

OFFICIAL BULLETIN

ORGANIZATION FOR THE HARMONIZATION OF BUSINESS LAW IN AFRICA



Permanent Secretariat of OHADA – P.O. Box 10071 Yaounde (Cameroon) – Tel. : (237)222 21 09 05 – Fax : (237) 222 21 67 45

UNIFORM ACT OF 17 OCTOBER 2023 ORGANIZING SIMPLIFIED RECOVERY PROCEDURES AND ENFORCEMENT MEASURES





**Uniform Act of 17 October 2023
organizing simplified recovery procedures
and enforcement measures**

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UNIFORM ACT ORGANIZING SIMPLIFIED RECOVERY PROCEDURES AND ENFORCEMENT MEASURES

The Council of Ministers of the Organization for the Harmonization of Business Law in Africa;

- Considering the Treaty on the Harmonization of Business Law in Africa, signed at Port-Louis on the 17th of October 1993, as amended at Quebec City on the 17th of October 2008, in particular Articles 2, 5 to 10 and 12;
- Considering the report of the Permanent Secretariat and the observations of the States Parties;
- Considering Opinion No. 002/2023 of the 30th of May 2023 of the Common Court of Justice and Arbitration;
- Having deliberated thereon, the States present and voting, have deliberated and unanimously adopt the Uniform Act set out below:

PRELIMINARY CHAPTER COMMON PROVISIONS

Section 1 - Scope and definitions

Article 1

This Uniform Act shall apply to injunctions to pay and order for delivery or restitution procedures, as well as to protective and enforcement measures.

A creditor who intends to pursue the compulsory recovery of his claim or the preservation of his rights shall only be entitled to implement against his debtor the measures and procedures provided for in this Uniform Act.

However, this Uniform Act shall not govern:

- attachment covered by international conventions, in particular those relating to the attachment of ships or aircraft;
- specific attachment and procedures provided for in the law of each State Party for the collection of public debts;
- protective measures provided for by other Uniform Acts.

Article 1-1

For the purposes of this Uniform Act, the following terms and expressions shall have the following meanings:

- **agent in charge of the sale:** any Public Officer, any other Auxiliary of Justice or any agent in charge, in the State party, of the public auction of attached movable property;

- **livestock:** all animals raised on a farm or as part of a farming operation or in trans-humance and, in general, animals with a market value, with the exception of pets;
- **terms of reference:** a document drafted and signed by the pursuing creditor's Counsel or by the Bailiff or Process-server, that specifies the terms and conditions of the sale of property attached ;
- **Declaration of real purchaser:** statement by which a successful bidder in a real property attachment notifies to the sale agent that he has purchased the property not on his own behalf, but on behalf of another person whose identity he shall specify;
- **natural increase:** increase of livestock by reproduction;
- **shareholdings:** the rights acquired by a person referred to as a partner in return for a contribution in cash or in kind made either upon the incorporation of a company or on the occasion of a capital increase;
- **bids:** successive and increasingly high offers from persons wishing to acquire an attached property for sale;
- **bidder:** a person who makes a bid at an auction sale;
- **irresponsible bidding:** procedure aiming to nullify the auction sale due to the failure of the successful bidder to meet his obligations and to bring about a new auction sale;
- **substantial formality:** essential requirement for the validity of a deed or an act;
- **Bailiff or Process-server (enforcement agent):** any public officer, any other Auxiliary of Justice or any agent entrusted in the State Party with the enforcement of writ of execution and the issuing and service of the documents required for such enforcement;
- **business days:** days of the week other than weekly rest days and days declared to be public holidays under the national law of each State Party;
- **electronic money:** monetary value representing a claim on the issuing institution stored or incorporated in electronic form, issued upon remittance of funds, which can be used or is accepted to make payments to persons other than the issuer, without involving bank accounts in the transaction;
- **Notification:** an action that consists in informing a person of an act or a fact;
- **service of process:** notification of process effected by a Bailiff or a Process-server;
- **service at the residence:** service consisting in the delivery of a copy of an act to any person present at the residence of the addressee, in cases where the Bailiff or Process server cannot find the addressee on the premises;

- **personal service:** service consisting in the delivery of a copy of an act to the addressee himself, in the case of a natural person, to his legal representative, to a proxy of the latter or to any employee or agent empowered for this purpose, in the case of a corporate person;
- **overbid:** procedure whereby, after the auction sale, a person offers to acquire the property sold at the sale price plus at least one tenth (1/10) of the purchase price.
- **Overbidder:** person who makes a higher bid;
- **garnishee:**
 - **in matters of debt attachment:** a person bound, on the day of attachment, by an obligation relating to a debt of a sum of money arising from a legal relationship which implies a power of his own and independent of the debtor;
 - **in matters of attachment of property other than a debt:** the person who, on the day of the attachment, holds the property to which the attachment relates on behalf of the debtor;
- **provisional writ of execution:** decision the provisional enforcement of which is provided for by law or ordered by the Judge;
- **transferable securities:** negotiable instruments (securities) conferring identical rights by category giving access, directly or indirectly, to a share of the capital of the corporate person having issued them or to a claim on its assets.

Section 2 - Authorities responsible for executing acts

Article 1-2

Only the authorities responsible for enforcement or sale in the State Party shall be empowered to carry out the protective measures or acts of execution provided for by this Uniform Act.

The authorities referred to in the preceding Paragraph of this Article are required to provide assistance in accordance with the rules governing their profession. They shall be released from this obligation when the measure requested is manifestly unlawful; refusal to execute in breach of this rule shall give rise to civil liability.

Article 1-3

The President of the competent court, upon request, or the Judge delegated by him, may authorize any Bailiff or Process-server in possession of a writ of execution, to request State administrations, other legal entities under public law and credit bureaus to disclose relevant information, without being bound by professional secrecy.

The information referred to in Paragraph 1 of this Article shall concern the composition of the debtor's assets, his address, if applicable, and the identity and address of his employer, to the exclusion of any other information.

The person appointed to disclose the information may apply to the Judge for a retraction.

The Judge's decision to reject the application or to rule on the retraction shall be final.

Article 1-4

Information collected pursuant to Article 1-3 of this Uniform Act shall only be used to the extent required for the enforcement of the security(ies) for which it is requested. Unless required by law, it shall not be communicated to third parties, nor shall be the subject of a nominative information file.

Section 3 - Form, deadlines for completing acts and nullity on defect of form

Paragraph 1 - The form of the acts

Article 1-5

The acts drawn up for the purpose of securing or recovering debts may be drawn up either on paper (paper-based acts) or electronically (electronic acts).

Electronic acts are tantamount to paper-based acts when they are drawn up and kept using a reliable technical process that guarantees, at any time, the accessibility, origin and integrity of the acts throughout electronic processing and transmission.

Article 1-6

Without prejudice to the provisions specific to each type of measure or procedure, any act drawn up by a Bailiff or a Process-server shall include, under pain of nullity:

- a) the date;
- b) the following identifying information:
 - for natural persons: the surname, first names and residence;
 - for the corporate persons: the name, corporate form, registered office and legal representative;
- c) the surname, first name, business address and signature of the Bailiff or Process-server;
- d) the time at which the act was issued;
- e) where the document is to be served, the surname, first name and address of the addressee or, in the case of a corporate person, its name and registered office.

Article 1-7

Unless otherwise provided for in this Uniform Act, acts shall be notified to the concerned parties by way of formal service.

Article 1-8

Service shall be made either on paper or by electronic means.

Service by electronic means shall be deemed to have been effected when it is carried out by any electronic means which:

- certifies the date of the act;
- guarantees the identity of the sender and the addressee;
- attests the effective receipt of the act.

The transfer of an act by registered mail shall be deemed to have been performed when it is forwarded, by electronic means, using a process that makes it possible to identify the third party, to designate the sender, to guarantee the identity of the addressee and to establish actual receipt of the act by the addressee.

Article 1-9

Service shall be personal.

Whether in the case of a natural or corporate person, service shall be deemed personal when the addressee of the act or the person entitled to receive it, after having taken notice of it, declines to take a copy thereof.

In the case referred to in the previous Paragraph of this Article, a copy shall be sent to the person concerned by registered mail or by any other means with written proof and establishing actual receipt.

Article 1-10

If personal service is impossible, a copy of the act may be handed:

- to anyone found by the Bailiff or the Process server at the residence of the person concerned; such Bailiff or Process server shall record the identity of the person who received the act and indicate his relationship with the person concerned
- if no one is found at the residence, service shall be effected as the case may be, on the chief of the village, the chief of the district or, in the case of an apartment block, on the janitor or manager whose name and address the Bailiff or the Process server shall specify on the act.

Where service is carried out in accordance with Paragraph 1 of this Article, the Bailiff or Process-server shall specify the number, date of issuance and expiry, as well as the signing authority of the identification document of the person receiving the act.

Article 1-11

The Bailiff or the Process-server shall, without delay, hand over the copy of the act to the municipal authority, his deputy, any agent appointed for this purpose or, failing this, to the local administrative authority:

if the person found at the residence, or the persons or authorities referred to in Article 1-10 refuse to receive the act or are unable to provide an identification document;

if the residence of the addressee of the act is unknown.

In the event of service on the municipal authority or on the administrative authority, the Bailiff or the Process-server shall, under pain of nullity, latest within two (2) days of service, notify the addressee by registered mail or by any other means with written proof and establishing actual receipt; mention of this shall be made on the original act.

Article 1-12

In all cases where service is not personal, the copy of the act shall be delivered in a sealed envelope bearing on the front, the surname, first name and address of the party and, on the back, the stamp of the Bailiff or Process-server affixed to the flap of the envelope.

The Bailiff or the Process-server shall state in the act the steps he has taken to effect personal service, as well as the circumstances making such service impossible.

Paragraph 2- Deadline**Article 1-13**

When an action or a formality must be accomplished within a certain time limit, such time limit shall run from the date of commencement of the action or formality, the decision, the notification, the service or the event that constitutes the starting point of the time limit.

Article 1-14

When a time limit is set in days, the day from which it begins and the day on which it expires shall not be taken into account in calculating the time limit.

When a time limit is set out in months or years, it shall expire on the day of the last month or year which has the same date as the day of the act, the event, the ruling or the notification which causes it to run; in the absence of an identical date, it shall expire on the last day of the month.

When a time limit is set in months and days, the months shall be counted first, followed by the days.

Article 1-15

All time limits shall expire at midnight on the last day.

Where the time limit expires outside business days, the action or formality may be completed on the next working day.

Paragraph 3- Nullities on defect of form

Article 1-16

No procedural act provided for in this Uniform Act may be declared null and void on the grounds of a formal defect if the nullity does not result from an express provision of the said Uniform Act.

The nullity can only be pronounced if the party raising it can prove that he has been prejudiced by the non-observance of a formality or the failure of a mention on an act.

Notwithstanding the provisions of Paragraph 1 and 2 of this Article, the nullity shall be ordered in the event of failure to comply with a substantial formality or a rule of law and order.

BOOK I

SIMPLIFIED RECOVERY PROCEDURES

PART I

INJUNCTIONS TO PAY

CHAPTER I

CONDITIONS

Article 2

The recovery of a debt that is certain, due and owing may be obtained following the procedure of injunctions to pay.

The procedure of injunction to pay shall be applicable where:

- the debt arises from a contract;
- the commitment results from the issuance, endorsement, guarantee or acceptance of any negotiable instrument or from the issuance of a cheque without cover or insufficient cover.

CHAPTER II

THE PROCEDURE

Section 1 - Application

Article 3

The action shall be commenced by an application to the competent court of the place of residence or place of abode of the debtor or in the event of several debtors, in the residence or place of abode of one (1) of the debtors.

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

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

Article 4

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

It shall, under pain of inadmissibility, mention the following:

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

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

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

Section 2 - Injunction to pay

Article 5

The President of the competent court or the Judge delegated by him shall rule within three (3) days of the referral.

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

Where the President of the competent court dismisses the petition in whole or partially, his order, which must be justified, shall not be subject to appeal by the creditor. The creditor's only remedy shall be an ordinary civil claim.

Article 6

The originals of the petition and the injunction to pay shall be kept by the Court Registrar who shall give a copy thereof to the petitioner. The original documents annexed to the petition shall be returned to the petitioner and their certified true copies shall be preserved in the registry.

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

Article 7

A certified true copy of the petition and of the injunction to pay, issued in conformity with the provisions of Article 6 of this Uniform Act shall be notified at the instance of the creditor on each debtor by an extrajudicial act.

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

Article 8

Under pain of nullity, service of the injunction to pay shall enjoin the debtor, within a period of ten (10) days:

- either to pay to the creditor the amount indicated in the order, including the interests and costs, the amount of which shall be specified;
- or, if the debtor intends to put forward defences, to file an opposition.

Under the same pain of nullity, service of the injunction to pay shall:

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

Article 8-1

Where the competent court annuls the writ of service pursuant to the provisions of Article 8 of this Uniform Act, there shall be no ruling on the merits of the case.

The creditor may proceed to a new service of the injunction to pay, subject to the provisions of Article 7, Paragraph 2 of this Uniform Act.

Section 3 - Opposition**Article 9**

The recourse against an injunction to pay shall be by way of opposition. It shall be brought before the President of the competent court or the Judge delegated by him who rendered the decision granting the injunction to pay.

The opposition shall be filed by extrajudicial act.

Article 10

The opposition shall be filed within ten (10) days from the date of service of the injunction to pay. This time limit may be extended, taking into account the distance of the parties from the seat of the court.

However, where the injunction to pay was not personally served on the debtor, the opposition shall be admissible up to the expiry of ten (10) days following the first act of personal service or, failing this, following the first enforcement measure having the effect of attaching all or part of the debtor's property.

Article 11

The opposing party shall, under pain of forfeiture and within the same act of opposition: serve the opposition on all the parties, the Bailiff or the Process-server as well as the Registry of the court which issued the order; serve a summons to appear before the competent court on a scheduled date which shall not exceed a period of thirty (30) days from the date of the opposition.

Article 12

The court before which the opposition is brought shall appoint a Judge to attempt conciliation.

The appointed Judge shall carry out the conciliation attempt, in chambers, within fifteen (15) days of his appointment.

Where the conciliation succeeds, the Judge shall draw up a conciliation report which he shall sign with the parties and the Court Registrar. A copy of the said report shall bear the executory formula.

The report shall replace the injunction to pay, even if it already bears an executory formula as provided for in Article 16 of this Uniform Act.

Where the conciliation fails, the Judge shall record this fact and refer the case to the next public hearing. The court shall rule on the claim for recovery, within two (2) months of the date of the first hearing, by a judgment which shall have the effect of a decision rendered after full hearing, notwithstanding the absence of the debtor who lodged the opposition.

The court shall rule on the entire dispute, including incidental claims and arguments on the merits.

Article 13

The burden of proof of the debt shall lie on the petitioner who seeks an injunction to pay.

Article 14

Where the case has been examined on the merits, the court's decision shall replace the injunction to pay.

Article 15

Unless otherwise provided by the law of each State Party, the decision issued on opposition shall be subject to appeal.

The time limit for appeal shall be fifteen (15) days from the date on which the decision is issued, if the latter is rendered after full hearing.

The time limit referred to in Paragraph 2 of this Article shall run from the date of service of the decision in the case of a default judgment.

Both the appeal and the time limit for appeal shall be stay execution. However, the court may order provisional enforcement of the decision.

The appeal shall be lodged by extrajudicial act, served on the other party and on the Registry of the court that rendered the judgment.

The Registrar of the court that rendered the judgment shall forward the case file, together with all the exhibits, to the competent appellate court within ten (10) days of being served with the notice of appeal.

The appellate court shall rule within two (2) months from the date of the first hearing which shall not be held more than one (1) month after receipt of the file.

Section 4 – Effects of the Injunction to Pay

Article 16

The creditor may request the insertion of the executory formula on the ruling where no opposition is filed within ten (10) days from service of the injunction to pay or, where the debtor withdraws his opposition.

The effect of such insertion shall be that of a decision rendered after an adversary hearing and shall not be subject to appeal.

However, where the executory formula is inserted in accordance with this Article, while the opposition may still be filed pursuant to Article 10 of this Uniform Act, the debtor who lodged the opposition may apply to the President of the court seized of the opposition to discontinue the proceedings. This court shall render its decision within fifteen (15) days from the date the matter was called up in court for the first time.

The Bailiff or Process-server shall be made a party to the proceedings.

The decision rendered in respect of the application to discontinue the proceedings shall not be subject to appeal.

Article 16-1

The executory formula shall be affixed to the injunction to pay where, by a decision not subject to suspensive appeal:

- the opposition is declared inadmissible;
- the opposition is declared null and void;
- the court before which the opposition is brought has either declined jurisdiction or has been declared incompetent.

Article 17

The application to affix the executory formula shall be made at the Registry orally or in writing.

The injunction to pay shall become null and void where the creditor's application was not presented within two (2) months following the expiry of the time limit for the opposition or its withdrawal by the debtor.

Where the Court Registrar, upon application to affix the executory formula in accordance with the conditions laid down in this Article, rejects the request, the applicant may apply to the President of the competent court for an injunction to affix the executory formula. The ruling shall not be subject to appeal.

The certified true copies of the documents produced by the creditor and provisionally preserved at the Court Registry shall be returned at his request from the time the opposition is filed or when the executory formula is affixed on the injunction to pay.

Article 17-1

In addition to the case provided for in Article 17 Paragraph 2 of this Uniform Act, the injunction to pay shall be null and void when, following a ruling not subject to suspensive appeal:

- the President who issued the injunction to pay or the Judge delegated by him is declared incompetent;
- the application for an injunction to pay is declared inadmissible.

Article 18

A register shall be kept the Registry of each court. It shall be , numbered and initialled by the President of the court or the Judge delegated by him, in which shall be entered the surnames, first names and residences of creditors and debtors, the date of the injunction to pay or of refusal to grant the injunction, the amount and origin of the debt, the date of issuance of a copy of the injunction to pay, the date of appearance of the parties, the date of the conciliation attempt report and, if applicable, the date of the opposition ruling.

The register provided for in Paragraph 1 of this Article, which may also be electronic, shall include the same details as on paper; it shall be kept in accordance with a reliable technical procedure that guarantees its accessibility, origin and integrity at all times.

PART II

SIMPLIFIED PROCEDURE FOR THE DELIVERY OR RESTITUTION OF SPECIFIC PERSONAL PROPERTY

Article 19

Any person who claims to be the creditor of a contractual obligation of delivery or restitution that is certain and owing of any specific, tangible personal property may apply to the President of the competent court to order such delivery or restitution.

CHAPTER I APPLICATION

Article 20

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

Only the court or the debtor during the proceedings initiated by his opposition may raise the issue of lack of territorial jurisdiction.

Article 21

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

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

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

Article 22

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

CHAPTER II

THE DECISION ORDERING DELIVERY OR RESTITUTION

Article 23

The President of the competent court or the Judge delegated by him shall issue the order within three (3) days from its referral.

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

The originals of the application and the injunction shall be preserved by the Registrar, who shall issue copies thereof to the applicant.

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

Article 24

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

Article 25

A certified true copy of the application and of the delivery or restitution order shall be served by extrajudicial act at the instance of the creditor, on the person required to effect the delivery.

Under pain of nullity, the notification shall contain an order to proceed within ten (10) days:

- either to deliver, at the respondent's expense, the designated property to a specific place under given conditions;
- or, where the holder of the property has a defense, to file an opposition by extrajudicial act, failing which the decision shall become enforceable.

Under pain of nullity, the notification shall:

- specify the time limit within which the opposition shall be lodged, the court before which it shall be brought and the forms in which it must be filed;
- inform the debtor that he may consult the documents filed by the creditor at the Registry of the competent court whose President has ruled on the delivery or restitution order, and that if he fails to lodge an opposition within the specified time limit, he shall no longer be entitled to any recourse and may be forced by all legal means, to deliver or reconstitute the property claimed.

The ruling ordering delivery or restitution shall be null and void where it has not been notified on the party concerned within three (3) months from the date of issue.

CHAPTER III
EFFECTS OF THE RULING ORDERING
DELIVERY OR RESTITUTION

Article 26

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

Article 27

Where there is no opposition within the time limit prescribed in Article 16 of this Uniform Act or in the event of withdrawal by the debtor, the petitioner may apply to the Registry of the competent court to affix the executory formula on the decision.

The provisions of Articles 16 to 18 of this Uniform Act shall apply to the procedure ordering delivery or restitution.

BOOK II
ENFORCEMENT MEASURES
PART I
GENERAL PROVISIONS

Article 28

Failing voluntary execution, any creditor may, regardless of the nature of his claim, under the conditions provided for in this Uniform Act, attach the property to compel the defaulting debtor to honour his obligations towards him, or take a protective measure to secure his rights. The creditor has the choice of measures to ensure the recovery of his claim or the preservation of his rights.

The execution of these measures may not, however, exceed what is necessary to secure payment or preserve rights. The competent court may, at the request of the distrainee, order the release of any unnecessary or abusive measure and order the creditor to pay damages in the event of the exercise of such measure under conditions where the exercise is prejudicial to the distrainee.

Where the attachment concerns immovable property belonging to the debtor, the latter may, except in the case of a debt secured by a mortgage or other preferential rights, apply to the competent court in the State party for a stay of execution and for it to be carried out in the first place on movable property; he shall then indicate its contents and location. Where the stay is ordered, further proceedings may only take place in the event of insufficient proceeds from the attachment and with the authorization of the Judge.

Where the attachment concerns a business assets, the debtor may, except in the case of a pledged claim or preferential rights, request that execution be stayed and that it be pursued in the first place on the other movables; this shall be done in accordance with Paragraph 4 of this Article.

Article 28-1

Protective measures and enforcement measures may only be taken or exercised by or against persons lacking legal capacity in accordance with the rules applicable to representation or assistance to such persons.

Article 28-2

No one may exercise a protective measure or an enforcement procedure on behalf of another person unless he has been duly mandated for this purpose.

The delivery of the writ of execution to the Bailiff or the Process-server shall constitute authority for any protective measure or forceful enforcement unless a special mandate is required by law.

Article 28-3

The following irregularities shall be sanctioned by nullity on grounds of substantive defect:

- protective measures taken or enforcement measures exercised by or against a person who does not have the capacity to exercise them;
- protective measures taken or enforcement measures exercised by a person acting on behalf of another person lacking the necessary mandate;
- acts performed by a Bailiff or a Process-server beyond his jurisdiction;
- acts performed by any person not empowered as a Bailiff or a Process-server;
- enforcement measures carried out without a writ of execution.

Article 28-4

Nullity on grounds of substantive defect shall be pronounced even if the person invoking it does not prove any prejudice suffered.

It may be raised ex officio by the Judge when it is based on the violation of a rule of law or public policy. In this case, the Judge shall summon the parties concerned to present their observations.

Article 29

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

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

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

Article 30

There can be no forceful enforcement or protective measures against legal entities governed by public law, in particular the State, local authorities and public establishments.

However, any debt which is certain, due and owing by legal persons under public law, shall give rise to a set-off against debts which are also certain, due and owing them, subject to an agreement of reciprocity.

The debts of the persons referred to in the preceding Paragraph may only be considered certain, within the meaning of this Article where they arise from either an acknowledgement by them of such debts or from a writ which is enforceable within the territory of the State where the persons are located.

Article 30-1

Any debt established by a writ of execution or arising from an admission of indebtedness by a legal entity governed by public law, in particular the State, a local authority or a public institution may, after formal notice served on the governing body or competent authority in each State party without success for three (3) months from the date of notification, be automatically included in

the accounts for the financial year and in the budget of the said legal entity, as compulsory expenditure.

The request for registration shall be sent to the Minister of Finance, together with supporting documents for the claim and a formal notice.

Claims registered following a request for compulsory registration shall automatically bear interest at the legal rate in force from the date of formal notice.

Article 30-2

Where forceful enforcement and protective measures are undertaken in respect of legal persons other than those referred to in Article 30 of this Uniform Act and are likely to seriously undermine the continuity of the public service, the Judge may, at the request of the legal entity concerned or the Legal Department, take all appropriate emergency measures, where making such measures subject to the debtor's performance of acts likely to facilitate or guarantee payment of the debt.

Article 30-3

Except upon express waiver of immunity, there is no compulsory execution or protective measures against foreign legal entities under public law and international organizations that are immune from execution pursuant to diplomatic or consular conventions or headquarters or establishment agreements.

Article 31

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

Article 32

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

The provision of Paragraph 1 of this Article shall not prevent the competent Judge from ruling on provisional execution defenses or stays of execution.

The enforcement of a provisional writ of execution shall be pursued at the risk of the judgment creditor, who shall, where the writ is subsequently modified, be bound to fully make good any damage caused by the execution, irrespective of whether he was at fault or not.

Article 32-1

The enforcement of a court ruling within the time limit for exercising a non-suspensive remedy, or in the event of the exercise of such action, shall not be considered as a fault, even if the ruling is called into question. The enforcement can only give rise to restitution.

Article 33

The following shall constitute writs of execution:

- court decisions bearing the executory formula and decisions which are immediately enforceable;
- foreign acts and court decisions as well as arbitral awards which have been granted ex-equatur in a ruling which is final in the State in which the writs are invoked;
- conciliation reports signed by the Judge, the Court Registrar and the parties;
- notarial acts bearing the executory formula;
- mediation agreements bearing the executory formula in compliance with the Uniform Act on Mediation;
- decisions recognised as court decisions by the national law of each State Party.

Article 34

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

Article 35

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

Article 36

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

Attachment shall render the property attached inalienable.

The debtor or third party may only transfer the property if he can prove a legitimate ground and on condition that he first notifies the creditor, indicating the place where the property shall be kept.

A debtor whose property has already been attached shall, under pain of a claim for damages, within five (5) days from the date he became aware of the attachment, disclose to any new creditor attaching the same property, the existence of a prior attachment and the identity of the person who carried it out. He shall, in addition, produce the writ of attachment.

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

The creditor so informed shall in turn communicate to all other creditors who are parties to the

proceedings, all documents and information that Articles 74 to 76 of this Uniform Act require to be notified.

Article 37

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

Article 38

Third parties may not obstruct proceedings for the enforcement or the protection of a claim. They shall lend support to such proceedings where so required by law. Failure by them to fulfill these obligations may make them liable to pay damages. To determine the quantum of damages, the Judge shall take into account the seriousness of the harm done to the pursuing creditor, without however exceeding the total amount of the judgment debt.

A third party distrainee may also, under the same conditions, be ordered to pay the judgment debt, subject to his filing an action for recovery against the debtor. If there are several garnishees, the cumulative amount of the sentences cannot exceed the judgment debt.

Article 39

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

However, taking into account the situation of the debtor and considering the needs of the creditor, the competent court may, except for claims for maintenance allowance and debts arising from an exchange transaction, postpone or order payment by instalment of the debt over a period not exceeding one (1) year. The court may also order that the payments shall first be applied to expunge the principal debt.

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

Article 40

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

Article 41

Where the legal conditions are met, the Bailiff or the Process-server may enter a place whether used as a residence or not and, where need be, open doors and open any movable property.

Article 42

In the absence of the occupant of the premises, or where the occupant denies access to the Bailiff or the Process-server, the latter may place a guard at the doors to prevent any fraudulent dis-

position of property. He shall request the competent administrative authority or the police or gendarme officers to be present during the operations.

Under the same conditions, he may open any movable property.

Article 43

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

Article 44

The Bailiff or the Process-server may ask to be assisted by one (1) or by two (2) adult witnesses who shall not be related by blood or marriage in direct line to the parties and who are not in their employ. In such case, he shall state in the report their surnames, first names, occupations and residences. The witnesses shall sign the original and copies of the report.

Article 45

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

Article 46

No act of execution shall be carried out on non-business days, except in case of necessity and by virtue of a special authorization of the President of the court in whose jurisdiction the enforcement measure is carried out or the delegated Judge.

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

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

Article 47

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

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

Article 48

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

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

Article 49

In respect of matters relating to movable property, the President of the competent court in each State Party or the Judge delegated by him shall hear any dispute or claim relating to a measure of forceful execution or sequestration.

He shall rule within two (2) months of the date on which the matter was called up in court for the first time.

The decision rendered may be challenged. Neither the recourse nor the time limit provided for it shall stay execution, except where by a reasoned ruling, the Judge referred to in Paragraph 1 of this Article decides otherwise. Recourse shall be exercised in accordance with the rules of domestic law.

The Judge referred to in Paragraph 1 of this Article may, even of his own motion, order a pecuniary penalty to ensure the execution of his decision. He shall determine the final amount of the penalty taking into account the behaviour of the debtor and the difficulties he has encountered in complying with the decision.

Article 50

All property belonging to the debtor may be the subject of attachment, even where the said property is held by a third party, except where it has been declared inalienable.

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

Article 51

The following shall be exempt from attachment:

- maintenance allowance awarded by a court decision;
- property declared inalienable by the national law of the States Parties;
- sums and objects available, declared non-transferable by the testator or donor, when attachment is pursued by creditors subsequent to the deed of donation or the opening of the legacy, unless authorized by the Judge and for the portion he determines;
- property which the law makes non-transferable, unless otherwise stipulated;
- food, food-related sums and maintenance allowance, except for the payment of maintenance already provided by the distrainor to the distrained party;
- movable property necessary for the livelihood of the debtor and his family;

- movable property necessary for the exercise of the distrainee's professional activity, except for payment of its price, unless such property is located in a place other than that where the distrainee usually lives or works, or if it constitutes tangible elements of a business assets or if they are of great value;
- essential items for people with reduced mobility or for the care of the sick;
- the assets of banks as well as those of credit, microfinance or payment institutions in the form of deposits in central bank accounts;
- assets and rights that have been declared exempt from attachment by the States Parties.

Article 52

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

Article 53

Where an account, even a joint account, funded by the earnings and salary of one of the spouses married under the joint property regime, is subject to a distraint or sequestration for the payment or guarantee of a debt incurred by the other spouse, the spouse whose earnings have been funding the account shall forthwith be awarded a sum of his choice equivalent to the earnings and salary paid into the account during the month preceding the attachment or an average of the earnings for the twelve (12) months immediately preceding the attachment .

PART II SEQUESTRATION

CHAPTER I GENERAL PROVISIONS

Article 54

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

Article 55

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

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

Article 56

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

Article 57

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

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

Article 58

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

Article 59

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

Article 60

The sequestration order of the competent court shall lapse where it is not executed within a period of three (3) months from the date on which it was made.

Article 61

Except where the sequestration was carried out with a writ of execution, the creditor shall, within one (1) month following the said sequestration and under pain of being declared null and void, institute proceedings or complete the necessary formalities aimed at obtaining a writ of execution.

Where the sequestration is carried out on property in the hands of a third party, copies of the documents in support of the process shall be forwarded to the third party within a period of eight (8) days from the date on which they were issued.

CHAPTER II DISPUTES

Article 62

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

Article 63

The application to set aside the protective measure shall be brought before the court which ordered the measure. Where such measure was taken without prior leave of court, the application shall be brought before the competent court of the residence or place of abode of the debtor. Other disputes, especially those relating to the execution of the measure, shall be brought before the competent court of the place where the attached property is located.

CHAPTER III SEQUESTRATION OF TANGIBLE MOVABLE PROPERTY

Section 1- The Attachment Process**Article 64**

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

- 1) a reference of the decision of the competent court or the enforceable instrument on the basis of which the attachment was carried out; the originals or the certified true copies of these documents shall be appended to the original of the act;
- 2) the surnames, first names and residences of the distrainor and distrainee or, in the case of corporate persons their corporate forms, corporate names and registered offices;
- 3) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not resident therein; any service or offer may be made at the chosen address;
- 4) a detailed description of the property attached;
- 5) where the debtor is present, his declaration concerning any previous attachment of the same property;
- 6) a statement in bold characters that the attached property is inalienable; that it is in the hands of the debtor or any third party agreed upon by the parties or, failing such agreement, by a court order ruling in urgent application; that it may neither be alienated nor removed except under the circumstances provided for by Article 67-1 of this Uniform Act, under pain of penal sanctions; and that the distrainee is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 7) a statement in bold characters of the debtor's right to apply to the competent court of his place of residence for an order of discharge of the protective measure, where the conditions of validity of the attachment are not fulfilled;
- 8) an indication of the competent court before which other disputes shall be brought, especially those relating to the attachment process;
- 9) an indication, where applicable, of the surnames, first names and status of the persons who were involved in the attachment process and who shall sign the original and the copies; where a person refuses to sign, it shall be mentioned in the report;
- 10) a reproduction of the criminal provisions punishing the fraudulent disposition of the attached property, as well as the provisions of Articles 62 and 63 of this Uniform Act.

The provisions of Article 45 above may equally apply.

Article 65

Where the debtor is present during the attachment exercise, the Bailiff or Process-server shall orally remind him of the contents of the provisions of Article 64 (6) and (7) of this Uniform Act.

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

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

Article 66

The provisions of Articles 99 and 103 of this Uniform Act shall apply to sequestration where the attachment is carried out in the hands of the debtor.

Article 67

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

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

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

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

Article 67-1

Property attached shall be inalienable.

Such property shall be placed in the custody of the debtor or of a third party designated by agreement between the parties or by ruling delivered without delay by the competent court and shall neither be removed nor transferred, except for legitimate reason other than in a case of absolute urgency. In such cases, the debtor or third party shall inform the creditor in advance, indicating the place where the asset shall be kept.

Article 68

All incidental issues arising in the course of the attachment process shall, where necessary, be treated in accordance with the provisions of Articles 139 to 146 of this Uniform Act.

Section- 2 Conversion into a Writ of Attachment and Sale**Article 69**

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

- 1) the surnames, first names and residences of the distrainee and the distrainor, or, in the case of corporate persons their corporate forms, corporate names and registered offices;

- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case mere reference to it shall be enough;
- 4) a separate breakdown of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the rate of interest.
- 5) a summons to pay the said sums within a period of eight (8) days, failing which the property attached shall be sold.

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

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

Article 70

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

In the report the debtor shall be informed that he has a period of one (1) month to sell the attached property by private sale, under the conditions provided for in Articles 115 to 119 of this Uniform Act.

Article 71

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

In the absence of a response, the creditor shall refer the matter to the competent court, which may order the delivery of this information under penalty, without prejudice to criminal proceedings for misappropriation of attached property.

Article 72

In the absence of a private sale within the stipulated period, the attached property shall be compulsorily sold in accordance with the procedure set out in Articles 120 to 128 of this Uniform Act.

Section 3- Foreign Attachment

Article 73

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

The distrainor shall be custodian of the property, if it is in his possession; otherwise, a custodian shall be appointed by the Bailiff or the Process-server.

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

Section 3 bis- Sequestration of livestock

Article 73-1

After reminding the debtor that he is required to indicate the livestock that may have been subject to a previous attachment and to provide him with the record thereof, the Bailiff or the Process-server shall draw up an attachment report containing, under pain of nullity:

- 1) a reference to the authorization of the court with jurisdiction or to the title under which the attachment is carried out; these documents are annexed to the original act or to a certified copy;
- 2) the surnames, first names and residences of the distrainee and distrainor or, in the case of corporate persons, their legal form, name and registered office;
- 3) the detailed description of the livestock;
- 4) if the debtor is present, his declaration regarding any previous attachment on the same livestock;
- 5) a statement, in bold characters, that the attached livestock is inalienable and cannot be removed or transferred, except for grazing, without prior notification of the Bailiff or the Process-server;
- 6) a statement, in bold characters, of the debtor's rights, if the conditions for the validity of the attachment are not met, to request the discharge of the attachment from the competent court.;
- 7) the appointment of the court before which other disputes shall be brought, in particular those relating to the enforcement of the attachment;
- 8) an indication, where applicable, of the surnames, first names and titles of the persons who witnessed the attachment operations, who shall affix their signatures to the original and copies; in the event of refusal, this shall be noted in the report;
- 9) the reproduction of criminal provisions punishing the misappropriation of attached objects as well as those of Articles 62 and 63 of this Uniform Act.

The provisions of Article 45 of this Uniform Act shall equally apply.

Article 73-2

If the debtor is present during the attachment process, the Bailiff or the Process-server shall orally remind him of the contents of the provisions of Article 73-1 (5) and (6) of this Uniform Act.

A copy of the report bearing the same signatures as the original, is immediately served on the debtor.

Where the debtor was not present at the attachment operations, a copy of the report shall be served on him, giving him a period of two (2) days to inform the Bailiff or the Process-server of any details relating to the existence of a previous attachment and to forward the report to him.

Article 73-3

The provisions of Article 152-3 of this Uniform Act shall apply to the sequestration of livestock, when carried out in the hands of the debtor.

Article 73-4

The debtor shall continue to use of the livestock made inalienable by the attachment.

However, the competent court may order, on petition, at any time, even before the start of attachment operations, and after hearing the parties or having duly summoned them, the handing over of one or more animals to an escrow agent appointed by the court.

Article 73-5

If the sequestration is carried out in the hands of a third party, the procedure shall be that provided for in Articles 108, 109, 112, 113 Paragraph 1, 114 and 152-5 of this Uniform Act.

If the sequestration is carried out without prior judicial authorization in accordance with the provisions of article 55, Article 105 of this Uniform Act shall apply.

If the third party is present during the sequestration operations, the Bailiff or the Process-server shall orally remind him of the contents of Articles 152-5 Paragraph 2 and 152-12 of this Uniform Act. Reference shall be made to this statement in the report. A copy of the attached report, bearing the same signatures as the original, shall be handed over to the third party immediately; such handover shall be equivalent to service of process.

Where the third party was not present during the sequestration operations, he shall be served with a copy of the attached report, giving him a period of eight (8) days within which he shall inform the Bailiff or Process-server of the existence of any previous attachment of the same property and forward the report to that authority.

Article 73-6

Incidents relating to the enforcement of the sequestration shall be subject, where necessary, to the provisions of Articles 63, 139 to 146 of this Uniform Act.

Section 3 *ter* - Conversion to attachment and sale**Article 73-7**

The creditor, in possession of a writ of execution confirming the existence of his claim, shall serve the debtor with an act of conversion which, under pain of nullity, shall contain:

- 1) the surnames, first names and residences of the distrainee and the distrainor, or, in the case of corporate persons, their legal form, name and registered office;
- 2) the reference to the attachment report;
- 3) indication of the writ of execution;
- 4) a separate breakdown of amounts payable in principal, costs and accrued interest, as well as an indication of the rate of interest;
- 5) a summons to pay this sum within eight (8) days, failing which the attached livestock shall be sold.

Conversion may be notified in the writ of execution.

If the attachment has been carried out in the hands of a third party, a copy of the act of conversion shall be served on the latter.

Article 73-8

Upon the expiry of a period of eight (8) days from the date of the act of conversion, the Bailiff or Process-server shall proceed with the verification of the attached livestock. A report of any missing livestock shall be drawn up. In this report, the debtor shall be informed that he has a period of one (1) month to privately sell the attached livestock in accordance with the conditions set out in Articles 115 to 119 of this Uniform Act.

Article 73-9

If the livestock can no longer be found at the place where it was attached, the Bailiff or the Process-server shall order the debtor or third party to inform him within eight (8) days of its whereabouts and, if it has been attached for sale, to inform him of the name and address either of the Bailiff or Process-server who carried out the attachment, or of the creditor on whose behalf the attachment was carried out.

In the absence of a reply, the creditor shall refer the matter to the competent court, which may order the disclosure of this information under penalty, without prejudice to criminal proceedings for misappropriation of attached objects.

Article 73-10

In the absence of a private sale within the stipulated period, the attached livestock shall be compulsorily sold in accordance with the procedure set out in Articles 120 to 128 of this Uniform Act.

Section 4. Multiple Attachments**Article 74**

The Bailiff or Process-server who carries out a sequestration on property rendered inalienable by one (1) or more previous sequestrations shall serve a copy of the sequestration report on each of the creditors whose action preceded his.

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

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

Article 75

Where the debtor makes proposals for a private sale, the distrainor creditor who accepts the said proposals shall, by registered mail with acknowledgement of receipt or by any other means with written proof and establishing actual receipt, notify the contents of the said proposals to the creditors who had previously carried out sequestration on the property, before the act of attachment or before the instrument of conversion, as the case may be. Under pain of nullity, the mail or other means used shall reproduce in bold characters the three (3) Paragraphs below.

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

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

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

Article 76

The distrainor creditor who undertakes the removal of the property with a view to its forced sale shall, by registered mail with acknowledgement of receipt or by any other means with written

proof and establishing actual receipt, inform the creditors who carried out a sequestration of the same property before the attachment or conversion as the case may be. Under pain of nullity, the registered mail or the other means used to communicate shall state the name and address of the Auxiliary of Justice in charge of the sale and reproduce in bold characters the following paragraph.

Each creditor shall, within a period of fifteen (15) days of receipt of the registered mail or other means used in informing him of the removal of the property with a view to selling it, inform the Auxiliary of Justice in charge of the sale of the nature and amount of his claim as at the date of the removal. Where he fails to reply within the time limit, he shall lose the right to a share in the proceeds from the private sale, unless he asserts his claim on the balance of the proceeds after the distribution, if any.

CHAPTER IV

SEQUESTRATION OF DEBTS

Section 1- The Attachment Process

Article 77

The creditor shall carry out the attachment by means of an instrument issued by a Bailiff or Process-server, served on the third party in accordance with the provisions of Articles 54 and 55 of this Uniform Act.

The instrument shall, under pain of nullity, contain:

- 1) the surnames, first names and residences of the debtor and the distraining creditor or, in the case of corporate persons, their name, corporate form and registered office;
- 2) a choice of an address for service within the jurisdiction where the attachment shall be carried out if the creditor is not resident therein; any service or offer shall be served at the chosen residence;
- 3) a reference to the decision of the competent court or the enforceable instrument on the basis of which the attachment was carried out;
- 4) a breakdown of the sums for which the attachment shall be carried out;
- 5) a prohibition to any third party from disposing the sums claimed up to the amount owed the debtor;
- 6) the reproduction of the provisions of Paragraph 2 of Article 36 and those of Article 156 of this Uniform Act.

Article 78

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

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

Article 79

Within a period of eight (8) days, under pain of forfeiture, the sequestration shall be notified to the debtor through an act of the Bailiff or Process-server.

Under pain of nullity, the act shall contain:

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

Article 80

A garnishee shall be required to furnish the Bailiff or the Process-server with the information provided for in Article 156 of this Uniform Act and to hand over copies of documents in support thereof. The information shall be mentioned in the report.

Article 81

A garnishee who, without legitimate cause, fails to provide the information required may be liable to pay the sums for which the attachment is made where the said attachment is converted into a writ of attachment and award subject to any action he may bring against the debtor. He may also be ordered to pay damages in the event of wilful negligence or an inaccurate or false declaration.

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

Section 2- Conversion into a Writ of Attachment and Award

Article 82

A garnishor in possession of a writ of execution in proof of his claim shall serve on the garnishee an act bearing the conversion of the writ. Such instrument shall, under pain of nullity, contain:

- 1) the surnames, first names and residences of the distrainee and the distrainor, or, in the case of corporate persons their corporate form, corporate name and registered office;
- 2) reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case, it shall simply refer to it;

- 4) a separate breakdown of all the sums payable by way of the principal, costs and accrued interest, as well as an indication of the rate of interest.
- 5) a request for payment of the sums previously indicated, up to the amount the third party has acknowledged or been asserted to owe.

The act shall mention the fact that within this time limit the request shall entail the immediate attribution of the sums attached to the garnishor.

Article 83

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

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

Where there is no opposition, the third party shall make payment to the garnishor or to his authorized agent upon presentation of a certificate of non-opposition from the Court Registry.

Payment may be made before the expiry of the said period where the debtor declares in writing that he does not intend to file any opposition against the conversion act.

Article 84

The provisions of Articles 158 and 159, 165 to 172 of this Uniform Act shall apply.

CHAPTER V

SEQUESTRATION OF SHAREHOLDINGS AND OTHER TRANSFERABLE SECURITIES

Section 1 – Attachment Process

Article 85

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

Article 86

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

- 1) a copy of the order of the competent court or, where applicable, of the enforceable instrument on the basis of which the attachment is carried out;

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

Article 87

The provisions of Article 239 of this Uniform Act shall apply.

Section 2 – Conversion into a Writ of Attachment and Sale

Article 88

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

- 1) the surname, first names and residences of the distrainee and distrainor or, in the case of corporate persons, their corporate form, name and registered office;
- 2) a reference to the sequestration report;
- 3) a copy of the writ of execution except where such writ has already been mentioned in the attachment report, in which case it shall simply refer to it;
- 4) a separate breakdown of all the sums payable in principal, costs and accrued interest, as well as an indication of the rate of interest;
- 5) a summons to pay the said sums, failing which the attached property shall be sold;
- 6) an indication in bold characters, that he has a period of one (1) month within which to sell the attached securities by private sale, under the conditions provided for in Articles 115 to 119 of this Uniform Act;
- 7) the reproduction of Articles 115 to 119 of this Uniform Act.

Article 89

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

Article 90

The sale shall be carried out in accordance with Articles 240 to 244 of this Uniform Act.

PART III

ATTACHMENT AND SALE

Article 91

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

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

CHAPTER I

PRELIMINARY SUMMONS TO PAY

Article 92

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

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

Article 93

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

Article 94

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

CHAPTER II

THE ATTACHMENT PROCESS

Section 1- General Provisions

Article 95

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

Article 96

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

Article 97

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

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

Article 98

Upon the expiry of the eight (8) days from the date of service of the unproductive summons to pay, the Bailiff or Process-server may, on the basis of the writ of execution, enter a place whether serving as a dwelling house or not, under the conditions provided for in Articles 41 to 46 of this Uniform Act.

Section 2- Attachment of Property in the hands of the Debtor

Article 99

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

Article 100

The Bailiff or the Process-server shall draw up an inventory of the property. The writ of attachment shall, under pain of nullity, contain:

- 1) the surnames, first names and residences of the distrainee and the distrainor, or, in the case of corporate persons their corporate names, corporate forms, and registered offices and any choice of address by the distrainor;

- 2) the reference to the writ of execution authorizing the attachment;
- 3) an indication of the person to whom the writ was handed;
- 4) a detailed description of the property attached;
- 5) where the debtor is present, his declaration concerning any prior attachment of the same property;
- 6) a statement in bold characters that the attached property shall be inalienable, that they are in the custody of the debtor, that under pain of penal sanctions they shall neither be transferred nor removed except under the circumstances provided for in Article 97 of this Uniform Act, and that the distrainee is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 7) an indication in bold characters, that he has a period of one (1) month within which to sell the attached securities by private sale, under the conditions provided for in Articles 115 to 119 of this Uniform Act;
- 8) an indication of the court before which any disputes relating to attachment and sale shall be brought;
- 9) an indication, where applicable, of the surnames, first names and status of the persons present during the attachment process and who shall sign the original and the copies; where a person refuses to sign, it shall be mentioned in the report;
- 10) a reproduction of the criminal provisions governing fraudulent disposition of attached assets as well as those of Articles 115 to 119 of this Uniform Act;
- 11) a reproduction of Articles 143 to 146 of this Uniform Act.

Article 101

Where the debtor is present during the attachment process, the Bailiff or the Process server shall orally remind him of the provisions of Article 100 (6) and (7) of this Uniform Act. He shall also remind him of the option of a private sale of the attached property, under the conditions provided for by Articles 115 to 119 of this Uniform Act.

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

Article 102

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

Article 103

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

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

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

Article 104

Sums in cash may be attached up to the amount of the claim of the distrainor. They shall be kept by the Bailiff or the Process-server or at a Registry of the distrainor's choice.

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

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

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

Section 3- Attachment of Property in the hands of a Third Party

Article 105

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

Article 106

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

From that date, the attached property shall be inalienable; it shall be placed in the custody of the third party, who shall neither dispose of it nor transfer it, except in the case provided for in Article 97 this Uniform Act.

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

Article 107

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

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

Article 108

Where the third party declares that he does not have any property belonging to the debtor in his possession or where he refuses to make any declaration, a report to that effect shall be drawn up. The said report shall be handed over to, or served on the third party, with an indication in bold characters of the sanction referred to in Article 107 of this Uniform Act.

Article 109

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

- 1) the reference of the instrument under which the attachment is carried out;
- 2) the date of attachment, the surname, first name and residence of the distrainor or, in the case of a corporate person, its corporate form, name and registered office; choice of address for service, if any;
- 3) the surname, first name and address of the debtor or, in the case of a corporate person, its corporate form, name and registered office;
- 4) the surname, first name and address of the third party;
- 5) the third party's declaration, and in bold characters, an indication that any inaccurate or false declaration shall make him liable for the debt, without prejudice to being held liable for any damages;
- 6) a detailed description of the property attached;
- 7) a statement in bold characters that the attached assets shall be inalienable, that they are placed in the hands of the third party, that they shall neither be transferred nor removed, except under the circumstances provided for in Article 97 of this Uniform Act, under pain of penal sanctions; and that the third party is required to disclose the present attachment to any creditor carrying out a subsequent attachment on the same property;
- 8) a statement that the third party may avail himself of the provisions of Article 112 of this Uniform Act, which shall be reproduced in the document;
- 9) a statement that the third party may assert his claim over the property attached, by a simple declaration or registered mail with acknowledgement of receipt or by any means with written proof and establishing actual receipt, addressed to the Bailiff or Process-server of the distrainor;
- 10) an indication of the court before which shall be brought any opposition relating to the attachment and sale;

- 11) an indication, where applicable, of the surnames, first names and status of the persons who were present during attachment process and who shall sign the original and the copies; in the case of refusal, it shall be mentioned in the report;
- 12) a reproduction of the penal provisions governing fraudulent disposition of attached assets.

Article 110

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

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

Article 111

A copy of the report shall be served on the debtor not later than eight (8) days after the attachment.

Under pain of nullity, it shall state that the debtor has a period of one (1) month within which to organise a private sale of the attached property in conformity with the conditions provided for by Articles 115 to 119 of this Uniform Act, which shall be reproduced.

Article 112

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

Article 113

Subject to the third party's right of usufruct of the property attached, the competent court may, at any time, even before the attachment and after hearing the parties or after they have been duly summoned, order the return of one (1) or more objects to an escrow agent appointed by the court.

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

Article 114

Where the third party claims a possessory lien over the attached property, he shall inform the Bailiff or Process-server thereof by registered mail with acknowledgement of receipt or through

any means with written proof and establishing actual receipt, except where he had made a declaration at the time of the attachment.

Within a period of one (1) month from the date of receipt of the registered mail or the means used for its notification, or from the date of the declaration, the distraining creditor may challenge this lien before the competent court of the third party's residence or place of abode. The property shall remain inalienable during the proceedings.

Where there is no opposition within the period of one (1) month, the third party's claim shall be deemed to be founded for the purposes of the attachment.

CHAPTER III

SALE OF ATTACHED PROPERTY

Section 1- Private sale

Article 115

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

Article 116

The debtor shall have a period of one (1) month from the date of service of the attachment report to dispose of the attached property by private sale.

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

Article 117

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

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

The above parties shall, within fifteen (15) days from the date of receipt of the registered mail or of any other means used, to decide whether they wish to accept the private sale, refuse it or propose themselves as purchasers.

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

A forced sale may only be carried out after the expiry of the one (1)-month time limit provided in Article 116 of this Uniform Act, extended, where necessary, by the fifteen (15)-day period accorded the creditors to respond to the offer.

Article 118

The proceeds of the sale shall be deposited with the Bailiff or the Process-server or at the Registry named by the distrainor.

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

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

Article 119

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

Section 2- Forced sale

Article 120

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

Where there is a disagreement between the creditor and the debtor over the place where the sale shall take place, the President of the competent court or the Judge delegated by him in each State party, shall adjudicate over the dispute within five (5) days of the complaint being filed by the most diligent party.

Article 121

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

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

The sale may also be advertised in the print, audiovisual or online media.

Publication shall be carried out upon the expiry of the period prescribed in the last paragraph of Article 117 of this Uniform Act and at least fifteen (15) days before the date fixed for the sale.

Article 122

The Bailiff or the Process-server shall certify that the publication formalities have been complied with.

Article 123

The debtor shall be informed by the Bailiff or Process-server of the place, date and time of the sale not less than ten (10) days before the date by registered mail with acknowledgment of receipt or by any other means with written proof and establishing actual receipt. Mention shall be made thereof in the certificate as provided for in Article 122 this Uniform Act.

Article 124

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

Article 125

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

Article 126

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

The official in charge of the sale by public auction shall return to the debtor the assets not included in the sale.

Article 127

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

Article 128

The official in charge of the sale shall be personally liable for the auction sale price and shall not receive any amount above the purchase price under pain of the applicable penal sanctions.

CHAPTER IV

INCIDENTAL CLAIMS RELATING TO ATTACHMENT

Article 129

Any disputes relating to the attachment and sale shall be brought before the court of the place of attachment.

Section 1- Opposition by Creditors

Article 130

Any creditor who fulfils the conditions provided for by Article 91 of this Uniform Act may join in an attachment which has already been executed against the property of the debtor by means of an opposition, by proceeding where necessary with a further attachment.

No opposition may be admissible after the property has been verified.

Article 131

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

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

It shall also be served on the debtor

The first distraining creditor shall proceed alone with the sale.

Article 132

Any opposing creditor may extend the initial attachment to other property. A report of an additional attachment shall be drawn up in accordance with the conditions set forth in Articles 100 to 102 of this Uniform Act.

This report shall be served on the first distraining creditor as well as the debtor.

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

Article 133

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

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

Article 134

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

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

Article 135

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

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

Article 136

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

Article 137

Nullity of the first attachment shall not entail nullity of the opposition except where such nullity results from an irregularity in the execution of the writ of attachment.

The nullity shall not affect any further attachment.

Article 138

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

Section 2- Disputes relating to Attached Property**Article 139**

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

Sub-section 1- Disputes relating to Ownership

Article 140

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

Article 141

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

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

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

Article 142

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

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

Sub-section 2- Disputes relating to Distrainability

Article 143

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

Where the debtor is opposed to the distraint of any property, he shall file such opposition within one (1) month of being served with the notice of attachment.

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

Section 3- Disputes relating to the Validity of the Attachment

Article 144

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

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

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

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

Article 145

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

Article 146

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

CHAPTER V SPECIAL PROVISIONS RELATING TO ATTACHMENT OF UNHARVESTED CROP

Article 147

Crops and fruits which are almost mature may be attached before harvest. Only the creditor of the person entitled to the fruits may exercise this right of attachment. Under pain of nullity, this right may not be exercised more than six (6) weeks prior to the habitual period of maturity.

Article 148

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

The report shall be signed by the Mayor or Head of the administrative unit where the property is located, and a copy thereof left with him. In the event of refusal, this shall be noted in the report.

Article 149

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

Article 150

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

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

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

Article 151

The sale shall be carried out in accordance with the provisions of Articles 120 to 128 of this Uniform Act, and at the place where the crops are located or in the nearest market.

Article 152

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

CHAPTER VI

SPECIAL PROVISIONS FOR THE ATTACHMENT OF LIVESTOCK

Article 152-1

The creditor in possession of a writ of execution may, without prior summons, proceed with the attachment of livestock belonging to his debtor.

Article 152-2

The Bailiff or the Process-server shall draw up an inventory of the animals. He shall not make any addition to the inventory after leaving the premises. He shall appoint a custodian in accordance with the provisions of Articles 152-9 to 152-11 of this Uniform Act. The latter shall sign the original and a copy of the writ of attachment, and if he is unable or unwilling to sign, this shall be recorded; a copy of the writ shall be handed over to him.

- 1) the surnames, first names and residences of the distrainee and the distrainor and, in the case of a corporate person, the name, corporate form and registered office; the seizing party's address for service;

- 2) reference to the writ of execution under which the attachment is carried out;
- 3) the person to whom the writ is given;
- 4) detailed description of the livestock attached;
- 5) the debtor's statement concerning any previous attachment of the livestock;
- 6) a separate breakdown of the sums claimed in principal, costs and accrued interest;
- 7) the time of attachment;
- 8) the surname, first name and address of the custodian;
- 9) a statement, in bold characters, that the livestock attached is inalienable, that it shall neither be transferred nor removed, except in the case provided for in Article 152-12 of this Uniform Act, under pain of penal sanctions;
- 10) a statement that the debtor is required to disclose this attachment to any creditor who may undertake a new attachment of the same livestock;
- 11) an indication in bold characters, that the debtor has a period of one (1) month to proceed with the private sale of the attached livestock under the conditions set out in Articles 115 to 119 of this Uniform Act;
- 12) the indication of the court before which disputes relating to the attachment of livestock shall be brought;
- 13) an indication, where applicable, of the surnames, first names and capacities of the persons who witnessed the attachment proceedings, who must sign the original and copies. In the event of refusal, this shall be recorded in the report;
- 14) the reproduction of the provisions of Articles 115 to 119, 335-3 and 335-8 of this Uniform Act;
- 15) the reproduction of Articles 143 to 146 of this Uniform Act.

Where the attachment is carried out in the hands of a third party, the writ of attachment shall include, in addition to the provisions of Paragraph 2 of this Article, excluding 5) 10), 11) and 14):

- 1) the third party's declaration, and in bold characters, an indication that any inaccurate or false declaration shall make him liable for the debt, without prejudice to being held liable for any damages;
- 2) a statement that the third party may avail himself of the provisions of Articles 112 and 152-11 of this Uniform Act, which shall be reproduced in the instrument;
- 3) a statement that the third party may assert his claim over the livestock attached, by a simple declaration or registered mail with acknowledgement of receipt or by any means with written proof and establishing actual receipt, addressed to the Bailiff or Process-server;
- 4) the reproduction of Articles 335-2 and 335-8 of this Uniform Act.

Article 152-3

If the debtor is present before any attachment is carried out, the Bailiff or the Process-server shall make an oral demand for payment and inform the debtor that he is required to disclose any livestock that may have been subject to a previous attachment.

Article 152-4

When the attachment of livestock is made in the hands of a third party, it shall be notified to the debtor, under pain of nullity, within eight (8) days of the attachment.

Under pain of nullity, the act of notification shall include copies of the attachment instrument and the writ of execution; under the same penalty, it shall contain:

- a copy of the attachment instrument;
- the indication of the writ of execution authorizing the attachment;
- the warning to the debtor that he has a period of one (1) month to proceed with the private sale of the attached property under the conditions prescribed by Articles 115 to 119 of this Uniform Act, which shall be reproduced.

Article 152-5

The Bailiff or Process-server shall require the third party to disclose any animals held on behalf of the debtor, including any that may have been subject to a previous attachment.

In the event of a refusal to make a declaration or of an inaccurate or false declaration, the third party may be ordered to pay the debt, without prejudice to his recourse against the debtor. He may also be ordered to pay damages.

Article 152-6

The distrainor shall not be present during the attachment process. However, he may be represented by an agent.

Article 152-7

The Bailiff or Process-server may undertake the attachment of the livestock at any time other than the legal days and hours, upon authorization from the President of the competent court or the Judge delegated by him; the Judge to whom the matter is referred shall rule within two (2) days following the date of referral.

Article 152-8

The Bailiff or Process-server shall come to the place where the livestock is located on the day of attachment, and shall be accompanied, if necessary, by the creditor's agent.

On the same day, he may remove the livestock for safekeeping in a place other than the place of attachment until the day of sale.

All straw, fodder and grain necessary for bedding and feeding of the attached livestock may also be attached and removed.

Article 152-9

The Bailiff or Process-server may appoint a custodian on the proposal of the attached debtor.

In the absence of a proposal or in the event of its rejection, the Bailiff or Process-server shall appoint a custodian for the attached livestock. In the event of impediment, the Bailiff or the Process-server shall appoint another custodian.

Article 152-10

Neither the distraining creditor, his spouse, blood relatives and relatives up to the degree of second cousin, nor his employees may be appointed custodians.

However, the distrainee, his spouse, parents and employees may be appointed custodians with the consent of the distraining creditor.

If the distrainee, who has been requested in this regard, refuses to be appointed custodian of the livestock, this shall be recorded in the report; the same shall apply in the event of refusal by his spouse, parents or employees.

Article 152-11

The custodian may ask to be released if the sale did not take place on the day indicated in the report.

The distrainee and the distrainor may ask the Bailiff or Process-server for the replacement of the custodian. In the event of such substitution, the Bailiff or the Process-server shall inform the debtor and proceed with the inventory of the attached livestock in the presence of both the debtor and the creditor or their representatives.

Article 152-12

The attached livestock shall be inalienable. The custodian shall neither dispose of nor transfer the livestock, except for grazing, without notifying the Bailiff or Process-server.

Article 152-13

Natural increase in the number of animals or any other products, in particular dairy products and manure shall be included in the attachment. In the event of sale, the price shall be distributed at the same time as the proceeds from the sale of the livestock. Such proceeds are taken into account in the remuneration of the custodian and in the feeding and care of the livestock.

In the absence of livestock products, the costs shall be borne by the creditor and included in the attachment costs.

Article 152-14

In the event of a forced sale, the official in charge of the sale must check at the time of the sale whether all the livestock that has been attached is made available. He shall draw up a report of the inventory which shall include the missing animals, if any.

At the time of the inventory, the debtor has the option to seize the competent court to halt the sale when the conditions for attachment provided for in this Uniform Act are not met.

Attached livestock shall be sold either at the place where the animals are kept, or at the nearest public market where the animals are located.

Article 152-15

The provisions of Articles 115 to 139 of this Uniform Act shall apply in the case of private sale, forced sale and incidents relating to the attachment of livestock.

*CHAPTER VII
ATTACHMENT OF PROPERTY IN A SAFE DEPOSIT BOX
BELONGING TO A THIRD PARTY*

Article 152-16

Any creditor in possession of a writ of execution proving the existence of a debt due and owing may claim payment from the tangible assets kept in a safe deposit box belonging to a third party.

Article 152-17

The writ of attachment shall prohibit access to the safe deposit box without the presence of the Bailiff or Process-server who carried out the attachment, with the possibility for the latter to affix seals.

Article 152-18

The attachment of assets in a safe deposit box belonging to a third party shall be carried out by an act issued by the Bailiff or the process-server and served on the third party. Under pain of nullity, this act shall include:

- 1) the surname, first names and residences of the debtor and creditor or, in the case of a corporate person, its corporate name, form, and registered office;
- 2) the instrument on the basis of which the attachment is carried out;
- 3) a separate breakdown of the sums claimed in principal, costs and accrued interest;
- 4) a warning that access to the safe deposit box is forbidden, except in the presence of the Bailiff or Process-server;
- 5) the summons to disclose and inform, within a period of eight (8) days, the existence of any previous attachments, where applicable, the identification details of the creditors who carried out the attachment process.

Article 152-19

The writ of attachment shall be served on the third party, who is required to provide the Bailiff or the Process-server with any information enabling the safe deposit box to be identified. This shall be stated in the writ.

Within a period of eight (8) days from its date, the attachment shall be notified, under pain of forfeiture, to the debtor by the Bailiff or the Process-server; the act of notification shall include, under pain of nullity:

- 1) a summons to pay the debt before the date set for opening the safe deposit box , or to attend, in person or by proxy, the opening of the safe deposit box for the purpose of attachment of the assets contained therein, with a warning that in the event of refusal to open the safe deposit box , it shall be opened by force and at the debtor's expense;
- 2) an indication of the place, day and time set for the opening of the safe deposit box;
- 3) a reminder to the debtor that he has a period of one (1) month from the opening of the safe deposit box to proceed with the private sale of the assets included therein, in accordance with the conditions set out in Articles 115 to 119 of this Uniform Act;
- 4) where the safe deposit box contains money, the debtor shall be warned that he has fifteen (15) days to challenge the decision, and that the provisions of Article 152-24, Paragraph 3 of this Uniform Act shall apply;
- 5) the reproduction of Articles 115 to 119 of this Uniform Act;
- 6) an indication of the date from which, in the absence of a private sale, a forced sale may be carried out.

Article 152-20

The safe deposit shall not be opened before the expiry of a period of fifteen (15) days from the date of service of the act of notification. However, the debtor may request that the safe deposit box be opened at an earlier date.

If the debtor is not present, the forced opening can only take place in the presence of the owner of the safe deposit box or his duly authorized representative.

The costs shall be advanced by the distraining creditor.

Article 152-21

On the scheduled day, an inventory of the assets shall be drawn up, with a detailed description.

If the debtor is present, the inventory shall be limited to the attached assets. These are immediately removed or, in the case of cash, they shall be placed under the custody of the Bailiff or the Process-server or an escrow agent appointed upon request, failing amicable agreement, by a ruling delivered without delay by the President of the competent, or the Judge delegated by him.

If the debtor is absent, an inventory of all the assets in the safe deposit box shall be drawn up. The attached property shall immediately be removed by the Bailiff or Process server as described in Paragraph 2 of this Article. The remaining assets shall be handed over to the third party who has custody of the safe deposit box or to an escrow agent appointed in accordance with the conditions set out in Paragraph 2 of this Article, who shall present them at the debtor's request.

Where applicable, the Bailiff or Process-server may photograph the items removed from the safe deposit box under the conditions laid down in Article 45 of this Uniform Act.

Article 152-22

A writ of the process shall be drawn up.

This act shall include, under pain of nullity, an indication of the surnames, first names and capacities of the persons who attended the process and those into whose hands the assets were handed over. They shall sign the original and copies. In the event of refusal, this shall be mentioned in the act.

Article 152-23

A copy of the inventory shall be given or served on the debtor and, where applicable, on the persons to whom property has been delivered.

Under pain of nullity, the copy given or served on the debtor shall mention the place where the attached property is kept.

Article 152-24

The private sale shall be carried out as provided for in Articles 115 to 119 of this Uniform Act. However, the period of one (1) month granted to the debtor shall run from the day of opening of the safe deposit box.

Forced sale shall be carried out in accordance with Articles 120 to 128 of this Uniform Act.

If the safe contains money, in the absence of an objection within the time limit provided for in Article 152-25, Paragraph 2 of this Uniform Act, or where such objection is dismissed, , these sums of money shall be assigned to the creditor up to the amount of the claim and shall be paid to him by the Bailiff, the Process-server or the escrow agent.

Article 152-25

Articles 129 to 146 of this Uniform Act shall apply to the attachment of property kept in a safe deposit box insofar as they are compatible with this procedure.

In the case of cash, the debtor shall have fifteen (15) days from the date of attachment, if present, or from the date of notification, if absent, to object the attachment before the court where the process took place.

Article 152-26

The debtor shall regain free access to the safe deposit box from the day the property is removed.

PART IV

GARNISHEE PROCEEDINGS

Article 153

Any creditor in possession of a writ of execution in proof of a debt certain, and due and owing may, in order to secure payment, without prior summons, attach any sum of money owed the debtor by a third party, subject to the special provisions relating to the attachment of earnings. These claims may consist of electronic money that the debtor can access by means of a withdrawal, payment or transfer.

Article 154

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

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

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

Article 154-1

Where the total amount of the attached debts clearly exceeds the amount of the debt sought to be recovered, the Bailiff or Process-server may, of his own motion or at the request of the debtor, discharge one (1) or more of the attachments.

Failing this, the debtor may apply to the President of the competent court for the attachment to be set aside. The President or the Judge delegated by him shall rule within eight (8) days of the referral.

The President or the Judge delegated by him shall rule on the measure requested if he finds that the amount of the claims attached significantly exceeds that of the claim which is the subject of the attachment. In this ruling, the court shall indicate the claim(s) concerned.

The decision shall be served on any garnishee against whom the attachment has been rendered ineffective.

Article 155

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

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

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

Article 156

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

The above declaration and the handing over of the documents shall be done within two (2) days to the Bailiff or the Process-server and stated in the writ of attachment or, at the latest, within five (5) days if the writ was not served directly on the person concerned. Any inexact, incomplete or late declaration shall engage the liability of the garnishee to pay the claim, without prejudice of an order to pay damages.

CHAPTER I THE WRIT OF ATTACHMENT

Article 157

The garnishor shall commence attachment through a writ served on the garnishee by the Bailiff or the Process-server.

Where the attachment is related to an electronic money asset, such writ shall be served on the issuing institution.

The act shall, under pain of nullity, contain:

- 1) the surnames, first names and residences of the debtor and creditor or, in the case of corporate persons, their corporate form, name and registered office;
- 2) the writ of execution authorizing the attachment;
- 3) a separate breakdown of the sums claimed in principal, costs and accrued interest, plus a provision for accrued interest within the one (1)-month period allowed for any challenge;
- 4) an indication that the garnishee is personally liable to the distraining creditor and that he is prohibited from disposing of the sums attached within the limit of what he owes the debtor;
- 5) a full reproduction of Articles 38, 156, 169 to 172 of this Uniform Act.

The writ shall indicate the time of service.

Article 158

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

Article 159

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

Article 160

Under pain of nullity, the attachment shall be notified to the debtor through an act of the Bailiff or Process-server within a period of eight (8) days.

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

1. an indication of the existence of a writ of attachment;
2. an indication in bold characters, that disputes shall be raised, under pain of inadmissibility, within a period of one (1) month following service of the writ and the date on which this period expires, as well as the designation of the court before which disputes may be brought.

Where the act of notification is served on the debtor in person, the Bailiff or Process-server shall orally reiterate the above indications. Mention of these oral declarations shall feature in the act of notification.

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

Article 161

Where the attachment is carried out in the hands of a credit or similar institution, a microfinance institution or an institution issuing electronic money, the institution shall declare the nature of the debtor's account(s) and the balance(s) in the account(s) on the day of the attachment. This declaration shall also cover electronic currency holdings.

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

- a) credit entry:
 - deposits previously made in order to cash cheques or negotiable instruments not yet in the account;
- b) debit entry :
 - charges on cheques deposited to be cashed or credited to the account before the attachment, which returned unpaid;
 - withdrawals from the cash dispenser made before the attachment and payments by card, where the beneficiaries were effectively paid off before the attachment.

Notwithstanding the provisions of Paragraph 2 of this Article, negotiable instruments returned to discount and not paid upon presentation or on their due date, where such date is subsequent to the attachment, may be endorsed within a period of one (1) month following the attachment. The attached sums shall only be affected by these contingent debit and credit transactions where their aggregate result of these transactions is negative and higher than the sums not affected by the attachment on the day of their settlement.

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

Article 162

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

Article 163

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

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

CHAPTER II

PAYMENT BY THE GARNISHEE

Article 164

The garnishee shall make payment to the garnishor on presentation of a certificate from the Court Registry to prove that no opposition was filed within one (1) month following disclosure of the attachment, or on presentation of the enforceable decision of the court dismissing the opposition.

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

Article 165

Payment shall be made against a receipt to the garnishor or his representative with a special power of attorney, who shall immediately inform the creditor thereof.

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

Article 166

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

Article 167

Where the attachment concerns a debt that is to be paid by instalments, the obligation of the third-party debtor shall be extinguished as and when the instalments are paid in accordance with the provisions of Paragraph (1) of Article 165 of this Uniform Act.

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

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

Article 168

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

CHAPTER III

DISPUTES

Article 169

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

Article 170

Under pain of inadmissibility, the dispute shall be brought before the competent court by a writ of summons within a period of one (1) month from the date of disclosure of the attachment to the debtor. The debtor who files an objection shall notify the Court Registry and all the parties of his remedy.

The garnishee shall be duly summoned.

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

Article 171

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

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

Article 172

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

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

PART V

ATTACHMENT AND ASSIGNMENT OF EARNINGS

Article 173

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

Article 174

The attachment of sums, regardless of the amount due as remuneration to any salaried person or worker, in any capacity, in any place whatsoever, for one (1) or more employers, shall only be carried out after an attempt at conciliation before the competent court of the place of residence of the debtor or the Judge delegated by him.

Article 175

Earnings shall not be subject to sequestration.

Article 176

It shall be kept at the Registry of each court, a register which shall be numbered and initialed by the President of the court or the Judge delegated by him, in which shall be recorded all writs irrespective of the nature, decisions and formalities arising from assignments and attachment of earnings.

Article 177

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

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

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

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

Article 178

Where a debtor receives from several sources sums attachable or assignable under the conditions provided for by this Chapter, the attachable portion shall be calculated on the entire amount. Any deductions shall be made in accordance with the terms and conditions determined by the President of the competent court or the Judge delegated by him.

CHAPTER I GARNISHMENT OF EARNINGS

Section 1- Conciliation Attempt

Article 179

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

The application shall contain:

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

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

Article 180

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

Article 181

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

The summons shall contain :

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

Where the creditor fails to appear for no legitimate reason, the debtor may request a decision on the merits of the claim, which shall be considered to have been rendered after an adversarial hearing, unless the Judge decides to adjourn the case to a later hearing.

The Judge may, ex officio or otherwise, strike off the case from the cause list. The creditor may request the reinstatement of the latter if he informs the Registry within fifteen (15) days of any legitimate reason which he would not have been able to raise in due course. In this case, the parties shall be summoned to a subsequent hearing.

If the debtor fails to appear, the President of the competent court or the Judge delegated by him shall order the attachment, unless he deems it necessary to issue a new summons.

This decision which shall not be subject to opposition shall only be challenged by way of appeal within fifteen (15) days of its delivery. This period shall run from the date of delivery of the decision or, where there is no return of service, from the date of notification of the decision.

Article 182

The President of the competent court or the Judge delegated by him, assisted by the Registrar, shall draw up the report of the appearance of the parties whether or not conciliation took place. In case of conciliation, he shall state in the report, the terms of settlement which shall bring an end to the proceedings.

Where there is no conciliation, attachment shall be carried out after verification by the President or the Judge delegated by him of the amount of the debt in principal, interest and costs and, where applicable, rule on any objections raised by the debtor.

Section 2- Attachment Process

Article 183

Within eight (8) days of failure of conciliation or in the case where a ruling was delivered, within eight (8) days following the expiry of the time limit for opposition, the Registrar shall give notice of the writ of attachment to the employer by registered mail with acknowledgement of receipt or by any other means with written proof and establishing actual receipt.

Article 184

Under pain of nullity, the writ of attachment, shall contain:

- 1) the surnames, first names and residences of the debtor and the creditor or, in the case of corporate persons, their corporate form, name and registered office;
- 2) a separate breakdown of the sums attached in principal, costs and accrued interest, as well as an indication of the rate of interest;
- 3) the method of calculation of the attachable portion and the method of payment thereof;
- 4) an injunction to declare at the Registry within fifteen (15) days, the nature of the legal relationship existing between the employer and the distrainee debtor, any assignments or attachments currently being carried out as well as any information authorizing deductions where the attachment concerns salary paid from public funds;
- 5) a reproduction of Articles 185 to 189 of this Uniform Act.

Article 185

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

Article 186

The employer shall be required to inform the Registry and the distrainor within eight (8) days of any changes in his relationship with the distrainee which may likely influence the proceedings in progress.

Section 3- Effects of the Attachment**Article 187**

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

Article 188

Every month, the employer shall send to the Registry or the institution designated for that purpose by each State Party the sums withheld from the earnings of the distrainee, without exceeding the attachable portion.

Payment shall be made upon issue of a receipt to the distraining creditor or his representative with a special power of attorney who shall immediately inform his principal.

His obligations shall be extinguished upon the issue of a receipt from the Court Registrar or by the acknowledgement of receipt of the money order issued by the postal department, the transfer order, the remittance of a cheque or the presentation of any other secure means of payment.

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

Article 189

Where the employer fails to make the payments, the competent court shall in its ruling adjudge him personally liable. The ruling shall be served on him by the Court Registrar or the creditor by registered mail with acknowledgement of receipt or by any other means with written proof and establishing actual receipt within three (3) days from the date of the ruling. Notice thereof shall be given to the debtor and, where necessary, to the creditor.

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

Any ruling which remains unopposed within a period of fifteen (15) days shall become final. It shall be enforced at the request of the most diligent party on the basis of a copy with an executory formula issued by the Court Registrar.

An appeal may be lodged against a decision rendered on an opposition within fifteen (15) days of its delivery.

Judgment shall be rendered within one (1) month from the date the matter was called up in court for the first time.

Section 4- Intervention in the attachment process.

Article 190

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

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

The application shall contain the details provided for in Article 179 this Uniform Act.

Article 191

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

Article 192

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

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

Article 193

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

Section 5- Payment and Distribution of Attached Funds.

Article 194

Any movement of funds shall be mentioned in the register prescribed in Article 176 this Uniform Act.

Article 195

Where there is only one (1) distrainor creditor, the Registrar shall pay to such creditor or his representative with a special power of attorney the amount deducted as soon as he receives it from the employer. The creditor or his authorized agent shall sign in the register provided for in Article 176 of this Uniform Act.

Article 196

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

Article 197

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

Withdrawals of funds for distribution from such account shall be made by the Registrar upon the authorization of the President of the competent court or the Judge delegated by him.

Article 198

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

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

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

Article 199

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

Article 200

Any objection to the statement of distribution may be made within a period of fifteen (15) days from its notification through an opposition filed at the Registry.

Article 201

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

It shall be notified to the employer within eight (8) days.

Section 6- Miscellaneous provisions**Article 202**

Except where he has a representative, the distrainor creditor who changes his residence or his place of abode shall inform the Registry of such change.

Article 203

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

Article 204

Where there is a change of employer, the attachment may be pursued on property in the hands of the new employer, without any prior conciliation, on condition that the application is made within one (1) year of the notice given by the former employer in accordance with the provisions of Article 186 of this Uniform Act. Failing this, the attachment shall come to an end.

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

CHAPTER II

ASSIGNMENT OF EARNINGS

Article 205

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

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

Article 206

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

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

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

Article 207

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

Article 208

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

Article 209

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

The Registrar shall equally inform the employer that subsequent payments shall be made at the Registry

Article 210

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

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

Article 211

Where there are strong presumptions that the assignment was made to defraud the distrainor, he may claim for annulment of such assignment, obtain an order from the court ruling without delay, the deductions deposited with the Registrar until the final decision on the merits of the case is pronounced by the court.

Article 212

The Registrar shall, of his own motion or on the application of the most diligent party, proceed to cancel the entry in the register provided for by Article 176 of this Uniform Act and immediately notify the debtor and the employer by registered mail with acknowledgement of receipt or by any other means with written proof and establishing actual receipt where:

annulment of the assignment is by court order;

by a declaration from the assignee written in a form provided for in Article 205 of this Uniform Act, the cancellation of the assignment is agreed to by the parties;

payment of the last instalment intended to complete the execution of the assignment has been made.

CHAPTER III
PROCEDURE APPLICABLE TO CLAIMS OF MAINTENANCE
ALLOWANCE

Article 213

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

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

Article 214

Notice of the application shall be given to the third party by registered mail with acknowledgement of receipt or by any other means with written proof and establishing actual receipt ad-

dressed by the Bailiff or Process-server who shall notify the debtor by simple letter.

The third party shall, within eight (8) days, acknowledge receipt of such application and state whether or not he is in a position to act on it. He shall equally inform the debtor of the cessation or the suspension of remuneration.

Article 215

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

Article 216

Any objection relating to these proceedings shall not stay execution.

They shall be made by written or oral declaration at the Registry of the court of the residence of the debtor paying the allowance.

Article 217

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

PART VI

ATTACHMENT - APPREHENSION AND ATTACHMENT UNDER A PRIOR CLAIM OF TANGIBLE MOVABLE PROPERTY

Article 218

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

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

CHAPTER I *ATTACHMENT- APPREHENSION*

Section 1- Apprehension of the property in the hands of the person required to deliver under a writ of execution

Article 219

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

The summons shall, under pain of nullity, contain:

- 1) a mention of the writ of execution authorizing the delivery as well as the surnames, first names and addresses of the beneficiary and debtor of the object to be delivered and, in the case of a corporate person, its corporate form, name and registered office;
- 2) an indication that the person required to deliver may, within a period of eight (8) days, transport at his expense, the named object to a place and under the stated conditions;
- 3) a warning that failure to deliver within the said period, the property may be apprehended at his expense;
- 4) an indication that disputes may be brought before the court of the place of residence or the place of abode of the recipient.
- 5) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein; any service or offer may be made at the chosen address.

a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein; any service or offer may be made at the chosen address.

Article 220

The property may also be apprehended immediately without a prior summons and on mere presentation of the writ of execution, where the person delivering same is present and where, in

answer to the question to be asked by the Bailiff or the Process-server, he does not offer to bear the transportation expenses.

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

Article 221

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

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

Article 222

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

Article 223

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

An act shall be delivered or notified to the debtor and shall, under pain of nullity, contain:

- 1) a copy of the delivery or apprehension instrument, as the case may be;
- 2) an indication of the place where the property is kept;
- 3) a separate breakdown of the sums claimed in principal, costs and accrued interest, as well as an indication of the rate of interest;
- 4) a statement in bold characters that the debtor has a period of one (1) month to carry out a private sale of the attached property, in accordance with the provisions of Articles 115 to 119 of this Uniform Act, and stating the date on which a forced sale may be carried out by public auction, where the private sale is not carried out within the said period;
- 5) a reproduction of Articles 115 to 119 of this Uniform Act.

Section 2- Apprehension in the hands of a third party under a writ of execution

Article 224

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

The summons shall, under pain of nullity, contain:

- 1) a copy of the writ of execution authorizing the restitution and, where it is authorized by court decision, the order of the court as well as the surnames, first names and addresses of the beneficiary of the restitution and of the third-party holder of the object and, in the case of a corporate person, its corporate form, name and registered office;
- 2) an injunction to, within a period of eight (8) days, either deliver the designated property or inform the Bailiff or the Process-server, under pain of damages, as the case may be, of the reasons for his refusal to deliver;
- 3) an indication that any problems shall be brought before the court of place of residence or place of abode of the beneficiary of the deed;
- 4) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein; any service or offer may be made at the chosen address.

Article 225

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

The summons referred to in Article 224 of this Uniform Act and any preventive measures taken shall lapse where the matter is not referred to the court within one (1) month from the date of service of the summons.

Article 226

The property may be apprehended upon mere presentation of the court ruling ordering delivery of same to the applicant. An act of apprehension shall be drawn up in conformity with the provisions of Article 221 of this Uniform Act. A copy of the act shall be handed or notified to the third party by registered mail with acknowledgment of receipt or by any other means with written proof and establishing actual receipt.

After removal, the person required to deliver shall be informed thereof as specified in the provisions of Articles 222 and 223 of this Uniform Act, as the case may be.

CHAPTER II

ATTACHMENT UNDER A PRIOR CLAIM

Article 227

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

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

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

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

Article 228

The validity of the attachment under a prior claim shall be subject to the conditions prescribed for preventive measures by the provisions of Articles 60 and 61 of this Uniform Act.

Where the said conditions are not met, an end of the attachment may be ordered at any time, even where the applicant has a writ of execution or a court judgment which is not yet enforceable. The application to end the attachment shall be brought before the court of the place of residence or place of abode of the debtor enjoined to deliver or retribute the property.

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

Article 229

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

Article 230

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

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

Article 231

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

- 1) the surnames, first names and residences of the creditors and debtors or, in the case of corporate persons, their corporate form, name and registered office;
- 2) reference of the authorization of the competent court which shall be annexed to the act or an indication of the writ upon which the attachment was carried out;
- 3) a detailed description of the property attached;
- 4) where the holder is present, his declaration as to a prior attachment of the same property;
- 5) a statement in bold characters that the attached property placed in the custody of the third party shall, under pain of criminal sanctions be inalienable, that it shall neither be transferred nor removed, except under the circumstances provided for in Article 97 of this Uniform Act; and that the third party is required to inform any creditor carrying out a subsequent attachment on the same property of the existence of an attachment under a prior claim;
- 6) a statement in bold characters of the right to challenge the validity of the attachment and to apply to the court of the residence or place of abode of the debtor for an end to it;
- 7) an indication of the court before which shall be brought any opposition relating to the execution of the writ of attachment;
- 8) an indication, under pain of penal sanctions, where applicable, of the surname first name and status of the persons who were present during attachment exercise and who shall sign the original and the copies; any refusal to sign shall be mentioned in the deed;
- 9) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein; service or offer may be made at the chosen address;
- 10) a reproduction of the criminal provisions governing fraudulent disposition of attached property as well as the provisions of Articles 60, 61, 227 and 228 of this Uniform Act.

The Bailiff or Process-server may photograph the attached property under the conditions prescribed by Article 45 of this Uniform Act.

Article 232

The writ of attachment shall be handed to the holder of the property and he shall be orally reminded of the provisions of Article 231 (5) and (6) of this Uniform Act. Mention shall be made thereof in the writ.

Where the attachment is carried out on property in the hands of a third party, the writ shall also be served on the person required to deliver or restitute not later than eight (8) days of issue.

Where the holder was not present during the attachment, a copy of the writ shall be served on him and he shall be given a period of eight (8) days to bring to the knowledge of the Bailiff or Process-server any information relating to the existence of a previous attachment, by giving him a report thereto.

Article 233

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

Article 234

Any party with a personal right on attached property in his hands shall inform the Bailiff or the Process-server thereof by registered mail with acknowledgement of receipt or by any other means with written proof and establishing actual receipt, except where he made a declaration thereof at the time of the attachment. The distrainor shall, within a period of one (1) month, bring any dispute before the court of the place of residence or place of abode of the holder.

The property shall be inalienable during the hearing.

Where no objection is raised within a period of one (1) month, the inalienability shall lapse.

Article 235

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

PART VII

**ATTACHMENT OF PARTNERSHIP RIGHTS,
TRANSFERABLE SECURITIES AND OTHER NEGOTIABLE
INSTRUMENTS**

CHAPTER I

THE ATTACHMENT PROCESS

Article 236

The attachment of partnership rights, transferable securities and other negotiable instruments shall be carried out either on the issuing company or corporate person or on the authorized agent charged with the preservation or management of the securities.

Article 237

Eight (8) days after an unproductive summons to pay, the creditor shall proceed to attachment by an act which shall, under pain of nullity, contain:

- 1) the surnames, first names and residences of the debtor and the distrainor or, in the case of corporate persons, their corporate form, name and registered office;
- 2) a choice of an address for service within the jurisdiction where the attachment is carried out, if the creditor is not a resident therein; any service or offer may be made at the chosen address;
- 3) a reference to the writ of execution authorizing the attachment;
- 4) a separate breakdown of the sums claimed in principal, costs and accrued interests, as well as an indication of the rate of interest;
- 5) an indication that the attachment shall render inalienable the pecuniary rights attached to all shares or transferable securities and other negotiable instruments to which the debtor is entitled;
- 6) a formal request to disclose within a period of eight (8) days the existence of any subsequent pledges or attachment and to communicate to the distrainor a copy of the Articles of Association of the company if applicable, information relating to the securities and the securities account statement.

Article 238

The attachment shall, within a period of eight (8) days and under pain of forfeiture, be disclosed to the debtor by service of the writ, which shall, under pain of nullity contain;

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

- shall also mention the expiry date of the said period.
- 3) an indication of the competent court, which shall be that of the place of the residence of the debtor;
 - 4) a statement in bold characters that the debtor has a period of one (1) month to carry out a private sale of the attached transferable securities and other negotiable instruments, in accordance with the conditions set out in Articles 115 to 119 of this Uniform Act;
 - 5) a reproduction of Articles 115 to 119 of this Uniform Act.

Article 238-1

Creditors in possession of a writ of execution that proves their claim to be due and owing may join the proceedings by lodging an objection under the conditions set out in Articles 130 to 133 of this Uniform Act.

Article 239

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

CHAPTER II

THE SALE

Article 240

Where a private sale is not carried out under the conditions of Articles 115 to 119 of this Uniform Act, the forced sale shall be carried out in the form of an auction sale, at the request of the creditor, upon presentation of a certificate issued by the Registrar showing that no objection had been raised within one (1) month following disclosure of the attachment or, where applicable, a court decision dismissing the opposition filed by the debtor.

Article 241

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

- the Articles of Association by the issuing company or, where applicable, the opinion of the body responsible for issuing the securities;
- any document needed to assess the composition and value of the rights put up for sale.

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

Article 242

A copy of the terms of reference shall, where applicable, be notified to the issuing corporate person and, in the case of a company, to its partners.

On the same day, a summons shall be served, where applicable, on the other opposing creditors requesting them to consult the terms of reference at the offices of the auctioneer.

Any interested party may make observations on the terms of reference at the offices of the authority referred to in Paragraph 2 of this Article. Such observations shall no longer be admissible after the expiration of two (2) months following the notification provided for in Paragraph 1 of this Article.

Article 243

The notice showing the date, time and place of the sale shall be published in the media and, where necessary, by posters affixed not more than one (1) month and not less than fifteen (15) days prior to the date fixed for the sale.

The debtor, the issuing corporate person and, where necessary, the other opposing creditors shall be informed of the date of the sale by means of notification.

Article 244

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

CHAPTER III *MULTIPLE ATTACHMENTS*

Article 245

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

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

PART VII

ATTACHMENT OF BUSINESS ASSETS

Article 245-1

Any creditor in possession of a writ of execution in proof of a due and owing debt may, in order to secure payment, proceed, after service of a summons to pay, with the attachment and assignment of the business assets belonging to his debtor.

At any time during the proceedings, the President of the court referred to in Paragraph 3 of Article 245-16 of this Uniform Act or the Judge delegated by him shall, if he considers that the debtor is in a situation of suspension of payments, inform the Legal Department of the competent court in order to open collective receivership or liquidation proceedings; the commencement of such proceedings shall stop the compulsory assignment.

Article 245-2

Attachment shall relate to the elements of the business listed in Article 136 of the Uniform Act on General Commercial Law and, if they exist, to those referred to in Article 137 of the same Uniform Act.

CHAPTER I

SUMMONS TO PAY

Article 245-3

The attachment of a business assets shall be preceded by a summons to pay served on the debtor at least eight (8) days before the attachment.

Under pain of nullity, the summons shall include:

mention of the writ of execution under which the proceedings are brought, with a separate breakdown of the sums claimed in principal, costs and accrued interest, together with an indication of the rate of interest;

A summons requiring the debtor to pay within eight (8) days, failing which his business assets shall be compulsorily assigned.

Article 245-4

The summons shall include a choice of an address for service, till the end of the proceedings, unless a new address is served on the debtor, in the territorial jurisdiction where enforcement is to be pursued if the creditor does not reside there. Any service or offer may be made at this chosen address.

Article 245-5

The summons shall be directly served on the person concerned or served at his residence. The summons shall not be served at the chosen address. It may be served with the writ of execution.

CHAPTER II

ATTACHMENT PROCESS

Article 245-6

On expiry of a period of eight (8) days from the date of the unsuccessful summons to pay, the Bailiff or Process-server shall serve the debtor with a writ of attachment including, under pain of nullity:

- 1) the surnames, first names and residences of the distrainee and distrainor or, in the case of corporate persons, their corporate form, name and registered office; the distrainor's chosen address for service, if any;
- 2) a reference to the writ of execution under which the attachment is carried out;
- 3) the name of the person to whom the writ of attachment is assigned;
- 4) a detailed description of the attached assets;
- 5) the reiteration of the claim for payment;
- 6) a reminder to the debtor of his obligation to inform the Bailiff or Process-server, where applicable, the existence of previous attachments and to provide information on the creditor who carried them out;
- 7) a reminder to the debtor of his obligation to inform the Bailiff or the Process-server, where the assets include equipment and assets that have already been attached as well as information on the creditor who carried out the attachment;
- 8) a reminder of the option open to him to proceed with the private sale of attached assets under the conditions set out in Articles 245-10 to 245-14 of this Uniform Act;
- 9) a statement in bold characters that the attached business assets are inalienable and shall not be transferred; that its components with the exception of saleable goods, shall neither be transferred nor displaced, under pain of criminal sanctions, and that the debtor shall inform any creditor who may proceed with a new attachment of the same business assets that such assets have already been attached;
- 10) an indication, in bold characters, that the debtor has a period of two (2) months to proceed with the private sale of the attached business assets under the conditions laid down in Articles 245-10 to 245-14 of this Uniform Act;
- 11) an indication of the court before which disputes relating to the attachment of the business assets shall be brought;
- 12) the reproduction of the criminal provisions punishing the misappropriation of attached property, as well as that of Articles 245-12 and 245-13 of this Uniform Act.

Article 245-7

Upon service of the writ of attachment, the Bailiff or Process-server, shall apply to the President of the court having jurisdiction in commercial matters in the place where the business is carried

out, for the appointment of an escrow agent to receive and hold the funds arising from the attachment process.

The President of the competent court in commercial matters or the Judge delegated by him, shall rule without undue delay; the decision rendered shall immediately be served on the debtor by the Bailiff or the Process-server.

The decision referred to in Paragraph 2 of this Article may be appealed within fifteen (15) days of its pronouncement.

The time limit for appeal and the exercise of this right of appeal shall not stay execution.

The court to which the appeal is lodged shall render its decision within one (1) month of the date on which the appeal was lodged.

Article 245-8

Where the business assets are run under a management lease contract concluded in accordance with the provisions of the Uniform Act relating to General Commercial Law, the writ of attachment and the decision referred to in Article 245-7 of this Uniform Act shall be served on the lessee-manager. Under pain of nullity, the notification together with copies of the writ of attachment and the writ of execution shall include:

- 1) the indication of the writ of attachment;
- 2) a notification that, as of the date of service, the sums due, which can no longer be paid to the owner shall be deposited in the hands of the escrow agent designated in the decision rendered by the President of the competent court in commercial matters or by the Judge delegated by him pursuant to Article 245-7 of this Uniform Act;
- 3) the surname, first name and residence of the escrow agent.

Article 245-9

Upon service of the writ of attachment, the business assets shall become inalienable. The debtor shall no longer alienate it or encumber it with rights or charges. Nor shall it alienate or encumber its components.

If it is operated under a management lease, the lessee-manager shall no longer, as from the notification made to him, pay overdue sums to the owner; he shall henceforth transfer them to the escrow agent appointed in accordance with the provisions of Article 245-7 of this Uniform Act.

The debtor or, in the case of a lease-management, the lessee-manager shall continue to operate the business assets, unless otherwise decided by the President of the competent court sitting in commercial matters in the place where the business is operated or the Judge delegated by him.

CHAPTER III

SALE OF BUSINESS ASSETS

Section 1- Private sale

Article 245-10

A debtor against whom execution is being sought on his business assets may voluntarily assign the said business assets, under the conditions hereinafter defined, in order to use the proceeds to pay creditors.

Article 245-11

The debtor shall have two (2) months from the date of service of the writ of attachment to transfer the business assets himself.

The attached business assets shall remain inalienable until the monetary value is deposited, under the responsibility of the debtor, or in the case of a management lease, under the responsibility of the tenant-manager.

Article 245-12

Where offers are made, the debtor shall inform the Bailiff or Process-server in writing, indicating the surnames, first names and residence of the potential purchaser or, in the case of a corporate person, its corporate form, name and registered office, as well as the period within which the latter offers to deposit the proposed price.

The Bailiff or the Process-server shall communicate these details to the distraining creditor and to registered creditors by registered mail with acknowledgement of receipt or by any other means with written proof and establishing actual receipt.

They shall, within fifteen (15) days decide whether to accept or refuse the private sale, or to become purchasers.

In the absence of any reply, they shall be deemed to have accepted.

A forced sale shall only be carried out after the expiry of the two (2)-month period provided for in Article 245-11 of this Uniform Act, extended, where applicable, by the fifteen (15)-day period given to creditors for their reply.

Article 245-13

In the event of a private sale of the business assets, the Bailiff or Process-server shall draw up an act containing:

- 1) the full personal data of the owner and purchaser in the case of natural persons, and the name, corporate form and registered office in the case of corporate persons;

- 2) the activities of the owner and purchaser;
- 3) registration numbers in the Trade and Personal Property Credit Register;
- 4) where applicable, the origin of the business with regard to the previous owner;
- 5) a statement of the liens, pledges and registrations encumbering the business;
- 6) the turnover for each of the last three (3) years of operation, or since acquisition where the business has not been in operation for more than three (3) years;
- 7) the commercial balance sheet for the same period;
- 8) the lease attached to the act, indicating its date, duration, the surname, first name and address of the lessor and assignor, if any;
- 9) the agreed price and date of payment;
- 10) the location and elements of the business assets sold;
- 11) the surname, first name and address of the escrow agent appointed by virtue of Article 245-7 of this Uniform Act;
- 12) the date on which the business assets is to be made available to the purchaser.

Article 245-14

The sale price, which must be paid in cash, shall be deposited on the date and at the place specified in the sale contract, in the hands of the escrow agent appointed pursuant to Article 245-7 of this Uniform Act.

The business assets shall be at the disposal of the purchaser as soon as the price has been deposited.

Where the price is not deposited within the agreed period, the forced sale shall be carried out.

Article 245-15

A copy of the deed recording the private sale, certified by the Bailiff or Process-server, shall be filed by the seller with the Trade and Personal Property Credit Register.

Within fifteen (15) days of its date, the deed recording the sale of the business must be published, at the purchaser's request, in the form of a notice, in a newspaper authorised to publish legal announcements and available in the place where the seller is registered in the Trade and Personal Property Credit Register.

Section 2- Forced sale

Article 245-16

Forced sale shall be carried out upon expiry of the two (2) -month period granted to the owner of the business to proceed with the private sale, extended where applicable, by the fifteen (15)-day period given to creditors for their replies.

A forced sale shall also be carried out if the purchaser fails to deposit the proceeds.

The sale shall take place at the competent court sitting in commercial matters in the place where the business is operated.

The forced sale shall be made on the basis of a starting bid which may not be less than a quarter of the value of the business as determined by an amicably appointed expert or, failing agreement, by the Judge.

When the business assets include equipment and goods that have been the subject of a previous attachment brought to the attention of the Bailiff or Process-server in compliance with the provisions of Article 245-6 and 7, the sale shall be subject to separate bids, unless the terms of reference require the successful bidder to acquire the business assets as well as the equipment and goods for separate prices determined by experts; in such case, a single bid shall be fixed.

Paragraph 1- Preparation for the sale

Article 245-17

At the request of the distraining creditor, his Counsel, the Bailiff or the Process-server appointed him, shall draft and sign terms of reference which shall, under pain of nullity contain:

- 1) the title of the act;
- 2) a statement of the writ of execution under which the proceedings are being taken and, if applicable, the writs under which the equipment and assets have previously been made inalienable;
- 3) the surnames, first names and residence, in the case of natural persons, and the name, corporate form and registered office address, in the case of corporate persons, of the pursuing creditor and the owner of the business assets;
- 4) the various components of the business assets;
- 5) the location of the business assets;
- 6) the nature of the operations carried out on the business assets;
- 7) the amount of the starting bid set in accordance with Article 245-16 of this Uniform Act, or if the business assets include equipment and assets already made inalienable by one (1) or more previous attachments, the amounts of the two (2) separate bids,

one for the business without the equipment and assets and the other for the equipment and assets, unless the pursuing creditor stipulates that the business and the equipment and assets are to be sold together to the successful bidder at separate prices set by experts;

- 8) an indication of the court whose President or Judge delegated by him rules on such claims and disputes;
- 9) an indication of the court before which the auction sale is being conducted.

Article 245-18

Within five (5) days of its drafting, the terms of reference shall be deposited by the Counsel, Bailiff or the Process-server appointed by the pursuing creditor at the Registry of the court before which the sale is conducted. The date of the sale shall be stated in the act containing the terms of reference.

Within eight (8) days, at the latest, of the filing of the terms of reference, the distraining creditor shall summon the owner of the business, the creditors registered prior to the summons and the creditors who have attached the equipment and assets prior to the summons, to acquaint themselves with the terms of reference, to insert their comments and observations and to attend the auction sale if they so wish.

Under pain of nullity, the summons shall be directly served on the person concerned at his residence or at his chosen address.

Article 245-19

Under penalty of nullity, the summons shall indicate:

- the day and time of the hearing at which the President of the competent court shall rule on the statements, observations and challenges and set the date of the auction hearing;
- a reminder of the deadlines and procedures for filing statements, observations and challenges.

Paragraph 2- Incidental Claims

Article 245-20

The Bailiff or Process-server, carrying out an attachment of business assets including equipment and assets already made inalienable by one or multiple attachments, shall serve the writ of attachment on the creditors who carried out those attachment process.

The distraining creditor shall then carry out the process until the forced sale, which shall take place in accordance with the provisions of the last paragraph of Article 245-16 of this Uniform Act.

Article 245-21

Creditors who have previously attached equipment and goods may apply to the President of the court for subrogation in the proceedings in the event of collusion with the debtor, fraud, negligence or any other cause of delay attributable to the creditor carrying out the proceedings.

The request shall be made after a summons issued to the creditor to carry out the legal formalities, without success for a period of eight (8) days.

Article 245-22

Petitions from the debtor, creditors or third parties and disputes shall be submitted in the form of statements of claim filed, under pain of forfeiture, no later than the fifth day prior to the hearing at which the President of the competent court or the Judge delegated by him shall rule; the statements of claim shall be mentioned at the end of the terms of reference.

Article 245-23

The President of the court before which the sale is sought or the Judge delegated by him shall rule on the claims, arguments and disputes at a hearing which shall not take place less than thirty (30) days after the last summons.

At the same hearing, even if he takes a measure likely to interrupt the proceedings, he shall set the date of the adjudication hearing, which shall take place between the fortieth and sixtieth day after his ruling.

Article 245-24

The decision referred to in Article 245-23 shall be transcribed by the Registrar onto the terms of reference; and shall be withdrawn and served by the most diligent party on the other parties.

It is subject to appeal within fifteen (15) days of its pronouncement. The time limit for exercising the right to appeal and the appeal shall stay execution.

The Appellate Court shall rule within one (1) month of the first hearing.

Paragraph 3- Auction sale**Article 245-25**

No sooner than thirty (30) days and no later than fifteen (15) days before the auction hearing, an extract of a term of reference sheet shall be published, with the signature of the prosecuting Counsel, or the Bailiff or the Process-server in a legal gazette and by posting notices at the door of the court and, where applicable, in the official notice boards of the administrative district in which the business assets is located and at the door of the building where the said business is operated.

In addition, advertising may be done by audio-visual or electronic means.

Under pain of nullity, the extract shall contain, details of the day, time and place of the auction and of the court, as well as the reproduction of the information provided for in Article 245-17 (3), 4), and 7) of this Uniform Act.

Article 245-26

On the day scheduled for the auction sale, the court shall decide:

- either to reject the assignment;
- or to order, for serious and legitimate grounds or if the appeal procedure does not enable proceedings on the sale to be carried out as they stand, the postponement of the auction;
- or to proceed with the auction sale.

Article 245-27

Where the court decides to proceed with the auction sale, Articles 282, Paragraphs 2 and 3, 283 and 284 of this Uniform Act shall apply, insofar as they are compatible with the business assets attachment proceedings.

Article 245-28

The business assets shall be awarded to the last bidder or to the pursuing creditor if no bid has been made.

In the event of prior attachment of equipment and goods, the court shall allocate a share of the price to the equipment and goods.

Article 245-29

The transfer price shall be deposited in the hands of the escrow agent appointed in accordance with Article 245-7 of this Uniform Act.

However, the competent court may, by reasoned decision, if there are no other registered creditors or creditors who attached the equipment and goods, and subject to deduction of preferential costs for the benefit of those entitled, authorize the pursuing creditor to collect directly from the successful bidder, the amount of the price, in deduction or up to the amount of his claim, in principal, interest and costs.

Article 245-30

Any person may, within ten (10) days, make a higher bid, on condition of depositing the amount of the price plus one tenth (1/10) in the hands of the escrow agent referred to in Article 245-7 of this Uniform Act.

The higher bid shall be made at the Registry of the court that ordered the sale, by the higher bidder himself or by his Counsel; it shall be mentioned in the terms of reference.

The higher bid shall be notified by extrajudicial act, at the request of the higher bidder or his Counsel, within five (5) days, to the successful bidder and to the owner of the business.

The act of notification shall indicate the date of the hearing at which the President of the competent court or the Judge delegated by him shall rule on any disputes relating to the validity of the higher bid and shall set the date of the auction hearing; it shall specify the time limit and form of the dispute.

Article 245-31

The hearing provided for in the last Paragraph of Article 245-30 of this Uniform Act shall take place at the earliest twenty (20) days from the last notification.

Article 245-32

The validity of the higher bid shall be challenged by submissions filed and communicated at least five (5) days before the date set for the hearing provided for in the last Paragraph of Article 245-30 of this Uniform Act; the challenge shall be stated after indication of the higher bid in the terms of reference.

Article 245-33

If the higher bid is not challenged, or where, in the event of a challenge, the higher bid is dismissed, the President of competent court or the Judge delegated by him shall schedule a new auction hearing between the fifteenth and thirtieth day following his decision.

The new auction shall be preceded by the affixing of posters at least eight (8) days before the assignment, and by publication within the same period in a legal gazette.

Article 245-34

Whether the auction sale takes place at the initial auction hearing or at the subsequent auction hearing, and failing the successful bidder to comply with the clauses of the terms of reference or to deposit the sale price in the hands of the escrow agent, unless exempted from this obligation by competent court, the business assets shall be resold at the irresponsible bidder's price. Insofar as they are compatible with the attachment of business assets, the provisions relating to the irresponsible bidding proceedings for the attachment of the real property shall apply.

The irresponsible bidder shall be liable to the creditors of the owner of the business assets and to the owner himself for the difference between his price and that of the resale arising from the irresponsible bidding, without being able to claim the surplus, if any.

PART VIII

ATTACHMENT OF REAL PROPERTY

Article 246

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

Any agreements to the contrary shall be null and void.

CHAPTER I

CONDITIONS FOR THE ATTACHMENT OF REAL PROPERTY

Article 247

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

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

Article 248

In each State Party, the sale shall be pursued before the court competent to settle disputes relating to the attachment of real property in whose territorial jurisdiction the property is located.

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

Section 1- Conditions relating to the Nature of the Property

Article 249

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

Article 250

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

Article 251

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

Article 252

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

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

- 1) where the properties form part of one and the same commercial activity;
- 2) With the authorization of the President of the competent court, where the value of the property situated within the jurisdiction of one court is below the total sum owed the distrainor creditor and the registered creditors. The authorization may include all or part of the property.

Section 2- Prior registration**Article 253**

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

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

*CHAPTER II**PLACEMENT OF THE PROPERTY IN THE HANDS OF JUSTICE***Section 1- Summons to pay****Article 254**

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

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

- 1) a reproduction or copy of the writ of execution and the amount of the debt, as well as the surnames, first names and address of the creditor and the debtor and, in the case of a corporate person, its corporate form, name and registered office;

- 2) a copy of the special power to attach given to the Bailiff or Process-server by the pursuing creditor, except where the copy and the original of the summons to pay is endorsed with a special proxy given to the Notary Public or Process server signed by the pursuing creditor.
- 3) a warning that, failure to pay within twenty (20) days, the summons may be registered at the land registry and shall entail attachment from the date of publication;
- 4) an indication of the court before which expropriation shall be pursued;
- 5) the number of the land certificate and an indication of the precise location of the property which is the subject of attachment; in the case of unregistered real property, the reference number of the application for registration; and, where expenses have been incurred by the debtor on land not belonging to him, but which had been assigned to him by decision of an administrative authority, its exact description as well as the reference of the assignment decision;
- 6) the name of Counsel whose address the pursuing creditor has chosen for service and where all oppositions to the summons, real offer and notifications relating to the attachment shall be served.

Article 255

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

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

Article 256

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

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

Article 257

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

Article 258

Where the property constitutes expenses incurred by the debtor in relation to land which does not belong to him, but which has been assigned to him by decision of an administrative authority,

the summons provided for in Article 254 of this Uniform Act shall equally be served on the said authority who shall endorse it.

Section 2- Publication of the Summons to Pay

Article 259

The Bailiff or Process-server shall cause the original of the summons to be endorsed by the land Registrar who shall be given a copy for publication.

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

Where a summons had not been deposited at the land registry or with the administrative authority concerned within three (3) months of its notification and effectively published thereafter, the creditor shall only recommence process by repeating the entire proceedings.

Article 260

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

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

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

The attachment shall not be carried out without the consent of the distrainor creditors who were subsequently disclosed.

Article 261

In the event of payment, the registration of the order shall be cancelled by the land registrar or administrative authority upon presentation of the discharge signed by the pursuing creditor.

Failing this, the debtor or any interested party may request the discharge by showing proof of payment; to this effect, he shall refer the matter to the competent court ruling without delay.

The court shall rule within eight (8) days upon the matter being referred to it. Its decision shall be subject to appeal in accordance with the prescribed procedure.

Section 3- Effects of the Summons to Pay

Article 262

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

The landed property and the revenue therefrom shall be immobilized under the conditions provided for in the Articles below. The debtor shall neither alienate the landed property nor encumber it with a real right or charge.

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

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

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

Article 263

Natural crops and industrial crops, rents and farm rents collected after the service of the summons or the proceeds there from, except in the case of a previous attachment, shall be immobilized for eventual distribution with the proceeds of the sale of the immovable property. They shall be deposited either in the Deposit and Consignment Fund or in the hands of an escrow agent appointed by the President of the competent court or the Judge delegated by him.

Where the immovable property is not leased out for farming or rented, the distrainee shall hold the property until the sale, as a court appointed receiver, unless otherwise ordered by the President of the competent court upon the application of one (1) or more creditors or the Judge delegated by him.

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

In the event of difficulties, the matter may be referred to the President of the competent court where the property is located. He shall rule by a decision that is not subject to appeal.

Article 264

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

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

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

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

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

Article 265

Where the debtor proves that the unencumbered net income from his property over a period of two (2) years is sufficient to settle the debt in its principal, costs and interest and, where he offers the income to the creditor, the proceedings may be suspended following the procedure set out in Article 264 of this Uniform Act.

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

CHAPTER III

PREPARATION OF THE SALE

Section 1- Drawing up and filing of the Terms of Reference

Article 266

The terms of reference, drafted and signed by the Counsel of the pursuing creditor shall specify the conditions and procedure for the sale of the property attached.

Under pain of forfeiture, it shall be filed at the Registry of the competent court of the place of the location of the property within a maximum period of fifty (50) days of the publication of the summons.

Article 267

Under pain of nullity, the terms of reference shall include:

- 1) the title of the act;
- 2) an indication of the writ of execution by virtue of which the proceedings against the debtor were instituted and the summons to pay with a mention of the fact of its publication, as well as the other acts and decisions of the court pronounced after the service of the summons to pay and which have been served on the pursuing creditor;
- 3) an indication of the court or Notary Public agreed upon by the pursuing creditor and the judgment debtor to carry out the auction sale;
- 4) an indication of the place where the hearing may take place, provided for by Article 270 of this Uniform Act;
- 5) the surname, first names, profession, nationality, date of birth and residence of the pursuing creditor;
- 6) the surnames, first names capacity and address of the pursuing Counsel;
- 7) the designation of the attached property as contained in the summons to pay or report describing it drawn up by the Bailiff or the Process-server;
- 8) the conditions of sale and, especially, the rights and obligations of the vendors and successful bidders, an indication of the costs of the proceedings and any special condition;
- 9) where necessary, the parcel of land;
- 10) the reserve price fixed by the judgment creditor which shall not be lower than a quarter of the market value of the property. The value of the property shall be appreciated in accordance with the valuation made by the parties during the conclusion of the mortgage contract or, failing this, by comparison with the transactions concerning property of a similar nature or location.

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

Article 268

The date of the sale shall be fixed in the deposit deed at the earliest forty-five (45) days and latest ninety (90) days from the date of filing the said document.

Section 2- Summons to consult the terms of reference**Article 269**

Within eight (8) days of filing the terms of reference, the distrainor creditor shall summon the distrainee and other registered creditors to consult the terms of reference filed at the Registry, and to cause their observations to be entered therein.

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

Article 270

Under pain of nullity, the summons referred to in Article 269 of this Uniform Act shall state:

- 1) the date and time of the contingent hearing during which the court shall rule on the statements and submissions made. Such hearing shall not take place less than thirty (30) days after the last summons;
- 2) the dates and times envisaged for the auction sale which shall take place between the thirtieth and sixtieth day after the contingent hearing;
- 3) under pain of forfeiture, that the statements and observations shall be received up to the fifth day preceding the contingent hearing and that where they fail to file an application for a resolutive action against a previous sale or file proceedings against an irresponsible bid of a previous forced sale and mention same pursuant to the terms of reference within the same period, they shall forfeit their right to exercise these actions against the successful bidder.

Article 271

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

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

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

Section 3- Contingent Hearing

Article 272

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

Where there is an objection to the amount of the reserve price, the onus shall lie on the party objecting to support his objection. He may apply to the President of the competent court to appoint an expert at his expense. The fees shall be payable in advance.

Article 273

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

Article 274

The ruling of the court after the contingent hearing shall be transcribed in the register kept for terms of reference by the Court Registrar; the ruling shall be reproduced and served on the parties on the application of the most diligent party.

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

Article 275

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

- 1) order forthwith the removal of some of the attached property wherever its overall value appears to be disproportionate to the amount of debt to be recovered;
- 2) alter forthwith the amount of the reserve price where it was not fixed in conformity with the provisions of Article 267-10 of this Uniform Act.

In such case, the competent court shall inform the parties of its intention to modify the terms of reference and invite them to file further observations within a period not exceeding five (5) days. Where the matter could not be heard on the date initially scheduled, the parties shall be informed of the date and time of the next hearing.

Section 4- Publication of the Sale

Article 276

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

In addition, advertising may be carried out through audio-visual or electronic means.

Article 277

Under pain of nullity, the extract shall contain:

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

Article 278

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

Article 279

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

CHAPTER IV *SALE*

Section 1- Date and place of the Auction Sale

Article 280

On the date scheduled for the auction sale, the court shall be moved by the written or oral submissions of the Counsel for the pursuing creditor or any other registered creditors. The latter

shall, in open court, state the costs of the proceedings previously fixed by the President of the competent court or by the Judge delegated by him.

Article 281

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

In case of an adjournment, the decision of the court shall fix a new date for the auction sale which shall not be more than sixty (60) days from the date of the court session. The pursuing creditor shall proceed with the formalities of publication de novo.

The decision of the court shall not be subject to appeal, except where the competent court did not respect the time limit provided for in Paragraph 2 of this Article. In such case, an appeal shall lie in accordance with the conditions provided for in Article 301 of this Uniform Act.

Article 282

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

Any person wishing to acquire the property shall submit one or more bids. The property shall be adjudicated in favour of the highest bidder.

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

Article 283

Before bidding begins, candles shall be prepared in such a way that each shall last approximately one (1) minute.

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

Where a bid is made, during the duration of one (1) candle, such bid shall only become final and entail adjudication where no new bid is made before the extinction of two (2) candles.

The bidder shall cease to be bound where his bid is superseded by another, even where the later bid is declared a nullity. Where no bid is made after three (3) candles have been successively lit, the pursuing creditor who initiated the sale shall be declared the successful bidder at the reserve price unless he applies that the auction sale be adjourned to another court session with a new reserve price in conformity with the provisions of Article 267, -10) of this Uniform Act. The ad-

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

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

Article 284

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

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

Article 285

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

Article 286

The Counsel who is the last bidder shall, within three (3) days of the auction sale, disclose the successful bidder and furnish his written acceptance or proxy which shall remain annexed to the original of the ruling of the court or the report drawn up by the Notary Public, otherwise, he shall be deemed to be the successful bidder.

The successful bidder shall have the option no later than the following day, to disclose in an act known as «declaration of real purchaser», that he did not bid on his own account, but on the account of person whose name he shall disclose.

Section 2- Higher bid

Article 287

Any person may, within ten (10) days following the date of auction sale, may make a higher bid, provided that it shall be higher than the purchase price by 10%. The time limit for the higher bid shall entail forfeiture.

The said higher bid may not withdrawn.

Article 288

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

The higher bidder or his Counsel shall be required to disclose the higher bid within five (5) days of the declaration, to the person to whom the property was adjudicated, the pursuing creditor and to the distrainee.

The disclosure shall be entered in the register kept for terms of reference within a period of five (5) days.

Where the higher bidder fails to make the disclosure or to enter same in the register kept for terms of reference within the time limit, the pursuing creditor and the distrainee or any creditor who has been registered or summoned may make the disclosure and enter same in the said register within five (5) days of expiry of the afore mentioned time limit; the costs shall be borne by the negligent higher bidder.

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

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

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

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

Article 289

Any objection relating to the higher bid shall be contained in the submissions filed and communicated to the adverse party not later than five (5) days before the contingent hearing. The filing of the submissions shall be mentioned next to the entry on the disclosure of the higher bidder in the register kept for terms of reference.

Where there is no objection relating to the higher bid, or where it is validated, the new auction sale shall be preceded by the affixing of posters at least eight (8) days before the sale, in conformity with the provisions of Articles 276 to 279 of this Uniform Act.

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

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

Section 3- Auction Sale

Article 290

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

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

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

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

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

Article 291

Where the auction sale comprises of several parcels of landed property, a copy of the decision of the court or the report of the auction sale drawn up by the Notary Public shall be issued to each successful bidder. The executory formula shall be affixed on the court ruling or the report.

Article 292

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

Article 293

The decision of the court or the auction sale report drawn up by the Notary Public shall not be subject to appeal, without prejudice to the provisions of Article 313 of this Uniform Act.

Article 294

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

The successful bidder shall be required to carry out this formality within two (2) months, under pain of a resale on the ground of irresponsible bidding.

The land registrar shall mention the fact of publication in the margin of the copy of the published summons. He shall also proceed to strike off the registered preferential claims and mortgages which have been paid off by the proceeds of the sale, even those registered after the issuance of the statement of entry. In this case, the only claim of creditors shall be for a share in the proceeds of the sale.

Article 295

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

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

Article 296

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

Article 297

The time limits provided for in Articles 259, 266, 268, 270, 276, 287, 288 (Paragraphs 7 and 8) and 289 of this Uniform Act are subject to foreclosure .

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

Article 297-1

Nullity declared for lack of sufficient designation of one (1) or more of the properties included in the attachment shall not necessarily entail the nullity of the proceedings in respect of the other properties.

CHAPTER V
INCIDENTS RELATING TO THE ATTACHMENT
OF REAL PROPERTY

Article 298

Any dispute or incidental claim relating to the proceedings in the attachment of real property raised after service of the summons to pay shall be filed through a simple document drafted by Counsel. It shall contain the arguments upon which the claim is based.

Where the party has not briefed Counsel, his action shall be commenced by writ of summons.

The matters shall be heard and adjudicated upon expeditiously.

Article 299

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

However, under pain of forfeiture, claims founded on a fact or an act which happened or was disclosed after such hearing and those likely to cause the removal of all or part of the attached property, the nullity of all or part of the procedure of the contingent hearing or the annulment of the attachment, may still be raised after the contingent hearing within eight (8) days before the date of the auction sale.

Article 300

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

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

The decisions of the Appellate Court shall not be subject to opposition.

The time limit for appeal shall be fifteen (15) days from the date of notification of the decision. The appeal time limit and the exercise of the right to appeal shall stay execution.

Article 301

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

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

The notice of appeal shall contain the appellant's grounds of appeal.

The Appellate Court shall rule within one (1) month from the date the matter was called up in court for the first time.

Section 1- Incidents arising from Multiple Attachments.

Article 302

Where two (2) or more distrainers have published the summonses to pay relating to different properties belonging to the same debtor, and where the attachment is carried out before the same court, the proceedings shall be consolidated at the request of the most diligent party and shall be continued by the first distrainer.

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

Article 303

Where a second summons to pay presented at the land registry comprises more properties than the first, such summons shall be published in respect of the property not included in the first. The second pursuing creditor shall disclose the published summons to the first distrainer, who shall be required to pursue the action for the two (2) distrainers, where they are at the same level.

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

Article 304

Where the first distrainer fails to carry out the proceedings in accordance with the provisions of Article 303 of this Uniform Act, the second distrainer may, in written application addressed to the land Registrar, apply for subrogation.

Article 305

An application for subrogation may also be addressed to the President of the court before which the sale is being carried out or the Judge delegated by him, where there is collusion, fraud, neg-

ligence or other cause for delay attributable to the distrainor, without prejudice to damages payable to the injured party.

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

A creditor may only apply for subrogation eight (8) days after an unproductive summons to continue proceedings by a correspondence between Counsel to creditors whose summonses to pay were previously filed at the land registry.

The distrainee shall not be joined to the action.

The President of the competent court or the delegated Judge shall rule within eight (8) days of the referral. The time limit for appeal shall be fifteen (15) days from notification of the decision. Appeals shall be heard as a matter of urgency.

Article 306

The party who loses the action for subrogation shall bear the costs.

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

Article 307

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

Section 2- Application for Diversion

Article 308

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

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

Article 309

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

Article 310

Where the application for diversion concerns the whole property, the proceedings shall be discontinued.

Where the application for diversion concerns a part of the attached property, the remainder may be auctioned off. The competent court may also order the suspension of the proceedings in relation to all the property upon the application of the interested parties. In the case of partial diversion, the pursuing creditor may be allowed to change the reserve price that was mentioned in the terms of reference.

Section 3- Application for Annulment**Article 311**

With the exception of those grounds for nullity referred to in Article 299 (2) of this Uniform Act, the grounds relating to the form or merits, against the procedure preceding the contingent hearing shall be raised, under pain of forfeiture, by way of a statement annexed to the terms of reference not later than five (5) days before the date fixed for hearing. Where they are allowed, the action may be recommenced from the last valid act and the time limits for accomplishing the subsequent acts shall be computed from the date of the notification of the decision which pronounced the nullity.

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

Article 312

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

Article 313

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

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

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

Section 4- Irresponsible Bidding

Article 314

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

Bidding shall be deemed irresponsible where the successful bidder:

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

Article 315

The irresponsible bid may be brought by the distrainee, the pursuing creditor and the registered and unsecured creditors. It is brought against the successful bidder and, where applicable, his successors in title. It shall not be subject to any time limit. However, it shall no longer be brought or pursued when the grounds for initiating this action have disappeared, subject to the provisions of Article 320 of this Uniform Act.

Article 316

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

Where the successful bidder files an opposition to the issuance of a such a certificate, the President of the competent court or the Judge delegated by him shall rule at the instance the most diligent party. The ruling shall not be subject to an appeal.

Article 317

The certificate provided for in Article 316 of this Uniform Act shall be served on the successful bidder. Within five (5) days of service, publication of such service shall be made with a view to the new auction sale.

The posters and entries shall show the surnames, first names and residence of the irresponsible bidder, the amount of the auction, a reserve price fixed by the pursuing creditor and the date when the new auction sale shall take place shall be mentioned in the terms of reference that were previously filed. The time limit between the new publication and the sale shall be within a period of at least fifteen (15) days and not more than thirty (30) days.

Article 318

Not later than fifteen (15) days before the auction sale, notice shall be served on the successful bidder, distrainee, distrainor and the creditors indicating the date, time and place of the auction sale. The said notice shall be communicated through a simple correspondence between the Counsel and, in the absence of Counsel, through notification by writ of the Bailiff or the Process-server.

Article 319

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

Five (5) days after the service of the summons to pay, he may proceed to publish the new sale as provided for in Article 317 of this Uniform Act.

Article 320

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

Article 321

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

The grounds for nullity shall be filed five (5) days before the auction sale as provided for in Article 317 of this Uniform Act.

Article 322

Where no bid is made, the reserve price may be reduced within the limit provided for in Article 267 -10 of this Uniform Act by a decision of the President of the competent court or the Judge delegated by him.

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

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

Article 323

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

Where the second price is higher than the first, he shall not benefit from the difference. The costs of the proceedings, registry fees and the cost of the stamp shall not be reimbursed.

PART IX

DISTRIBUTION OF THE PROCEEDS OF THE SALE

Article 324

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

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

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

Article 325

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

In such case, they shall forward a copy of their private agreement or authenticated deed to the Registry or to the Auxiliary of Justice holding the funds.

The creditors shall be paid within a period of fifteen (15) days as soon as the agreement is received.

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

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

Article 326

Where within a period of one (1) month of the payment of the purchase price by the successful bidder, the creditors have not arrived at a unanimous agreement, the most diligent creditor shall refer the matter to the President of the court of the place of the auction sale. The latter shall rule on the distribution of the proceeds of the sale.

Article 327

The writ of summons referred to in Article 326 of this Uniform Act shall state the date of the hearing and enjoin the creditors to prove their claims by stating their dues, the rank on which they expect to be placed and to forward all documents in proof thereof.

The summons shall reproduce the provisions of Article 330 of this Uniform Act.

Article 328

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

Article 329

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

Article 330

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

Article 331

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

Article 332

After examining the statements in support of the claim, and the submissions of the parties, the competent court shall proceed to the distribution of the proceeds of the sale. The court may for serious and duly justified reasons postpone the distribution to a new date. The decision of the court granting or dismissing the application to postpone the distribution shall not be subject to appeal.

Article 333

The decision rendered on the merits by the court may be appealed against within fifteen (15) days of its notification. The appeal shall only be admissible where the contested amount is above the amount stated in the final ruling of the court.

Article 334

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

PART X

PENAL, MISCELLANEOUS AND FINAL PROVISIONS

Article 335

A distrainee or third-party holder who fails to comply with the obligations relating to his capacity as custodian under Article 36 of this Uniform Act shall be liable to criminal penalty.

Article 335-1

In the case of a sequestration, penal sanctions shall be meted against the distrainee or third party who shall:

- remove or transfer property, without a legitimate reason making such transfer or removal necessary;
- not inform the creditor in advance of the transfer or disposal of the attached property, except in cases of utmost emergency;
- in the event of removal, fail to inform the creditor of the place where the property is to be located.

Article 335-2

Any custodian who, except in the case provided for in Article 97 of this Uniform Act, shall transfer or remove a property subject to attachment and sale shall be liable to penal sanctions.

Article 335-3

The following shall be liable to penal sanctions:

the custodian who, in the context of a private sale, removes property, except in cases of utmost emergency, before the deposit of the price provided for in Article 118 of this Uniform Act;
the debtor who, without complying with the procedure laid down in Articles 115 and seq. of this Uniform Act, transfer the assets subject to attachment for sale.

Article 335-4

Any authority empowered to carry out a public auction who receives a sum in excess of the auction sale price shall be liable to penal sanctions.

Article 335-5

Any holder who, except in the case provided for in this Uniform Act, transfers or removes property which is the subject of an attachment under a prior claim shall be liable to penal sanctions.

Article 335-6

The owner of business assets subject to an attachment who, in violation of Article 245-9 of this Uniform Act, transfers the said business assets or grants a real right or charge thereon shall be liable to penal sanctions.

Article 335-7

Any debtor or third-party holder who, in violation of Article 73-1 (5) of this Uniform Act, transfers or displaces a sequestered livestock shall be liable to penal sanctions.

Article 335-8

Any custodian who, in violation of Article 152-12 of this Uniform Act, transfers or displaces livestock subject to attachment, except for grazing, without notifying the Bailiff or the Process-server, shall be liable to penal sanctions.

Article 335-9

Any Bailiff or Process-server who diverts from their purpose information communicated under the conditions provided for in Article 1-3 and the photographs referred to in Article 45 of this Uniform Act shall be liable to penal sanctions.

Article 336

Except where reference is made to the provisions of international conventions or to the rules applicable in the States Parties, only the provisions of this Uniform Act shall apply to the procedures and protective or enforcement measures which it governs.

Article 337

This Uniform Act, which repeals and replaces the Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures adopted on April 10, 1998, shall apply only to simplified recovery procedures and enforcement measures initiated after its entry into force.

Simplified recovery and enforcement procedures initiated before its entry into force shall remain subject to the legislation in force at the time.

Article 338

This Uniform Act shall be published in the Official Gazette of OHADA and of the States Parties. It shall enter into force in accordance with the provisions of Article 9 of the Treaty on the Harmonization of Business Law in Africa.

Done in Kinshasa on 17 October 2023

Pour la République du Bénin

S.E.M. Yvon DETCHENOU

Pour la République du Cameroun

S.E.M. Jean de Dieu MOMO

Pour l'Union des Comores

S.E.M. DJAE AHAMADA CHANFI

Pour la République du Congo

S.E.M. Aimé Ange Wilfrid BININGA

Pour la République de Côte d'Ivoire

S.E.M. Volkanaud N'GUESSAN

Pour la République Gabonaise

S.E.M. Paul Marie GONDJOUT

Pour la République de Guinée

S.E.M. Aly DOUMBOUYA

Pour la République de Guinée-Bissau

S.E.M. Albino GOMES

*Pour la République de Guinée
Équatoriale*

S.E.M. Sergio Esono ABESO TOMO

*Pour la République Démocratique du
Congo*

S.E.M. MUTOMBO KIESE Rose

Pour la République du Sénégal



S.E.M. SY Doro

Pour la République du Tchad



S.E.M. MAHAMAT DINA YAYA

Pour la République Togolaise



S.E.M. Pius Kokouvi AGBETOMEY

