subsection 1

Winding-up commenced without an observation period

Articles L622-1 to
L622-4

Article L622-1

Winding-up proceedings with no period of observation shall be instituted for any undertaking referred to in the first sub-paragraph of Article L. 620-2 which has suspended payments, ceased trading or is obviously unable to recover.

It shall be instituted in accordance with the second sub-paragraph of Article 621-1 and Articles L. 621-2 to L. 621-5, L. 621-14 and L. 621-15.

The date on which payments are suspended shall be set in accordance with Article L. 621-7.

Article L622-2

(Law No 2003-7 of 3 January 2003 Article 45 Official Gazette of 4 January 2003)

In the judgment ordering compulsory liquidation, the court appoints the insolvency judge, as well as a listed court-appointed receiver or a person chosen pursuant to the first paragraph of subparagraph II of Article L. 812-2 to act as liquidator. The liquidator is replaced pursuant to the rules laid down in the second paragraph of Article L. 622-5. One or more assistant liquidators may be appointed on the same basis.

A creditors' representative is appointed as indicated in the first paragraph of Article L. 261-8 or in the first line of Article 621-135, as applicable. He is replaced as indicated in the third paragraph of Article L. 621-10. He performs the duties envisaged in Article L. 621-36 and, in the circumstances described in the second paragraph of Article L. 621-135, the functions conferred on him by those provisions.

Controllers are appointed as indicated in Article L. 621-13 and perform their duties as envisaged in Chapter I.

Article L622-3

The judgment instituting winding-up proceedings shall have the same effect as that for which provision is made in the case of an administrative order in the first and fourth sub-paragraphs of Article L. 621-24 and in Articles L. 621-40, L. 621-41, L. 621-43, L. 621-48, L. 621-50, L. 621-115, L. 621-116 and L. 621-122.

Creditors shall state their claims to the liquidator in accordance with Articles L. 621-43 to L. 621-47.

Article L622-4

The liquidator shall effect liquidation transactions and verify claims at one and the same time and may institute proceedings for which the creditors' representative is responsible.

The liquidator shall perform the duties which devolve upon the administrator and the creditors' representative under Articles L. 621-18, L. 621-41, L. 621-42, L. 621-126 and L. 621-127.

Redundancies shall be subject to the provisions of the fourth sub-paragraph of Article L. 622-5.

Article L622-5

(Law No 2003-7 of 3 January 2003 Article 46 Official Gazette of 4 January 2003)

The court which declares the debtor bankrupt appoints the creditors' representative as the liquidator. Through a reasoned decision, however, and if so requested by the administrator, a creditor, the debtor or the Public Prosecutor, it may appoint a different person as liquidator, as indicated in Article L. 812-2.

The court may replace the liquidator at its own initiative, on a proposal from the insolvency judge or at the behest of the Public Prosecutor. The debtor or a creditor may ask the insolvency judge to initiate such a procedure before the court.

The liquidator carries out the liquidation operations concurrently with verification of the debts and establishment of the creditors' priority rankings. He maintains any actions brought prior to the judgment ordering liquidation, either by the administrator, or by the creditors' representative, and may initiate actions which fall within the competence of the creditors' representative.

Any redundancies the liquidator has to implement as a result of the judgment ordering liquidation are subject to the provisions of Articles L. 321-8 and L. 321-9 of the Labour Code.

Subsection 3

Common provisions

Articles L622-6 to
L622-15**Article L622-6**

No relation by blood or marriage up to three times removed, including of the entrepreneur or directors in the case of a legal person, may be appointed as liquidator.

Article L622-7

The liquidator shall give the court-appointed receiver and the procureur de la République a progress report at least every three months.

Article L622-8

Any sums received by the liquidator during the course of his duties shall immediately be paid into a deposit account at the Consignations and Loans Fund. In the event of delay, the liquidator shall be liable for interest at a rate of five percentage points above the legal rate of interest on any sums not deposited.

Article L622-9

The judgment instituting winding-up proceedings automatically removes the debtor from the administration and disposal of his assets, including any acquired in any manner before winding-up is completed. The debtor's rights and proceedings in relation to his assets shall be exercised by the liquidator throughout the winding-up procedure.

However, the debtor may institute civil proceedings with a view to establishing the guilt of the perpetrator of a crime or misdemeanour of which he claims to be the victim, provided that the proceedings are limited to prosecution and no compensation is sought.

Article L622-10

If it is in the public or the creditors' interest, the court may authorise the debtor to continue trading for a maximum term set by decree of the Conseil d'Etat, which may be extended for a term set in the same manner at the request of the procureur de la République. In the case of a farm holding, this term shall be set by the court on the basis of the current growing season, taking account of standard practices specific to the crops in question. The provisions of Article L.621-32 shall apply to claims which accrue during the said period.

The undertaking shall be administered by the administrator, who shall remain in office by way of exception from the provisions of Article L. 621-27 or, where there is no administrator, by the liquidator. The administrator, or where there is no administrator, the liquidator shall make redundancies in accordance with Articles L. 321-8 and L. 321-9 of the Employment Code.

Where the administrator does not have the sums needed in order to continue trading, he may arrange for the liquidator to pay them to him with the consent of the court-appointed receiver.

Article L622-11

The court-appointed receiver shall perform the duties which devolve upon him pursuant to Articles L. 621-12, L. 621-13, L. 621-55, L. 621-20 and L. 621-21, the first sub-paragraph of Article L. 621-28 and the fourth sub-paragraph of Article L. 621-31.

The information held by the procureur de la République shall be sent to him in accordance with the rules for which provision is made in the second sub-paragraph of Article L. 621-11.

Article L622-12

The court-appointed receiver shall give the liquidator all the information and documentation needed in order for him to perform his duties. The liquidator shall perform the duties which devolve upon the administrator or the creditors' representative, as applicable, pursuant to Articles L. 621-16, L. 621-20 and L. 621-112.

In the instance referred to in the second sub-paragraph of Article L. 622-10, the administrator or, where there is no administrator, the liquidator, may demand that contracts pending be performed in accordance with Article L. 621-28.

Article L622-13

Winding-up proceedings shall not automatically cancel the lease on the buildings used for the business.

The liquidator or the administrator may continue the lease or cancel it in accordance with the terms and conditions set out in the agreement with the landlord, together with all the rights and obligations pertaining thereto.

If the liquidator or the administrator decides not to continue the lease, it shall be cancelled at and as of the date of his request to that effect.

If the landlord intends to request or establish cancellation on grounds which predate the winding-up proceedings order, he must file his request within three months of the order, unless he has already done so. The provisions of Article L. 621-29 shall apply, irrespective of whether or not trading continues.

The landlord's preferential right shall be determined in accordance with the first three sub-paragraphs of Article L. 621-31.

Article L622-14

Articles L. 621-51 to L. 621-53 and L. 621-103 to L. 621-129 shall apply to the court-ordered winding-up.

Article L622-15

During the winding-up proceedings, the liquidator shall take receipt of correspondence addressed to the debtor. The provisions of the second and third sub-paragraphs of Article L. 621-20 shall apply.

SECTION II

Sale of the assets

Articles L622-16 to

L622-21

Article L622-16

Real property shall be sold in accordance with the procedure prescribed for the distraint of real property. However, the court-appointed receiver shall stipulate the reserve price and the basic terms and conditions of the sale and how it is to be publicised, once he has obtained the observations of the controllers, the debtor and the liquidator, who shall be heard or duly summoned.

Where an administrative order or winding-up proceedings suspend proceedings already instituted to distraint real property, the liquidator may subrogate to the rights of the distraining creditor for the deeds which he has carried out, which shall be deemed to have been carried out on behalf of the liquidator who proceeds to sell the real property. The distress of real property may then resume at the point at which it was suspended by the judgment instituting the procedure.

Similarly, the court-appointed receiver may authorise the sale, either by private auction on the reserve price which he has set or by mutual agreement for a price and on terms determined by him, if the composition and location of the assets and the offers received are such that they can be sold amicably on better terms. In the case of a private auction, a higher bid can always be made.

The proceeds from auctions held in application of the preceding sub-paragraphs shall be used to clear any mortgages.

The liquidator shall distribute the proceeds from the sale and regulate the order of creditors, subject to any objections brought before the tribunal de grande instance.

In the event of winding-up proceedings of a farm holding, the court may set and grant the farmer a period of grace to vacate his main residence, depending on his personal and family circumstances.

A Conseil d'Etat decree shall stipulate how this Article is to be applied.

Article L622-17

Production units comprising all or some of the movable or immovable assets may be sold in one lot.

The liquidator shall invite bids and set the deadline by which they must be received. Any interested party may submit a bid to the liquidator.

However, the debtor, the de jure or de facto directors of the legal person being wound up and their relations by blood or marriage up to the second degree may not put in a bid.

All bids shall be made in writing and shall include the information referred to in Article L. 621-85 (1) to (5). Bids must be filed with the court registry, where any interested party may inspect them, and notified to the court-appointed receiver.

The court-appointed receiver, having heard or duly summoned the debtor, the works council or, where there is none, the staff delegates, controllers and, where applicable, the owner of the premises in which the production unit is housed and advised the department of the procureur de la République, shall select what he considers to be the most serious bid, which will allow the creditors to be employed in the long term under optimum conditions.

The liquidator shall report on the execution of the deeds of sale.

Part of the sale price shall be allocated to each asset sold in order to distribute the price and exercise preferential rights.

Article L622-18

The court-appointed receiver shall order the remaining assets of the undertaking to be sold by public auction or mutual agreement, having heard or duly summoned the debtor and obtained the observations of the controllers.

The court-appointed receiver may ask that planned amicable sales be submitted to him so that he can verify if they comply with the terms which he has set.

Article L622-19

The liquidator shall notify the administrative authority responsible for keeping files before he sells or destroys the debtor's files. The said authority shall have a pre-emptive right.

Article L622-20

The liquidator may, with the court-appointed receiver's consent and having heard or duly summoned the debtor, compromise and compound on any objections which affect the creditors collectively, even those pertaining to rights and proceedings relating to real property.

If the object of the compromise or transaction is of undetermined value or exceeds the court's jurisdiction at last resort, the compromise or transaction shall be submitted for the court's approval.

Article L622-21

The liquidator authorised by the court-appointed receiver may pay the debt and redeem assets pledged as security by the debtor or the item retained.

If they are not redeemed, the liquidator must ask the court-appointed receiver for permission to realise the assets within six months of the winding-up proceedings judgment. The liquidator shall give the creditor fifteen days' notice of the realisation of the assets.

Even if they are not admitted, secured creditors may ask the assets to be awarded by court order before they are realised. If all or part of the claim is rejected, they must return the asset or its value to the liquidator, less the amount of the claim accepted.

In the event of sale by the liquidator, the right of retention shall automatically be offset against the price.

The liquidator shall ensure that any lien entered to maintain the security is deleted.

SECTION III

Liquidation and settlement

Articles L622-22 to
L622-34

Subsection 1

Settlement of creditors

Articles L622-22 to
L622-29

Article L622-22

The judgment instituting or ordering winding-up proceedings shall render due claims which have not yet matured.

Where the said claims are denominated in a currency other than that of the place in which winding-up proceedings were ordered, they shall be converted to the local currency on the basis of the exchange rate on the date of the judgment.

Article L622-23

Creditors who benefit from a special preferential right, charge or mortgage and the Treasury (for its preferential claims) may exercise their right to institute individual proceedings as soon as they have stated their claims, even if they have not yet been admitted, if the liquidator has not realised the assets encumbered within three months from the judgment instituting or ordering court-ordered winding-up.

Real property shall be sold in accordance with the provisions of the first, third and fifth sub-paragraphs of Article L. 622-16. Where proceedings to distrain real property are instituted prior to the judgment instituting the procedure, mortgagees shall be exempt from deeds and formalities carried out prior to the judgment when individual proceedings are instituted.

Article L622-24

The court-appointed receiver may order provisional payment of part of a claim which has been definitively admitted either ex officio or at the request of the creditors' representative, the liquidator, the commissioner responsible for executing the plan or a creditor.

This provisional payment may be subject to presentation by the payee of a guarantee from a credit institution.

Article L622-25

Any amounts distributed before the price for the real property is distributed shall be allocated to admitted preferential creditors and mortgagees in proportion to their total claims.

Once the real property has been sold and the order of mortgagees and preferential creditors has been finalised, those whose priority comes within the price of the real property shall only be paid the sum which corresponds to their mortgage ranking, less any amounts already received.

The sums deducted shall be paid to unsecured creditors.

Article L622-26

The rights of mortgagees who only rank for part of the price distributed from real property shall be settled on the basis of the amount outstanding to them after their mortgage ranking. Dividends paid to them during previous distributions which exceed the dividend calculated once they have been ranked shall be deducted from the sum of their mortgage ranking and included in the sums to be divided between unsecured creditors.

Article L622-27

Preferential creditors or mortgagees not fully satisfied from the price paid for the real property shall compete with

unsecured creditors for the amount outstanding to them.

Article L622-28

Subject to the third sub-paragraph of Article L. 622-21, the provisions of Articles L. 622-25 to L. 622-27 shall apply to creditors who have been given special collateral.

Article L622-29

The amount realised from assets, less the expenses and expenses of court-ordered winding-up, subsidies granted to the entrepreneur or directors or their families and sums paid to preferential creditors, shall be divided between all the creditors in proportion to their claims admitted.

The part corresponding to claims on the admission of which no final decision has been taken, especially the fees payable to company directors whose case has not been decided, shall be allocated to a reserve.

Subsection 2

Closure of winding-up proceedings

Articles L622-30 to
L622-34

Article L622-30

The court may order winding-up proceedings to be closed at any given time, even ex officio, having heard or duly summoned the debtor and received the court-appointed receiver's report:

1. where there are no more liabilities owing or the liquidator has sufficient funds at his disposal to satisfy the creditors or
2. where it is impossible to continue with winding-up proceedings because there are insufficient assets.

Article L622-31

The liquidator shall render the accounts and shall be responsible for the documents provided to him during the procedure for a period of five years from the date of the accounts rendered.

Article L622-32

I. - The judgment closing winding-up proceedings on the grounds of insufficient assets shall not allow creditors to recover the right to institute individual proceedings against the debtor unless their claim is based on:

1. a criminal conviction either for an offence unrelated to the debtor's professional activity or for tax fraud, in which case the Treasury alone shall benefit, or
2. the creditor's personal rights.

II. - However, the guarantor or joint debtor who paid instead and in lieu of the debtor may sue the debtor.

III. - Creditors shall recover the right to institute individual proceedings in the event of fraud against them, personal bankruptcy, prohibition from directing or controlling a commercial undertaking or legal person, aggravated bankruptcy or if the debtor or the legal person of which he was a director has been declared insolvent and the procedure has been closed on the grounds of insufficient assets.

IV. - Creditors whose claims have been admitted and who recover the right to institute individual proceedings may obtain a writ of execution by order of the president of the court.

Article L622-33

The closure of winding-up proceedings shall suspend the effect of the ban on issuing cheques applied to the debtor pursuant to Article 65-3 of the decree of 30 October 1935 unifying laws relating to cheques and laws relating to payment cards when a cheque issued before the judgment instituting the procedure was rejected.

If the creditors recover their right to institute individual proceedings, the ban shall again take effect when the writ of execution referred to in the last sub-paragraph of Article L. 622-32 is issued.

Article L622-34

If closure of winding-up proceedings is ordered on the grounds of insufficient assets and it is clear that assets were not realised or proceedings in the creditors' interest were not instituted, the procedure may be resumed at the request of any interested creditor by specially reasoned decision of the court provided that proof that the funds needed for the procedure have been deposited with the Consignments office is provided. Sums recovered following the resumption of the procedure shall be used first to reimburse the expenses consigned to the creditor who advanced the funds.

CHAPTER III

Appeals

Articles L623-1 to
L623-10

Article L623-1

I. - Appeals, including to the Supreme Court, may be lodged against:

1. Rulings on the institution of proceedings by the debtor, the prosecuting creditor or the ministère public, even if it has not acted as the main party.
2. Rulings on winding-up proceedings setting out or rejecting the plan to continue trading on the part of the debtor, the administrator, the creditors' representative, the works committee or, where there is none, the staff delegates or the ministère public, even if it has not acted as the main party.
3. Rulings amending the plan to continue trading on the part of the debtor, the commissioner responsible for executing the plan, the works committee or, where there is none, the staff delegates or the ministère public, even if it

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has not acted as the main party.

II. – Appeals on the part of the ministère public shall have a suspensive effect.

Article L623-2

Third party objections may be lodged against rulings instituting the procedure.

Article L623-3

Third party objections may not be lodged against rulings on the plan to continue trading.

Article L623-4

Objections, third party objections or appeals, including to the Supreme Court, may not be lodged against:

1. Judgments appointing or replacing the court-appointed receiver.
2. Judgments ruling on appeals against orders issued by the court-appointed receiver within the limits of his jurisdiction, with the exception of rulings on claims.

Article L623-5

Appeals, including to the Supreme Court, may only be lodged against rulings on appeals against orders issued by the court-appointed receiver in application of Articles L. 622-16, L. 622-17 and L. 622-18 by the ministère public.

Article L623-6

I. – Appeals may only be lodged by the ministère public, even if it has not acted as the main party, against:

1. Judgments appointing or replacing the administrator, the creditors' representative, the liquidator, the controllers or experts.

2. Judgments ruling on the duration of the period of observation, whether to continue or cease trading or authorising the real estate management for which provision is made in Article L. 621-34.

II. – Appeals against judgments setting out or rejecting the plan to assign the business may only be lodged either by the ministère public, even if it has not acted as the main party, or by the transferee or other contracting party referred to in Article L. 621-88. The transferee may only lodge an appeal against the assignment plan if it violates Article L. 621-63 by causing him to incur charges other than the commitments to which he subscribed while the plan was being prepared. The other contracting party referred to in Article L. 621-88 may only lodge an appeal against the part of the judgment resulting in assignment of the contract.

III. – Appeals against judgments amending the assignment plan may only be lodged either by the ministère public, even if it has not acted as the main party, or the transferee, subject to the limitations referred to in the preceding sub-paragraph.

IV. – Appeals by the ministère public shall have a suspensive effect.

Article L623-7

Third party objections or appeals to the Supreme Court may not be lodged against judgments returned in application of Article L. 623-6 I.

Only the ministère public may lodge an appeal with the Supreme Court against judgments returned in application of Article L. 623-6 II or III.

Article L623-8

Where the ministère public must be notified of administrative order or winding-up proceedings and cases relating to the responsibility of company directors, it alone may lodge an appeal with the Supreme Court on the grounds of lack of notification.

Article L623-9

If the judgment is set aside and the case therefore has to be referred back to the court, the cour d'appel may institute a new period of observation lasting no more than three months, reduced to one month where the simplified procedure for which provision is made in Chapter I, Section 5 is applied.

Where an appeal is lodged against the judgment ruling on winding-up proceedings or setting out or rejecting the plan to continue or cease trading and provisional enforcement is decreed, the period of observation shall be extended pending the decision of the cour d'appel.

Article L623-10

Works councils or staff delegates shall appoint one of their members to lodge appeals on their behalf for the purpose of this title.

CHAPTER IV

Provisions specific to legal persons and their directors

Articles L624-1 to
L624-7

Article L624-1

The judgment instituting an administrative order or winding-up proceedings of the legal person shall apply to all persons who are members or partners of the legal person and who are indefinitely and jointly and severally liable for the debts of the company. The court shall institute an administrative order or winding-up proceedings against each of them, as applicable.

Article L624-2

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Where an administrative order or winding-up proceedings are instituted against a legal person under private law, the following provisions of the present title shall apply to natural persons and legal persons acting as directors and to natural persons acting as the standing representatives of directors who are legal persons.

Article L624-3

Where it appears during the course of an administrative order or winding-up proceedings of a legal person that there are insufficient assets, the court may decide, if management errors have contributed to this lack of assets, that all or some of the debts of the legal person shall be borne, with or without joint and several liability, by all or some of its paid or unpaid de jure or de facto directors.

Proceedings shall be statute barred three years after the judgment setting out the recovery plan or, where there is none, the judgment ordering winding-up.

The amounts paid by the directors in application of the first sub-paragraph shall be included in the debtor's estate and shall be allocated on the basis of the liability settlement plan if the undertakings continues to trade. If the undertaking ceases to trade or is wound up, these amounts shall be divided between all the creditors on a pro rata basis.

Article L624-4

The court may institute an administrative order or winding-up proceedings against directors who were ordered but failed to pay all or some of the liabilities of a legal person.

Article L624-5

I. – In the event of administrative order or winding-up proceedings of a legal person, the court may institute an administrative order or winding-up proceedings against any paid or unpaid de jure or de facto directors charged with:

1. Having disposed of the assets of the legal person as their own property.
2. Having traded for personal interest under cover of the legal person.
3. Having used the assets or credit of the legal person to the detriment of its interests either for personal gain or in order to benefit another legal person or undertaking in which they had a direct or indirect interest.
4. Having, for personal interests, abusively pursued a loss-making operation which was bound to result in the insolvency of the legal person.
5. Having kept fictitious accounts or removed accounting documents from the legal person or failed to keep all the accounts required by law.
6. Having embezzled or concealed all or some of the assets or fraudulently increased the liabilities of the legal person.
7. Having kept accounts which are manifestly incomplete or irregular.

II. – The date on which payments are suspended shall be set in the judgment instituting administrative order or winding-up proceedings of the legal person.

IV. – Proceedings shall be statute barred three years after the judgment setting out the recovery plan for the undertaking or, where there is none, the judgment ordering winding-up.

Article L624-6

In the cases for which provision is made in Articles L. 624-3 to L. 624-4, the court shall act ex officio or shall be petitioned by the administrator, the creditors' representative, the commissioner responsible for executing the plan or the procureur de la République.

Article L624-7

For the purpose of the provisions of Articles L. 624-3 to L. 624-5, the court may, either ex officio or at the request of one of the persons referred to in Article L. 624-6, instruct the court-appointed receiver or, where there is no court-appointed receiver, a member of the court appointed specifically to obtain any documents or information from administrations and public agencies, welfare and national insurance agencies or credit institutions on the assets of natural persons or legal persons acting as directors or natural persons acting as standing representatives of directors who are legal persons, as referred to in Article L. 624-2, any statutory provisions to the contrary notwithstanding.

CHAPTER V

Personal bankruptcy and other prohibition measures

Articles L625-1 to
L625-10

Article L625-1

Where an administrative order or winding-up proceedings are instituted, the provisions of this chapter shall apply to:

1. Natural persons exercising the profession of trader or farmer or entered on the trades register.
2. Natural persons acting as de jure or de facto directors of legal persons which have an economic activity.
3. Natural persons acting as standing representatives of legal persons acting as directors of the legal persons defined in No 2 above.

Article L625-2

Personal bankruptcy shall result in prohibition from directing, managing, administering or directly or indirectly controlling any commercial or artisan undertaking, any farm holding and any legal person exercising an economic activity.

Article L625-3

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At any point during the proceedings, the court may declare personally bankrupt any natural person who is a trader or farmer or who is entered in the trades register and who is charged with:

1. Having abusively continued to operate a loss-making business which was bound to result in insolvency.
2. Having failed to keep accounts in accordance with the law or removed all or some accounting records.
3. Having embezzled or hidden all or some of the assets or fraudulently increased the liabilities.

Article L625-4

At any point in the proceedings, the court may declare personally bankrupt any natural person who is a paid or unpaid de jure or de facto director of a legal person who has committed one of the acts referred to in Article L. 624-5.

Article L625-5

At any point in the proceedings, the court may declare personally bankrupt any person referred to in Article L. 625-1 who is charged with:

1. Having exercised the profession of trader, artisan or farmer or held office as a director or administrator of a legal person despite being disqualified by law.
2. Having purchased items with a view to reselling them at a loss or used ruinous means in order to obtain funds with intent to avoid or delay the institution of an administrative order or court-ordered winding-up.
3. Having made commitments, on behalf of a third party and without a counterparty, which were considered excessive when made, given the standing of the undertaking or legal person.
4. Having paid or arranged for payment to be made to a creditor to the detriment of the other creditors once payments had been suspended and knowing that they had been suspended.
5. Having omitted to declare suspension of payments within fifteen days.

Article L625-6

The court may declare a director of a legal person who fails to pay the legal person's debts for which he was responsible personally bankrupt.

Article L625-7

The court shall act ex officio or at the petition of the administrator, the creditors' representative, the liquidator or the procureur de la République in the cases for which provision is made in Articles L. 625-3 to L. 625-6.

Article L625-8

The court may disqualify persons from directly or indirectly directing, managing, administering or controlling either any commercial or artisan undertaking, farm holding or legal person or one or more thereof, in lieu of declaring them personally bankrupt.

The prohibition referred to in the first paragraph may also be ordered against any persons referred to in Article L. 625-1 who failed, in bad faith, to give the creditors' representative a complete, certified list of their creditors and the amounts outstanding within eight days of the judgment instituting the procedure.

Article L625-9

The voting rights of directors declared personally bankrupt or disqualified in accordance with Article L. 625-8 shall be exercised at the general meetings of shareholders of legal persons subject to administrative order or winding-up proceedings by an agent specifically appointed by the court at the request of the administrator, the liquidator or the commissioner responsible for executing the plan.

The court may order all or some of these directors to sell their shares in the legal person or may order the forced sale thereof by a legal agent, where necessary after an expert opinion. The proceeds from the sale shall be used to pay some of the company's debts, insofar as the said debts were the directors' responsibility.

Article L625-10

Where the court orders the personal bankruptcy or prohibition provided for in Article 625-8, it shall set the term thereof, which shall be at least five years, and may order the provisional enforcement of its ruling. Forfeitures and prohibitions shall cease ipso jure at the end of the term set, without the need for a judgment.

The judgment closing the procedure because the liabilities have been paid shall reinstate the entrepreneur or the directors of the legal person in all their rights and shall dispense them from or relieve them of all forfeitures or prohibitions.

In all events, interested parties may request that the court relieve them of all or some forfeitures or prohibitions by making an adequate contribution towards payment of the liabilities.

Where relief is granted from all forfeitures and prohibitions, the court judgment shall include discharge.

CHAPTER VI

Aggravated bankruptcy and other offences

Articles L626-1 to
L626-19

SECTION I

Aggravated bankruptcy

Articles L626-1 to
L626-7

Article L626-1

The provisions of this section shall apply to:

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1. Any trader, farmer or person entered on the trades register.
2. Any person who has acted as the direct or indirect de jure or de facto director or liquidator of a private legal person exercising an economic activity.
3. Any natural person acting as the standing representative of a legal person acting as the director of a legal person as defined in no. 2 above.

Article L626-2

If administrative order or winding-up proceedings are instituted, the court may institute an administrative order or winding-up proceedings against any paid or unpaid de jure or de facto directors charged with:

1. Having purchased items with a view to reselling them at a loss or used ruinous means in order to obtain funds with intent to avoid or delay the institution of an administrative order or court-ordered winding-up.
2. Having embezzled or hidden all or some of the debtor's assets.
3. Having fraudulently increased the debtor's liabilities.
4. Having kept fictitious accounts or removed accounting documents from the undertaking or the legal person or failed to keep any accounts required by law.
5. Having kept accounts which are manifestly incomplete or irregular.

Article L626-3

Aggravated bankruptcy shall be punished by five years' imprisonment and a fine of 75,000 euros.

Accessories to aggravated bankruptcy shall be liable to the same punishment, even if they are not traders, farmers or artisans or do not directly or indirectly act as the de jure or de facto directors of a private legal person exercising an economic activity.

Article L626-4

Perpetrators of or accessories to aggravated bankruptcy who are directors of investment service companies shall be liable to seven years' imprisonment and a fine of 100,000 euros.

Article L626-5

Natural persons found guilty of the offences for which provision is made in Articles L. 626-3 and L. 626-4 shall also be liable to the following additional punishment:

1. Deprivation of civic, civil and family rights as stipulated in Article 131-26 of the Penal Code.
2. Prohibition, for a period of no more than five years, from public office or from exercising the professional or social activity in or during the exercise of which the offence was committed.
3. Exclusion from public procurement contracts for a period of no more than five years.
4. Prohibition, for a period of no more than five years, from issuing cheques other than cheques allowing the drawer to withdraw funds from the drawee or certified cheques.
5. Judgment to be posted or displayed as stipulated in Article 131-35 of the Penal Code.

Article L626-6

The criminal jurisdiction which finds one of the persons referred to in Article L. 626-1 guilty of aggravated bankruptcy may also declare them personally bankrupt or disqualify them in accordance with Article L. 625-8.

Where a criminal jurisdiction and a civil or tribunal de commerce have passed final judgments declaring a person personally bankrupt or disqualified in accordance with Article L. 625-8 for the same deeds, the sanction ordered by the criminal jurisdiction alone shall be enforced.

Article L626-7

I. – Legal persons may be found criminally responsible in accordance with Article 121-2 of the Penal Code for the offences for which provision is made in Articles L. 626-3 and L. 626-4.

II. – The sanctions imposed on legal persons shall be as follows:

1. A fine in accordance with Article 131-38 of the Penal Code.
2. The punishments referred to in Article 131-39 of the Penal Code.

III. – The prohibition referred to in Article 131-39 (2) of the Penal Code shall apply to the activity in or during the exercise of which the offence was committed.

SECTION II

Other offences

Articles L626-8 to
L626-14

Article L626-8

A sentence of two years' imprisonment and a fine of 30,000 euros shall be passed on:

1. Any trader, any person entered in the trades register, any farmer or any paid or unpaid de jure or de facto director of a legal person who consents to a mortgage or a charge during the period of observation, who concludes a deed of disposal without the authorisation for which provision is made in Article L. 621-24 or who pays all or part of a debt which accrued before the decision to institute proceedings.

2. Any trader, any person entered in the trades register, any farmer or any paid or unpaid de jure or de facto director of a legal person who effects a payment in violation of the liability payment schedule for which provision is made in the plan to continue trading or who concludes a deed of disposal without the authorisation for which provision is made in Article L. 621-72.

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3. Any person who, knowing the debtor's circumstances, concludes one of the deeds referred to in nos. 1 or 2 above with the debtor or receives irregular payment from the debtor during the period of observation or the execution of the plan to continue trading.

Article L626-9

The punishments for which provision is made in Articles L. 626-3 to L. 626-5 shall be imposed on:

1. Any person who removes, receives or hides all or part of the assets, chattels or real property belonging to the persons referred to in Article L. 626-1, in their interest, none of which shall prejudice the application of Article 121-7 of the Penal Code.

2. Any person who fraudulently declares fictitious claims during an administrative order or winding-up proceedings either in his own name or through an intermediary.

3. Any person acting as a trader, artisan or farmer, either in his own name or under an assumed name, who is guilty of one of the acts for which provision is made in Article L. 626-14.

Article L626-10

Spouses, descendants, ascendants, collaterals or partners of the persons referred to in Article L. 626-1 who embezzle, misappropriate or receive bills backed by the assets of a debtor subject to an administrative order shall be sentenced to the punishment for which provision is made in Article 314-1 of the Penal Code.

Article L626-11

In the cases for which provision is made in the preceding Articles, the court referred to shall rule, even in the event of acquittal:

1. ex officio on the reintegration into the debtor's estate of any assets, rights or shares fraudulently removed and
2. on any damages sought.

Article L626-12

1. – Any, creditors' representative, liquidator or commissioner in charge of executing the plan who:

1. willingly damages the interests of the creditors or the debtor either by using the sums received in the performance of his duties for his own profit or by arranging for benefits to be allocated to him which he knows were not due;

2. uses the powers at his disposal in his own interest, to the detriment of the interests of the creditors or the debtor, shall be sentenced to the punishment for which provision is made in Article 314-2 of the Penal Code.

II. – Any administrator, creditors' representative, liquidator, commissioner in charge of executing the plan or other person, with the exception of the controllers and salaried employees' representatives who, having taken part in some capacity in the proceedings, directly or indirectly acquire the debtor's assets on their own account or use them for their own profit shall be liable to the same punishment. The court referred to shall declare the acquisition null and void and shall rule on any damages sought.

Article L626-13

Any creditor who concludes an agreement which includes a specific benefit at the debtor's expense once the judgment instituting an administrative order or winding-up proceedings have been passed, shall be liable to the punishment for which provision is made in Article 314-1 of the Penal Code.

The court referred to shall declare the said agreement null and void.

Article L626-14

Any person referred to in Article L. 626-1 (2) and (3) who, in bad faith, removes or conceals or attempts to remove or conceal all or some of the assets of a legal person subject to a judgment instituting an administrative order or winding-up proceedings with a view to preventing the legal person or the partners or creditors thereof from recovering all or some of their assets or fraudulently having themselves listed as debtors for sums not owing to them shall be liable to the punishment for which provision is made in Articles L. 626-3 to L. 626-5.

SECTION III

Procedural rules

Articles L626-15 to
L626-19

Article L626-15

For the purpose of the provisions of sections 1 and 2 of this chapter, the period of limitation for prosecution shall only commence on the date of the judgment instituting the administrative order procedure if the deeds incriminated emerged before that date.

Article L626-16

Recourse shall be taken to the criminal jurisdiction either at the instigation of the ministère public or if the administrator, the creditors' representative, the salaried employees' representative, the commissioner in charge of executing the plan or the liquidator files for damages.

Article L626-17

The ministère public may require the administrator or liquidator to hand over all deeds and documents in their possession.

Article L626-18

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The expenses of proceedings instituted by the administrator, the creditors' representative, the salaried employees' representative, the commissioner in charge of executing the plan or the liquidator shall be borne by the Treasury in the event of an acquittal.

In the event of a conviction, the Treasury may only take recourse against the debtor once winding-up proceedings have been completed.

Article L626-19

Judgments and convictions returned in application of this chapter shall be published at the offender's expense.

CHAPTER VII

Common provisions

Articles L627-1 to
L627-5

Article L627-1

No manner of objection to or enforcement proceedings on sums paid to the Consignments office shall be admissible.

Article L627-2

The court-appointed receiver shall be entitled to reimbursement of his travelling expenses from the debtor's assets.

Article L627-3

I. – Where the debtor has insufficient liquid assets for immediate purposes, the Treasury shall advance expenses and expenses on the instructions of the court-appointed receiver or the president of the court, including service and publication expenses in connection with:

1. Decisions made during the course of an administrative order or winding-up proceedings in the collective interest of the creditors or the debtor.

2. Proceedings instituted in order to protect or restore the debtor's assets or in the collective interest of the creditors.

3. Proceedings instituted in accordance with Articles L. 625-3 to L. 625-6.

II. – The Treasury shall also advance expenses and expenses on the instructions of the president of the court, including service and publication expenses in connection with proceedings instituted to cancel or amend the plan.

III. – These provisions shall also apply to appeals against any of the decisions referred to above, including to the Supreme Court.

IV. – Reimbursement of Treasury advances shall be guaranteed by the preferential right of court expenses.

Article L627-4

Any person who exercises a professional activity or office in violation of a prohibition, forfeiture or legal incapacity in accordance with Articles L. 625-2 and L. 625-8 shall be sentenced to two years' imprisonment and a fine of 375,000 euros.

Article L627-5

Plans by the administrator, employer or liquidator, as applicable, to dismiss the salaried employee's representative referred to in Articles L. 621-8, L. 621-135 and L. 622-2 shall be referred to the works council, which shall give its opinion on the planned dismissal.

The redundancy shall be subject to the consent of the health and safety inspector responsible for the establishment. Where there is no works council in the establishment, the health and safety inspector shall be addressed directly.

However, in the event of serious misconduct, the administrator, the employer or the liquidator, as applicable, may dismiss the interested party immediately pending a final decision. If the redundancy is refused, the dismissal shall be reversed and its consequences suppressed *ipso jure*.

The protection afforded the salaried employees' representative in the exercise of his duties in accordance with Article L. 621-36 shall cease once the creditors' representative has repaid all the sums paid to him by the institutions referred to in Article L. 143-11-4 of the Employment Code to the salaried employees, in application of the tenth sub-paragraph of Article L. 143-11-7 of the said Code.

Where the salaried employees' representative performs the duties of the works council or, where this is none, of the staff delegates in application of Article L. 621-135, protection shall cease at the end of the final hearing or consultation for which provision is made in the administrative order procedure.

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

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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.

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