

 EU  
ENFORCEMENT  
ATLAS

# France

## Narrative National Report

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## PART I: LEGAL FRAMEWORK

### I.1 Legislation affecting civil enforcement

The legislation on civil enforcement relates firstly to the professionals in charge of enforcement: the judicial officers (“huissiers de justice” or “commissaires de justice”, hereinafter referred to as “judicial officers”). They have the monopoly on civil enforcement in accordance with Article 1 of Order No 45-2592 of 2 November 1945 relating to their status<sup>1</sup>.

Civil enforcement is currently regulated by Articles L.111-1 to L.334-1 of the Civil Enforcement Procedures Code (hereinafter referred to as “CEPC”) as far as the legislative part is concerned and Articles R.112-1 to R.334-3 of the same code as far as the regulatory part is concerned. Many legal provisions relating to enforcement are also found in the Code of Civil Procedure (hereinafter referred to as “CPC”).

### I.2 Enforceable titles

The 1992 reform regarding civil enforcement<sup>2</sup> has established six types of enforceable titles, mentioned in Article L.111-3 CEPC.

#### I.2.1 Decisions by competent judicial or administrative bodies and agreements, which have acquired legal enforceability

These constitute the first category of enforceable titles, irrespective of the competent body that has pronounced them. To be an enforceable title, these decisions must order to pay a sum of money, to do or not to do something. However, court decisions cannot immediately be enforced once pronounced. An enforceable title may be enforced only upon the production of a certified copy, imprinted with an order of enforcement<sup>3</sup>, unless the law provides otherwise<sup>4</sup>. The decision also has to be served to the defendant prior to enforcement.

##### I.2.1.1 Enforceable decisions

The principle is that a court decision becomes “res judicata” from its pronouncement.

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<sup>1</sup> “Les huissiers de justice sont les officiers ministériels qui ont seuls qualité pour signifier les actes et les exploits, faire les notifications prescrites par les lois et règlements lorsque le mode de notification n'a pas été précisé et ramener à exécution les décisions de justice, ainsi que les actes ou titres en forme exécutoire.”

<sup>2</sup> Decree No 92-755 of 31 July 1992 instituting new rules relating to civil enforcement proceedings for the application of the Law No 91-650 of 9 July 1991 on civil enforcement proceedings.

<sup>3</sup> As mentioned in Article 1 of Decree No 47-1047 of 12 June 1947 : “Au nom du peuple français”, et terminées par la formule suivante : “ En conséquence, la République française mande et ordonne à tous huissiers de justice, sur ce requis, de mettre ledit arrêt (ou ledit jugement, etc.) à exécution, aux procureurs généraux et aux procureurs de la République près les tribunaux judiciaires d'y tenir la main, à tous commandants et officiers de la force publique de prêter main-forte lorsqu'ils en seront légalement requis.

“ En foi de quoi, le présent arrêt (ou jugement, etc.) a été signé par...”.

<sup>4</sup> Article 502 CPC.



It is enforceable as soon as it becomes “*res judicata*”<sup>5</sup>, except when the debtor benefits from a grace period or if the creditor benefits of provisional enforcement. By law, all first instance decisions are enforceable on a provisional basis, except when the law or the pronounced decision state differently<sup>6</sup>, with a few legal exceptions<sup>7</sup>.

When provisional enforcement is not automatic, it remains optional (unless forbidden by law). It is possible to obtain it upon request of the parties or by order of the judge if he/she considers it necessary and compatible with the matter of the trial. There are also some legal exceptions<sup>8</sup>. When enforcement is based on a provisional enforcement title, the risk is that the creditor may have to pay back the money to the debtor if the enforcement title is challenged.

### **1.2.1.2 Notified enforceable decisions**

Even when provisional enforcement is granted or when the decision becomes *res judicata*, in any case, it always needs to be notified to the debtor prior to enforcement<sup>9</sup>, with one exception<sup>10</sup>.

Judgments are notified by way of service of a judicial officer, except where the law provides otherwise<sup>11</sup>. However, in certain cases (non-contentious matters, decisions by the enforcement judge, labour court, rural lease and social security disputes, over-indebtedness and attachment of earnings), judgments will be notified by the clerk of the court by registered letter with acknowledgement of receipt<sup>12</sup>.

After the service of the judgment, unless the decision is *res judicata* from its pronouncement or benefits of provisional enforcement, its enforceability may be proved by the agreement of the condemned party or by the presentation of a certificate of no appeal in the absence of provisional enforcement.

### **1.2.2 Legal documents, foreign court decisions and arbitral awards declared**

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<sup>5</sup> Article 501 CPC.

<sup>6</sup> Article 514 CPC.

<sup>7</sup> - Decisions on family matters, by which the judge ends the trial (except if the decision pronounces provisional enforcement).

- Decisions relating to filiations, subsidies (Article 1149 CPC).

- Decisions relating to adoption (Article 1178-1 CPC).

- Personal data matters (Articles 1045, 1054-1, 1055-3, 1055-10 CPC).

- Absence declaration (Article 1067-1 CPC).

- Orders on motions (ex parte decisions) granting requests cannot be subject to enforcement suspension remedy, so they are immediately enforceable.

<sup>8</sup> The judge can decide to totally or partially exclude the provisional enforcement by law if he/she thinks it is not compatible with the matter of the trial (unless for emergency proceedings, or when he/she orders provisional or protective measures or when, acting as a judge preparing the hearing, he/she allows a provisional sum for the creditor). He/she must then reason his/her decision (Article 514-1 CPC).

<sup>9</sup> Article 503 CPC, paragraph 1: “*Judgments can only be enforced against those to whom they are pronounced after having been notified, unless the enforcement is voluntary*”.

<sup>10</sup> In the event of an enforcement on the mere presentation of the original of the decision (Article 503 CPC, paragraph 2: “*Au seul vu de la minute*”). The said presentation amounts to a notification.

<sup>11</sup> Article 675 CPC paragraph 1.

<sup>12</sup> Article 675 CPC paragraph 2.



### **enforceable by a decision not subject to enforcement suspension remedy, in accordance with applicable EU rules**

Article 509 CPC provides that judgments of foreign courts and deeds of foreign officers shall be enforceable on the territory of the French Republic in the manner and under the circumstances specified by law.

Outside the European Union, this means firstly deciding if the judgment is valid and can be enforced in France in compatibility with its internal public policy (“ordre public”) through the *exequatur* (recognition) procedure<sup>13</sup>.

Within the European Union, mutual recognition is the principle, as described in the relevant European regulations<sup>14</sup>.

#### **I.2.3 Extracts of conciliation agreements signed by the judge and the parties**

A conciliation agreement is enforceable and constitutes an enforcement title when it is imprinted with an order of enforcement<sup>15</sup> and following a summons of its homologation by a judge.

#### **I.2.4 Notarized agreements imprinted with an order of enforcement; Private agreements of mutual acceptance of divorce or judicial separation, countersigned by lawyers and registered at a notary’s office in accordance with Article 229-1 of the**

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<sup>13</sup> In order to facilitate obtaining the *exequatur* of a French judgment abroad, Article 479 CPC provides that in case of a judgment by default or a judgment regarded as “judgment after trial” against a party residing abroad, the efforts made to inform the defendant of the document initiating proceedings must be established expressly.

<sup>14</sup> - Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

- Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis).

- Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 and as of 1<sup>st</sup> August 2022, Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.

- Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

- Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

<sup>15</sup> Similarly, an arbitration award is an enforcement title when it contains the *exequatur* order delivered by the president of the judiciary court. The same applies for private contracts, when they are enforceable. Mediation agreements are enforceable after homologation by judge.



## Civil Code

When they contain an obligation, notarized agreements constitute an enforcement title. The party who commits him/herself in front of a notary provides the creditor with an enforcement title, which can be directly enforced without having to recourse to a judge. Private agreements filed as official records of a notary who authenticates their signatures therefore constitute enforcement titles.

### **I.2.5 Titles issued by a judicial officer in case of non-payment of cheques or agreements between the creditor and the debtor under Article L.125-1 CPEC and Article L.131-74 of the Monetary and Financial Code**

#### **I.2.5.1 Monetary claims up to 5,000 Euros**

To obtain payment of a claim up to 5,000 Euros, a creditor may appoint a judicial officer to collect the debt<sup>16</sup>. The judicial officer will send a registered letter with acknowledgment of receipt inviting the debtor to participate in this procedure<sup>17</sup>. The letter mentions that the debtor can accept or refuse to participate within a month. In case of refusal or in the absence of answer, the creditor must go to court to obtain judgment. If the debtor agrees to participate in the procedure, the agreement is recorded by the judicial officer. Subsequently, after receiving the agreement of both the creditor and the debtor, the judicial officer immediately issues an enforcement title<sup>18</sup>.

To facilitate this procedure, the French National Chamber of Commissioners of Justice opened in June 2016 the “Credicys” platform<sup>19</sup>, which allows online submission of cases.

#### **I.2.5.2 Non-payment of cheques**

When a cheque is unpaid, the creditor requires a “certificate of non-payment” from the bank, which he/she hands to a judicial officer. The judicial officer will serve it to the debtor. If the debtor does not pay within 15 days after service, the judicial officer issues an enforcement title which will be enforced for the amount of the cheque plus procedural costs, according to all the enforcement measures provided by law.

### **I.2.6 Titles legally qualified as such issued by legal entities of public law; Decisions granted the same effects as a court decision by law**

#### **I.2.6.1 Judgments by administrative authorities**

Administrative court judgments, administrative court of appeal judgments, State

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<sup>16</sup> Article L.125-1 CPEC.

<sup>17</sup> The letter contains: name and address of the judicial officer in charge of the procedure, name or company name, address or head office of the creditor, reason and amount of the sum of money due (principal and interests), legal dispositions of Articles L.111-2, L.111-3, L.125-1 et R.125-2 CPEC and 2238 of the Civil Code, possibility for the debtor to accept or refuse.

<sup>18</sup> However, because of the risk of conflict of interest, the enforcement will be carried out by a different judicial officer.

<sup>19</sup> Accessible on [www.credicys.fr](http://www.credicys.fr).



Council judgments and conflicts court judgments, relating to “full jurisdiction competence”<sup>20</sup> or only legality are immediately enforceable with a certified copy imprinted with an order of enforcement.

Enforcement procedures are forbidden against legal entities of public law. If the debtor is a legal entity of public law, an order of payment will be given to the accountant officer in charge of the payment. The debt must be paid within four months after the official demand. If the payment has not taken place within this timeframe, the creditor can directly refer to the accountant, who will pay within one month of the referral.

#### **1.2.6.2 Payment demands from social organisations (social security etc.)**

These organisations can recover all monies due to them. Demands are issued by the director of the organisation mentioning the amount and the cause of the claim. The payment demand will be served by a judicial officer or notified by post<sup>21</sup>. If an appeal (“opposition”) is not filed within 15 days, the demand will have the same effects as a judgment.

#### **1.2.6.3 Administrative enforcement titles**

In order to ensure a quick recovery of their claim, administrations are allowed to deliver an enforcement title themselves. They do not need to refer to a judicial authority normally in charge of delivering the certified copy imprinted with an order of enforcement.

#### **1.2.6.4 Other titles (titles regarding direct and assimilated taxes, land claims, statements of account<sup>22</sup>, enforceable statements<sup>23</sup> etc.)**

In all the aforementioned cases the debtor can appeal against the existence of the claim or against the legal proceedings.

### **1.3 Service of documents to parties and third parties**

French judicial officers have the monopoly on service of documents. Article 651 CPC differentiates notification and service of documents: when the notification is carried out by a judicial officer, it is called a “signification” (service of document). To serve a document is to hand the document or its copy to the addressee in person. When this is not possible, Articles 653 et seq. CPC define the various and subsidiary alternative means of service.

#### **1.3.1 Conditions and formalities**

In the French judicial system, the fundamental mission of service of document has always been attributed to the judicial officer. This is one of his/her major functions. By his/her quality of public judicial officer specially and legally entitled to serve a document, he/she confers an authentic quality on them.

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<sup>20</sup> “*Contentieux de pleine juridiction*”.

<sup>21</sup> Art. L.244-9 Code of Social Security.

<sup>22</sup> Order of receipts in shape of a statement of account.

<sup>23</sup> Other claims not related to taxes, receipts etc.



### **I.3.1.1 Entitlement to serve**

Article 16 of Decree n°56-222 of 29 February 1956, provides that the service of document must be carried out by the judicial officer personally<sup>24</sup>. Judicial officers carry out their activity in the jurisdiction of the court of appeal where their office is located. In major cities (such as Paris, Marseille, Lyon), judicial officers have set up groups to form common offices of service of documents. The judicial officer has a civil liability for nullities, penalties, and damages resulting from the actions of his/her sworn clerks, or his/her substitute colleague.

### **I.3.1.2 Addressee**

The principle is that the document must be served to the addressee personally. This includes the possibility to serve the document to the addressee's legal representative or to a legal entity. Documents addressed to public entities or institutions are served where they are officially and legally established and to a person entitled to receive them<sup>25</sup>. To ensure efficiency and to protect the fundamental rights of the addressee, there are many obligations relating to the service of documents.

### **I.3.1.3 Time of service**

Serving a document before 06:00 and after 21:00, on Sunday or during public holidays is prohibited without the permission of a judge, and can only take place when it is necessary<sup>26</sup>. Service of documents made outside of legal hours is not null but renders the judicial officer liable for disciplinary measures.

The date of service is the date when the document was handed to the addressee personally, or at his/her home or residence or the establishment of the report mentioned in Article 659 CPC (see below). In case of electronic service, the date and the hour are those of sending of the document to the addressee<sup>27</sup>.

### **I.3.1.4 Places of service**

#### **I.3.1.4.1 Individuals**

Service must be carried out personally. This rule is mandatory. The judicial officer can serve the document to the addressee personally wherever he/she is located, including the workplace<sup>28</sup>. The judicial officer can go to the addressee's home and stay there until service is carried out. However, without the judge's authorisation, the judicial officer cannot force entry.

#### **I.3.1.4.2 Legal entities**

The service of document to a private law legal entity or a public industrial

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<sup>24</sup> When the document served does not relate to an attachment, the judicial officer can delegate this function to a specially trained sworn clerk, without limitation in number (Article 6 of the law of 27 December 1923).

<sup>25</sup> Article 692 CPC.

<sup>26</sup> Article 664 CPC.

<sup>27</sup> Article 664-1 CPC.

<sup>28</sup> Article 654 CPC.



establishment is carried out at the head office or at the principal establishment. If these places no longer exist, the document can be served to a legal representative or an entitled person in another location. A standard letter containing the name, surname and capacity of the recipient and a copy of the document is posted to the addressee on the same day or on the next working day<sup>29</sup>.

#### **I.3.1.4.3 Elected residence**

Service of document at an elected residence is valid when the law permits or imposes it<sup>30</sup>.

#### **I.3.2 Means of service**

##### **I.3.2.1 Personal service to the addressee**

As already mentioned, to fulfil this imperative rule, the judicial officer must look for the addressee wherever he/she can be found<sup>31</sup>.

##### **I.3.2.2 Service at addressee's home or residence**

Article 655 CPC contains the principle of service of document at home. When personal service is not possible, service can be carried out at the effective home or residence of the addressee to any legally capable person<sup>32</sup> who accepts the document and mentions his/her name, surname, and relation to the addressee. The document will be handed in a closed envelope and the judicial officer will leave a delivery notice on location<sup>33</sup>. A standard letter containing the same mentions than the delivery notice and the copy of the document is posted to the addressee on the same day or on the next working day<sup>34</sup>.

##### **I.3.2.3 Service at elected residence**

As mentioned in section I.3.1.4.3, the service of document at an elected residence is only valid when the law permits or imposes it, which concerns only a few cases<sup>35</sup>. In any case, even when the law permits service at an elected residence, personal service of document to the addressee is always valid. The document will be handed in a closed envelope and the judicial officer will leave a delivery notice at the location<sup>36</sup>. A standard letter containing the same mentions than the delivery notice and the copy of the document is posted to the addressee on the same day or on the next working

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<sup>29</sup> Article 658 CPC.

<sup>30</sup> Article 689 CPC.

<sup>31</sup> In the street, in the office of the judicial officer, even at work. Unless the document is served at the addressee's domicile, the document can only be handed to the addressee personally.

<sup>32</sup> There is no provision regarding the gender or age of the person present at the domicile but it is admitted that the copy cannot be served to a child (less than 12-13 years old, as admitted by general opinion) or to a person visibly no longer in full possession of his/her intellectual faculties.

<sup>33</sup> Article 656 CPC.

<sup>34</sup> Article 658 CPC.

<sup>35</sup> For example, when the head office of a legal entity is that of a domiciliation company, in case of selling of a business, or in case of enforcement (according to Article R.141-1 CEPC, the creditor elects a domicile at the residence of the judicial officer in charge of enforcement).

<sup>36</sup> Article 656 CPC.



day<sup>37</sup>.

#### **1.3.2.4 Service by deposit of the document in the office of the judicial officer (Article 656 CPC)**

If no one can or is willing to receive the document and if the address of the recipient can be certified by the judicial officer<sup>38</sup>, the service is nevertheless effective. In this case, the judicial officer leaves a delivery notice at this address (generally in the letterbox) mentioning that the copy of the document must be collected as soon as possible at the judicial officer's office, in exchange for receipt or signature by the addressee him/herself or any person specially appointed. Not later than the following working day of service, the judicial officer also sends by post a standard letter to the addressee with the same content as that of the delivery notice and the copy of the document inviting him/her to collect the document at his/her office within three months<sup>39</sup>.

#### **1.3.2.5 Service to a person with no known home, residence or working place (Article 659 CPC)**

In this case, the judicial officer draws a report explaining in detail all the research carried out to find out the addressee. The same day, or the next working day, the judicial officer will send to the addressee, at the last known address, a copy of the report with a copy of the document to be served, by registered letter with acknowledgment of receipt. The same day, the judicial officer informs the addressee, by regular letter, that he/she fulfilled this formality. This procedure concerns also service of documents to a legal entity with no establishment at the address of the head office indicated in the companies register.

#### **1.3.2.6 Service to a person living abroad (Article 684 CPC)**

##### **1.3.2.6.1 Service of documents in the European Union**

When the addressee lives in another European Union country, the document is served according to Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

##### **1.3.2.6.2 Service of documents outside the European Union or in an overseas French territory**

When the addressee is living outside a European Union country, service is carried out depending on whether the foreign country has ratified The Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters. If the foreign country has ratified the convention, service will

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<sup>37</sup> Article 658 CPC.

<sup>38</sup> All the searches and diligences made to ensure that the addressee is living at this address will be mentioned in the report of service of document.

<sup>39</sup> After three months the judicial office is discharged from keeping the document. Upon request of the addressee the judicial officer can send the document to another judicial officer's office, where the addressee will be able to collect it under the same conditions.



be effected accordingly. If the foreign country has not ratified the convention, the judicial officer will serve the document to the public prosecutor's office<sup>40</sup>.

### **I.3.2.7 Service in France of a document coming from abroad (Articles 688-1 to 688-8 CPC)**

Documents coming from a foreign state authority are notified by simple delivery or service of document. The request is transmitted by the Ministry of Justice to the prosecutor of the judicial court or to the French National Chamber of Judicial Officers, with respect to other possible means of service. The notification made by the prosecutor's office consists in a simple delivery without any cost. The French National Chamber of Judicial Officers will transmit the document to an appropriate judicial officer with regional jurisdiction where the document has to be served with respect to international conventions (mainly, the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters<sup>41</sup>) and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, when the documents come from another European Union country. In both cases, the claimant must pay the cost of service in advance, currently 48.36 €<sup>42</sup>.

### **I.3.2.8 Service of documents in criminal matters**

The Code of Criminal Procedure (CCP) defines the rules applicable in subpoena (summons in criminal matters) and service of documents very precisely in Articles 550 to 556 CPC. Regarding judicial officers, Article 550 CCP reaffirms the principle of the monopoly of the judicial officer on summons and service of documents in criminal matters unless otherwise provided by law or decree.

### **I.3.2.9 Electronic service of documents**

The electronic signature is admitted by the Civil Code since 2011 and Article 653 CPC which provides that the service of document is carried out in hard copy or by electronic means.

The addressee must give his/her agreement to be served electronically unless such service is compulsory by law<sup>43</sup>. The agreement is kept in a database managed by the French National Chamber of Judicial Officers during five years after the revocation of

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<sup>40</sup> The competent public prosecutor is that in charge of the trial, having pronounced the judgment, or of the location where the claimant is living in France. The judicial officer will serve two copies to the public prosecutor's office and a third certified copy will be sent the same day or the next working day by registered letter with acknowledgment of receipt at the addressee's home address abroad (Article 686 CPC).

<sup>41</sup> Article 10 (b) of the Convention provides the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination.

<sup>42</sup> Article A.444-28 Commercial Code (No 116).

<sup>43</sup> Article 748-2 CPC.



the agreement. Before serving the document, the judicial officer will consult this database through a secured access. Judges have the right to consult this database when judicial procedures need it.

When the document has to be served to several parties living on different territories (different working areas), if the parties have accepted the electronic service of document, any judicial officer of one of the working areas can serve the documents to all the parties, in order to avoid transmission of documents and save time.

The electronic service is carried out by the transmission of the document to the addressee, submitted to an electronic acknowledgment of receipt indicating the date and if necessary, the hour of the receipt<sup>44</sup>. The document served mentions the agreement of the addressee. This acknowledgment of receipt serves as a visa, seal and signature appended on the document when these formalities are requested by law. The document is considered served personally to the addressee if he/she opens the mail the same day of the sending. The service report will mention the date and hour when the addressee read the document<sup>45</sup>. If not, the document will be considered served at home.

When a document has to be served within a time limit and cannot be transmitted by electronic means before the last day of the time limit for a reason not related to the judicial officer in charge of the service, the time limit is postponed until the next working day<sup>46</sup>.

#### **I.4 Legal remedies, appeal and objection**

Remedies are filed before a court hierarchically superior than the court which pronounced the decision that is being challenged. If the reversal is based on a legal argument and if the judgment is not subject to appeal or if the violation of law concerns the appeal court, the remedy will be brought before the Court of Cassation. French law makes a distinction between:

- Ordinary remedies: motion to vacate (*opposition*), challenge (*contredit*) and appeal.
- Extraordinary remedies: motion to vacate (*opposition*) by third party, appeal for revision and appeal before the Court of Cassation.

The admissibility of remedies is linked to conditions relating to the resort rate<sup>47</sup> and to special rules provided by the CPC. Some remedies cannot be raised before certain jurisdictions or in some matters. The admissibility of remedies is also subject to timeframes between the date of the service of the judgment and the date of the enrolment of the remedy. In case of appeal and motion to vacate, the timeframe is one month in contentious cases and 15 days in equitable cases (*“matière gracieuse”*).

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<sup>44</sup> Article 748-3 CPC.

<sup>45</sup> Article 663 CPC.

<sup>46</sup> Article 748-7 CPC.

<sup>47</sup> If the demand is equal or higher than 5,000 €, it is possible to lodge an appeal. If it is lower than 4,000 €, it is possible to appeal before the Court of Cassation or file an opposition.



In case of appeal before the Court of Cassation, the timeframe is two months. If the petitioner lives abroad, the timeframe is extended for two more months<sup>48</sup>. If the judgment<sup>49</sup> has not been served or notified within two years from its pronouncement, the party who appeared is no longer admissible to appeal after this period.

#### **I.4.1 Appeal before the court of appeal**

Appeal is an ordinary remedy used to reform or annul a judgment pronounced by a first instance jurisdiction by a second instance jurisdiction. The court of appeal will judge the case for a second time. Appeal has important consequences as it is a reversal remedy challenging the authority of “*res judicata*”, by judging again on the merits and on the facts<sup>50</sup>.

#### **I.4.2 Appeal before the Court of Cassation**

Appeal before the Court of Cassation is a last resort remedy against decisions (judgments issued by the court of appeal or judgments not subject to appeal). The Court of Cassation rules only on points of law and ensures the compliance of the decision with the law (and not with the facts). This remedy is not suspensive and must be submitted within two months after the service of the decision under cassation. An appeal before the Court of Cassation can be brought in the following cases:

- Lack of reasoning: lack or shortfall, or contradictory or hypothetical reasoning, or no response to the demands of the parties.
- Formal irregularity: for instance, non-respect of contradictory principle.
- Violation of law and lack of legal basis: wrongful analysis of the law by the judge, or lack of information to assess the rigour of the judge’s reasoning.
- Incompetency or conflict of judgments.

#### **I.4.3 Other remedies**

##### **I.4.3.1 Motion to vacate (opposition) procedure**

The motion to vacate seeks to have rescinded a judgment rendered by default, namely in the absence of the concerned party. The same judge will be appointed to judge on the same demand again with regard to law and facts, allowing the absent party to assert his/her arguments. It is not possible to bring a second motion to vacate the forthcoming judgment.

##### **I.4.3.2 Third-party motion to vacate (opposition) procedure**

A third-party who suffers the consequences of a judgment of a trial in which he/she was not involved can use this remedy. The initial judgment can be modified only

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<sup>48</sup> Namely: 1 month + 2 months, 2 months + 2 months or 15 days + 2 months. In criminal matters, the timeframe is usually 10 days.

<sup>49</sup> In case of judgments judging on the principal demand or closing the procedure for any legal reason (Article 528-1 CPC).

<sup>50</sup> The appeal has a “*dévolutif*” effect.



partially, in the part causing damage to the third-party, and will keep all its effects regarding the initial parties.

#### **I.4.3.3 Appeal for revision**

Revision constitutes a remedy against judicial errors appearing after the decision became definitive. It may be filed in civil and criminal matters. In civil matters, appeal for revision may be filed before the judge who pronounced the first decision. The judge can modify the decision in case of fraud or fake documents. Since 2016, there is also another possibility, relating to a person's personal situation<sup>51</sup>, in cases the European Court of Human Rights has judged that the decision was issued in serious violation of a right protected by the European Convention of Human Rights. In criminal matters, appeal for revision is brought before the Court of Cassation which examines if there are new facts, not known during the trial, which can give rise to doubts concerning the guilt of the convicted person.

#### **I.4.4 Classification of judgments in France**

##### **I.4.4.1 Judgment of first or last instance ("*jugement en premier ou dernier ressort*")**

Appeal against a judgment of first instance is lodged before of the court of appeal, which issues a second instance decision. Appeal against a judgment of last instance is not possible<sup>52</sup>.

##### **I.4.4.1.1 Determination in accordance with the amount of the claim<sup>53</sup>**

Last instance	First instance
<ul style="list-style-type: none"> <li>- The claim is lower than 5,000 €.</li> <li>- The counterclaim is lower than 5,000 € (even when the principal claim is above 5,000 €)</li> </ul>	<ul style="list-style-type: none"> <li>- The claim is higher than 5,000 €.</li> <li>- The counterclaim is higher than 5,000 € (alone)</li> <li>- The claim does not relate to the payment of monies (e.g., request for appointment of expert).</li> </ul>

Before the commercial court, requests for accessories are not added to the amount of the principal claim to determine the resort. Interests and legal costs are considered to be accessories.

##### **I.4.4.1.2 Determination in accordance with the nature of the matter**

Last instance	First instance
Decision ordering or refusing to order investigation (Article 545 CPC), except decisions related to realisation of	- Judgment on procedure contestation or plea in bar (" <i>fin de non-recevoir</i> ") (Article 544 CPC).

<sup>51</sup> "*Etat des personnes*".

<sup>52</sup> The Court of Cassation is competent.

<sup>53</sup> And not the amount of the condemnation.

investigation.	<ul style="list-style-type: none"> <li>- Decision ordering expertise mission.</li> <li>- Decision taken after sworn testimony.</li> </ul>
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#### **I.4.4.2 Judgment following adversarial proceedings, considered adversarial or default judgment**

This distinction is necessary to determine the possible remedies available to the parties.

##### **I.4.4.2.1 Judgment following adversarial proceedings (“*contradictoire*”)**

A judgment is contradictory when:

- Parties were present or represented at the hearing<sup>54</sup>.
- If, without legitimate reason, the claimant does not appear in court, the defendant can apply for a judgment following adversarial proceedings (“*contradictoire*”). However, the judge can always postpone the case for a later hearing<sup>55</sup>.

##### **I.4.4.2.2 Considered contradictory judgment**

When the defendant or at least one of the defendants, is not present or represented during the hearing, the judgment is considered to have been issued following adversarial proceedings (“*contradictoire*”) if:

- It is issued at first instance, regardless if the summons has been served or not to the addressee personally or in case there is only one defendant and the summons was personally served to the addressee<sup>56</sup>.
- It is issued at first instance and there are several defendants or all summons were personally served to the addressees.

##### **I.4.4.2.3 Default judgment**

When the defendant or at least one of the defendants is not present or represented during the hearing, judgment is considered to be by default when:

- There is only one defendant, the judgment is issued at final instance<sup>57</sup> and the summons was not personally served to the addressee<sup>58</sup>.
- In case of several defendants, the judgment is issued at final instance and one or several summonses have not been personally served to the addressees<sup>59</sup>.

#### **I.5 Postponement, suspension and termination of enforcement**

The enforcement can be adjourned or postponed for many reasons, mainly when enforcement is suspended, a grace period is granted and in case of procedures of

<sup>54</sup> Article 467 CPC.

<sup>55</sup> Article 468 paragraph 1 CPC.

<sup>56</sup> Article 473 paragraph 2 and Article 474 paragraph 1 CPC.

<sup>57</sup> When appeal is not permitted.

<sup>58</sup> Article 473 paragraph 1 CPC.

<sup>59</sup> Article 474 paragraph 2 CPC.



collective proceedings or individual over indebtedness, explained in detail below.

### **I.5.1 Suspended enforcement**

The request to suspend enforcement correlates to an appeal or an opposition, under strict conditions. The suspension of the enforcement will permit non-compliance of the debtor with the judgment until further court decision.

#### **I.5.1.1 Request to postpone or adjust the provisional enforcement<sup>60</sup>**

This request can be lodged in case of appeal against a first instance decision accompanied by provisional enforcement<sup>61</sup>. The request will be joined with the appeal declaration to the First President of the court of appeal, ruling on emergency proceedings. Regarding last instance judgments (in case of opposition), the request will be lodged before the first instance judge<sup>62</sup>. The request to stop the provisional enforcement will succeed when there are serious reasons to invalidate or review the decision or if this enforcement can clearly have excessive consequences (in this case, the first president can order adjusted measures).

Normally, compulsory provisional enforcement cannot be stopped, but can exceptionally be adjusted:

- The judge in charge of emergency proceedings can subject the provisional enforcement to the lodging of a guarantee under special conditions<sup>63</sup>.
- The first president of the court of appeal may require additional conditions<sup>64</sup>.

#### **I.5.1.2 Request to suspend enforcement through appeal of a decision of the enforcement judge<sup>65</sup>**

The decision of the enforcement judge is enforceable by law. The defendant who lodges an appeal against an enforcement judge's decision can request the first president of the court of appeal to suspend the enforcement. Suspension can be ordered only when there are serious reasons to invalidate or review the decision.

### **I.5.2 Request to postpone the payment of the debt (grace period)**

The debtor can request the enforcement judge to postpone the payment of his/her debt for a period of up to two years<sup>66</sup>. There are specific systems with regards to several matters: lodging, commercial or professional lease, consumer or property credit.

#### **I.5.2.1 Scope**

Grace period concerns the payment of a sum of money. It cannot be allowed when a

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<sup>60</sup> Articles 517 to 524 CPC.

<sup>61</sup> Article 524 CPC.

<sup>62</sup> Article 514-3 CPC.

<sup>63</sup> Articles 517 to 522, and Article 489 paragraph 1 CPC.

<sup>64</sup> Article 521, paragraph 2, and Articles 522 and 524 CPC.

<sup>65</sup> Article R.121-22 CEPC.

<sup>66</sup> Articles 510 CPC and 1343-5 CC.



previous request has been presented and rejected, the debtor's goods have been attached by another creditor, the debtor is under a collective redress or has voluntarily decreased the guarantees given by contract to his/her creditor. In these cases, the grace period the debtor might have obtained previously is no longer applicable<sup>67</sup>. The grace period is also not possible for the following types of debts: alimonies, taxes, social care, payment of penalties and fines or civil condemnation<sup>68</sup> pronounced by a criminal court.

### 1.5.2.2 Judge's decision

The competent judge is the civil or criminal judge, who pronounced the condemnation. In case of emergency, the "*juge des référés*"<sup>69</sup> is also competent, as is the enforcement judge, when enforcement has been initiated<sup>70</sup>. Normally, the grace period must be requested by the debtor. However, in case, for instance, of a house lease, the judge can *de facto* grant a grace period. The judge can postpone the payment to the date he/she will fix<sup>71</sup>, for a maximum and non-extendable two years period. By a special and reasoned decision, the judge can decide that the interest rate on postponed sums will be reduced<sup>72</sup>, or that the payments will be charged on the capital first.

The debtor must respect the moratorium fixed by the judge. To facilitate or guarantee the payment of the debt, the judge can order the debtor to undertake measures such as for example the selling of assets<sup>73</sup>. The judge has a total discretion in consideration of the situation of the debtor and the needs of the creditor. He/she shall reason the decision that accepts the request but not the one that refuses it. The grace period will take effect from the day of the decision if it is contradictory or in other cases from the day of its service<sup>74</sup>.

During the grace period, enforcement proceedings are suspended, and penalties and interest increases are discontinued<sup>75</sup>. However, provisional measures are allowed<sup>76</sup>.

### 1.5.3 Collective proceedings<sup>77</sup>

This procedure concerns traders, craftsmen, farmers or private legal entities and aims at resolving issues related to insolvency. There are three different procedures: (i) safeguard procedure, at the initiative of the legal representative of a company, prior to a situation of cessation of payment, (ii) receivership and (iii) compulsory liquidation,

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<sup>67</sup> Article 512 CPC.

<sup>68</sup> For instance, a civil fine for taking abusive civil action.

<sup>69</sup> Jurisdiction exceptionally and temporarily available to resolve an urgent and important matter (Source: "*Dahl's Law Dictionary*", Hein, Dalloz, 2001).

<sup>70</sup> Article 510 NCPC.

<sup>71</sup> Article 1343-5 CC.

<sup>72</sup> Article 1343-5 paragraph 2 CC.

<sup>73</sup> Article 1343-5 paragraph 3 CC.

<sup>74</sup> Article 511 CPC.

<sup>75</sup> Article 1343-5 paragraph 4 CC.

<sup>76</sup> Article 513 CPC.

<sup>77</sup> Articles L.610-1 to L.694-1 Commercial Code.

when the company is in a situation of cessation of payment. The judgment opening the collective proceedings stops or forbids any enforcement in favour of creditors claiming payment of money even if the claim is anterior to the judgment.

In case of natural persons, two other types of redress are available besides the aforementioned procedures: individual over-indebtedness and personal recovery.

#### **I.5.3.1 Safeguard procedure<sup>78</sup>**

The scope of this procedure is to facilitate reorganisation of the company in order to allow maintenance of its economic activity, employment and settlement of debts. Usually, this procedure ends with the implementation of a safeguard plan.

##### **I.5.3.1.1 Proceedings**

If the request is accepted, the court will declare the procedure opened and appoint the bodies of the procedure<sup>79</sup>. The opening judgment is mentioned in the commercial registry and in the trade directory, and published in a legal newspaper. To enable to achieve an economic and social assessment of the company and to examine its possibilities of reinstatement, the safeguard procedure starts with an observation period of maximum six months, which can be extended once.

##### **I.5.3.1.2 Effects**

- Suspension of all debts anterior and posterior to the judgment<sup>80</sup>.
- Interruption of legal and contractual interests.
- Interruption of late payment interests and increased interests.
- Suspension of lawsuits of creditors against the company.

Upon request of the legal representative of the company and if the possibility to safeguard the company is strong, the court will set up a safeguard plan. This plan will last 10 years at most (15 years in the case of farmers). If at the end of the observation period, no improvement is observed, the court can turn the safeguard procedure into receivership or compulsory liquidation.

#### **I.5.3.2 Receivership**

Receivership is applicable to traders, craftsmen, farmers or private legal entities when they are in cessation of payments. Such as the safeguard procedure, it aims to maintain activity, employment and debt settlements. An economic and social assessment is made after the pronouncement of the receivership by the court. A receiver and an administrator are appointed by the court to administer part of or the entire company, alone or together with its legal representative.

##### **I.5.3.2.1 Proceedings**

The company shall request the opening of the receivership within 45 days following

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<sup>78</sup> Article L.621-1 et. seq. Commercial Code.

<sup>79</sup> Court appointed receiver, liquidator, creditor's representant.

<sup>80</sup> Article L.622-7 Commercial Code.



the cessation of payments at the latest, when there is no conciliation procedure. The request will be filed before the competent court: commercial court in case the company has commercial and craft activity or judicial court in other cases (such as farmers etc.). The procedure can also be filed by a creditor or by the public prosecutor.

### **1.5.3.2.2 Effects**

The judgment opening the procedure initiates an observation period during which the activity will go on. This period can be interrupted at any time either by transformation into liquidation, by adoption of a receivership plan or by payment of the creditors and the procedural costs.

Regarding the creditor, the opening of the procedure suspends lawsuits, as well as interests and interest increases. The salary of the representative of the company is fixed by the judge. Regarding employees, the administrator can be authorised by the court to fire staff when necessary.

The observation period enables to determine the future of the company:

- Setting up a receivership plan for a maximum of ten years.
- End of the receivership if the company can pay the creditors and the costs of the procedure.
- Part or entire transfer of the company.
- Pronouncement of liquidation if the receivership is obviously impossible.

The role of the legal representative of the company is subject to change based on the court's decision. During the observation period, he/she maintains his/her powers: administration and management, except for the tasks carried out by the administrator. However, the payment of creditors with claims anterior to the judgment and the pursuance of ongoing contracts are forbidden.

To protect the company's assets, an inventory is set up when the judgment is pronounced. This assessment can inform the creditors to claim for goods present in the company. This inventory can be made by a judicial officer (or an auctioneer, a notary or a sworn broker), filed at the court administrative service and sent to the debtor, the administrator and the court appointed receiver.

During the observation period, payment of debts anterior to the judgment is forbidden. The same applies to debts posterior but not necessary for the continuation of the company activity. This period suspends any current proceedings aiming to the payment of a sum of money or to the cancellation of a contract for no payment in the case of requests filed by a creditor with claims prior to the judgment. On the other hand, enforcement proceedings on movables and immovables (attachment on movables, bank account, provisional measures and notice to third holder<sup>81</sup>) are forbidden for these creditors.

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<sup>81</sup> *"Avis à tiers détenteur."*



The opening judgment foresees the due date for non-expired claims and fixes the rate of legal, conventional interest, and any interest for late payment or increase, except in particular the interest on loan contracts of a duration greater than or equal to one year. It prohibits the registration of mortgages, pledges, and privileges except for the seller of the business assets and the Treasury. Assets can be sold exceptionally to finance the company. In this case, their sale price, which is not distributed to creditors, is mainly paid either directly to the company for its cash flow or sequestered.

Based on the economic and social balance sheet, the administrator draws up the receivership plan with the assistance of the debtor. The preparation of the plan requires in principle the consultation of creditors with claims prior to the opening of the procedure, and after the declaration of their claims, on the proposals for payment terms and debt forgiveness made to each of them<sup>82</sup>.

The judgment on the receivership plan is mentioned on the commercial registry and becomes opposable in this way.

### **I.5.3.3 Judicial liquidation**

This procedure is applicable when there is cessation of payments, when the company's activity has stopped and when the receivership is obviously impossible. Assets are sold to pay the creditors.

#### **I.5.3.3.1 Proceedings**

Liquidation puts a definitive stop to the company's activity. The judicial liquidation procedure is applicable to any person exercising a commercial, craft or agricultural activity defined in Article L. 311-1 of the Rural and Maritime Fisheries Code and to any other natural person exercising an independent professional activity therein, including a liberal profession subject to a legislative or regulatory statute or whose title is protected, as well as to any legal person of private law person. The liquidator carries out the liquidation operations at the same time as the verification of the claims. The liquidator, within two months of taking office, shall submit to the bankruptcy judge a statement mentioning the valuation of the assets and liabilities.

#### **I.5.3.3.2 Effects**

##### **I.5.3.3.2.1 Selling of immovables**

The sale of immovables is organised in accordance with the provisions on seizure of property. The bankruptcy judge fixes the price and the essential conditions of the sale. Regarding the debtor's other assets, the bankruptcy judge either orders their sale by public auction or authorises their sale by mutual agreement at the prices and conditions he/she determines. The judge rules after having collected the observations

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<sup>82</sup> The draft plan includes:

- Prospects for recovery.
- The terms of settlement of the liabilities and any guarantees that the debtor must make to ensure their execution.
- The level and prospects of employment, as well as the social conditions taken into account for the continuation of the activity.



of the controllers and heard the debtor and his/her spouse, as well as the liquidator.

#### **I.5.3.3.2.2 Transfer of the company**

The sale of the company aims to ensure the maintenance of activities, of all or part of the jobs attached to it, as well as to settle the liabilities. It can be total or partial.

#### **I.5.3.3.2.3 Payment of creditors**

Regarding creditors, the delivery of judicial liquidation has several effects<sup>83</sup>. However, if claims are not paid when due, they are paid before any other claim, except the privileged (priority) claims<sup>84</sup>. Creditors whose claims arise after the judgment pronouncing the liquidation are unpaid, must declare them to the liquidator, at the latest within six months of the date of publication of the said judgment or, failing this, within one year of the date of the judgment setting down the business disposal plan.

A new procedure was introduced in 2019: the simplified compulsory liquidation for companies without immovable assets, and small incomes<sup>85</sup>. Compared to the ordinary judicial liquidation procedure, the simplified judicial liquidation procedure appears lighter and faster<sup>86</sup>.

The application of the simplified procedure has consequences in terms of verification of claims: only those likely to be useful (*"rang utile"*) or those resulting from an employment contract are verified by the liquidator. In principle, except for an

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<sup>83</sup> These effects are:

- Immediate payment of claims not due on the day of the liquidation, in order to allow the distribution of the assets and the settlement of liabilities, unless the court pronounces the continuation of the activity for a total or partial transfer of the company.
- Suspension of proceedings and enforcement proceedings on movables and immovables initiated by creditors prior to liquidation, and posterior creditors, and aiming to condemn the debtor to pay a sum of money, or to termination of a contract for default of payment.
- Prohibition of the payment of the claims prior to the judgment pronouncing the liquidation, except for compensation of related claims between two persons mainly creditors and debtors of each other.
- Payment on due date of debts arising regularly and after the judgment pronouncing the liquidation, since this payment is necessary for the proper conduct of the procedure or the provisional maintenance of the activity, or it corresponds to the consideration of a service provided to the company during the maintenance of the activity.

<sup>84</sup> Such as wages, court costs (born regularly after the judgment declaring the liquidation for the needs of the course of the procedure), debts caused by a cash flow contribution necessary for the pursuit of the activity, within the framework of a conciliation procedure opened previously, and previous debts accompanied by property or special movable securities with right of retention (right of refusal to divest of a property left as collateral).

<sup>85</sup> Article 57 of "Pact" Law No 2019-486 of 22<sup>nd</sup> May 2019.

<sup>86</sup> The simplified procedure is applicable:

- When the debtor's assets do not include immovable property.
- When the number of employees (during the six months preceding the opening of the procedure) is less than or equal to one employee, and the turnover excluding taxes of the company (on the closing date of the last accounting year) is less than or equal to 300,000 €.
- If these thresholds (1 employee and 300,000 €) are reached but without exceeding 5 employees (in the last six months) and 750,000 € excluding turnover, the application of the simplified procedure is optional.



extension of three months, the judicial liquidation must be closed within one year of the judgment on the simplified procedure, by decision of the court. This initial or extended deadline may be exceeded to decide on the termination of the ordinary procedure.

#### **1.5.4 Individual over-indebtedness**

The over-indebtedness procedure aims to allow debtors, individuals, in a difficult financial situation to arrange the payment of their debts or even delete them.

Two conditions must be satisfied: the debtor must be of good faith and unable to meet all of his/her non-professional debts due and fall due as well as commitments arising from an act of security or payment in solidarity for the benefit of an individual entrepreneur or of a company since he/she was not a company executive. The procedure aims to set up a global moratorium on all debts declared by the debtor, excluding alimonies, pecuniary reparations allocated to victims and fines imposed in the context of a criminal conviction and unless agreed by the creditor. If the debtor is insolvent, the debt may, under certain conditions, be partially erased. Finally, if the debtor's situation appears to be irreparably compromised, he/she may request the opening of a personal recovery procedure, which can be referred to as "civil bankruptcy".

##### **1.5.4.1 Suspension of enforcement proceedings**

From the request for over-indebtedness and until the decision, the suspension of the proceedings can be ordered by the judge<sup>87</sup>. Suspension has the effect of interrupting the time limits. The postponement of a seizure of immovable property in progress can also be ordered.<sup>88</sup> In the event of admissibility of the request for over-indebtedness<sup>89</sup>, the opening of the procedure suspends the actions in progress and forbids new ones until the final decision on the outcome of the procedure.

The admissibility of the request entails suspension and prohibition of enforcement procedures carried out against the debtor's property as well as the transfer of salary granted by the debtor and relating to debts other than alimonies<sup>90</sup>. Procedures and transfers of salary are suspended or prohibited in several cases<sup>91</sup>. The suspension and the ban cannot exceed two years.

The fate of the suspended enforcement will depend on the consequences of the procedure. In the event of a plan<sup>92</sup> of closure of the liquidation possibly ordered, the judge will order withdrawal of enforcement procedures only upon request. However,

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<sup>87</sup> Article L.721-4 of the Consumer Code.

<sup>88</sup> Article L.721-7 of the Consumer Code.

<sup>89</sup> Article L.721-5 of the Consumer Code.

<sup>90</sup> Article L.722-2 of the Consumer Code.

<sup>91</sup> Until the approval of the conventional recovery plan, until the decision imposing the measures provided for in Articles L.733-1, L.733-4, L.733-7 and L.741-1 of the Consumer Code, until the judgment pronouncing a personal recovery without compulsory liquidation or until the judgment initiating proceedings personal recovery with compulsory liquidation.

<sup>92</sup> In this case, if the plan is respected, the debt is staggered in time, which deprives it of being due.



the suspension and the prohibition of enforcement procedures do not concern eviction measures initiated by the lessor against the tenant; however, the debt commission may refer to the judge for a decision on the suspension.

#### **I.5.4.2 Conventional recovery plan**

The commission will seek the possibilities of agreement with the creditors on a conventional recovery plan including settlement of creditors through instalments. The plan cannot exceed seven years and presupposes the agreement of the creditors (who had claims before the judgment opening the procedure) but may be exceeded if it concerns the repayment of a loan to acquire a family home, the sale of which can thus be avoided. The commission may impose:

- Rescheduling of debt payments (over a maximum period of seven years).
- Attribution of payments first to capital.
- Reduction of interest rates.
- Suspension of debts other than alimonies (for a maximum of two years).

At the end of these two years of debt suspension, the commission re-examines the situation of the over-indebted. The measures imposed apply immediately to the over-indebted and to the creditors. The duration of the measures imposed must not exceed seven years. However, it may exceed this period when these measures relate to the repayment of loans contracted for the purchase of immovable property constituting the principal residence, in order to avoid their sale. The commission may recommend the reduction of the residual property debt after the sale of the house and the cancellation of part of debts, under certain conditions (which regularise payment incidents). Both imposed and recommended measures are notified to the parties (debtor and creditors) by registered letter with acknowledgment of receipt.

If the debtor or one of the creditors do not accept these measures, they can be challenged before the judge of first instance, within 15 days of their notification. The judge summons the over-indebted and the creditors at least 15 days before the date of the hearing by registered letter with acknowledgment of receipt. After having, from his/her own decision, published a call to creditors and verified the validity and the amount of debts, the judge pronounces a judgment which is subject to appeal. The recommended measures must be approved by the judge to be applicable to the over-indebted.

#### **I.5.5 Personal recovery**

##### **I.5.5.1. Personal recovery without compulsory liquidation<sup>93</sup>**

The personal recovery procedure allows erasing the debts of an over-indebted person whose financial situation is so degraded that no treatment measure (recovery plan or imposed measures) is possible. This procedure is initiated by the over-indebtedness commission with the agreement of the over-indebted. It is pronounced without

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<sup>93</sup> Articles L.741-1 to L.741-9 of the Consumer Code.



judicial liquidation (without sale of property) if the over-indebted person does not have any assets. The commission's recommendation can be challenged by the over-indebted or the creditors.

When the commission considers that the situation of the over-indebted justifies personal recovery without judicial liquidation, the decision is published in a legal announcement journal within 30 days, and the over-indebted and his/her creditors are informed by registered letter with acknowledgment of receipt. This letter indicates that the decision can be challenged within 30 days, as well as the means to do so.

If the judge orders personal recovery without judicial liquidation, the decision entails:

- The cancellation of all non-professional debts (fixed at the date of judgment) of the over-indebted, except debts paid by a surety bond from the debtor if this bond is an individual, alimony debts, criminal fines, damages awarded to a victim.
- The registration of the over-indebted in the loan repayment incident file for five years.

#### **I.5.5.2. Personal recovery with compulsory liquidation<sup>94</sup>**

The personal recovery procedure is pronounced with compulsory liquidation (sale of property) when the over-indebted (or spouse in certain cases) has a property likely to be sold (immovable or movable of value of no particular use in daily life)<sup>95</sup>.

The over-indebtedness commission must summon the over-indebted and obtain his/her agreement before initiating a personal recovery procedure with compulsory liquidation. The absence of over-indebtedness at the summons of the commission constitutes refusal. Without the agreement of the over-indebted, the commission starts again seeking a solution (conventional recovery plan or imposed measures). The over-indebted and his/her creditors are summoned to the opening hearing by registered letter with acknowledgment of receipt (the over-indebted person also receives a simple letter), at least one month before the hearing date. The judge can pronounce the opening of the procedure (the opening judgment is published in a legal announcement newspaper), and appoint a court appointed receiver to assess the economic and social situation of the over-indebted.

Once the opening judgment has been pronounced by the judge:

- Enforcement proceedings and transfer of salary (except alimony and property debts) against the over-indebted are suspended and prohibited until the closing judgment.
- Eviction measures (except those based on a judgment of auction sale pronounced

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<sup>94</sup> Articles L.742-1 to L.742-19 of the Consumer Code.

<sup>95</sup> Some goods cannot be sold:

- Goods necessary for daily life.
- Goods without market value and whose selling costs would be disproportionate to the selling price.
- Goods non-professional, but essential for working (car or computer for example).



in matters of foreclosure of property) are suspended until the closing judgment.

- The over-indebted can no longer sell his/her property without the consent of the court appointed receiver.

Within two months after the publication of the opening judgment creditors shall declare their claims to the court appointed receiver (or at the court office) by registered letter with acknowledgment of receipt. From the opening judgment, an economic and social assessment of the over-indebted will be drawn up by the court appointed receiver. This balance sheet is sent to the over-indebted and to the creditors by registered post with acknowledgment of receipt and delivered or sent to the court administration by simple letter. It is possible to challenge the economic and social balance sheet at the latest 15 days before the liquidation hearing.

The court registry summons the over-indebted and the creditors to the hearing of the liquidation judgment. The judge can then:

- Order the judicial liquidation of the assets of the over-indebted and appoint a liquidator in charge of the amicable or judicial sale of his/her assets within 12 months;
- Order the closure of the procedure for insufficient assets (if no property can be sold); or
- Establish the plan (imposed measures) proposed by the court appointed receiver, if the judge considers that compulsory liquidation can be avoided.

This judgment can be challenged on appeal. The liquidator first draws up a plan to distribute the outcome of the sale among the various creditors. After the sale of the goods, and depending on the amount obtained, the judge issues a closing judgment:

- For extinction of liabilities if the sale of property has made it possible to pay off all debts; or
- For insufficient assets (in all other cases).

The benefit of the personal recovery procedure with compulsory liquidation leads to the registration in the file of credit repayment incidents to individuals for five years from the closing judgment. The judge's decision (closing judgment) cancels all non-professional debts except:

- Debts paid by the security of the over-indebted, if this security is an individual (e.g., tenant's security).
- Alimonies debts.
- Criminal fines.
- Damages awarded to a victim.

## **1.6 Counter enforcement**

In France, counter-enforcement is ruled by “compensation”. Compensation is a settlement method between two people who have claims and debts between them.



The compensation will consist in charging the debt on the claim for which it therefore reduces the amount (or pays it entirely depending on the amounts concerned)<sup>96</sup>. There are three modes of compensation: legal, jurisprudential, and contractual.

### **I.6.1 Legal compensation**

Legal compensation is provided by law when two persons are in debt with each other. The compensation erases these two debts. The two claims must be mutual, fungible, with a determined amount and due, and the compensation can only operate insofar as it is invoked<sup>97</sup>. Reciprocity concerns natural persons: one is a creditor of the other, and the latter a creditor of the first. Fungibility is acquired between two sums of money or two debts / claims relating to goods of the same kind. Compensation only takes place between two debts, which relate to the payment of a sum of money or a certain quantity of fungible things of the same kind which are due and with a determined amount of money<sup>98</sup>. Finally, the claims must precisely determine the amount of money to be paid, and therefore not be subject to either conditions or different payment terms.

### **I.6.2 Judicial compensation**

The judicial compensation is decided by the judge, when the defendant makes a counterclaim during a trial. The judge may order compensation between the sums to which the parties are condemned<sup>99</sup>.

### **I.6.3 Contractual compensation**

This type of compensation is accepted by the parties by contract, even though the conditions for legal compensation would not be met<sup>100</sup>.

## **I.7 Objects and exemptions on enforcement**

Some assets cannot be attached and therefore are not subject to enforcement<sup>101</sup>:

- 1) Goods which the law declares exempt from seizure.
- 2) Property which the law makes non-transferable unless provided otherwise.
- 3) Provisions, sums and pensions of a maintenance nature, except for the payment of maintenance already provided by the creditor to the debtor.
- 4) Available assets declared exempt from seizure by the testator or the donor, except

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<sup>96</sup> "Compensation is the simultaneous extinction of mutual obligations between two persons. It takes place, subject to having been invoked, commensurately, on the date when its conditions are met" (Article 1347 CC).

<sup>97</sup> Article 1347 paragraph 2 CC.

<sup>98</sup> Article 1347-2 CC.

<sup>99</sup> "Compensation can be ordered in court, even if one of the obligations, although certain, is not yet due or the amount is not determined. The compensation takes effect on the date of the decision, unless the judge takes a different decision" (Article 1348 CC).

<sup>100</sup> "The parties may freely agree to cancel all mutual obligations, present or future, by compensation; this takes effect on the date of their agreement or, in the case of future obligations, that of their coexistence" (Article 1348-2 CC).

<sup>101</sup> Article L.112-2 CEPC.



with the authorisation of the judge and for the portion he/she determines, by creditors subsequent to the deed of gift or the opening of the legacy;

5) Movable property necessary for the life and work of the garnishee and his/her family<sup>102</sup>, if not for payment of their price, within the limits set by decree in the Council of State and subject to the provisions of 6). However, they can be attached when they are in a place other than the one where the garnishee usually lives or work, if they are valuable goods, in particular because of their importance, their material, their rarity, their seniority, or of their luxurious character, if they lose their character of necessity because of their quantity or if they constitute physical elements of a goodwill.

6) The movable goods mentioned in 5), even for payment of their price, when they are the property of beneficiaries of social assistance benefits for children provided for in Articles L. 222-1 to L. 222-7 of the Code of Social Action and Families.

7) Objects essential for disabled people or intended for the care of sick people.

Likewise, buildings by destination cannot be seized independently of the building, except for payment of their price (Article L.112-3 CEPC), and unseizable debts, the amount of which is paid into an account, remain exempt from seizure under the conditions provided for by decree of the Council of State (Article L.112-4 CEPC).

## **I.8 (Court) penalties and fines**

### **I.8.1 Penalty clause<sup>103</sup>**

The penalty clause is the clause by which a party to a contract undertakes to pay to the contracting partner a sum determined as a fixed amount in the event of non-compliance of his/her obligations. The penalty clause gives the debtor of an obligation the possibility to avoid the payment of compensation. It is also a means of compelling the debtor to comply with the obligation. The penalty clause can intervene in different branches of law, such as law of obligations and labour law. This clause is a civil law

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<sup>102</sup> These are (Article R.112-2 CEPC):

- Clothes.
- Bedding.
- Household linen.
- Items and products necessary for personal care and maintenance of the house.
- Foodstuff.
- Household items necessary for the conservation, preparation, and consumption of food.
- Heating devices.
- Table and chairs for taking meals together.
- Furniture for clothes and linen, and other piece of furniture for storing household items.
- Washing machine.
- Books and items necessary for the pursuit of studies or professional training.
- Children's items.
- Personal or family memories.
- Apartment or guard animals.
- Farm animals (as well as the food necessary for their breeding).
- Work tools necessary for personal professional activity.
- Telephone set allowing access to fixed or mobile telephone service.

<sup>103</sup> Article 1235-1 et seq. CC.



penalty. It therefore applies in the event of a contractual violation committed by one of the parties without the need to involve a judge. The principle is that it sanctions the breach of a contractual obligation, regardless of the damage suffered by the injured party.

The parties to the contract can develop a penalty system on their own will. The penalty may vary depending on the context. Some contracts introduce a penalty clause stipulating that the party at fault will have to pay a certain sum of money to sanction the breach of his/her obligation. Other penalty clauses may oblige the party at fault to perform a service or, on the contrary, to refrain from doing something. The penalty clause is binding on all parties to the contract and is enforceable against the party at fault. However, it may be subject to review by the judge. The review can take place when the judge considers that the penalty clause is either excessive or derisory.

### **1.8.2 Fines**

The fine is a penalty consisting in paying a sum of money to the Public Treasury. Its amount depends on the gravity of the offense, but it can be reduced or increased depending on the time within which the payment takes place. The fine may be non-foxed, pronounced by the court, or fixed, notified by the police. Several payment methods exist, but there are specificities depending on the type of fine to be paid. In all cases, the fine is payable to the Public Treasury and non-payment may result in enforcement proceedings.

#### **1.8.2.1 Non-fixed fine**

The fine is pronounced by the court, taking into account the nature of the facts, circumstances and the personality of the person. The judge freely sets the amount of the fine, respecting the maximum amount for the offense concerned, which is determined by law. The judge may also pronounce a deferment to the fine.

#### **1.8.2.2 Fixed fine**

The fixed fine is issued to the perpetrator by a police officer. Its amount is fixed. It may nevertheless be reduced or increased, depending on the period within which the payment is made. No trial is required. The perpetrator directly receives the notification of the amount of the fine and can only either pay or initiate a dispute procedure. Payment ends the legal proceedings.

### **1.8.3 Office for the Execution of Sentences**

This office is part of the registry service of criminal courts and is intended to receive the convicted person at the end of the criminal hearing and to establish, with his/her consent, a first act of execution of his/her sentence. It can also inform victims of their rights.

## **1.9 Access to information on the domicile and assets of the debtor**

The judicial officer can carry out usual inquiries on the Internet (Google, directories, Facebook, court administration services registry and others). The judicial officer also has access to all legal means available to him/her to locate the debtor, his/her bank



details and to identify his/her employer, vehicle, or real estate. These various searches are organised and strictly governed by Articles L. 152-1 et seq. CEPC. Most of this research is dematerialised and fast<sup>104</sup>.

Since a law of 22<sup>nd</sup> December 2010<sup>105</sup>, with an enforceable title, the judicial officers can directly send requests for information to administrations, state-owned companies, regions, and departments which must communicate the information they hold to determine:

- Details on the person of the debtor.
- His/her address.
- The identity and address of his/her employer.
- The composition of his/her immovable assets.

The judicial officer can also consult the family allowance office, the unemployment insurance office, the collector general of taxes and the pension plan office by dematerialised way. Timeframes for responses vary from one administration to another and the relevance of the information depends on the updating of their files.

With an enforceable title, judicial officers can directly question the national bank accounts file (Ficoba)<sup>106</sup>, which is a national file listing all the bank accounts held by each individual or legal entity on French territory. Ficoba includes the address given by the debtor to his/her bank, which in some cases allows to find out his/her new address very quickly. From then on, it will be possible for the judicial officer to carry out an attachment on the bank accounts of the debtor concerned.

The judicial officer can also enquire to the car registration number office to obtain the brand, registration number, model, and date of first registration of the vehicle. This makes it possible to know whether the debtor's vehicle has a market value and whether it is relevant to seize it.

The judicial officer can question the mortgages register using a standard form called "Request for urgent summary information". The land registry department will return this completed form, indicating the nature of the property, its cadastral references, its origin, any mortgages encumbering it, etc. After analysing this information, an attachment of the immovable asset may be initiated, or a mortgage may be registered.

## **PART II: ORGANIZATION OF ENFORCEMENT**

### **II.1 The status of the judicial officer**

Judicial officers are self-employed. They can carry out their functions either individually or within a company. Their working area is in the jurisdiction of the court

<sup>104</sup> These searches are mentioned in the judicial officer's tariff and are paid by the debtor (however, in the event of unsuccessful recovery these costs will be borne by the creditor).

<sup>105</sup> "Béteille" law (No 2010-1609).

<sup>106</sup> "Fichier national des comptes bancaires" (Ficoba).



of appeal<sup>107</sup>. Since 1<sup>st</sup> January 2017, their working area is national concerning the amicable recovery of unpaid debts, assessment and public auctions, statements of facts and additional activities.

They are public officers. They have the monopoly on service of documents and enforcement of court decisions. This in return imposes on them an obligation to work when they are legally required and a tariff for their functions. In the matter of unpaid checks, the judicial officer also has a monopoly to issue an enforceable title. In addition, the judicial officer has a mission of information and advice. He is also bound by professional secrecy. It is possible after obtaining the professional diploma to practice as a judicial officer employed in an office. Judicial officers are appointed by decree of the Ministry of Justice. The judicial officer is subject to the supervision of the Public Prosecutor under the jurisdiction of the High Court in which he/she practices. Their remunerations are regulated by Decree No 2016-230 of 26 February 2016.

Judicial officers are professionally represented on three levels:

- The National Chamber of Judicial Officers represents the whole profession before the public authorities. It organises trainings and initiates actions for the development of activities and the prospecting of new areas of intervention.
- The regional chambers of judicial officers represent all the judicial officers in the jurisdiction of the court of appeal regarding their common rights and interests. It is responsible for verifying the accountancy as well as the functioning and organisation of the judicial officer's offices and oversees disciplinary functions.
- The departmental chambers of judicial officers<sup>108</sup> are responsible, moreover, for ensuring execution of the decisions taken by the national and the regional chambers.<sup>109</sup>

### II.1.1 Access to the profession

In addition to exemplary moral conditions, the candidate must have a master's degree in law. He/she must also undergo a two-year internship. At the end of this internship, the candidate must take the professional examination of judicial officer. The ongoing professional training of judicial officer is compulsory. Its duration is twenty hours in a calendar year or forty hours within two consecutive years.

### II.1.2 Legislative reform

In France, the profession of judicial officer has merged with that of judicial auctioneers. The "huissier de justice" will disappear and will be replaced by the "commissaire de justice"<sup>110</sup> (commissioner of justice) in 2022. The creation of this new profession shall take place in three steps:

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<sup>107</sup> There are 36 courts of appeal in France.

<sup>108</sup> There are 97 departments in France.

<sup>109</sup> Departmental chambers will cease to operate in 2022.

<sup>110</sup> Order No 2016-728 of 2 June 2016.



- Step 1 (January 2019): creation of the National Chamber of Commissioners of Justice which will replace the National Chamber of Judicial Officers and the National Chamber of Judicial Auctioneers.
- Step 2 (July 2022): entry into force of provision on commissioners of justice.
- Step 3 (July 2026): judicial officers who have not followed the specific training for commissioners of justice will no longer be able to exercise their activities.

## II.2 Supervision over enforcement

The Code of the Judicial Organisation<sup>111</sup> provides that disputes arising from the enforcement of court decisions in civil matters are settled by the enforcement judge, who is present in each court<sup>112</sup>. The enforcement judge rules alone and issues orders<sup>113</sup>. The enforcement judge is seized by summons. The disputes may relate to the enforceability of a title, to the interpretation that should be made of this title as to the determination of the exact amount of the debtor's debt, or to the formal regularity of an enforcement deed or the substantive conditions of an enforcement measure. Ownership of seized property can also be contested before the enforcement judge.

The enforcement judge is also in charge of the procedure of attachment on immovable assets, of the procedure of attachment on salaries, of claims for compensation which may arise from difficulties relating to enforcement or provisional measures. He/she may order the withdrawal of these measures when they are unnecessary or abusive and, in this case, order the creditor to pay damages.

The judicial officer is under the control of the public prosecutor. The enforcement judge has also a possibility of supervision during the enforcement.

## II.3 Access to the premises

The judicial officer can only forcefully enter premises, whether the defendant is present or not, when carrying an enforceable title. If the debtor is absent or refuses access, he can enter, provided that he is accompanied by the mayor of the municipality, a municipal councillor, a police officer or, if this is not possible, of two adult witnesses who are neither at the service of the creditor nor of the judicial officer<sup>114</sup>, who will only attend the operations. If necessary, the judicial officer may request the assistance of the police<sup>115</sup>. When the judicial officer enters in the absence of the debtor, he/she is responsible for locking the door.

## II.4 Obstructing the judicial officer from carrying out enforcement

In case of difficulty, the judicial officer can refer to the enforcement judge. The Criminal Code punishes anyone who poses violent resistance to a person having public

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<sup>111</sup> (Articles L.213-5 to L.213-7).

<sup>112</sup> "Tribunal judiciaire".

<sup>113</sup> Such as interlocutory measures.

<sup>114</sup> Articles L.142- 1 to L.142-3 CEPC.

<sup>115</sup> This is the case when there is information that the debtor could be violent.



authority while carrying out his/her duties, at the occasion of the enforcement of court decisions. Third parties cannot obstruct enforcement procedures. They must contribute to the enforcement when legally required. Anyone who, without valid reason, avoids these obligations may be compelled to comply, if need be, under penalty, with possible damages<sup>116</sup>.

## II.5 Time of enforcement

In principle, no enforcement action may be taken on a Sunday or a public holiday, except with special authorisation from the enforcement judge. Likewise, enforcement cannot start before 06:00 and after 21:00 or be exerted on public holiday or non-working day unless specifically authorised by the enforcement judge<sup>117</sup> and only in places which are not used as home.

## II.6 Mediation

Mediation concerns anyone involved in a conflict with another party. It can be contractual (decided by the parties) or judicial (ordered by a judge). It can also be compulsory: professionals are required to offer their consumer customers a free mediation procedure in the event of disputes. Article 127 CPC provides that if the party initiating a legal proceeding does not justify the steps taken to reach an amicable resolution of the dispute, the judge may propose to them a mediation measure. In private law disputes, the judge generally appoints the mediator. However, those wishing to use mediation can choose their own mediator. The judicial officer can be a mediator as an additional activity<sup>118</sup>. During a mediation process, he/she may also provide for all provisional measures to preserve the interests of the creditor with the agreement of the debtor.

# PART III: ENFORCEMENT PROCEDURES

## III.1 Initiation and end of the enforcement procedure

To initiate enforcement, the judicial officer must be in possession of the enforceable title acknowledging an assessable<sup>119</sup> and due<sup>120</sup> debt and imprinted with the enforcement order. The claim is “liquid” when it is estimated in money or when the title contains all the elements allowing its valuation<sup>121</sup>. The claim is due when it is not affected by a term or condition by suspending execution.

The enforcement procedure can only start when the enforceable title has been served to the debtor, which allows him/her to know the exact extent of his/her obligations<sup>122</sup>.

<sup>116</sup> Article L.123-1 CEPC.

<sup>117</sup> Article 508 CPC.

<sup>118</sup> Article 20 of Decree No 56-222 of 29 February 1956, modified by Decree No 2011-1173 of 23 September 2011.

<sup>119</sup> Valued in money or when the judgment contains all the elements allowing its valuation.

<sup>120</sup> When it is not affected by a term or condition suspending enforcement.

<sup>121</sup> Article L.111-6 CEPC.

<sup>122</sup> Article 503 paragraph 1 CPC: “...unless the execution is voluntary”.



The enforcement procedure must be implemented within a certain time. If the enforceable title is judicial (for example, a judgment), an enforcement measure must be implemented within ten years of the issuance of the title. This period may be extended in certain cases<sup>123</sup>. The enforcement procedure mainly ends either with the total payment of the sums due, or with the declaration of the insolvency of the debtor

### **III.2 Enforcement against movable assets to settle pecuniary claims**

Enforcement against tangible movable assets is ruled by Articles L.221-1 et seq. and Articles R.221-1 et seq. CEPC.

#### **III.2.1 Implementation**

The seizure for sale allows to freeze the movable tangible assets of a debtor and to proceed with their sale to pay the creditor(s). The goods are seized by the judicial officer and are then sold by amicable sale or, following the lack of agreement for amicable sale, at public auction. Seizure and forced sale of movable assets is possible when:

- one or more creditors have an assessable (valued in money) and due claim acknowledged in an enforceable title and
- the debtor has not paid his/her debt within eight days of service of a payment order.

If the claim is less than 535 € (excluding costs and interests) and is not a maintenance claim, priority is given to the seizure of the bank account or the income of the debtor. If this is impossible, a seizure by sale can take place and can only be carried out by a judicial officer.

The movables likely to be seized are tangible personal property belonging to the debtor (furniture, books, vehicles including cars<sup>124</sup>), regardless whether they are held by the debtor or not, with the exception of unseizable goods<sup>125</sup>. When the goods are held at the home of a third party, the procedure must be authorized upon request to the enforcement judge.

#### **III.2.2 Realisation**

When the debtor does not pay the debt within the prescribed time, the judicial officer can proceed with the attachment. He/she visits the debtor's home. If the debtor is present, the judicial officer verbally reiterates the request for payment of the debt. The debtor must inform the judicial officer of the goods which have already been the subject of a previous seizure. During the visit, the judicial officer may, if necessary, photograph the objects seized. At the end of the visit, he/she gives the debtor an attachment document. If the debtor is absent during the attachment, a copy of the attachment document is sent to him/her.

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<sup>123</sup> Article L.111-4 CEPC: "...unless the actions for recovery of the debts which are prescribed by a longer period".

<sup>124</sup> There is a special procedure for motor vehicles (see III.9 below).

<sup>125</sup> See section 1.6. above.



The debtor retains the use of the goods seized pending their sale (unless certain goods are sequestered). However, they can neither be freely sold nor moved by the debtor, under penalty. If a legitimate cause makes their displacement necessary, the creditor is informed beforehand. The place where they will be moved is indicated to the creditor.

If no property can be seized (unseizable property or property with no market value), the judicial officer draws up a statement of insolvency. The debtor can challenge the possibility to seize a property, within one month from the service of the act of attachment. He/she can also contest the validity of the seizure, until the sale of the seized goods. To exercise the remedy, he/she must file a summons before the enforcement judge of his/her domicile.

### **III.2.3 Sale**

#### **III.2.3.1 Amicable sale**

The debtor can proceed to the amicable sale of his/her goods within one month from the date of seizure, to avoid the auction. The debtor must then inform the judicial officer of the proposals which have been made to him/her. The judicial officer communicates these indications to the creditor, who can accept or refuse the amicable sale within 15 days. In the absence of a response, the creditor is presumed to have accepted. In the event of a sale, the amount collected is paid to the judicial officer. The goods sold are handed only after payment of the agreed sums.

#### **II.2.3.2 Public auction**

The auction of seized goods is possible in the absence of an amicable sale. The sale takes place after the expiration of the period of one month following the day of seizure, to which a period of 15 days, left to the creditors in the event of a proposal for the amicable sale of the seized property, is added, if necessary. The sale is publicized by posters indicating its place, day, and time (at least eight days before) and the nature of the goods seized. The debtor is informed of the place and date of the sale at least eight days before it is held. The sale is stopped as soon as the amount of debt and interest is reached. The profit from the sale is distributed among the creditors with an enforceable title. They must have appeared before the sale. In the event of difficulty of distribution, the enforcement judge proceeds to the partition.

### **III.3 Attachment on the bank account of the debtor**

The attachment on the bank account of the debtor is ruled by Articles L.211-1 et seq. and Articles R.211-1 et seq. CEPC.

#### **III.3.1 Conditions of implementation**

The attachment on a bank account only concerns claims relating to sums of money and can only be implemented with an enforceable title. A judicial officer will draw up the act of seizure on the bank account (or several accounts, if necessary) of the debtor. This deed will be served to the bank. When the balance is positive the bank must



indicate:

- The debtor's deposit account(s) (ordinary or joint).
- All current accounts.
- All accounts and savings accounts.

The judicial officer will inform the debtor of the attachment within eight days. If this deadline is not respected, the procedure is not valid. In the case of a joint account, each holder must be informed of the attachment.

### III.3.2 Consequences on the seized bank account

During the 15 working days following the seizure, the bank account is blocked to determine the sums that can be seized. However, the account can be credited or debited after the date of seizure in case of transactions that had been carried out before this date (for example, a cheque handed to the bank before seizure). The debtor can carry out transactions on the account during these 15 working days. He/she can also contact the judicial officer to establish the conditions for the release of the seizure. For example, the withdrawal of the account can be considered before the end of this period, after establishing a repayment schedule of the debt.

It is not possible to seize all the sums available on the accounts, even if the amount due is higher than the available balance. A legal unseizable bank balance<sup>126</sup> will be left at the disposal of the debtor. There are also sums which are inherently unseizable (for example, minimum social benefits, family benefits, reimbursement of medical expenses, etc.). To be able to dispose of them, within the limit of their amounts, the debtor must provide the bank with proof of the origin of these sums within 15 days of service of the seizure to the bank. The amount withdrawn corresponds to the total amount due to the creditor (adding the judicial officer's fees) unless the account balance before seizure does not allow full payment. No amount can be taken if the account balance before the seizure is negative.

### III.3.3 Procedure

The debtor can contest the attachment before the enforcement judge within one month from the service of the attachment. The act of notice of attachment issued by the judicial officer must designate the location of the enforcement judge. In the event of a contest, the attachment is suspended until the enforcement judge issues his/her order. If the dispute is only partially accepted, the judge determines the amount seized in the account.

The sums seized are unavailable until the date of payment. To proceed to the payment, the judicial officer must present to the bank:

- a certificate attesting that the debtor has not presented a remedy to contest the attachment; or
- the order dismissing the debtor after he/she has filed an appeal to contest the

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<sup>126</sup> The “*solde bancaire insaisissable*” (SBI) which is settled every year (for 2020: 559.74 €).



attachment.

Payment of the amount seized is made by the bank.

#### **III.4 Enforcement against savings deposits and current accounts**

The procedure will be the same as the one followed in the case of bank accounts. All savings deposits are attachable<sup>127</sup>, but some sums are unseizable. Stocks accounts and the content of a safe are seized by special proceedings. All savings deposits are attachable under the procedure followed for the attachment of bank accounts, with the difference that the accountant can inform the judicial officer about the balance of the account within 24 hours after the attachment; in case of current accounts such information is provided immediately<sup>128</sup>.

#### **III.5 Enforcement on immovable property**

Enforcement on immovable property is ruled by Articles L.311-1 et seq. and R.311-1 et seq. CEPC.

##### **III.5.1 Conditions**

Any immovable property owned by the debtor can be seized (house, apartment, etc.). A creditor with an enforceable title can apply to a judicial officer to obtain payment of the claim.

##### **III.5.2 Seizure procedure**

The judicial officer delivers a payment order to the debtor indicating the obligation to pay the amount due within eight days. This order of payment is equivalent to the seizure of the immovable. Consequently, the debtor can no longer sell it, give it away, or collect rent. The debtor can still live in the property seized, pending the sale (unless the order of payment orders eviction). If the amount due is not reimbursed within this period, the judicial officer is entitled to go on site to draw up a report describing the property seized. He/she can enter inside the property in the presence of the occupant, even if the latter refuses to let him/her in, or in the absence of the occupant. The order of payment is published in the mortgage bureau within two months of its service to the debtor. Within two months of this publication, the debtor is summoned to appear by the creditor at an orientation hearing before the enforcement judge.

##### **III.5.3 Sale procedure**

During the orientation hearing, the enforcement judge takes note of the remarks and possible disputes of the debtor and the creditor(s). The debtor can request the amicable sale of the seized property. At the end of the hearing, the judge determines the procedure to be followed:

- by authorising the amicable sale of the property seized;
- by ordering its forced sale; or

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<sup>127</sup> Article L.162-1 CEPC.

<sup>128</sup> Article R.211-4 CEPC.



- by ending, suspending, or interrupting the entry procedure.

### III.5.3.1 Amicable sale

The debtor can ask the enforcement judge for the amicable sale of the property without waiting for the orientation hearing. In this case, the debtor notifies all the creditors concerned by the attachment. Otherwise, the request for amicable sale is made during the orientation hearing.

### III.5.3.2 Judge's response

The judge fixes the minimum price of the good, respecting the economic conditions of the market. He/she sets the date of the hearing which will allow taking stock, within a maximum of four months. Pending this hearing, the debtor must take the necessary steps to sell the property. During this period, the creditor can request to prevent the amicable sale procedure and to initiate the enforced sale procedure of the property. At the next hearing, if the debtor justifies the existence of a sales agreement, a period of three additional months is granted to conclude the authentic act of sale of the property seized. After this period of three months has elapsed, the sale is definitive, if the judge notes that the conditions prescribed for the mutual sale are fulfilled.

In the absence of a buyer (or if the conditions prescribed by the judge for the sale are not met), the judge orders the forced sale of the property. The sum paid by the buyer is not given to the owner of the property. It is kept before being distributed among the creditors. If its amount is higher than the total amount due, the debtor receives the remaining amount. If the amount is lower than the total amount due, the debtor is liable for the remaining debt.

### III.5.3.3 Forced sale

The court judge determines the date of the auction sale hearing of the seized property within two to four months. During this period, the sale is advertised (by publication in legal announcements newspaper, posting of a notice in front of the property seized etc.). The aim is to inform as many bidders as possible. This process is carried out by the creditor(s) at the expense of the debtor. The creditor(s) determine(s) the amount of the starting bid.

In the absence of an auction, the creditor(s) will automatically be declared buyer(s) for this amount. If the amount of the starting bid is obviously insufficient, the debtor may refer to the judge. The debtor and the creditor(s) can at the same time agree that the property seized may be sold by mutual agreement. This can be done until the auction opens. The property can be visited by potential buyers at the request of the creditor(s).

### III.5.4 Auction sale

During the auction sale hearing, any bid is brought by a lawyer who intervenes on behalf of the potential buyer. The last bid wins the auction. Anyone can bid higher within 10 days of the sale auction hearing, through a lawyer. This higher bid is at least equal to 10% of the main sale price, and results in the determination of a higher bid audience. At the end of the sale auction hearing (or "overbidding", if it takes place), a



sale auction judgment summarises all the disputes decided by the decision. After the expiry of the time limit for appeal, the sum collected at the end of the last bid is distributed among the creditors. After reimbursement, the judge ends the seizure procedure. The buyer of the property (the successful bidder) is entitled to request the eviction of the debtor, who occupies the property seized, unless the conditions of the sale stipulate that the occupant can stay.

### **III.6 Enforcement against wages and other permanent pecuniary income**

Attachment of salaries is ruled by Articles L.212-1 et seq. and R.212-1 et seq. CEPC.

Attachment of salaries is a procedure allowing a creditor to request the court to have his/her debt paid by the salary paid to the debtor employee. A deduction is then made by the employer, who must pay the amount deducted to the court on a monthly basis. However, the sums can be withdrawn only within certain limits, which are determined by a scale updated each year.

#### **III.6.1 Request**

To be able to apply for attachment of salaries, the creditor must have an enforceable title. The procedure is initiated by a request of the creditor before the court of the domicile of the debtor. The request is handed or sent by the creditor to the court clerk office registry of the judicial court; this can be done through a lawyer or a judicial officer. The document must contain the compulsory content including the statement of the sums claimed as well as the name and address of the employer. The creditor must attach a copy of the enforceable title to his/her request.

#### **III.6.2 Conciliation hearing**

Conciliation must necessarily take place before any attachment on salaries aiming at reaching an agreement on the terms of reimbursement of the creditor by the debtor. The court summons the two parties at least 15 days before the date of the hearing. The conciliation stage can then lead to an agreement between the parties - by fixing, for example, instalments - or not. The debtor can challenge the procedure during the hearing. The judge then settles the dispute either at the time of the hearing or in a subsequent hearing. In the event of an agreement, the debtor and the creditor sign a conciliation report by which the debtor undertakes to pay according to the terms provided in it. In the event of non-compliance with his/her obligations, the creditor may then directly request the court clerk office to proceed with the attachment of salaries without going through a new phase of conciliation. During this hearing, a judicial officer is entitled to represent the creditor.

#### **III.6.3 Seizure**

When the attempt of conciliation fails, the judge draws up a report of non-conciliation. Within eight days of the hearing, the court sends an attachment document to the debtor's employer by registered letter. A copy of this attachment document is sent to the debtor by simple letter. Upon the reception of the document, the employer must pay monthly to the court an amount equal to a fraction or to the total of the wages normally paid to the employee until the date of completion of seizure is notified by



the clerk. Within 15 days of receiving the document, the employer must inform the court clerk of the employee's situation in the company (fixed-term contract, permanent contract, etc.) and if the employee is already the subject of other seizures in progress (in the event of payment of alimony, for example). The employer must scrupulously respect this obligation because, failing this, he/she is subject to a fine of 10,000 € as well as the payment of damages. If the employee is dismissed, on sick leave or goes part-time, the employer must also inform the court within 8 days.

The debtor whose remunerations are seized may contest the amount of the sums withdrawn by contacting the judge. He/she can also request to benefit from a grace period of up to two years, particularly when he/she justifies serious financial difficulties to pay off his/her debts. If his/her financial situation improves, the debtor can also stop the attachment of wages by paying off his/her debts directly without waiting for the monthly attachment deadlines. In this case, he/she must file a request for lifting of attachment of wages to the court clerk.

### **III.7 Attachment under the debtor's debtor**

This seizure may be carried out in the hands of the debtor's debtor. The procedure is the same as the one followed for the attachment of bank accounts (see III.3). This attachment procedure is followed in the case of financial institutions holding deposit accounts (banks), as well as in the hands of any third-party (natural person or corporation), provided that they owe claims amounting to a sum of money to the debtor sued.

### **III.8 Enforcement against shares**

Enforcement of intangible rights (shares) is covered by Articles L.231-1 et seq. and R.231-1 et seq. CEPC.

#### **III.8.1 Implementation**

To implement an enforcement against associate shares, the creditor must have obtained an enforceable title concerning a liquid and due debt. The judicial officer will serve a deed of attachment of shares to the company that has issued the shares. The attachment act renders the debtor's pecuniary rights unavailable. The debtor is informed of the seizure by a document served by the judicial officer within eight days, under penalty of forfeiture. Upon receipt of the document, the debtor must within one month proceed to the amicable sale of the shares him/herself. Failing this, an auction shall be implemented. Within the same period of one month, the debtor can challenge the seizure before the enforcement judge who:

- Confirms the claim of the debtor and declares the seizure null. In this case, there is immediate and total release.
- Rejects the claim of the debtor. In this case, the auction shall be implemented.

The debtor can remain totally passive, without contesting, without doing anything to achieve the amicable sale of the seized values. In this case, the judicial officer will deliver a certificate of non-contestation or will request the registry clerk office of the enforcement judge of the debtor's domicile to issue such a certificate.



### III.8.2 Sale specifications drawn up for the sale

These specifications, which must in all circumstances be in the possession of the auctioneer (the judicial officer), are available to potential purchasers (bidders) who may become aware of them. They include:

- A recall of the previous procedure.
- The statutes of the corporation.
- All documents necessary to assess the consistency and value of the rights offered for sale, the charges and conditions of the sale.

A copy of these specifications is notified to the corporation which informs its partners. On the same day, a summons notifies, when necessary, the other creditors to take note of the specifications and the person in charge of the sale. Within two months, any interested party may make comments to the latter on the content of the specifications.

In case of judicial sale, a legal publicity indicating the day, time and place of the sale must be published in a newspaper, and if necessary, by way of posters. This publicity must be carried out one month at the most and 15 days at least before the date fixed for the auction. The date of the auction is notified to the debtor, the corporation, and other creditors, where applicable.

The legal and conventional approval, pre-emption or substitution procedures are implemented in accordance with the provisions specific to each of them.<sup>129</sup>

### III.9 Other attachment procedures

#### III.9.1 Attachment of land motor vehicles

Attachment of land motor vehicles is ruled by Articles L.223-1 et seq. and Articles R.223-1 et seq. CEPC.

##### III.9.1.1 Implementation

The attachment is carried out, under conditions, by declaration to the prefecture or by immobilisation of the vehicle. The creditor must have obtained an enforceable title. The seizure may relate to any land motor vehicle (car, motorcycle, scooter, quad, etc.) belonging to the debtor. However, the seizure of a vehicle is not possible if this vehicle is necessary for the personal exercise of professional activity (if the debtor is a taxi driver or sales representative, for example).

##### III.9.1.2 Procedure

There are two procedures:

- Seizure by declaration to the prefecture, so that the debtor cannot sell his/her vehicle;

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<sup>129</sup> Article R.233-9 CEPC.



- Seizure by immobilisation, so that the debtor cannot use and sell his/her vehicle.

These two procedures are not linked. They can be entered independently of one another, one after the other or at the same time.

#### **III.9.1.2.1 Seizure by declaration to the prefecture**

The judicial officer makes a declaration to the prefecture resulting in the attachment of the vehicle. The debtor is served with a copy of the declaration within eight days. The declaration to the prefecture expires after two years from its service to the debtor unless it is renewed in the meantime. The debtor can keep using his/her seized vehicle. However, if the attachment is not lifted, the debtor can no longer sell his/her vehicle. The debtor can challenge the attachment by applying before the enforcement judge of his/her domicile.

#### **III.9.1.2.2 Seizure by immobilisation**

The creditor can request a judicial officer to seize the vehicle of his/her debtor by way of immobilisation. When seizing the vehicle, the judicial officer must draw up an immobilisation report. If the debtor is absent during the seizure, the judicial officer must inform him/her by simple letter. The vehicle is usually immobilised using a wheel clamp. It can also be moved and stored. The immobilisation must in no case damage the vehicle. The vehicle can be immobilised during a movable's attachment procedure, carried out in the premises occupied by the debtor or by a third party holding the vehicle on behalf of the debtor. The judicial officer notifies an order to pay to the debtor within eight days of the date of immobilisation of the vehicle. The debtor can sell his/her vehicle amicably within one month, with the agreement of the creditor. Failing this, the vehicle is sold at public auction. Any contestation of the seizure (seizability of the vehicle or ownership of the vehicle) is settled by the enforcement judge of the debtor's domicile or of the location where the vehicle is immobilised.

#### **III.9.2 Attachment of a good locked in a safe**

This procedure is covered by Articles R.224-1 et seq. CEPC.

It can only take place if the safe is owned by a third party (most often a bank). The creditor must have obtained an enforceable title. The seizure, without compulsory preliminary order of payment, is carried out by act of a judicial officer served on the third party - owner of the safe, who is required to provide the identification of the safe. The immediate effect of the attachment is that the safe is made unavailable. The debtor has then no longer free access to the seized safe. The judicial officer can also seal the safe. When the purpose of the attachment is to proceed with the sale of the goods contained in the safe, the judicial officer will serve to the debtor an order to pay on the first working day following the service of the act of attachment on the third-party owner of the safe. The date and time for opening the safe are indicated in this document. This opening cannot take place less than 15 days after the service of the order of payment.

The debtor is invited to be present on the opening days and times with the keys to the



safe. Failing this, if the debtor refuses to open the safe, the seizure of the safe continues with forced opening. Whether the opening was carried out by the debtor or in his/her absence, the judicial officer proceeds to an inventory. If the debtor is present, only assets with a sufficient value are removed. In the opposite case, an inventory is drawn up of all the goods contained in the safe. Assets with value are then seized and removed. The rest are left with a custodian (the financial institution which, in practice, opens a new safe on behalf of its client). The debtor has an amicable sale deadline, as in any movable's enforcement procedure. In the absence of a proposal accepted by the creditor, the auction procedure is carried out by the judicial officer.

### **III.10 Handing over movable assets**

The procedure relating to handing over movable assets is covered by Articles L.222-1 to L.222.-2 and Articles R.222-1 et seq. CEPC. There are two distinct types of proceedings: apprehension seizure<sup>130</sup> and revendication seizure<sup>131</sup>.

#### **III.10.1 Apprehension seizure**

The apprehension seizure makes it possible to return or deliver goods claimed by the claimant. This seizure is carried out in accordance with procedures which vary depending on whether the judicial officer has an enforceable title or not. If the creditor does not have an enforceable title ordering the delivery of the property, he/she must seize the enforcement judge of the domicile of the debtor. If the creditor has an enforceable title, he/she can directly contact a judicial officer.

Then there are two possibilities: the debtor is in possession of the property, or the property is owned by another person (a third party). In the event of attachment in the hands of the debtor, the judicial officer sends an order to restore or deliver. The property can also be apprehended immediately if the debtor is present and refuses to carry the property to the place indicated by the enforceable title at his/her expense. In this case, the enforcement order is not needed. An act stating the voluntary delivery or "apprehension" of the property is delivered to the debtor. In the event of seizure in the hands of a third party, the judicial officer must serve a summons to deliver the property. It is also sent to the debtor by registered letter with acknowledgment of receipt. At the end of an eight-day period, and in the absence of voluntary delivery of the property, the creditor can request the enforcement judge to order the delivery of this property.

#### **III.10.2 Revendication seizure**

This procedure allows any person entitled to request the delivery or return of a tangible movable asset to make it unavailable pending delivery. This is an interlocutory measure which will allow the owner-creditor or pledgee to prevent the possessor or holder from taking advantage of the length of the proceedings to obtain an enforceable title establishing a resale right. Clearly, this allows the claimant to irreparably dispose of the claimed property. This process leads to seizure when the

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<sup>130</sup> Article L.222.-1, and Articles 222-1 to R.222-16 CEPC.

<sup>131</sup> Article L.222.-2, and Articles 222-16 to R.222-25 CEPC.



writ of execution prescribing the surrender, or the restitution is finally obtained.

### **III.11 Enforcement in reinstatement of employee to work**

If the court orders the reinstatement of an employee, the judicial officer can make a statement of fact concerning the reinstatement or non-reinstatement.

### **III.12 Eviction**

This procedure is covered by Articles L.411-1 et seq. and Articles R.411-1 et seq. CEPC.

#### **III.12.1 Implementation**

The eviction procedure must be carried out by a judicial officer. From the first month of unpaid rent or in the presence of squatters, the owner can request a judicial officer to serve an order to pay to the tenant. The tenant must settle the unpaid rent within two months. Failing this the lessor may apply to the court to declare the termination of the lease and order the eviction and the payment of the debt owed until the departure of the debtor. The judgment ordering this eviction is served to the debtor, who then has one month to appeal. If the tenant has not left the premises and has not appealed at the end of the one-month period, the judicial officer serves an order to leave the premises to the debtor within two months. Failing this, the judicial officer requires the assistance of the Police department<sup>132</sup> to carry out the eviction. The administration must respond within two months.

#### **III.12.2 Procedure**

The judicial officer may announce his/her visit beforehand, but this is not compulsory. On the day of the eviction:

- If the debtor refuses to open the door, the judicial officer draws up a report of attempted eviction, reporting his/her failure, and calls on a police authority.
- If the tenant is absent, the judicial officer can enter the premises only with the assistance of police authority (and a locksmith). Then he/she draws up an eviction report. He/she informs the debtor by a notice posted on the door, mentioning that he/she can no longer enter the premises.
- If the debtor does not protest to leaving the premises, the judicial officer draws up a report in which he proceeds to the inventory of the movables garnished in the premises.
- If goods have been left on site or dropped off by the judicial officer in an appropriate place, the eviction report will contain the inventory of these goods, the place where they are stored, and their conditions of withdrawal. Failing withdrawal, the goods will be sold at public auction by the judicial officer.

No eviction relating to home location can take place during a “winter break” period, usually from 1 November to 31 March of the following year.

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<sup>132</sup> Préfecture de police.



### III.13 Enforcement of obligations to act, refrain from acting or suffer action

This procedure is covered by Articles L.131-1 et seq. and Articles R.131-1 et seq. CEPC.

Article 1221 CC provides that: "*The creditor of an obligation may, after formal notice, keep up the enforcement in kind unless such enforcement is impossible or if there is an obvious disproportion between its cost to the debtor and its interest for the creditor.*"

Forced enforcement in kind is therefore essential for all obligations. The judge has the means to compel any debtor to perform his/her obligations independently of the recovery procedure by financial penalty<sup>133</sup>. This corresponds to a sum of money that the debtor will have to pay if he/she does not comply with the judgment. It is first temporarily determined by a judge<sup>134</sup>. If the judgment is complied with, the penalty is not owed by the debtor. In the event of non-compliance, the penalty will become final and will have to be paid by the debtor. The penalty is generally mentioned in a judgment which condemns a debtor to an obligation.

Specifically, the judge will determine a sum of money which, in the event of non-execution, must be paid:

- Per day delay, if it concerns an obligation to act (for example, destroy a construction, cut a tree etc.);
- By observed violation if it concerns an obligation to refrain from acting (for example, prohibition to sell a counterfeit etc.)
- If the debtor has not complied after the expiration of a period imposed by the judge.

The temporary penalty cannot be enforced against the debtor. The judge must calculate the amount of the final penalty to be paid. The creditor must refer to the judge to calculate the penalty payment and demonstrate that the debtor has not complied with the obligations imposed on him/her. The amount of the temporary financial penalty does not bind the judge. He/she can change the amount of the penalty payment at the time of the final calculation, in order to adapt it to the circumstances and the behaviour of the debtor. However, once it becomes definitive, the penalty cannot be changed. The judgment with the final calculation is the enforceable title with which the creditor will compel his/her debtor to pay the penalty payment. The financial penalty can be abolished in whole or in part, if it is established that non-compliance or delay in compliance with the judge's injunction is, in whole or in part, the result of an external cause. The external cause is a circumstance beyond the control of the debtor which prevents him/her from performing his/her obligations.

### III.14 Sequestration of goods

There are two kinds of sequestration:

- Under contract (contractual)<sup>135</sup>: a contract is concluded between the persons

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<sup>133</sup> "Astreinte".

<sup>134</sup> Article L.131-1 CEPC.

<sup>135</sup> Article 1956 CC.



in dispute and the third-party (depository), who undertakes to keep the contentious item and deliver it to the claimant who wins the trial.

- Judicial<sup>136</sup>: a protective measure is ordered by the judge, most often at the request of the party who does not possess the disputed good and fears its diversion.

The depository is bound to keep the good and, if necessary, to administer it taking into account its nature and the extent of its mission. Sequestration may be free, but it is most often remunerated. The depository responsible for the sequestration has a right of retention over the good held to obtain his/her payment (fees, reimbursement, and compensation). If the sequestration is not equivalent to a payment, since it does not entail any transfer of property, it is nevertheless admitted that it produces its liberating effect. The default interest's price is discontinued.

Whether contractual or judicial, the sequestration ends with the court decision, the arbitral award or the transaction which ends the dispute. The depository is then required to return the thing to the person to whom the decision recognises rights over the thing. The depository must not return the thing before the end of the dispute under penalty of engaging his/her responsibility unless he/she is discharged by the common will of the parties to the dispute, regardless of whether it has been designated conventionally or judicially, or if he/she has asked to be discharged by a judicial decision for a "cause deemed legitimate", in which case it is up to the judge to discharge the depository and, if necessary, to designate a new one.

The judicial officer may be designated as depository of a sum of money which will be kept in his/her office. The debtor of a contractual obligation has the possibility of entrusting the judicial officer with a sum of money as a guarantee within the framework of rents<sup>137</sup>, sale of a business<sup>138</sup> or pending the outcome of a dispute. A report of this deposit will be drawn up and, in all cases, the judicial officer will only be discharged of the funds if the contractual and/or judicial conditions are met.

### III.15 Enforcement of foreign enforceable documents from non-EU States

Any court decision or arbitral award made abroad does not automatically apply on French territory. A judgment which is not recognised in France will not be subject to compulsory execution and will therefore have no effect. The claimant must request a French judge to recognise the foreign decision in the internal judicial order so that it can produce effects. The exequatur (recognition) procedure makes a judicial decision or an arbitration award made abroad enforceable on French territory. While certain foreign decisions will not require or cannot be subject to an exequatur procedure<sup>139</sup>, the decisions which may be subject to an exequatur procedure are:

- Divorce judgments.

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<sup>136</sup> Article 1961 CC.

<sup>137</sup> In case of conflict with the owner, the tenant can sequester the rents.

<sup>138</sup> It is customary to sequester the price of the sale in the hands of a judicial officer, to protect the buyer.

<sup>139</sup> Decisions not deemed to be enforced, criminal decisions other than their civil component.



- Judgments pronouncing an adoption.
- Judgments ordering a party to pay a sum of money.
- Civil components of criminal decisions.
- Arbitral awards.

The provisions applicable to the exequatur procedure depend on the country of origin of the decision invoked. The applicable provisions are, on the one hand, the rules proscribed by the CPC and the jurisprudence and, on the other hand, the bilateral conventions between France and the country where the decision was issued. In domestic law, the exequatur procedure is provided for by Articles 509 et seq. CPC which provides that "*Judgments pronounced by foreign courts and acts received by foreign officers are enforceable in the territory of the Republic with the means and in the case provided for by law*". This legal provision is completed by the exequatur judge who lays down the basic conditions to recognise a foreign decision. As such, the French judge examines:

- The indirect jurisdiction of the foreign judge based on the link between the dispute and the judge seized.
- Compliance with substantive and procedural international public policy ("ordre public").
- Absence of legal fraud.

These three conditions are cumulative, which means that the exequatur can be refused when only one condition is lacking. These provisions apply in the absence of an international convention regulating the conditions for the recognition and enforcement of foreign judgments and decisions. Indeed, some countries have, by mutual agreement, put in place the rules for the recognition and enforcement of judgments rendered in the territory of other states parties to the convention. Generally, these are bilateral conventions.

The procedure to recognise a foreign judgment is exercised at the territorially competent judicial court<sup>140</sup>. A summons is served on the defendant. This summons will seize the court of the demand for exequatur. Foreign decisions on matters of state and capacity benefit from the principle of automatic recognition (divorce or adoption). Before being transcribed into French civil status registers, the foreign judgment is subject to opposability verification by the public prosecutor of the relevant court. If the foreign decision is judged to be enforceable in France, the public prosecutor instructs the civil status officers concerned to attach a reference of the decision in the margins of the registers. If the foreign decision is declared unenforceable in France, the public prosecutor invites the applicant to initiate an exequatur procedure before the court of his/her domicile.

#### **PART IV: ENFORCEMENT COSTS**

<sup>140</sup> Article R.212-8 of the Code of the Judicial Organisation.



## IV.1 The costs of enforcement

For acts and other formalities carried out by judicial officers falling under their exclusive powers, the price is set according to the scale fixed by the Commercial Code<sup>141</sup>. Enforcement costs are borne by the debtor unless he/she is insolvent. In this case, they are borne by the creditor. In the event of success in recovery, the judicial officer will collect a performance fee which is payable by the creditor. The tariff of judicial officers differs for activities they have the monopoly to carry out (regulated tariff) and activities for which they compete with other professionals (free tariff).

### IV.1.1 Regulated activities

For activities falling under the monopoly of the judicial officer, the tariff is fixed by decree every two years and can be found in the Commercial Code<sup>142</sup>. As regards activities the judicial officer has the monopoly to carry out, they consist in service of documents (summons, court decisions, orders to pay, etc.) but also documents and minutes relating to enforcement procedures. The tariff fixes the amount of the fee charged by the judicial officer for each act and formality. This fee has a coefficient (0.5 or 1 or 2) depending on the amount claimed<sup>143</sup>. Several taxes are added to this cost<sup>144</sup>. Further additional costs may also be added<sup>145</sup>. When the judicial officer duly collects a debt, he/she perceives a "result fee" on the one hand by the debtor and on the other hand by the creditor. The amount of this fee depends on the amount recovered<sup>146</sup>.

### IV.1.2 Unregulated activities

The judicial officer does not have a monopoly on certain activities (statement of facts, legal consultations, etc.) but is in competition with other professionals. For these activities, he/she is free to set his/her price<sup>147</sup>.

## PART V: LINKS, LITERATURE AND SOURCES

### Codes

Code of Civil Enforcement Procedure

Civil Code

Criminal Procedure Code

Commercial Code

[Code of Collective Proceedings](#)

Dalloz Codes

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<sup>141</sup> Article A.442-32 of the Commercial Code.

<sup>142</sup> Articles A.444-10 et seq.

<sup>143</sup> Article A.444-46 of the Commercial Code.

<sup>144</sup> VAT, compensation for transport linked to travel to carry out the activity, flat-rate tax, disbursements.

<sup>145</sup> In case of emergency for example, or when the law so provides.

<sup>146</sup> Article 444-32 of the Commercial Code.

<sup>147</sup> Article L.444-1 of the Commercial Code.



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