

## THE LAW OF THE REPUBLIC OF TAJIKISTAN “ON BANKRUPTCY”

This Law sets forth conditions and rules of implementation of specific procedures aimed at rehabilitation of insolvent enterprises, declaration of the legal entity bankrupt and its liquidation.

### Chapter I. General Provisions

The following terms and definitions are used in this Law:

insolvency - the inability of a debtor to pay off creditors' claims with regard to moneyprecuniary obligations, including obligations to pay wages, as well as to ensure obligatory payments to the budget and non-budget funds at the expense of the debtor's property;

debtor- a legal entity, whose illiquidity or insolvency is the reason for applying to it bankruptcy procedures pursuant to legislation;

bankruptcy - the insolvency of the debtor officially recognized in a court's decision or announced in accordance with the out-of-court proceedings upon agreement with creditors to be a ground for liquidation of the debtor;

bankrupt - a debtor, whose insolvency is determined by the court, or officially declared in an agreement between the debtor and the creditors through out-of-court procedures;

authorized state body - the state body authorized to reorganize and liquidate insolvent enterprises in the property of which the state has a share

out-of-court procedures - an out-of-court settlement of debts of the insolvent debtor by reaching an agreement between the debtor and its creditors, if the debtor is a state owned enterprise, between the authorized agency responsible for reorganization and liquidation of insolvent state-owned enterprises and the creditors on voluntary liquidation of the debtor under supervision of the creditors or application of rehabilitation procedures to the debtor with the purpose of restoring solvency of the insolvent debtor and enabling the debtor to continue on its operation;

external management of the debtor - a procedure for performing functions of management of the insolvent debtor's property and its business activities by an administrator; administrator - a person appointed by the court to manage the debtor's property and business activities for the period of the case examination until the beginning of the liquidation proceedings, and in case of rehabilitation procedure it is used prior to its commencement;

creditor - a person who holds property claims against the debtor arising from obligations specified in civil legislation, including those to pay wages and author's remuneration, and to ensure obligatory payments to the budget and non-budget funds;

bankruptcy creditor - a natural or legal person who has property claims to the debtor and is has no secured rights;

secured creditor - a creditor whose claims are secured with the pledge of the debtor's property;

bankruptcy estate - the debtor's property, which can be recovered during the

bankruptcy proceedings;

bankruptcy proceedings - a procedure, aimed at distributing the estate of the liquidated insolvent debtor among the creditors, carried out both through in-court and out-of-court proceedings; bankruptcy manager - a person appointed pursuant to applicable norms for purposes of implementing the bankruptcy proceedings;

amicable agreement - an agreement between the insolvent debtor and creditors on deferment of payments due to creditors, and/or providing payments by installments, discounts of the debts, or satisfaction of the creditors' claims in any other way that does not contradict the law;

rehabilitation procedure - an in-court or out-of-court procedure within the framework of which any reorganizational, organizational-economic, managerial, investment, technical, financial-economic, legal and other measures which do not contradict the legislation, shall be applied to the insolvent debtor with the purpose of restoring solvency of the debtor to prevent its liquidation;

rehabilitation manager - a person to whom, under this Law, the functions of management of the insolvent debtor's property and operations are delegated for the period of the rehabilitation procedure;

financial rehabilitation (sanation) - an in-court or out-of-court rehabilitation measure under which the owner of the debtor's property (a body commissioned by him), creditors or other persons render financial assistance to the insolvent debtor, or perform any other complex set of measures aimed at mobilizing the debtor's resources, and improving its financial and economic conditions;

intentional bankruptcy - the intentional bringing of the debtor to insolvency by actions or inactions of the owner of the debtor's property or of the legal bodies of the debtor carried out by him (them) in their own interests or the interests of the third persons;

fictitious bankruptcy - an intentionally fictitious appeal of the debtor to the court to adjudicate it in bankruptcy or the debtor's official announcement its bankruptcy in an out-of-court procedure under the creditors' supervision, when the debtor has possibilities to satisfy the creditors' claims in full.

## **Section 1. General Provisions**

### **Article 1. Bankruptcy subjects**

This Law shall be applied to the cases of bankruptcy of self-supporting enterprises, other legal entities, which do not fulfill liabilities to the creditors and the budget.

### **Article 2. Creditors and debtors**

A natural or legal entity who has property claims against the debtor arising from legal or other obligations can be a creditor.

A legal entity the insolvency of which is the basis for announcing it bankrupt through bankruptcy proceedings is a debtor.

### **Article 3. Grounds for application of bankruptcy proceedings**

Insolvency of the debtor shall be the basis for initiating a bankruptcy case by the

creditor.

A debtor shall be considered insolvent if it failed to fulfill its obligation of \_\_\_\_\_ minimum salaries within three months after the date of its performance has arrived. Insolvency of the debtor shall be the basis for initiating a bankruptcy case by the debtor. Insolvency of the debtor shall be sufficient basis for the debtor's official announcement of its bankruptcy or implementation of the out-of-court rehabilitation procedures.

#### **Article 4. Concept and attributes of bankruptcy**

Bankruptcy is the insolvency of the debtor officially recognized in a court's decision or announced in accordance with the out-of-court proceedings upon agreements with creditors to be a ground for liquidation of the debtor.

Suspension of payments because of the excess of the obligations (liabilities) over the property (assets) is considered to be a basic attribute of bankruptcy.

#### **Article 5. Property (assets) and obligations (liabilities).**

The property (assets) of the enterprise include fixed assets, current assets, financial and intangible assets according to the accepted classification.

The obligations (liabilities with the exception of субвенция, subsidies and ownership capital) of the enterprise include loan and debt capital.

#### **Article 6. Bankruptcy case**

The economic court of the Republic of Tajikistan shall initiate bankruptcy proceedings in the debtor's location indicated in the founder documents.

Bankruptcy cases shall be regulated by Economic Judicial Code of the Republic of Tajikistan and other law of the republic of Tajikistan.

#### **Article 7. Administrator, rehabilitation and bankruptcy managers**

With a view to securing the interests of the parties concerned and achieving the goals of bankruptcy procedures, for the period of external management, rehabilitation or bankruptcy proceedings, all the divisions of the insolvent debtor shall be kept away from management, while the functions of managing the debtor's property and operations shall be delegated to the administrator, the rehabilitation manager or bankruptcy manager.

The procedures for and terms of appointing the administrator, the rehabilitation and bankruptcy managers, requirements to the candidates, their jobs description, including the right to remuneration, and the scope of their authority in managing the business and property of the insolvent debtor shall be regulated by this Law and by the contract, concluded with the creditor's committee, and if it is not created - with a person authorized by the creditors' meeting.

A person shall be appointed administrator, rehabilitation and bankruptcy manager, if he is licensed to perform such activity by a state body authorized to carry out reorganization and liquidation of insolvent state owned enterprises.

A person shall not be appointed administrator, the rehabilitation and bankruptcy manager, if he is:

an official of the debtor's or creditor's administration;

a person removed from management on the grounds provided for the present Law; officials of an enterprise than was deemed to be bankrupt earlier.

The administrator, the rehabilitation and bankruptcy managers shall be removed from managing the debtor's business and property in accordance with the procedure that is used for their appointment in the event of

non-performance or ill-performance of the duties they are vested with, performance of activities impairing interests or giving preferential treatment to certain creditors, and other activity or inactivity that can be the grounds for the director's dismissal;

revocation or suspension of the license;

inability to perform the duties they are vested with.

### **Article 8. Restoration of property and invalidation of a debtor's transactions concluded before the debtor was adjudicated in bankruptcy.**

Transactions concluded by a debtor before adjudicating it in bankruptcy, may be declared invalid and void by the administrator, the rehabilitation and bankruptcy managers on the basis of :

the insolvent debtor's transaction was performed after the suspension of payments to damage the creditor's interests;

the insolvent debtor's transaction was performed after the suspension of payments to result in preferential satisfaction of claims of some specific creditors;

the transaction not meet the requirements of the law.

The creditors, administrator, rehabilitation and bankruptcy managers shall have the right to demand invalidation of the transaction concluded over a one-year period before adjudicating the debtor in bankruptcy if the transaction was concluded:

by the insolvent debtor with his close relatives, or a husband (wife);

to transfer the property free of charge, or at the prices significantly lower than the market prices, or without sufficient grounds.

The creditors, administrator, rehabilitation and bankruptcy managers shall have the right to demand the return of the debtor's property assigned by it four month prior to the institution of period before institution of a bankruptcy proceedings, or taking a decision on the debtor's liquidation, or implementation of the out-of court rehabilitation procedure, by the creditors who were paid before the payment was due. In this case the creditors' rights shall be secured by the regulations of this Law.

### **Article 9. Refusal to fulfill an agreement**

The administrator, as well as the rehabilitation manager, shall have the right to refuse to fulfill contracts that were entered into by the debtor before the bankruptcy proceeding was instituted, and that were not executed, fully or partially, by both parties, provided there areis one of the following circumstances:

1) the fulfillment of the contract would incur losses for the debtor;

2) the contract contains performance requirements onerous for the debtor if compared to similar contracts concluded under comparable circumstances;

3) the contract is designed for a long term (more than one year) or is expected to bring the debtor results in the distant future;

4) other grounds whichit is assumed that the fulfillment of the contract may result in

detrimental consequences to creditors.

In the event of the refusal to perform the contract under this Article, the counteragent may enforce payment of real and actual damages caused by cancellation of the contract or contest the grounds for such refusal.

#### **Article 10. List of creditors' claims**

With a view to satisfying the creditors' claims and securing their interests, the list of creditors' claims shall be compiled for purposes of bankruptcy procedures.

The list shall cover the creditors' uncontested claims.

Deeming the creditors' claims to be well-grounded after the introduction of the bankruptcy procedure shall be done by the administrator, the rehabilitation or bankruptcy manager respectively.

The disputes between the creditors and the administrator, the rehabilitation or bankruptcy manager on the incorporation of the creditors' claims into the list or on the volume of their claims shall be handled by the court upon the respective creditor's petition.

In this case the court's decision is a ground for incorporation of the claims into the list.

### **Section 2. Creditors' Meeting and Creditors' Committee**

#### **Article 11. Formation of the creditors' meeting and creditors' committee**

With a view to securing creditors' interests and their participating in decision making in bankruptcy proceedings, the meeting of the creditors shall be convened.

The creditors' meeting, shall (provided there are more than 25 creditors) establish the creditors' committee.

The decision about the creditors' meeting and committee shall be submitted to the court.

The creditors (their representatives), administrator, rehabilitation manager and bankruptcy manager, debtor, procurator, representative of the labor collective, owner of the debtor's property (an agency authorized by it) and the authorized state agency shall have the right to participate in the creditors' meeting.

#### **Article 12. The first meeting of creditors.**

Within three days from the day of his appointment, the administrator shall publish in the official press the date and place of the first creditors' meeting. He shall send a notice to all creditors of whom he is aware and to other persons who have a right to participate in the meeting.

The first meeting of the creditors shall take place not later than 30 days from the day of introduction of external management.

In the case of an out-of-court procedure the creditors shall call their first meeting themselves in accordance with the requirements provided for by Paragraph 1 of this Article.

Subsequent sessions of the creditors' meeting are set in accordance with the procedure and terms stipulated by the creditors' meeting (the creditors' committee).

At the first meeting the creditors are obligated to:

- 1) elect the creditors' committee, provided there are more than 25 creditors;
- 2) discuss the issue of petitioning to the court about the rehabilitation procedure;
- 3) determine the amount of remuneration and procedure of payment to the administrator.

### **Article 13. Competence of the creditors' meeting**

The creditors' meeting shall be authorized to:

- 1) file and submit a petition to the court about the implementation, prolongation or termination of the rehabilitation procedures;
  - 2) present for the court's approval the candidature of the rehabilitation or bankruptcy managers;
  - 3) elect a representative of the creditors to oversee the activity of the administrator, rehabilitation and bankruptcy manager;
  - 4) put together the creditors' committee which is an operational body of the meeting.
- The powers of the creditors' committee shall be determined by the creditors' meeting.;
- 5) take decisions on conclusion of an amicable agreement;
  - 6) determine the amount of remuneration and the procedure of payment to the administrator, the rehabilitation and bankruptcy managers in accordance with the requirements set forth by this Law;
  - 7) demand from the administrator, rehabilitation and bankruptcy managers the information on the financial status of the debtor and the progress of the bankruptcy procedure;
  - 8) appeal the actions of the administrator, rehabilitation and bankruptcy managers in court as well as make decisions to move motions about their dismissal;
  - 9) consent to conclusion of transactions in cases provided for by this Law;
  - 10) acquire other rights provided for by this Law.

The creditors' meeting may delegate its powers to the creditors' committee, except for the decision-making that requires the majority of the creditors' votes.

### **Article 14. Decision-making by creditors' meeting and committee**

The bankruptcy creditors as participants of the creditors' meeting (committee) shall have the right of the deciding vote.

The secured creditor shall have the right to participate and vote at the creditors' meeting as far as the pledged property is concerned and in cases when the secured creditor refuses his pledges claims for the benefit of the creditors.

The creditors' meeting shall be deemed to be legitimate irrespective of the number of attending secured and bankruptcy loancreditors, provided that the creditors were notified in time about the date and place of the creditors' meeting.

The bankruptcy and liensecured creditors whose claims constitute more than 50% of the total volume of claims shall vote by majority on the following issues:

- 1) election of the creditors' committee;
- 2) petition of the rehabilitation procedure to the debtor;
- 3) nomination of the rehabilitation and bankruptcy managers for out-of-court procedures;

4) appeal to court to replace the administrator, rehabilitation or bankruptcy managers. The decisions on the issues that are not listed in Paragraph 4 of the this Article shall be approved by the majority of the secured and bankruptcy loan creditors. If there is no quorum, the creditors shall reconvene the meeting and shall vote by majority, except for the cases specified by this Law.

Decisions of the creditors' committee shall be approved by majority of all the members of the creditors' committee.

### **Section 3. In-Court Consideration of Bankruptcy Cases**

#### **Article 15. Purposes of legal proceedings of bankruptcy in economic court**

Examination of a bankruptcy case in the economic court shall as much as possible satisfy the creditors' claims, adjudicate the debtor free of debts and ensure normal operation of the enterprise.

#### **Article 16. Procedures for initiating a bankruptcy case**

The court shall initiate bankruptcy proceedings upon the filling of a petition by the debtor, creditor (creditors), and in the case of state owned enterprises and enterprises in which the state share of the charter capital accounts more than 25 %, and also by an authorized state agency, and a procurator in the cases specified in Article 21 of this Law.

The bankruptcy proceeding shall be considered initiated upon the court's decision on acceptance of the debtor's bankruptcy petition.

#### **Article 17. The debtor's petition**

The debtor may file a bankruptcy petition with the court based on the decision of the body of the legal entity, by virtue of its founding documents, or the owner of the debtor's property or an agency authorized by it who has the right to take such a decision by virtue of its founding documents.

The debtor is obligated to file a bankruptcy petition with the court if the owner of the property, an agency authorized by it, or the authorized body of the legal entity have decided to liquidate the debtor, with the value of its property being insufficient to pay off the creditors' claims in full, or in the event an agreement with the creditors on official declaration of the debtor a bankrupt through out-of-court procedures has not been reached.

A debtor shall file a petition to the court in writing. The petition shall be signed by the manager of the debtor legal entity or by a person authorized to do pursuant to the founding documents and should contain, except the data prescribed by the Law of the Republic of Tajikistan, indication of the debtor's steady insolvency, or preconditions for the insolvency. In addition, the debtor's petition shall contain the following items

- 1) a list of the creditors with civil Law claims of whom he is aware with specified amounts of their claims and their postal address;
- 2) a list of the debtors with civil Law claims of whom he is aware with specified amounts of their claims and their postal address;
- 3) total arrears on the employees' wages and severance payment for the debtor's

employees;

- 4) total arrears claims for injuries, except for moral injuries;
- 5) total arrears of obligatory payments to the budget and non-budget funds;
- 6) substantiation of the inability to pay off the creditors' claims;
- 7) information on actions filed against the debtor and on claims subject to indisputable (non-acceptance) writing off; 8) a list the debtor's property, including pledged property, amounts of money on bank accounts;
- 9) a list of the debtor's liabilities that will come due within one year of the filing of the debtor's petition;
- 10) a list of the attached documents.

The debtor's petition may contain other pieces of information, provided it is important for the court's review of the case, as well as the plaintiff's motions.

The debtor's bankruptcy petition shall also be supplemented with:

- 1) a copy of the decision of the owner or founders (participants), bodies of the legal entity that is a ground to file a bankruptcy petition by the debtor;
- the debtor's accounting balance as of the last reporting date;

The debtor must send copies of the bankruptcy petition to all the creditors and other persons participating in the proceedings.

The debtor's petition cannot be recalled without the subsequent decision of the court.

#### **Article 18. A petition filed by creditor(s)**

The creditor's petition to the court shall be in written form. The petition of a creditor-legal entity shall be signed by its director or his representative. If the creditor is an individual he shall be the only one authorized to sign the petition. In the event the creditor's petition is signed by its/his representative, a notarized copy of the creditor's power of attorney, authorizing the representative to file an appropriate petition with the court on behalf of the creditor, shall be attached to the petition.

The creditor's petition shall contain the following data besides those required by the Law of the Republic of Tajikistan:

- 1) the debtor's obligation to the creditor from which its claim arose; the date the payment is due;
- 2) the characteristics and the value (amount) of the claims of this creditor to the debtor;
- 3) the total arrears on the obligation, including the accrued interest, forfeits (penalties, fines), and losses payable by the debtor;
- 4) a statement of legal grounds for the creditor's claims (a court's decision, recognition of these claims by the debtor, a notary's certification of the decision);
- 5) information, known to the creditor, about the debtor's property;
- 6) a list of attached documents;

The creditor's petition shall contain the following data besides those required by the Law of the Republic of Tajikistan:

- 1) proofs of presenting claims to the debtor;
- proofs of presenting the ground of the creditor's claims;  
the creditor's motions;

other information necessary for examination of the bankruptcy case;  
The creditor's petition may be recalled prior to the economic court's decision.

#### **Article 19. Joint claims of one or several creditors**

The creditor may pool several claims in one petition against the debtor arising from different obligations.

The creditors may join several claims against the debtor arising from different obligations and file only one statement of claim with the court. The statement shall be signed by the creditors who joined their claims.

#### **Article 20. The petition of the authorized state agency to initiate bankruptcy proceedings**

The petition, filed by an authorized state agency with the court to adjudicate a debtor with the state share (contribution) of more than 25 % a bankrupt must meet the requirements set forth by this Law with respect to a creditor's petition, unless otherwise prescribed by the law or not stemming from legal relations.

#### **Article 21. Petition filed by the procurator**

A procurator shall have the right to file a bankruptcy petition a petition with the court to deem the debtor to be bankrupt provided he:

- 1) uncovers indications (signs) of an intentional bankruptcy;
- 2) uncovers indications (signs) of a fictitious bankruptcy;

The procurator shall file a petition with the court pursuant to the requirements towards the creditor's petition set forth by this Law.

The procurator's decision can be recalled prior to the economic court's decision on adjudicating the debtor in bankruptcy. The procurator's refusal to initiate the bankruptcy proceedings shall not deprive the creditor's right to institute proceeding on bankruptcy.

#### **Article 22. Debtor's response to the petition filed by the creditor**

or an authorized state agency or by the procurator

Within 5 days upon receipt of the copy of the petition filed by the creditor or an authorized state agency or procurator, the debtor shall send to the court its response to this petition and documents confirming the forwarding of a copy of the response and documents attached thereto to the person who filed the bankruptcy petition. The response shall contain the following data:

- 1) name of the economic court to which the response is forwarded;
- 2) name of the petitioner, the petition registration number and the date of filing;
- 3) debtor's objections to the creditor's claims;
- 4) total arrears on the liabilities toward other creditors, the employees' wages, obligatory payments to the budget and non-budget funds;
- 5) a list of the debtor's property, including pledged property; the amounts of money on bank accounts; numbers of the accounts and postal addresses of the banks;
- 6) evidences of potential settlement of the creditors' claims, provided the debtor recognizes them.

The absence of the debtor's response or failure to send it within the time frames set forth by Paragraph 1 of the this Article shall not interfere with the consideration of the case.

### **Article 23. Institution of bankruptcy proceedings**

Within 10 days upon receipt of the bankruptcy petition and on the proviso it was filed in conformity to the requirements set forth by the law, the economic court shall render a ruling on institution of the proceedings and preparation of the case for court examination.

The court shall forward a notarized copy of the ruling to institute bankruptcy proceedings to all the involved in the case.

### **Article 24. Specifics of institution of bankruptcy proceedings for the state enterprises with the state share of more than 25 %.**

On initiating the bankruptcy proceedings against the state enterprise with the state share of more than 25 %, the economic court shall notify the debtor's owner, or its authorized agency, on institution of the proceedings within 3 days.

The debtor's owner (its authorized agency), within 5 days upon receipt of the notification shall submit the petition on suspension the case for 40 days to take a decision (rehabilitation, liquidation).

The debtor's owner, or its authorized agency, within 30 days upon receipt of the notification shall conduct the higher debtor's administration meeting which pursuant to the founder documents has the power to take the appropriate decision (rehabilitation, liquidation).

On expiry of the term specified in Paragraph 2 of this Article, the debtor's owner (or its authorized agency) shall notify the court on the decision taken.

In case the decision of rehabilitation is taken, the debtor's owner (its authorized agency) of the state owned enterprises , or the higher debtor's agency which pursuant to the founder documents has the power to take decisions on the state enterprises with the state share of more 25 %, shall ensure to satisfy all the property claims of the creditor and legal costs; he shall submit to the economic court a rehabilitation plan together with guarantees to be the ground to suspend the legal proceedings on implementation of rehabilitation procedures.

In case the creditors are not satisfied with the guarantees submitted, the examination of the case shall be proceeded.

### **Article 25. Effects on bankruptcy proceedings**

Upon the institution of bankruptcy proceedings:

1) execution of the decisions rendered earlier by other courts or arbitration courts shall be stopped;

2) any claims of the creditor against the debtor shall be filed only in accordance with the bankruptcy procedures prescribed by this Law;

recovery of money from the debtor's accounts to satisfy the claims of creditors, tax authorities or other authorized agencies which are subject to collection, or recourse

against the debtor's property shall be prohibited;  
the official of the debtor shall be prohibited to alienate the stock they own, or shares of the debtor's property;  
The court shall, within 3 days, publish in the national mass media an announcement about the institution of bankruptcy proceedings.

#### **Article 26. Preparation of the case for court examination**

In the course of the preparation of the case initiated on the basis of the debtor's bankruptcy petition, along with the actions stipulated by procedural legislation, the court shall:

apply to the authorized state agency for the administrator's candidacy and invites him to the court session;

review the creditors' objections concerning the administrator's candidacy;

fix the court session for approval of the administrator's candidacy.

In the course of the preparation of the bankruptcy case initiated on the basis of the petition of the creditor, procurator, or other authorized persons for court consideration, along with other actions performed in accordance with Paragraph of this Article, the court shall demand and obtain the information and documents listed in Paragraphs 3 and 6 off Article 17 of this Law.

In case the debtor fails to submit the documents stipulated by Paragraph 2 of this Article, the court can charge an independent auditor to draw the documents at the expense of the debtor.

The officials not carrying out the court's decision on submitting the documents listed in Paragraph 2 of this Articles, or hampering the process, shall be made answerable to pay the penalty in the size of 50 up to 100 minimum salaries and obtain the missing information.

#### **Article 27. Introduction of external management**

In the event of uncontested claims against the debtor, the initiation of the proceeding shall result in external management of the debtor, except for the cases provided for by this Law.

Uncontested claims to the debtor shall be considered ascertained, provided as follows:

- 1) there is a court's decision or executive orders on recovery of certain amounts of money from the debtor;
- 2) the debtor recognized the creditors' claims or failed to file his objection to the claims within the specified period of time;
- 3) a bankruptcy case is initiated on the basis of the debtor's petition.

Upon introduction of external management of the debtor, the following steps shall be taken:

- 1) the administrator shall be appointed within 10 days from the moment of initiation of the bankruptcy proceedings, and from that moment onwards the bodies of the legal entity-debtor shall be removed from managing the debtor's property and business activities;
- 2) measures prescribed by Paragraph 1 of Article 25 of this Law, shall be implemented, except for the cases, prescribed by the this Article;

- 3) the administrator shall acquire the right to manage the debtor's property under the creditors' supervision;
- 4) the information about the financial status of the debtor shall no longer be considered confidential of trade secret.

Upon introduction of external management, the creditors forfeit the right to demand individual payment of their claims. All the actions with regard to the debtor shall be effectuated pursuant to the provisions of this Law.

The external management shall be valid until the court renders a decision adjudicating the debtor a bankrupt, and institutes bankruptcy proceedings, and in the event of implementation of the rehabilitation procedure - up to the launching of this procedure. The earlier appointed administrator may be vested with the functions of the rehabilitation or bankruptcy manager in accordance with the rules set forth by this Law. The external management of the debtor's property may not be introduced, on the proviso the secured and bankruptcy creditors, whose claims constitute no less than 2/3 of the total claims, grant their consent thereto, and the managing of the debtor's property shall be effectuated by the debtor's respective administrative body within the scope of authorities described in Article 28 of this Law.

#### **Article 28. Scope of authorities the administrator**

The administrator managing the debtor's property shall be authorized toshal:

- 1) dispose of the debtor's property in accordance with the procedures prescribed by this Law;
- 2) make severance payments and pay wages to the persons working on a contractual basis that come due after the introduction of external management;
- 3) pay taxes and ensure other obligatory payments to the budget that come due after the introduction of external management;
- 4) satisfy the creditors' claims that stem from the liabilities that come due after the introduction of external management;
- 5) incur expenses necessary for the debtor's activities.

The administrator shall:

- 1) keep/maintain the list of the creditors' claims;  
convene the creditors' meeting;
- 3) take measures aimed at protecting the debtor's property (assets) and recovering the debts thereto;
- 4) analyze the debtor's financial condition and trace indications of fictitious or intentional bankruptcy;
- 5) determine the practicability of the debtor's rehabilitation, including a conclusion on the motion for implementation of the rehabilitation procedure and on the rehabilitation plan;
- 6) perform other functions set forth by this Law.

#### **Article 29. Court examination**

The trial shall take place no later than 2 months after filing, provided there are no grounds for extension under the conditions envisaged by this Law.

During the hearing the court shall consider the motion for implementation of the

rehabilitation procedure. The motions may be submitted before the court renders a decision on bankruptcy.

The economic court shall involve independent auditors to determine the possibility and advisability of conducting rehabilitation procedures.

#### **Article 30. Specifics of the preliminary procedures for a bank**

The National Bank of the Republic of Tajikistan shall be notified on a bank's being a debtor. The National Bank of the Republic of Tajikistan within 15 days shall submit to the economic court its resolution on the expediency to conduct the rehabilitation procedures.

#### **Article 31. Court decisions (rulings) on bankruptcy cases**

After examination of the bankruptcy case by the court, the court may pass (render) one of the following judicial acts:

- 1) a decision on adjudication of the debtor in bankruptcy and institution of bankruptcy proceedings;
- 2) a decision on refusal to adjudicate the debtor in bankruptcy;
- 3) a ruling on suspension of the rehabilitation procedure provided there is a relevant motion; and
- 4) a ruling on halting the lawsuit and also in cases of:
  - a) satisfying the creditors' claims as a result of rehabilitation procedures; concluding amicable agreement;revoking the debtor's bankruptcy petition.

The court's rulings and decisions listed in Paragraph 1 of the this Article must conform to the requirements of procedural legislation of the Republic of Tajikistan with consideration for the characteristics set forth by this Law.  
dismisses the petition filed by the creditors

### **Chapter 4. Rehabilitation Procedure**

#### **Article 32. Grounds for applying the rehabilitation procedures**

The realistic opportunity to restore the debtor's solvency with the purpose of preventing its liquidation shall provide the ground for applying the rehabilitation procedures.

#### **Article 33. Grounds for the court decision to stop bankruptcy proceedings and apply the rehabilitation procedures to the debtor**

The court shall make a ruling to apply the rehabilitation procedures to the debtor if:

- 1) There is the realistic opportunity to restore solvency of the debtor with the purpose of preventing its liquidation.

There is a motion to apply the rehabilitation procedures to the debtor which meets the requirements of Article 34 of this Law.

The bankruptcy creditors who hold more than 2/3 of the total claims agree with the proposed debtor's rehabilitation plan with the other creditors' interests being not impaired.

### **Article 34. Petition for application of rehabilitation procedures**

An insolvent debtor, owner of the debtor's property (a body authorized by him), or a creditor may submit the petition to the court for application of the rehabilitation procedures to the debtor before the court renders a decision to adjudicate the debtor in bankruptcy.

The petition for rehabilitation procedure shall must contain must substantiation of the implementation of the above mentioned procedure with respect to the debtor, practicability of restoring the solvency of the debtor, and the name of a proposed candidate for the position of the rehabilitation manager.

A written consent of the candidate shall be attached to the petition.

The rehabilitation plan for the debtor containing concrete measures to restore the solvency of the debtor (rehabilitation measures) as well as dates of settlement of debts to the creditors shall be attached.

The year financial report shall be attached to the debtor's petition besides the documents enumerated in this Article.

### **Article 35. Effects of introduction of the rehabilitation procedure**

The rehabilitation manager shall be appointed for the period of implementation of the rehabilitation procedure with respect to the debtor. The rehabilitation manager shall have the powers of all bodies of the legal entity with regard to managing the property and business activities of the debtor.

From the moment of introduction of the rehabilitation procedure the creditors' claims shall be paid in the following priority:

- 1) severance payments, and wages to the persons who work under a labor agreement (contract), that come due after the introduction of the rehabilitation procedure;
  - 2) taxes and other obligatory payments to the budget (non-budget funds) and non-budget funds, the payment that come due after the introduction of the rehabilitation procedure;
  - 3) the creditors' claims that stem from the liabilities, inclusive of the deals made by the rehabilitation manager, that come due during the rehabilitation procedure;
- All other settlements of debts of the debtor to the creditors, including the debts collected under writs of execution or in an unconditional procedure shall be carried out in accordance with the rehabilitation plan ( schedule) with consideration of the priorities as established in Article 66 of this Law.

### **Article 36. Term of rehabilitation procedures**

The term of implementation of the rehabilitation procedures must not exceed 18 months.

At the request of the rehabilitation manager the court may extend this term for no more than 3 months.

### **Article 37. Rehabilitation manager**

The court shall approve the candidacy of the rehabilitation manager. The debtor, debtor's owner (his authorized representative or agency) or creditor may propose their candidacies for the position of the rehabilitation manager.

A legal entity may be appointed to serve as the rehabilitation manager provided the bankruptcy creditors holding 3/42/3 of the total claims agree hereto.

If there are several candidacies for the position, the rehabilitation manager shall be appointed on a competitive basis.

All the candidacies are obligated to submit to the creditors' meeting their rehabilitation plans (schedules) meeting the deadlines determined by the court. The creditors meeting is obligated to review the plans (schedules) within 10 days. That candidacy whose plan (schedule) is approved by the majority (based on the amount of claims) of the creditors, but by no fewer than 2/3 of the total claims, shall be recognized as a winner of the competition.

### **Article 38. Scope of authorities of the rehabilitation manager**

The rehabilitation manager shall:

1) receive, manage and dispose of the debtor's property pursuant to the parameters of this Law;

organize development implementation of the debtor's rehabilitation plan;

2) fulfill other functions listed in this Law.

With the consent of the creditors' meeting (committee) the rehabilitation manager shall:

1) conclude transactions to manage dispose of the debtor's real estate (sale, assignment, pledge, etc.) ,;

2) conclude transactions to manage other debtor's dispose of the debtor's other property, the value of which exceeds 20% of the value of all other assets of the debtor;

3) make decisions entailing increase of debtor's operating expenses, including wages for debtor's workers.

At the request of the creditors' representative, the rehabilitation manager shall notify him about the deals entered into. concluded transactions on disposal of the debtor's property. If there is no representative, the rehabilitation manager shall submit a monthly report on such transactions to the creditors' meeting (committee) regarding such deals.

If the total amount of the debtor's pecuniary liabilities, emerged after introduction of the rehabilitation procedures, exceeds 20% of the total amount of the creditors' claims, the rehabilitation manager may conclude other transactions that entail new pecuniary liabilities only if the creditors agree hereto.

The rehabilitation manager shall have the right to appeal to the court to invalidate the transactions, concluded by the debtor, on the basis of the grounds stipulated in Article 8 of this Law.

Rights and obligations of the rehabilitation manager are set forth by this Law, and by the Civil Code of the Republic of Tajikistan as well as specified in an agreement concluded between the rehabilitation manager and the creditors.

### **Article 39. Remuneration to the rehabilitation manager**

Remuneration to the rehabilitation manager shall be paid off out of the property of the debtor and shall be included into the debtor's current operating expenses.

The amount of remuneration and procedures for its payment shall be determined and approve by the economic court.

#### **Article 40. Termination of the rehabilitation procedure**

The rehabilitation manager may petition to the court to terminate the rehabilitation procedure with respect to the debtor in the following cases:

- 1) the rehabilitation procedure has achieved its goal;
- 2) the rehabilitation manager has come to the conclusion that it is not realistic to achieve this goal.

The owner of the debtor's property (a body commissioned by it) or any of the creditors who thinks that the implementation of the rehabilitation plan, actions (lack of actions) of the rehabilitation manager impairs his interests, may file a petition with the court to revise the plan or to terminate the rehabilitation procedure. The court, within 10 days, is obligated to consider the petition and render a ruling based on the results of the examination.

#### **Article 41. Financial rehabilitation (Sanation)**

If the plan for rehabilitation of the insolvent debtor provides for sanation as one of the rehabilitation measures, the plan must be accompanied by a written contract setting forth the amounts of money to be transferred by a sanation participant to the debtor and/or creditors in compliance with the rehabilitation plan and specifying the deadlines (terms) of payment.

A participant of sanation may undertake an obligation to secure payment of all creditors' claims within the terms they agree upon. In this case the participant of sanation or his authorized representative shall manage the debtor's estate within the limits of competence of the rehabilitation manager. The rules specified in Par. 6 of article 44 and paragraphs 4 of Article 7 of this Law shall not apply to fulfillment of managerial functions by the sanation participants with regard to the debtor's property.

The court shall have the right to make the sanation participant present documents confirming his ability to fulfill obligations specified in Paragraphs 1 and 2 of this Article.

#### **Article 42. Agreement between the participants of sanation**

Provided there are two or more sanation participants who undertook the obligation to secure payment of creditors' claims, they are obligated to conclude an agreement that would incorporate provisions on distribution of their liabilities before the creditors, responsibilities of one or several sanation participants in the event of their refusal to participate in sanation after its commencement, and procedures for their participation in managing the debtor's property.

#### **Article 43. Responsibilities of the participants of sanation**

A participant of sanation, who undertook the obligation specified in Paragraph 2 of Article 41 of this Law, shall bear subsidiary responsibility for the outstanding obligations of the debtor after its (debtor's) liquidation unless he proves that the purposes of sanation were not achieved due to force majeure circumstances or actions of the debtor's creditors or of the debtor (owner of the debtor's property).

If two or more persons participate in sanation, they shall bear the joint liability unless otherwise provided by the agreement.

The extent of the liability of a sanation participant who does not undertake the obligation to secure payment of the creditors' claims, shall be specified by an agreement between the sanation participant and the rehabilitation manager and approved by the creditors' meeting.

#### **Article 44. Rights of the participant of sanation**

If the bankruptcy proceeding is dismissed because the goal of sanation was achieved, the participant of sanation, who undertook the obligation stipulated by Paragraph 2 of Article 41 of this Law, and who is not the owner of the debtor's property, shall acquire the rights of the participant of the business partnership and comes to own the funds, invested by him as provided by a resolution of the participants' meeting before the commencement of sanation. If the debtor is a state-owned enterprise or a production cooperative, the sanation participant shall acquire such rights after the enterprise is reorganized into a business partnership at the initial stage as provided by the resolution of the state body duly authorized by the property owner or by the resolution of the meeting of the cooperative's members.

The above-mentioned resolutions shall be submitted to the court together with the rehabilitation plan (schedule). In such a case the charter capital of the newly created economic partnership may be less than the minimum amount stipulated by legislation provided that within one year the charter fund is replenished to the fixed amount.

If there are two or more persons participating in sanation, their share of the debtor's property shall be prorated by the amount of resources each of them used for sanation.

#### **Article 45. Assignment of debtor's claims**

The rehabilitation plan (schedule) may provide for assignment of the debtor's claims through the sale of these claims at an open tender that conforms to legislation.

The assignment of the debtor's claims without a recourse to an open tender may be accomplished by amicable agreement concluded in accordance with the applicable rules.

### **Chapter 4. Amicable Agreement**

#### **Article 46. General provisions**

The amicable agreement between the debtor and the creditors may be entered into at any stage of the bankruptcy proceeding before the court has decided to adjudicate the debtor in bankruptcy.

#### **Article 47. Terms to conclude an amicable agreement**

The amicable agreement cannot be entered into of the second priority claims specified in Article 66 of this Law.

The amicable agreement shall be considered to be entered into if the creditors whose claims constitute more than 2/3 of the total claims agree thereto, and if the debtor paid off the creditors' claims of other priorities in the full amount, except for the cases, when the creditors voluntarily grant a deferral, an installment plan or a debt discount.

The terms of the amicable agreement whereby the debtor is granted a deferral and/or an

installment plan shall apply to the creditors, who do not agree to enter into the amicable agreement. However, they shall not adversely affect such creditors if compared to those who belong to the same class and entered into the agreement.

The amicable agreement cannot be entered into, if bankruptcy proved to be fictitious.

#### **Article 48. The amicable agreement entering into legal force**

Amicable agreement shall be concluded in writing.

The economic court shall approve the amicable agreement and render a ruling to declare the bankruptcy procedures complete.

The amicable agreement shall enter into legal force on the date of its approval by the decision of the court and shall be binding on all the creditors.

#### **Article 49. The amicable agreement' examination in the economic court**

When filing a petition for the amicable agreement, the debtor must submit the amicable agreement signed by him or by the creditors (creditors), the creditors' motions of written objections against the amicable agreement, the balance sheet of the enterprise, the list of all the creditors with their addresses and claims, and the statement of satisfaction in the full amount of the claims of creditors other priorities.

The economic court shall notify all the parties concerned about the examination of the amicable agreement. The examination shall not be delayed if the parties invited have not appeared in the court.

Every creditor who has objections against the amicable agreement to be approved shall heard by the economic court, even if he has voted for the agreement adopted at the creditor's meeting.

All the creditors shall be paid off at least 35 % of the total debt's amount. In case the debtor asks for the deferral for more than a year, the debtor shall pay off 40 % of his debts; if the deferral term exceeds 18 months, the creditors shall be paid off 50 % of their claims.

#### **Article 50. Grounds for rejection of the amicable agreement**

The court shall reject the amicable agreement in the following cases:

1) non-observance of the rules of entering into the amicable agreement;

2) inconsistency with the requirements set forth by legislation;

the agreement contains provisions that give advantages to particular creditors, or impair the rights and legitimate interests of particular creditors;

the fulfillment of the amicable agreement will not result in restoring the solvency of the debtor.

If the court refuses to approve the amicable agreement, it shall be entitled to deem the debtor to be bankrupt and to liquidate it, or to render a ruling on implementation of rehabilitation procedures, provided that there is a petition filed by the persons specified by this Law.

#### **Article 51. Invalidation of the amicable agreement**

If any of the creditors files a claim or if the procurator files a protest, the amicable agreement may be declared null and void by the court in the event of incorrect

assessment by the debtor its property in financial statements or other accounting documents, or forging financial statements.

Amicable agreement may be annulled on agreement of the parties, or by the decision of the economic court in the following cases:

non-fulfillment of the amicable agreement;

the financial state of the enterprise gets worse. In this case creditors have the right to petition the court to recommence bankruptcy proceedings;

the debtor's activity damages the rights and interests of the creditors.

If the amicable agreement is found null and void, the proceeding is recommenced, an appropriate announcement must be published in the official press at the debtor's expense.

If the amicable agreement is found null and void, the claims of the creditors against which a deferral, installment plan, or discount was applied, must be restored to their full amount.

The settlement of the creditors' claims shall be made within the framework of the bankruptcy proceedings in accordance with the rules set forth by this Law.

## **Chapter 5. Bankruptcy Proceedings**

### **Article 52. Goal of the bankruptcy proceedings**

The bankruptcy proceedings shall be performed for purposes of paying off the creditors' claims and declaring the bankrupt free of debts.

### **Article 53. Functions of the economic court**

The economic court shall have:

1) to institute and dismiss the bankruptcy proceeding;

to approve or appoint the bankruptcy manager ;

to convene the creditors' meeting;

to observe the bankruptcy manager's activity and the creditors' meeting;

to settle disputes among the participants of the bankruptcy proceedings;

### **Article 54. Effects of instituting bankruptcy proceedings against the bankrupt**

When the court decides to deem the debtor to be bankrupt and to institute bankruptcy proceedings, the following consequences shall occur:

the bankrupt shall be banned to dispose and manage its property;

the bankrupt shall be prohibited to alienate (except when alienation is approved by the creditors' meeting),

transfer the property and redeem obligations;

3) the outstanding debts of the debtor are considered to be overdue;

4) the accrual of penalties and interest shall cease on all arrears of the bankrupt;

5) all legislative restrictions to recourse against the debtor's property are removed;

Any property or financial claims against the debtor shall be filed only within the framework of the bankruptcy proceedings.

The bankrupt may appeal to the court any illegitimate actions of the bankruptcy manager and of the creditors' meeting (committee).

### **Article 55. Bankruptcy manager**

The court shall approve or appoint a bankruptcy manager to carry out the liquidation procedure.

The bankruptcy manager shall be elected by the creditors' meeting (with the consent of the creditors holding 2/3 of the total amount of claims).

The manager may serve as the bankruptcy manager with the consent of the creditors' meeting.

If the creditors' meeting does not elect a bankruptcy manager, the court shall do so at the proposal of the authorized state body.

### **Article 56. Responsibilities of the bankruptcy manager**

The bankruptcy manager shall:

dispose and manage the debtor's property;

study the grounds for the creditors' claims;

within 2 months from the date the decision on bankruptcy of the debtor was rendered,

bring claims against all legal entities indebted to the debtor to recover the amounts

owing in accordance with the rules set forth by legislation;

identify the deals concluded by the debtor under the circumstances described in Article 8 of this Law and file a nullity action or an action for return of the property;

determine the bankruptcy estate

sell the debtor's property (assets) in order to pay off creditors' claims;

settle the accounts with the creditors.

The bankruptcy manager shall cancel labor contracts (agreements), including temporary contracts, with the employees and warn them about the cancellation of the contract to ensure their social protection as of the moment the debtor is deemed to be bankrupt.

### **Article 57. Adjudication in bankruptcy**

The bankruptcy manager shall within five days from the date when the court's decision to deem the debtor to be bankrupt comes into force, publish an announcement in the official press about the bankruptcy of the debtor and about the procedure for submitting creditors' claims and in addition notify in writing all of the creditors of whom he is aware.

Publication shall contain:

name of the economic court which institutes the legal proceedings;

name and the essential elements of the bankrupt;

date of the court's decision on adjudicating the debtor in bankruptcy which is the ground to initiate the bankruptcy procedure;

filing of the creditors' claims against the bankrupt within two months' from the date of publication of announcement of the debtor's bankruptcy;

other necessary information.

If a bank is announced bankrupt, the National Bank of the Republic of Tajikistan shall be notified.

### **Article 58. Remuneration to the bankruptcy manager**

The amount of remuneration to the rehabilitation manager shall be determined by the creditors' meeting (committee) and approved by the economic court.

Remuneration to the bankruptcy manager shall be paid off out of the property of the bankrupt in the procedure specified in Article 66 of this Law.

### **Article 59. Creditors' claims' in the bankruptcy proceedings**

The creditors' claims against the debtor may be filed with 2 months from the date of publication of the announcement of the debtor's bankruptcy. Claims of the creditors shall specify the amount of the claims (amount of the principal, interests, penalties, fines, losses).

The creditors have the right to claim the amounts, inclusive of the debts, interest, losses incurred through the failure to fulfill or bad performance of the debtor's obligations, fines and other penalties.

The amount of interest shall be determined on the date the court renders the decision to deem the debtor bankrupt.

The creditors' claims against the debtor filed at the expiry of the term specified in Paragraph 1 Article 59 of this Law shall be paid off from the bankrupt's property after the creditors' claims filed in proper time have been paid off.

### **Article 60. Consideration of the creditors' claims**

The bankruptcy manager shall consider the creditors' claims within the term specified by Paragraph 1 Article 59 of this Law. A claim shall be considered accepted if the bankruptcy manager does not raise any objections against it.

The bankruptcy manager shall make the list of accepted and denied claims with indication of the amount of the accepted claims and priority of their payment.

The bankruptcy manager shall notify all the creditors in writing about the results of the creditors' claims evaluation (regarding the acceptance or denial of the claims) on the next day after the decision is made (if the claim was denied, the reasons therefore shall be set forth).

The creditors dissatisfied with the decision by the bankruptcy manager, may within a one-month period since the decision is rendered, file an appeal with the economic court that approved the bankruptcy manager.

### **Article 61. Approval of the claims' list by the court**

The bankruptcy manager shall file a written report setting forth the claims' list and the results of the claims' review for approval by the court within three months from the date the decision on debtor's bankruptcy and bankruptcy proceedings is taken.

The economic court shall approve the list of claims submitted by the bankruptcy manager within one week.

A decision shall be rendered on the approval of the list of the claims.

### **Article 62. Valuation of the debtor's property**

During the bankruptcy proceedings the bankruptcy manager shall invite experts to inventory and assess the debtor's property (assets), including the receivables. The

amount of remuneration to the experts shall be determined by the economic court. The valuation shall be carried out pursuant to the Law of the Republic of Tajikistan.

### **Article 63. Bankrupt's estate**

The debtor's property, including its claims (receivables), including the property specified in Paragraph 2 of this Article, shall constitute the general mass of the bankrupt's estate.

The general mass of bankrupt's estate does not cover the property (assets):

to be the pledge;

that do not belong to the debtor according to the ownership (full economic running);

3) assets withdrawn from the turnover pursuant to the Law of the Republic of Tajikistan.

### **Article 64. Repayment of the secured claim, the arrearages**

on this claim shall be counted in claim secured by law of estate (pledge)

The claim secured by pledge shall be paid off as a priority. The banks' claims secured by pledge have the right of priority. Then other claims secured by pledge are executed.

### **Article 65. The amount of claims secured by law of estate (pledge)**

When assessing a claim secured by pledge, the indebtedness on the part of property that is secured shall be considered.

The secured claims of creditors claims of creditors secured by pledge shall be satisfied at the expense of the pledged secured property property.

The arrearages on the unsecured part of the claim Indebtedness on the part of the property that is not secured shall be added to the list of claims of creditors according to the order of priority specified by Article 66 of this Law.

### **Article 66. Procedure and order of priority in distribution of the bankrupt's estate**

Expenses associated with the bankruptcy proceeding, remuneration of the external administrator, bankruptcy manager and rehabilitation manger shall be covered as a priority. First, the claims of the citizens to whom the debtor has caused harm to health or life shall be paid by capitalizing appropriate periodical payments.

Second, indebtedness on obligatory payments to the budget and non-budget funds shall be paid.

Third, the wages and severance of the employees working under labor agreements and royalties shall be paid.

Fourth, the account of other creditors shall be paid pursuant to the legislative acts of the Republic of Tajikistan.

The claims of each class must be paid after full satisfaction of the claims of the previous priority.

If the debtor's estate is insufficient to pay all claims in full, it shall be distributed pro rata among the creditors of the relevant priority.

The claims of the creditors which are not satisfied because of insufficiency of the debtor's estate shall be considered paid off.

### **Article 67. Representation of the interests of the employees of the debtor**

Persons who have wages claims against the debtor shall elect in a meeting (conference), by secret ballot, a representative commissioned to protect their interests at the negotiations with the debtor and its creditors, as well as in court during the review of the claims and approval of the list of claims and results of their examination. The representative who was elected under Paragraph 1 of this Article shall enjoy all the rights of a creditor provided for by this Law during the bankruptcy proceeding. The representative of the employees shall report to the meeting (conference) about the results of the approval of the list of the creditors' claims and their examination.

### **Article 68. Sale of debtor's property**

The decision on sale of the debtor's property shall be taken by the creditors' meeting (committee) on submission of the bankruptcy manager.

The bankruptcy manager within three days from the date the decision on sale of the debtor's property is taken, shall publish official announcement about the sale and terms of sale.

Official announcement about the sale of the debtor's property is published at the expense of the debtor.

The sale of the debtor's property shall be conducted by the bankruptcy manager in accordance with auction principles.

### **Article 69. Property left after paying off creditors' claims**

The monetary assets left after paying off the creditors' claims shall be transferred by the bankruptcy manager to the owner of the debtor's property or the founders (participants) in accordance with legislation or the debtor's founding documents.

The debtor's property in kind which was not sold and which was left after paying off the creditors' claims shall be transferred to the owner or the participants (founders) of the debtor - legal entity.

### **Article 70. Relief of the bankrupt from debts**

After the settlement of accounts with the creditors the bankrupt shall be relieved from the payment of debts and other claims filed for execution and taken into consideration during the bankruptcy procedure.

The bankrupt shall not be granted debt relief if it concealed some portion of its property or transferred it to another person over a one-year period before the bankruptcy petition was filed.

### **Article 71. Bankruptcy manager's report**

After the debtor's debt relief and satisfaction of the creditors' claims the bankruptcy manager shall submit to the court his/her final report with the attached liquidation balance sheet and the report on utilization of the assets left after the claims were paid off.

The court shall approve the bankruptcy manager's report and the liquidation balance

sheet, and render a decision on dismissal of the bankruptcy case and notify the department of justice responsible for state registration of legal entities.

#### **Article 72. Completion of debtor's liquidation**

After the approval of the bankruptcy manager's report and liquidation balance sheet the court shall render a ruling on completion of the debtor's liquidation.

The ruling on completion of the liquidation of the debtor may provide for settlement of such unresolved issues as remuneration for the bankruptcy manager and the debtor's remaining property. A copy of the court's ruling shall be forwarded to the department responsible for state registration of legal entities.

The debtor's liquidation shall be considered completed and the debtor dissolved after the appropriate entry is made in the state list of legal entities.

### **Chapter 6. Out-of-Court Procedures**

#### **Article 73. Out-of-court procedures**

Out-of-court procedures are the methods that allow the debtor (owner of debtors' property or an agency commissioned by it), through negotiations with the creditors, to declare officially its bankruptcy and voluntary liquidation, or implementation of rehabilitation procedures stipulated by this Law, or the amicable settlement of debts for purposes of continuing its operations.

An agreement between the debtor (owner of the property or an agency commissioned by it) and the creditors shall specify the procedure and conditions of the out-of-court procedures.

A meeting (committee) of creditors shall be convened in accordance with the rules set forth by this Law for purposes of agreeing upon the conditions of the out-of-court procedures, monitoring their implementation, and securing protection of the creditors' interests.

The out-of-court procedures and amicable settlement of debts may be implemented on the proviso that all the claims of the preferred creditors were fully paid off, unless the preferred creditors agree to grant a deferral, payment by installments, forgiveness, or relief from debts.

#### **Article 74. Results of out-of-court procedures**

The negotiations on application of out-of-court procedures may result in:

- 1) an agreement between the debtor and all/some of the creditors about a deferral and/or payment by installments of the sums due to the creditors, discounts, or settlement of creditors' claims in another manner, so long as it does not contradict the civil legislation (amicable settlement of debts);
- 2) an agreement on implementation of the rehabilitation procedures in accordance with the procedures set forth in this Law;
- 3) an agreement on voluntary liquidation of the debtor under the creditors' control and official announcement of the debtor in bankruptcy in the procedure and terms specified by this Law.

Claims of the creditors, who did not agree with the conditions of the agreement (Paragraph 1 of this Article) or did not participate in the negotiations, must be paid off in the full amount and within a specified period of time.

In the event these claims were not fully satisfied within the specified period of time, the creditors shall have the right to bring a court action to get their claims satisfied through regular proceedings or on the grounds stipulated by this Law, that is to initiate court proceedings to deem the debtor a bankrupt.

#### **Article 75. Characteristics of the out-of-court rehabilitation procedures**

The conditions and flow of the rehabilitation procedures, as well as the candidate for the position of the rehabilitation manager shall be determined in an agreement between the debtor (owner of the property or an agency commissioned by it) and the creditors. The secured and bankruptcy creditors who hold more than 2/3 of the total amount of all claims of these creditors shall give their consent to application of out-of-court rehabilitation procedures. The claims of the creditors who did not give their consent to application of the out-of-court rehabilitation procedures must be paid off in full.

Payments for Settlement of claims specified in Paragraph 2 of Article 35 of this Law shall be effected during implementation of the rehabilitation procedures.

The duration period of the rehabilitation procedures specified in this Law may be extended by agreement between the debtor and the creditors.

The rehabilitation procedures may be terminated by an agreement of the parties or through the court by motion of one of the parties on the proviso that:

- 1) the goals of the rehabilitation procedures are not achievable;
- 2) the requirements of the agreement were not met.

#### **Article 76. Liquidation of an insolvent debtor under the creditor control**

The owner of the debtor's property (an agency commissioned by it) together with the agency authorized by the founding documents and with all the creditors shall take a decision on voluntary liquidation of the debtor. The decision shall be made on the basis of the analysis of the debtor's financial conditions that ascertains that the debtor enterprise is not able to meet its liabilities and there are no possibilities to restore its solvency.

The official announcement about voluntary liquidation of the debtor shall be published in the official press.

The creditors' meeting shall appoint the bankruptcy manager.

Upon his appointment, the bankruptcy manager shall control and manage the debtor's property and the debtor's management bodies shall be relieved of any management duties.

The bankruptcy manager shall be responsible for presenting, on a regular basis, a progress report on the debtor's liquidation at the creditors' meeting.

The bankruptcy manager shall fulfill other functions stipulated by Article 56 of this Law.

The debtor shall be prohibited from satisfying any creditors' claims at the expense of its property after the appointment of the liquidation manager, except for the secured claims of the creditors

The debtor, within seven days of the appointment of the bankruptcy manager, must submit to him the financial statements.

The procedures for selling the debtor's property and paying off the creditors' claims shall be determined in accordance with provisions set forth in Articles 62, 66 and 68 of this Law.

After the sale of the debtor's property and apportionment of the money among the creditors, the bankruptcy manager shall convene a final meeting of the creditors, inviting the owner of property of the debtor, and shall report about his performance. The meeting shall vote to take decisions on approval of the liquidation balance sheet and the report on utilization of the funds remaining after the creditors' claims were paid off, as well as on liquidation of the enterprise. The enterprise shall be considered liquidated as of the moment it is excluded from the state registration list.

Though the decision on the debtor's voluntary liquidation was reached, the creditors (creditor), after the decision is taken, may file a petition with the court to initiate bankruptcy proceedings.

## **Chapter 7. Simplified Bankruptcy Proceedings**

### **Article 77. Bankruptcy of the liquidated debtor**

If a body of the legal entity or the liquidation commission discovers the circumstances stipulated in Paragraph 2 of Article 17 of this Law, they shall file a petition with the court to deem the debtor to be bankrupt. The liquidation commission shall be obligated to notify the leading management body of the legal entity-debtor about these circumstances.

The initiation of court proceedings shall operate as an automatic stay prohibiting the owner of the debtor's property, its founders (authorized agency), all legal bodies of the debtor are deprived to dispose it in any other way.

### **Article 78. Consideration of the case by the court**

The court which instituted bankruptcy proceedings against the legal entity subject to liquidation, within one month, shall render a decision on adjudicating the debtor in bankruptcy and liquidation of the legal entity.

If during the examination of the case it is established that the debtor's property (assets) is sufficient to pay off the creditors' claims in full, the court shall decide to refuse to deem the debtor to be bankrupt. The court's decision is a ground for continuation of the debtor's liquidation through regular procedures.

### **Article 79. The procedure of liquidation of the debtor**

The bankruptcy manager appointed (approved) by the court under Article 52-73 of this Law shall liquidate the debtor in accordance with the procedure set forth by Articles 55 of this Law.

### **Article 80. Effects of the refusal to liquidate the debtor in accordance with the bankruptcy procedures**

If the owner, founders (authorized agency), or liquidation commission, or the debtor's

legal agency refuses to file a bankruptcy petition for liquidation with the court on behalf of the debtor and liquidate it, though the available circumstances allow only for bankruptcy of the legal entity, the failure to pay off the claims of all creditors in full shall result in the rejection to record the liquidation of the debtor in the unified state registration list.

**Article 81. Bankruptcy of the absent debtor**

If the debtor is absent and it is impossible to determine his whereabouts the court may, upon petition of a creditor, procurator or a tax authority initiate bankruptcy proceedings. The external management shall not be established if bankruptcy proceedings have been initiated. The court, within two weeks after the initiation of such proceedings, shall decide to deem the debtor to be bankrupt and to liquidate it. Upon the participants' filing the petition, the court may

The court shall appoint the bankruptcy manager to liquidate the absent debtor. The creditors may propose the candidate for the position of the bankruptcy manager. The bankruptcy manager shall send a written notice about the debtor's bankruptcy to all the creditors of whom he is aware. The creditors, within two months of the receipt of the notice from the bankruptcy, may file their claims against the debtor. Creditors' claims shall be paid in the order of priority set forth by Article 66 of this Law. The creditors may appeal the decision of the bankruptcy manager regarding their claims to the court prior to the approval of the liquidation balance sheet.

*December 8, 2003*