

ภาคผนวก

## **Commercial Code**

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

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

##### **Article L. 611-1**

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

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

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

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

Recognised prevention groups are authorised to conclude, notably with credit establishments and insurance businesses, agreements for the benefit of their members.

(Amended by Article 3, Law of 2005)

##### **Article L. 611-2**

I. - Where it appears from any act, document or proceeding that a commercial company, an economic interest grouping or an individual, commercial or craftsman's businesses is experiencing difficulties of a nature which may compromise the

continuation of business, its managers may be summoned by the President of the Commercial Court so that proper measures may be taken to redress the situation.

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

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

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

(Amended by Article 4, Law of 2005)

#### Article L. 611-3

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

(Inserted by Article 5, Law of 2005)

#### Article L. 611-4

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

(Inserted by Article 5, Law of 2005)

#### Article L. 611-5

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

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

(Inserted by Article 5, Law of 2005)

#### Article L. 611-6

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

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

The conciliation procedure is opened by the President of the Court, who appoints a conciliator for a period not exceeding four months but which he may, by a reasoned order, extend by a month at the most at the latter's request. The debtor may suggest a conciliator for designation by the President of the Court. At the end of this period, the conciliator's mission and the proceedings come to an end as of right.

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

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

(Inserted by Article 5, Law of 2005)

#### Article L. 611-7

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

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

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

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

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

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

(Inserted by Article 6, Law of 2005)

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

#### Article L. 611-8

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

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

1. The debtor is not in cessation of payments or the agreement brings this to an end;
2. The terms of the agreement are of a nature to ensure the continuity of the business' activity;
3. The agreement does not harm the interests of non-signatory creditors, without prejudice to the application which may be made of Articles 1244-1 to 1244-3 of the Civil Code.

(Inserted by Article 7, Law of 2005)

#### Article L. 611-9

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

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

(Inserted by Article 7, Law of 2005)

#### Article L. 611-10

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

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

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

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

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

(Inserted by Article 7, Law of 2005)

#### Article L. 611-11

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

continuity will be paid, for the cost of this good or service, as a priority before all debts arising prior to the opening of conciliation.

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

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

(Inserted by Article 8, Law of 2005)

#### Article L. 611-12

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

(Inserted by Article 9, Law of 2005)

#### Article L. 611-13

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

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

(Inserted by Article 10, Law of 2005)

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

#### Article L. 611-14

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

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

(Inserted by Article 10, Law of 2005)

#### Article L. 611-15

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

(Inserted by Article 10, Law of 2005)

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

#### Article L. 612-1

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

This corporate bodies are required to appoint at least one auditor and one replacement.

For agricultural co-operatives and common interest agricultural companies that do not have commercial form, where they do not call on certified auditors, this requirement may be satisfied by recourse to the services of a recognised organisation according to

the provisions of Article L. 527-1 of the Rural Code. The conditions for the application of this provision shall be detailed in a decree by the Council of State.

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

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

(Amended by Article 11, Law of 2005)

#### Article L. 612-2

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

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

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

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

(Amended by Article 11, Law of 2005)

### Article L. 612-3

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

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

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

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

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

(Amended by Article 11, Law of 2005)

### Article L. 612-4

Any association receiving one or more subsidies on an annual basis from the State or public establishments or local authorities whose amount exceeds an overall amount fixed by decree must establish every year a balance sheet, profit and loss accounts

as well as an annexe, for which a decree shall establish the methods for establishing these.

These associations are required to appoint at least one auditor and one replacement.  
(Amended by Article 11, Law of 2005)

### **Title III: Judicial Rescue**

#### **Chapter 1: The Opening and Progress of Judicial Rescue**

##### **Article L. 631-1**

There are instituted proceedings of judicial rescue open to all debtor mentioned in with their available assets, are in cessation of payments.

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

(Inserted by Article 88, Law of 2005)

##### **Article L. 631-2**

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

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

(Inserted by Article 88, Law of 2005)

### Article L. 631-3

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

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

(Inserted by Article 88, Law of 2005)

### Article L. 631-4

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

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

(Inserted by Article 89, Law of 2005)

### Article L. 631-5

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

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

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

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

(Inserted by Article 89, Law of 2005)

#### Article L. 631-6

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

(Inserted by Article 89, Law of 2005)

#### Article L. 631-7

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

(Inserted by Article 89, Law of 2005)

#### Article L. 631-8

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

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

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

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

(Inserted by Article 89, Law of 2005)

#### Article L. 631-9

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

(Inserted by Article 89, Law of 2005)

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

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

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

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

(Amended by Article 90, Law of 2005)

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

The supervising judge determines the remuneration for the functions exercised by the debtor if an individual or by the managers of a corporate body.

In the absence of remuneration, persons mentioned in the preceding paragraph may obtain out of the assets, for themselves or their families, subsidies determined by the supervising judge.

(Amended by Article 91, Law of 2005)

Article L. 631-12

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

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

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

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

The administrator shall run, under his signature, any bank or Post Office accounts of which the debtor is the holder where the latter is subject to the prohibitions set out in

Articles L. 131-72 or L. 163-6 of the Monetary and Financial Code. (Inserted by Article 92, Law of 2005)

Article L. 631-13

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

(Inserted by Article 92, Law of 2005)

Article L. 631-14

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

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

(Inserted by Article 92, Law of 2005)

Article L. 631-15

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

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

II - At any time during the observation period, the Court, at the request of the debtor, the administrator, the judicial nominee, one of the monitors, the Public Prosecutor or ex

officio may order the partial cessation of business or orders judicial liquidation, if the conditions of Article L. 640-1 are met.

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

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

(Inserted by Article 92, Law of 2005)

#### Article L. 631-16

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

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

(Inserted by Article 92, Law of 2005)

#### Article L. 631-17

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

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

(Inserted by Article 92, Law of 2005)

#### Article L. 631-18

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

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

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

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

(Inserted by Article 92, Law of 2005)

#### Article L. 631-19

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

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

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

(Inserted by Article 92, Law of 2005)

Article L. 631-20

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

(Inserted by Article 92, Law of 2005)

Article L. 631-21

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

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

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

(Inserted by Article 92, Law of 2005)

Article L. 631-22

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

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

(Inserted by Article 92, Law of 2005)

## **Chapter 2: The Nullity of Certain Acts**

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

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

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

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

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

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

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

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

(Amended by Article 95, Law of 2005)

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

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

(Unchanged)

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

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

(Amended by Article 96, Law of 2005)



