

THE LAW

on

BANKRUPTCY

Part one

General Provisions

Subject of this Law

Article 1

This Law sets forth the provisions for:

1. the conditions for initiating a bankruptcy procedure, bankruptcy proceedings and the legal consequences of its initiation and implementation,
2. reorganization of an insolvent debtor based on a bankruptcy plan,
3. personal management by an insolvent debtor (in possession), and
4. the conditions and effects of discharging the debtor of his remaining obligations.

Goals of the bankruptcy procedure

Article 2

- 1) The bankruptcy procedure shall be instituted in order to jointly satisfy the creditors claims by the realization of the debtor's assets and their distribution among the creditors.
- 2) During the bankruptcy procedure the reorganization of the debtor according the Part IV of this Law may be instituted, in order to regulate the debtor's legal status and its relations with its creditors, and especially in order to preserve its operations.

Debtor in bankruptcy

Article 3

- 1) The bankruptcy procedure may be instituted against a legal entity as well as against the assets of an individual debtor, unless provided otherwise by law. According to this Law an individual debtor is a sole proprietor or a tradesman.
- 2) The bankruptcy procedure may not be instituted against the Republic of Croatia, funds that are financed from the budget of Republic of Croatia, pension or invalidity funds of employers, sole proprietors or individual farmers, Croatian agency for health insurance and the local government or administration.
- 3) The bankruptcy proceedings may not be instituted against legal entities registered for the manufacture of arms and military equipment or provision of services to the Army of the Republic of Croatia, without the prior consent of the Ministry of Defense. If the Ministry does not deny the approval for commencing the bankruptcy procedure within 30 days from the day the notice has been extended by the court, it shall be deemed that the consent has been given. If the Ministry of Defense refuses to give the consent, the Republic of Croatia shall be severally and jointly liable for the obligations of the debtor.
- 4) If the possibility for implementing the bankruptcy procedure against the assets of some legal entity is ruled out by law, the founders or/and members of this entity are severally and jointly liable for the obligations of this entity. This provision does not apply to a joint-stock company.
- 5) During the liquidation of a legal entity, commencement of a bankruptcy procedure is permitted until the distribution of the assets is completed.

Reasons for bankruptcy

Article 4

- 1) A bankruptcy procedure may be opened only if the existence of the reasons set forth by the law is established.
- 2) The reasons for bankruptcy are: insolvency and overdebtness. (Overburdened by debt)
- 3) A debtor shall be considered insolvent if it is not able to pay its monetary obligations as they become due. It shall be considered that a debtor is unable to make its payments if it has stopped all of its payments during a 30 day period without interruption. The fact that a debtor has paid, or is able to pay, partially or in full, claims of certain creditors does not by itself mean that the debtor is solvent.
- 4) A debtor may propose the opening of a bankruptcy procedure if it shows that it is probable that it will not be able to pay existing obligations when they become due. (Threat of insolvency)

5) A bankruptcy procedure shall be instituted against a legal entity in case of its insolvency² (overburdened by debt). A debtor shall be considered insolvent (overburdened) if its debts exceed its existing obligations. It shall not be deemed that the debtor is overburdened by debt, if according to the particular circumstances of the case (development plans, available resources, sort and quality of assets, acquired insurance, etc.), it could be reasonably predicted that by continuance of operations the debtor shall continue to regularly fulfill his obligations when they become due.

6) It shall not be deemed that an overburdened corporation is a person (public corporation, comandite corporation) if any of it's members that is jointly liable for it's obligations is a physical person.

7) If a corporation is insolvent or overburdened by debt, the management is bound to file the petition for opening of the bankruptcy proceedings without delay, or at latest 21 days after the insolvency or overburdening has occurred.

Part two

Bankruptcy Procedure

1. General procedural provisions

Jurisdiction

Article 5

Bankruptcy proceedings shall be conducted exclusively by the Commercial Court of jurisdiction in the territory in which the debtor legal entity or the individual debtor has its head office.

Application of the provisions of the Law on Civil Procedure

Article 6

Unless otherwise provided by this Law, the provisions of the Law on Civil Procedure shall be applied where pertinent to bankruptcy proceedings. (Official Gazette, No. 53/91 and 91/92.)

²2 Are paragraphs 3 and 5 alternatives?

Principles of procedure

Article 7

- 1) A bankruptcy procedure shall be initiated only by a petition in bankruptcy filed by an authorized person.
- 2) Bankruptcy shall be dealt with as an emergency procedure.
- 3) The bankruptcy court shall, by virtue of its office, examine all the facts relevant to the bankruptcy procedure and therefore it may deduce the necessary evidence.
- 4) The court may issue a decision without a hearing.
- 5) The court may rule out a hearing of a debtor even if it is provided by this Law, if the persons who represent the debtor by law, the persons that have an equity interest in the debtor or the individual debtor are of an unknown address or abroad, and their hearing would result in excessive delay of the procedure. Instead of the absent debtor-individual, the court may hear the debtor's representative or next of kin if it is possible. In order to protect the debtor's rights in cases where the court has dispensed with the hearing of the debtor, the court may appoint a temporary representative for the debtor.
- 6) Unless otherwise provided by this Law, it shall not be possible to make or submit proposals, statements or objections in the event of the failure to honor the date of, or to appear at, the hearing at which such proposals, statements or objections were to be made. A petition for the restitution to original state may not be made in the course of a bankruptcy procedure.

Service

Article 8

- 1) Court notices directed to a large number of persons shall be served, unless otherwise provided by this Law, by putting them on the notice board of the court, in an easy-to-survey manner according to the date of announcement. The service shall be considered executed three days after the notice has been put on the notice board.
- 2) When, according to the provisions of this Law, decisions and other notices of the court, or other body participating in the bankruptcy proceedings, should be served on the debtor or other person that has a head office registered in a public register, service shall be made at the address of the head office stated in the register. If that would not be possible, service shall be executed by putting it on the notice board of the court. The service shall be considered executed three days after the notice has been put on the notice board.
- 3) The person with unknown address is not required to be served. If such person has designated a person with the power of attorney for receiving mail or a temporary representative, service shall be on them.

4) The bankruptcy court may entrust a public notary to execute the service that must be delivered directly. Costs of such delivery shall be considered as costs of the bankruptcy proceedings.

5) In every court, the register of notices that have been served through the notice board shall be electronically kept, according to the time of announcement, separately for each debtor. The register shall be considered public and shall be at the disposal of the interested parties during the court working hours.

6) Only the necessary data shall be entered in the register described in paragraph 5. of this Article, based on which the identity of the debtor, case number, form of the notice and the date of announcement through the notice board shall be established.

Public announcements

Article 9

1) Court notices (rules, invitations, notices, etc.) that should be publicly announced shall be published in the Official Gazette and put on the notice board of the court, as a whole or an excerpt. In the published text the exact firm or name of the debtor should be stated with the address and scope of its activities. The announcement shall be considered executed eight days after the day of publication in the Official Gazette.

2) The bankruptcy court may decide that the announcement should be published in some other publication or to repeat the announcement. In the case of repeated publishing it should be stated when and where the first publication was made. Time periods related to the publication shall start running from the day of the first publication.

3) Public announcement shall be considered as valid evidence that the service has been made to all of the interested parties, even if a special delivery is provided for by this Law.

Decisions

Article 10

1) Bankruptcy proceedings shall be declared by a court decision and an order.

2) An order shall direct the official person or a body in charge of bankruptcy proceedings to perform individual actions, unless provided otherwise by this Law.

Appealing a decision

Article 11

- 1) A decision may not be appealed unless otherwise provided by this Law.
- 2) The time limit for appealing shall be eight days, unless provided otherwise by this Law.
- 3) If, according to the provisions of this Law, service shall be made by putting the notice on the notice board of the court, the term for appeal shall start on the third day after the day of announcement of the decision on the notice board of the court, except if the decision was served by a public announcement as well.
- 4) If this Law provides for the decision to be served on the persons concerned, the term for the appeal shall start on the day of service, unless the decision was served by public announcement as well.
- 5) An appeal against a decision shall not stay the execution, unless provided otherwise by this Law.

Complaint against an order

Article 12

- 1) A complaint against a court order may be lodged within three days from its announcement, and in case the order has not been announced, within three days from the day it has been served.
- 2) The bankruptcy tribunal shall decide on a complaint and will issue an order that cannot be appealed.
- 3) A complaint does not stay the execution of an order.

Extraordinary legal remedies

Article 13

- 1) A motion for a new trial or a revision cannot be submitted during the bankruptcy procedure.

Costs of the bankruptcy proceedings

Article 14

Each of the creditors shall bear its own costs of the proceedings, unless provided otherwise by this Law.

2. Bodies of the bankruptcy procedure

2.1. General provisions

Bodies of the bankruptcy proceedings

Article 15

The bodies of bankruptcy proceedings are: a bankruptcy tribunal, bankruptcy judge, trustee in bankruptcy and creditor's committee.

2.2. Bankruptcy tribunal

Composition of the bankruptcy tribunal

Article 16

- 1) The bankruptcy tribunal shall be composed of three judges, one of whom shall be the president of the tribunal.
- 2) The bankruptcy judge shall be a member of the bankruptcy tribunal, but may not be the president of the bankruptcy tribunal.

Authority of the bankruptcy tribunal

Article 17

- 1) The bankruptcy tribunal shall:
 1. decide on the initiation of a preliminary procedure to establish if the conditions for the bankruptcy procedure exist and conduct the procedure,
 2. decide on the initiation of bankruptcy proceedings,
 3. appoint and replace the trustee, according to the provisions of this Law,
 4. decide on complaints of the trustee in bankruptcy against the orders of a bankruptcy judge,
 5. decide on complaints of the creditors, as well as the creditor's committee and creditors, against the orders of a bankruptcy judge,

6. determine which pending transactions must be concluded during the bankruptcy proceedings, according to this Law,
7. approve the cost estimate for bankruptcy proceedings and determine the remuneration for the trustee in bankruptcy,
8. approve the satisfaction of the creditors,
9. render the decision on closing the bankruptcy proceedings,
10. perform other tasks provided for by this Law.

2) The bankruptcy tribunal may, by virtue of its office and on the basis of a complaint or a proposal, alter the decisions of the bankruptcy judge or of the trustee in bankruptcy, if it establishes that they are contrary to law and inappropriate.

2.3. Bankruptcy judge

Competencies of the bankruptcy judge

Article 18

- 1) The bankruptcy judge shall be competent in all matters related to the bankruptcy proceedings, unless the provisions of this Law provide for the competence of the bankruptcy tribunal or other body of bankruptcy proceedings.
- 2) The bankruptcy judge shall supervise the work of the trustee in bankruptcy and give him binding instructions.
- 3) The bankruptcy judge shall supervise the operation of the creditor's committee.

Appeal against the decision of a bankruptcy judge

Article 19

The trustee in bankruptcy, creditor's committee, or the creditors, may lodge an appeal with the bankruptcy tribunal against the decision of the bankruptcy judge.

2.4. The trustee in bankruptcy

Eligibility to serve as trustee in bankruptcy

Article 20

- 1) The trustee in bankruptcy shall be a natural person with the necessary expertise and business experience.

2) The trustee may not be a person that should be recused as a judge and especially, a person who is a close relative of a member of the bankruptcy tribunal, persons liable for the obligations in the bankruptcy, members of the managing board and other bodies of the debtor or creditor or persons in competition with the debtor.

3) The trustee in bankruptcy may not be a person who is not qualified according to law to be a member of the managing board, supervisory board or similar body of the debtor, nor a person that has been employed by the debtor or was a member of any debtor's body.

4) An notary public, associated notary public, or an attorney may be appointed as a trustee in bankruptcy, with their consent.

The list of trustees

Article 21

1) The list of trustees in bankruptcy is determined by the president of the Commercial Court for a period of four years, after the opinion of the local Chamber of Commerce and local Chamber of Craftsmen has been given. Once established, additional trustees may not be added to the list. If extraordinary circumstances demand it, the President of the Commercial Court, following approval of the Minister of Justice, may prepare a new list of trustees.

2) The Chambers shall deliver their opinions and possible suggestions to the court, within thirty days after they receive the request from the President of the Commercial Court.

3) If the Chambers do not proceed according to paragraph 2. of this Article, the list shall be determined regardless of that fact.

Appointment of the trustee

Article 22

1) The trustee in bankruptcy shall be appointed in the decision to open the bankruptcy procedure.

2) The decision on appointment of the trustee in bankruptcy may be appealed by appealing the decision to open the bankruptcy procedure, by which the trustee has been appointed.

3) If by the appeal against the decision to open the bankruptcy proceedings the decision on appointment of the trustee is appealed as well, following this appeal the tribunal can alter (only) the decision on appointment of the trustee, within the three days.

Against the tribunal's decision on appointment of a new trustee the appeal is permitted.

5) In assuming office, the trustee in bankruptcy shall state before the president of the bankruptcy tribunal that he shall discharge his duty conscientiously following the Constitution, laws and legal system of the Republic of Croatia. On this occasion the bankruptcy trustee shall be issued the certificate of appointment which must be returned immediately after completion of the office.

Appointment of the second trustee

Article 23

1) During the first meeting of the creditors, after the trustee has been appointed, the creditors may elect another person to serve as trustee in bankruptcy instead of the one appointed by the bankruptcy tribunal. The newly appointed trustee does not have to be on the list of trustees in bankruptcy. The newly appointed trustee shall be issued the certificate of appointment after he gives a statement that he shall discharge his duties conscientiously.

2) The bankruptcy tribunal shall render the decision on approval of the appointment of the new trustee. If the bankruptcy tribunal does not issue this decision within three days, it shall be considered that a newly elected trustee in bankruptcy has been approved.

3) The decision by which the bankruptcy tribunal has rejected the appointment of the elected trustee in bankruptcy may be appealed by an appeal submitted by any of the creditors.

4) The competencies of previously appointed trustee cease to exist at the moment of surrender of the certificate of appointment to the new trustee.

5) Previously appointed trustee is bound to execute the surrender of its office to the newly appointed trustee within three days.

6) The bankruptcy judge shall determine necessary measures in order to ensure the take over of the duties between the trustees

Authority of the trustee

Article 24

1) The trustee in bankruptcy shall exercise the rights and discharge the obligations of the debtor's managing bodies, unless otherwise provided by this Law.

2) If the debtor continues with its affairs during the bankruptcy procedure, the trustee shall manage these affairs.

3) The trustee in bankruptcy represents the debtor.

4) For the individual debtor, the trustee in bankruptcy shall manage only those affairs that are related to the bankruptcy estate and represents the debtor as a debtor in bankruptcy with the competencies of a legal representative.

5) The trustee in bankruptcy may file a written complaint with the bankruptcy tribunal against the directions and orders of the bankruptcy judge within three days, and if the order or decision has to be executed within a shorter period, within that period. The trustee may postpone the execution of the order or decision until the bankruptcy tribunal has decided on the matter, except if this might result in severe consequences.

Duties of the trustee

Article 25

1) The trustee in bankruptcy is bound to proceed with consciousness and care, and in particular:

1. update the books and records to the day of opening of the bankruptcy proceedings,
2. prepare, with the consent of the bankruptcy judge, the cost estimate for the proceedings and submit it to the bankruptcy tribunal for approval,
3. set up the commission to take inventory,
4. prepare an opening balance sheet,
5. in the manner of a good manager, see to it that the commenced and unfinished transactions of the debtor are finished and that actions necessary to prevent damage to the debtor's assets are carried out,
6. see to it that the claims of the debtor are satisfied,
7. conscientiously conduct the debtor's affairs, if the affairs are being continued,
8. liquidate or turn into cash, with the care of good manager the assets of the debtor which comprise the bankruptcy estate,
9. prepare the distribution to creditors and, after approval, execute the distribution,
10. deliver the closing balance of the proceedings to the creditor's committee,
11. execute the subsequent distribution to the creditors.

2). The trustee in bankruptcy shall submit written reports on the course of the bankruptcy proceedings and the state of the bankruptcy estate once every three months, or when asked to do so by the bankruptcy tribunal, bankruptcy judge or creditor's committee.

Supervision of the trustee

Article 26

1) The work of the trustee in bankruptcy shall be supervised by the bankruptcy judge and bankruptcy tribunal which are entitled to demand a report or information on the course of the proceedings.

- 2) If the trustee in bankruptcy does not proceed according to the order of the bankruptcy tribunal to undertake actions described in Article 25. of this Law the bankruptcy tribunal may fine him. The amount of a single fine may not exceed 10.000 kuna. The trustee may appeal this decision.
- 3) The work of the trustee in bankruptcy shall be supervised by the bankruptcy judge, bankruptcy tribunal and creditor's committee.

Removal of the trustee

Article 27

- 1) By the virtue of its office or upon a request of the bankruptcy judge, trustee in bankruptcy, or the creditor's committee, the bankruptcy tribunal may dismiss the trustee in bankruptcy if the latter does not perform his duties successfully or for other legitimate reasons. Prior to such decision the bankruptcy tribunal shall enable the trustee to make a statement, except if serious reasons demand for different course of action.
- 2) The trustee in bankruptcy may appeal the decision on his dismissal. If the decision on his dismissal has been overruled, creditor's committee and each of the creditors, may appeal this decision.
- 3) The trustee in bankruptcy may be relieved of duty on his own initiative. In that case, only the trustee may appeal the decision on dismissal, or decision rejecting this motion.
- 4) The bankruptcy tribunal may order the dismissed trustee to return whatever he has been given during the proceedings.
- 5) The bankruptcy tribunal may sanction the decision from paragraph 4. of this Article by threatening the trustee with fine from Article 26. paragraph 2. of this Law.

Liability of the trustee

Article 28

- 1) The trustee in bankruptcy shall be liable for the damages that have resulted from the infringement of his duties, to all parties in the proceedings.
- 2) The trustee in bankruptcy shall not be liable for the damage that has occurred as a result of action that has been approved by the bankruptcy tribunal or the bankruptcy judge or action that has been undertaken in order to execute an order or decision made by the bankruptcy judge, unless he has manipulated the bankruptcy judge into issuing such a decision or order by fraud.
- 3) The trustee shall be liable for the damage caused by the debtor's employees only if the damage has occurred due to the flaw in supervising them.

4) The trustee in bankruptcy is bound to reimburse the creditor of the bankruptcy estate for the damage he has suffered due to the unfulfillment of the obligation of the estate which has been accepted by the trustee's legal transaction, except if the trustee, in time of acceptance of this obligation could not have foreseen that the estate shall not be sufficient for its fulfillment.

5) The statute of limitations on right to claim the restitution for damages inflicted by the trustee's infringements of his duties is three years after the damaged party has learned about the damage and the circumstances on which the liability of the trustee is based. Generally, the statute of limitations is three years from the day when the decision on conclusion of the bankruptcy procedure became final. The statute of limitations regarding the demand for recovering damages caused by the breach of duties related to a subsequent distribution is three years after the subsequent distribution was concluded.³

6) The trustee in bankruptcy, immediately after assuming office, is obliged to obtain insurance against the liabilities provided for in this Article. The amount of the insurance shall be set by the bankruptcy judge according to the value of the bankruptcy estate and the expected complexity of the procedure. The cost of this insurance shall be considered a cost of the bankruptcy proceedings.

Compensation and remuneration of the trustee

Article 29

1) The trustee in bankruptcy shall be entitled to remuneration for his work and compensation for actual expenses.

2) The amount of the remuneration shall be determined by the bankruptcy tribunal at the time of the conclusion of the proceedings, taking into consideration the scope of tasks, the manner in which they were performed and the value of the bankruptcy estate.

3) The remuneration and compensation shall be determined by a decision of the bankruptcy tribunal.

4) The decision from paragraph 3. of this Article shall be specially served on the members of the creditor's committee, if there is one, and on the individual debtor. Notice of the determination of the remuneration and compensation, without stating the amounts, shall be announced on the notice board of the court, along with the instruction that the complete text may be inspected in the court administration office.

³Subsequent distribution refers to a distribution after the bankruptcy proceedings have been closed (Article 199)

5) The trustee in bankruptcy, individual debtor and each of the bankruptcy creditors may lodge a special appeal against this decision.

6) The bankruptcy tribunal may, during the procedure, approve advance payments on the trustee's remuneration and decide on compensation of expenses incurred. The advance may be set in monthly payments.

The code on remuneration and compensation of trustee

Article 30

1) The Minister of Justice shall set the basic principles for the determination of remuneration and compensation of the trustees in bankruptcy in a special regulation. (book of rules)

2) Until the code from paragraph 1. shall be made, the amount of remuneration and compensation shall be determined by the bankruptcy tribunal according to the provisions from Article 29. of this Law.

Rendering accounts

Article 31

1) The trustee in bankruptcy shall present his accounts to the creditors when concluding his duty.

2) The bankruptcy judge shall, before the creditors assembly convenes, examine the final account submitted by the trustee and confirm that it has been examined. If necessary, the judge may order the final account to be examined by experts.

3) If a creditor's committee has been established, the bankruptcy judge shall, prior to his examination, send the account to the creditor's committee and set a date for the committee to comment on the account. Once examined, the final account, supporting documentation, and the comments of the creditor's committee shall be presented to the creditors, at the court administration office. At least eight days should elapse between the date of the presentation of the accounts and the creditors assembly session.

3) The creditors may order the trustee in bankruptcy to present period or interim accounts during the procedure. Provisions set forth in paragraphs 1., 2. and 3. of this Article shall be applied accordingly to these accounts.

2.5. Creditor's committee

Establishing the creditor's committee prior to the creditors' session

Article 32

1) In order to protect the interests of the creditors in the bankruptcy proceedings and before the first creditors session, the bankruptcy tribunal may establish a creditor's committee and appoint its members.

2) The separate creditors, bankruptcy creditors with highest claims and the creditors with small claims should be represented on the creditor's committee. The representative of former employees of the debtor should be present on the committee, unless they, as creditors in bankruptcy, have insignificant claims.

3) Persons who are not creditors may be appointed to the creditor's committee as well if they could contribute to the work of committee with their expertise.

4) The number of members of the creditor's committee shall be set by the bankruptcy tribunal and it has to be an odd number.

5) When this Law provides that the creditor's committee shall undertake certain actions within the procedure, the official statements, reports and other documents shall be submitted by the president of the committee on behalf of the committee, based on the committee's decisions.

6) If the number of creditors is less than five, the powers of the committee shall be executed by all of the creditors.

Establishing the creditor's committee

Article 33

1) The creditors shall decide on establishing the creditor's committee on their first session. If the committee has already been established by the court, the creditors shall decide whether this committee should be retained.

2) The creditors may exclude the members appointed by the bankruptcy tribunal and appoint other or additional members to the creditor's committee

Tasks of the creditor's committee

Article 34

1) The creditor's committee shall supervise the trustee in bankruptcy and assist him in conducting the bankruptcy procedures, monitor the course of the proceedings, inspect the books and records, and order an examination of the revenues and cash balances. The creditor's committee may authorize some of its members to execute these duties.

2) Within the scope of its activities, the creditor's committee shall in particular:

1. consider reports of the trustee in bankruptcy on the course of the bankruptcy proceedings and the state of the bankruptcy estate,
2. inspect the books and records that have been taken over by the trustee in bankruptcy,
3. complain to the bankruptcy judge about the manner in which the trustee in bankruptcy discharges his duties,
4. give the bankruptcy tribunal its opinion on realization of the assets of the debtor, when asked to do so by the tribunal,
5. give the bankruptcy tribunal its opinion concerning the continuation of pending transactions, and work of the debtor, when asked to do so by the tribunal,
6. give the bankruptcy tribunal its opinion concerning the acknowledgment of justified deficits established during the inventory.

3) The creditor's committee shall be bound to inform the creditors of the course of the bankruptcy proceedings and the state of the bankruptcy estate.

Removal of creditor's committee members

Article 35

The bankruptcy tribunal may relieve a member of the creditor's committee from his duties, ex officio or upon the request by creditors, based on the existence of important reasons. Prior to this decision the member of the creditor's committee should be heard. The member shall have the right to a special appeal of this decision.

Liabilities of the creditor's committee members

Article 36

Members of the creditor's committee shall be liable for damages incurred to the separate and bankruptcy creditors if the damage is a result of infringement of their duties determined by the law. The provisions on the statute of limitations that apply to the liabilities of the trustee in bankruptcy shall be applied accordingly to the statute of limitations on demand for restitution of damage caused by the creditor's committee members.

Meetings and decisions of the creditor's committee

Article 37

The creditor's committee shall decide on matters within the scope of its activities in sessions.

2) The first session shall be convened by the bankruptcy judge, ex officio, or upon a proposal made by the trustee in bankruptcy or a majority of the committee's members. At the first session the members of the committee shall elect a president of the committee.

- 3) Further sessions may be convened by the president as well.
- 4) A person empowered by a member of the creditor's committee may substitute for that member at sessions of the creditor's committee.
- 5) The creditor's committee sessions may be attended by the bankruptcy judge and the trustee in bankruptcy, but they shall have no right to vote. It shall be mandatory to invite both of them to creditors' committee sessions.
- 6) The creditor's committee shall decide by majority vote of the members present at the session; if the votes are divided, the decision shall be made by the bankruptcy judge.

Remuneration and compensation

Article 38

- 1) The members of the creditor's committee shall be entitled to remuneration for their work and compensation of necessary expenses. For determining the remuneration, the volume of work and time consumed shall be taken into consideration.
- 2) The provisions of this Law on remuneration and compensation for the trustee in bankruptcy shall be applied to the remuneration and compensation for the creditor's committee members accordingly.

3. Commencement of a case

Proposal for commencing a bankruptcy proceeding

Article 39

- 1) Bankruptcy proceedings shall be initiated by a proposal filed by a creditor or the debtor.
- 2) A creditor with a legal interest in initiation of the bankruptcy proceedings shall be entitled to submit a proposal for commencing bankruptcy proceedings if it makes the existence of its claim and any of the reasons for initiating the bankruptcy proceedings plausible.
- 3) The proposal for initiating the bankruptcy proceedings over the estate of a legal entity may be submitted on behalf of the debtor by any person with the legal authority to represent the legal entity or any of the liquidators.
- 4) The proposal described in paragraph 3. of this Article that has not been submitted by the persons authorized to represent the legal entity by the law or any of the liquidators shall be permitted only if the proposer makes the existence of any of the reasons for initiation of the proceedings plausible. The bankruptcy tribunal shall, in that case, hear all of the other persons legally authorized to represent the debtor or any of the liquidators.

- 5) The individual debtor shall personally submit the proposal for initiation of the bankruptcy proceedings over his estate.
- 6) The persons legally authorized to represent the debtor, or the individual debtor in person, shall be bound to submit a proposal for bankruptcy not later than twenty one from the day when the incapability for payment has occurred.
- 7) The persons mentioned in paragraph 6 of this Article shall be liable for damages incurred by creditors by omission of the duties determined in paragraph 6.

Withdrawal of a proposal

Article 40

- 1) A proposal in bankruptcy may be withdrawn until the notice of commencement of bankruptcy proceedings has been put on the notice board of the court or until the decision rejecting or dismissing the proposal has been issued.
- 2) If the proposer withdraws the petition for commencing the bankruptcy proceedings, the bankruptcy tribunal shall suspend the procedure. The costs of the proceedings so far shall be borne by the petitioner.

Advance payment for the costs of preliminary proceedings

Article 41

- 1) The proposer shall be bound to make advance payment for the costs of bankruptcy proceedings in the amount determined by the bankruptcy tribunal.
- 2) If the proposer fails to deposit the specified amount of advance within the determined period, the bankruptcy tribunal shall reject the proposal by a decision.
- 3) Exceptionally, the bankruptcy tribunal may decide that the proceedings be continued although the advance payment has not been made.
- 4) If the bankruptcy proceedings are opened, the advance payment shall be counted in the costs of the proceedings.

4. Preliminary proceedings

Starting the preliminary proceedings

Article 42

1) On the basis of the petition in bankruptcy, the bankruptcy tribunal shall pass a decision instituting the preliminary procedure in order to determine the existence of the conditions for the opening of the bankruptcy procedure (preliminary procedure), or shall reject the petition in bankruptcy.

2) In the decision from paragraph 1. of the Article, the bankruptcy tribunal shall decide which of its members shall serve as the bankruptcy judge, and it may appoint the temporary trustee in bankruptcy.

3) If the debtor files the petition in bankruptcy, the bankruptcy tribunal shall decide on opening of the bankruptcy proceedings without the preliminary procedure. If the debtor, after the preliminary procedure has been started, admits the existence of the conditions for opening the bankruptcy proceedings, the bankruptcy tribunal shall render a decision to commence the bankruptcy proceedings without further continuation of the preliminary procedure.

Obligatory disclosure of information

Article 43

1) After the petition in bankruptcy has been submitted, the debtor, members of the management, the supervising body or similar bodies of the debtor, and the debtor's employees are bound to present all of the needed information and data to the bodies of the bankruptcy procedure, even if their duties or employment have terminated.

2) The bankruptcy judge may order the debtor and the bodies of the debtor to present, within a determined time, a written report on the financial and economic situation of the debtor. The members of the debtors bodies are liable for the verity and authenticity of the statements in the report.

Adequate protection

Article 44

1) In the decision on opening of the preliminary procedure, or by a special decision, the bankruptcy tribunal shall, ex officio or upon a proposition of the petitioner, determine all the measures that it deems necessary in order to prevent such changes in the financial situation of the debtor that might be unfavorable to the creditors.

2) The bankruptcy tribunal may particularly:

1. appoint the temporary (interim) trustee in bankruptcy - all of the provisions of this Law regarding the trustee in bankruptcy shall be applied accordingly to the interim trustee,
2. order a general suspension on the disposal of the debtor's assets, or make the validity of debtor's decisions regarding the disposal of its assets conditional on the consent of the bankruptcy judge or interim trustee,

3. prohibit or temporary stay the decision on enforcement or securing claims against the debtor,
4. suspend payments from the debtor's account.

3) The bankruptcy tribunal may, if justified reasons exist, order the measures from paragraph 1. and 2. to be instituted even before the decision on opening of the preliminary procedure has been passed.

4) If the other measures would not suffice, the bankruptcy tribunal may order the persons from Article 43. paragraph 1. of this Law to be brought in by force.

6) The bankruptcy council may fine the persons from paragraph 4. of this Article up to the amount of 50,000 kunas.

Interim trustee in bankruptcy

Article 45

1) If the interim trustee in bankruptcy for the debtor has been appointed and if the general suspension on the disposal of debtor's assets has been decided on, the interim trustee in bankruptcy shall be empowered to manage and dispose of the debtor's assets. In this case the interim trustee shall be bound to:

1. protect and maintain the debtor's assets,
2. continue managing the debtor's company until the decision on opening of the bankruptcy proceedings, unless the rest of the proceedings have been ordered by the bankruptcy court, in order to prevent the considerable diminishing of the assets,
3. determine if the debtor's assets are sufficient to cover the expenses of the proceedings.

2) The bankruptcy judge may ask an interim trustee in bankruptcy, as an expert person, to examine the existence of the reasons for opening the procedure and the prospects for continuing the debtor's affairs.

3) If the interim trustee in bankruptcy has been appointed, and no general suspension on disposal of the assets has been ordered, the duties of the interim trustee shall be determined by the court. They may not exceed the duties determined by the paragraph 1. of this Article.

4) The interim trustee in bankruptcy shall be authorized to enter the debtor's business premises and execute necessary activities. The debtor or debtor's bodies are obliged to enable the trustee to inspect all of the books and records of the debtor. In order to ensure obtaining the necessary information, the measures that can be applied after the opening of the bankruptcy proceedings may be executed against the debtor and his bodies at this stage as well.

Announcement of the limitation on disposal

Article 46

- 1) The court decisions that determine limitations on disposal provided in Article 49. paragraph 2. sent. 2. of this Law and those by which the interim trustee is being appointed shall be publicly announced. This decisions shall be served on the debtor, and the interim trustee in bankruptcy. The debtor's debtors shall be called to fulfill their obligations according to the published decision.
- 2) The decision from paragraph 1. of this Article shall be served on the register in which the debtor is registered.
- 3) For registering the limitations on disposal in the land register, the register of vessels, the register of vessels that are being built and the aircraft register, the provisions of this Law regarding the registration of opening of the bankruptcy proceedings shall be applied accordingly.

Effects of limitation on disposal

Article 47

- 1) In case of violation of the limitations on disposal from Article 44., the provisions of this Law regarding the legal consequences of violating the disposal limitations ordered at the time of opening of the bankruptcy proceedings shall be applied accordingly.
- 2) If the authorization for disposal of the debtor's assets has been vested in the interim trustee in bankruptcy, the provisions of this Law regarding the engagement in cases after the opening of the bankruptcy proceedings shall be applied accordingly to pending cases.

Annulling the limitation on disposal

Article 48

- 1) The decision on dissolving the protective measures shall be announced in the same way as the decision introducing them was announced.
- 2) If the authority to dispose of the debtor's assets has been passed over to the interim trustee, he shall, prior to his release, cover all the incurred costs and fulfill the obligations incurred by him, on behalf of the debtor. The same applies to the obligations resulting from permanent contractual obligations, if the interim trustee has accepted a performance in favor of the estate he is managing.
- 3) In emergency cases, the bankruptcy tribunal may order the actions from paragraph 2. to be executed by the newly appointed trustee, instead of the interim trustee.

Hearing for giving statements on petition in bankruptcy

Article 49

- 1) Immediately after it issues a decision to open the preliminary procedure, the bankruptcy tribunal shall convene a hearing at which the legal representatives of the debtor or an individual debtor, the petitioner, banks in which the debtor has its accounts, the interim trustee in bankruptcy and, if necessary, other persons, shall be invited.
- 2) In the hearing from paragraph 1. of this Article, the invited persons shall declare themselves regarding the petition for opening of the bankruptcy proceedings. The parties may declare themselves in writing as well.

Statement on assuming the debt

Article 50

- 1) If in the hearing from Article 54. of this Law, the statement on assuming the debt is given, the bankruptcy tribunal shall evaluate the statement, and where necessary, check it and ask for the appropriate guaranty. For this reason the bankruptcy tribunal may adjourn the hearing.
- 2) If the statement turns out to be ungrounded, the person who made the statement shall be liable for the damage incurred and the costs of the proceedings.
- 3) After the court has given approval and the debt has been assumed, the person who has assumed the debt, as well as his guarantors, and the debtor shall be jointly and severally liable for the obligations of the debtor incurred until the day the statement has been made.
- 4) By the decision under which the assumption of the debt has been approved, the bankruptcy tribunal shall suspend the bankruptcy proceedings. This decision may be appealed by the debtor and the petitioner.

Examination of economic and financial position of the debtor

Article 51

- 1) The bankruptcy tribunal shall assign one or more experts to examine, within 15 day period, and in association with, and under the instructions of the bankruptcy judge and appointed interim trustee, whether the debtor is insolvent or overburdened by debt.

Cases where examination of financial position shall not be undertaken

Article 52

- 1) The experts from Article 51. of this Law shall not be assigned if the conditions for opening of the bankruptcy proceedings without the prior examination of the insolvency or overburdening by debt have been established.
- 3) The experts from paragraph 1 of this Article shall not be assigned if the debtor's insolvency can be definitively established from the fact that it has stopped all payments. The fact that the debtor has stopped its payments can be definitively established from a report of the legal entities that perform the payment operations for the debtor.

5. Opening of the bankruptcy proceedings

Hearing and deciding on opening of the proceedings

Article 53

- 1) After receiving the report from the bankruptcy judge or the interim trustee in bankruptcy and the experts opinion on insolvency and overburdening by debt of the debtor, the bankruptcy tribunal shall determine the date of the hearing to discuss if the conditions for opening of the bankruptcy proceedings exist. The petitioner, legal representatives of the debtor or the individual debtor, interim trustee in bankruptcy and, if necessary, the experts shall be invited to attend.
- 2) The hearing from paragraph 1. of this Article will examine the possibilities for the debt to be assumed or for the forced settlement to be concluded. In this case the provision from Article 50. paragraph 4. of this Law shall be applied.
- 3) At the hearing or no later than three days after the hearing, the bankruptcy tribunal shall pass a decision to open bankruptcy proceedings against the debtor or to reject the petition in bankruptcy.
- 4) In the decision on rejecting the bankruptcy petition, the tribunal shall determine who is to bear the expenses of the proceedings.
- 5) A special appeal against the decision on rejecting the petition may be lodged by the legal representatives of the debtor or an individual debtor.
- 6) If it is established that the debtor has become solvent before the completion of the preliminary proceedings, the proceedings shall be suspended. The costs of the proceedings conducted shall be borne by the debtor.

Decision on opening of the proceedings - contents

Article 54

1) If it renders a decision to open the bankruptcy proceedings, the bankruptcy tribunal shall appoint the trustee in bankruptcy in the same decision.

2) In the decision on opening the bankruptcy proceedings the following data should be stated:

1. the company name, the firm, or name and family name, scope of activities and business head office,

2. name, family name and address of the trustee in bankruptcy, and

3. date of the commencement of the bankruptcy proceedings.

3) By the decision on opening the bankruptcy proceedings, the creditors shall be called to report their claims to the trustee in bankruptcy within the time period specified in this Law for reporting claims. The time period for reporting claims may not be shorter than fifteen days nor longer than three months.

4) By the decision on opening the bankruptcy proceedings, the creditors shall be called to report to the trustee in bankruptcy, without delay, their separate claims on the debtor's assets or rights, their separate claims on the debtor's real estate that are not inscribed in the land-registers, as well as their separate rights on the real estate which has been inscribed in the land-register if the separate rights are not inscribed. The creditors are not bound to report their separate claims on the assets (fixtures) and rights of the debtor that are inscribed in the respected register (like register of vessels, aircraft-register etc.). The exact part of the bankruptcy estate should be specified in the report as well as the method, legal basis and the amount of the claim. A creditor that has failed to report a claim without a justified reason or that is delaying the report of the claim shall be liable for the damage that might occur as a result of this.

5) By the decision on opening the bankruptcy proceedings over the estate of an individual debtor, the debtor's debtors shall be called to fulfill their obligations to the trustee in bankruptcy instead of directly to the debtor .

6) By the decision on opening the bankruptcy proceedings, the bankruptcy tribunal shall order inscription of the opening of the bankruptcy proceedings in the court register and in the public registers where the real estate, vessels, aircraft and intellectual properties are registered.

Convening the examination and report hearings

Article 55

1) By the decision on opening the bankruptcy proceedings, the bankruptcy tribunal shall fix the date for:

1. the creditor's meeting during which the reported claims shall be examined (Examination hearing). Between the last day of the period for reporting of the claims and the examination hearing not less than 8 days nor more than two months should elapse.

2. the creditors meeting, during which, based on the trustee's report, it shall be decided on further course of proceedings. (Report hearing). This hearing should not take place before the hearing from paragraph 1., nor later than 15 days after that hearing.

2) The hearings from paragraph 1 of this Article may be joined, in a way that first, the examination, and then the report hearings take place.

3) During the report hearing the creditors may establish a creditor's committee and appoint the new trustee, decide on continuation of business activities of the debtor and on the methods of realization of debtors assets, as well as on all other matters from the scope of the creditor's committee.

Convening the creditor's meeting

Article 56

1) The creditor's meetings shall be convened by the bankruptcy judge. All of the separate creditors, bankruptcy creditors, trustee in bankruptcy and the debtor shall have the right to attend.

2) Time, site and the agenda of the meeting shall be announced publicly. The announcement may be dispensed if the meeting has been adjourned at the previous meeting.

Proposition for convening the creditor's meeting

Article 57

1) The creditor's meeting shall be convened upon a proposal of:

the trustee in bankruptcy,

1 the creditor's committee,

at least five of the separate creditors or bankruptcy creditors that are not of lower priority, provided that the sum of their separate rights and claims, according to bankruptcy judges' estimate, exceeds one fifth of the total amount of separate rights and of all creditors that are not of lower priority,

one or more separate creditors or bankruptcy creditors that are not of lower priority, provided that the sum of their separate rights and claims, according to judges estimate, exceeds two fifths of the amount described in sentence 3. of this Article.

2) Not more than 30 days should elapse between the receipt of the proposal and the creditor's meeting.

3) The decision of the bankruptcy judge by which the proposal for convening the meeting has been rejected may be appealed by the party that has submitted the proposal. If there are more proposers, each of them may appeal this decision.

4) If the bankruptcy judge does not convene the creditors meeting within the time period set forth in paragraph 2., nor he rejects the proposal by a decision, it shall be considered that the proposal has been rejected. In this case the proposer has the right to appeal. The second instance court is bound to issue a decision regarding this appeal within 8 days.

Decision making at the creditor's meeting

Article 58

1) Creditor's meetings shall be conducted by the bankruptcy judge.

2) It shall be considered that the decision has been reached if the sum of the claims of the creditors that have voted in favor of the decision is greater than the sum of the creditors that have voted against it. In case of the separate creditors that are not owed directly by the debtor, the value of separate rights shall be taken into consideration instead of the amount of the claim.

Right to vote

Article 59

1) The right to vote is granted to the creditors that have reported their claims that were not refuted by the trustee in bankruptcy nor by any creditors with right to vote. The creditors of lower priority have no right to vote.

2) The creditors with refuted claims shall have the right to vote if the trustee in bankruptcy and the creditors present at the meeting agree on the matter. If the agreement in that case cannot be reached, the bankruptcy judge shall decide on the matter. The bankruptcy judge may alter his

decision following a proposal made by the trustee or any of the present creditors with the right to vote.

3) The provision from paragraph 2. of this Article shall be applied accordingly to creditors with claims under condition subsequent or separate creditors.

Abolishing the decision issued in creditor's meeting

Article 60

1) If any of the decisions reached in the creditor's meeting is contrary to joint interests of creditors, the bankruptcy tribunal shall, upon a request made by any of the separate creditors, bankruptcy creditors that are not of lower priority, or the trustee, suspend the decision.

2) The decision suspending decision from paragraph 2. of this Article shall be made public. This decision may be appealed by any of the separate creditors or bankruptcy creditors that are not of lower priority.

Creditors competencies at the meeting

Article 61

1) Apart from the decisions explicitly provided for by this Law, creditors may, at the creditor's meeting, make all of the decisions that are, according to this Law, in the competency of the creditor's committee.

2) The creditors may demand the information and reports on the course of the proceedings and management of the affairs to be presented by the trustee in bankruptcy. If the creditor's committee has not been established, than creditors, at the meeting, may order the inspection of the audit of the accounts and cash balances that are managed by the trustee in bankruptcy.

Immediate opening of the proceedings

Article 62

1) The bankruptcy tribunal may decide to open the bankruptcy proceedings without the preliminary proceedings and without examining whether the reasons for opening the proceedings exists if the petition has been filed by the debtor or the liquidator.

Cases when the proceedings shall not be carried out

Article 63

1) If, during the preliminary proceedings, it is established that the bankruptcy estate is insufficient to cover the costs of the proceedings or that it is of inconsiderable value, the bankruptcy tribunal shall render a decision to open and close bankruptcy proceedings. In this case the bankruptcy proceedings shall not be carried through.

2) The decisions from paragraph 1. of this Article shall be published in the Official Gazette

3) The petitioner from paragraph 4. of this Article (Republic of Croatia) may demand reimbursement for the advanced payments and damage suffered from any of the persons responsible for the fact that the petition has not been filed timely. This person shall have the burden of proving that it had not acted contrary to its duties and that it was not at fault. The statute of limitations on petitioners right to demand compensation of the costs and damage suffered shall stop five years after the announcement from paragraph 2. of this Article.

4) If the bankruptcy proceedings should be concluded according to the provisions of paragraph 1. of this Article, and the debtor has no means for covering the minimal, necessary expenses (the announcement, filing of the documentation etc.), these costs shall be covered from the State budget. Regarding the right of the Republic of Croatia to demand reimbursement for the expenses paid from the State budget, the provisions of paragraph 3. of this Article shall be applied accordingly.

5) In cases from paragraph 1. of this Article, the bankruptcy estate shall be used to cover the costs of the bankruptcy proceedings, and the remainder shall be transferred to the State budget.

Announcing the opening of the bankruptcy proceedings

Article 64

1) The creditors shall be informed of the opening of bankruptcy proceedings by an announcement.

2) The announcement shall be put on the notice board of the court and published in the "Official Gazette". The notice shall be put on the notice board of the court on the day the decision has been passed.

3) The notice of the opening of the bankruptcy proceedings shall contain:

1. the name of the court which has passed the decision to open the bankruptcy proceedings,

2. an excerpt from the decision to open the bankruptcy proceedings.

3. the firm and head office of the debtor,

4. the name and seat of the bankruptcy judge,
5. the name and address of the trustee in bankruptcy,
6. a call for creditors to report their claims, according to Article 54 of this Law,
7. the venue, date and time of the report and examination hearing,
8. a call to the debtor's debtors to pay their debts without delay,
9. the date of putting the notice on the notice board of the court.

Serving and announcing the decision on opening the proceedings

Article 65

- 1) The decision on opening the bankruptcy proceedings shall be served on the petitioner, the debtor, banks where the debtor has its accounts, local IRS office and the State Attorney's office. The decision shall be sent to the banks through the telefax and by mail.
- 2) The decision shall be sent to the bodies that manage public registers from the Article 54. paragraph 6. of this Law. The decision from Article 53. on opening of the bankruptcy proceedings shall be sent to these bodies as well.
- 3) The bodies from paragraph 2. of this Article shall ex officio, based on the received decision, register the opening of the bankruptcy proceedings.
- 4) If it is an individual debtor, he shall be instructed by the bankruptcy tribunal that he can be discharged from remaining obligations.
- 5) The decision on opening of the bankruptcy proceedings shall be announced by putting it on the notice board of the court.

Legal remedies

Article 66

- 1) If the petition for bankruptcy is rejected by the bankruptcy tribunal, the petitioner is entitled to an appeal.
- 2) If the bankruptcy proceedings are opened, the debtor is entitled to an appeal.

6. Bankruptcy estate and creditors

6.1. Bankruptcy estate

Definition of the bankruptcy estate

Article 67

- 1) The bankruptcy estate shall encompass the total assets of the debtor at the time of opening of the proceedings and the assets obtained during the proceedings (bankruptcy estate).
- 2) The bankruptcy estate shall be used to cover the costs of the bankruptcy proceedings and to satisfy the debtor's creditors and/or claims that have been secured by some rights on the debtor's assets.

Assets that do not enter the bankruptcy estate

Article 68

The assets of the individual debtor over which the execution could not be carried out unless he is an individual entrepreneur, shall not be included in the bankruptcy estate.

Joint assets

Article 69

If the bankruptcy proceedings are opened over the assets of one spouse, the part of the mutual assets that belong to this spouse shall enter the bankruptcy estate if, according to the general rules, the execution against the debtor may be conducted over this part of mutual assets. The division of the mutual assets shall be conducted out of the bankruptcy proceedings, based on the trustee's request.

6.2. Creditors in bankruptcy

Definition of a creditor

Article 70

1) The creditors in bankruptcy are personal creditors of the debtor who, at the time of the opening of the bankruptcy proceedings, have legally based claims against the debtor (creditors in bankruptcy).

2) According to their claims, the creditors shall be classified into priorities (ranks). The creditors of lower priority may be satisfied only after the higher priority creditors shall be satisfied in full. The creditors of the same priority shall be satisfied in proportion to the amount of their claims.

Creditors of higher priority

Article 71

The following claims shall have higher priority:

1. claims based on the taxes, and other claims that form the revenues of the State budget, revenues of the local government and administration budgets, claims of the funds that are, based on the law, obligatory extracted from revenues, or employees salaries, created till the day of opening of the proceedings.

2. claims in the bankruptcy proceedings made by the employees, as determined by the Labor Law, (“Official Gazette”, No. 38/95., 54/95. and 65/95.),

3. all other claims against the debtor, except those classified in lower priorities - (general payment rank).

Creditors of lower priority

Article 72

1) After the higher priority claims, as claims of lower priority, the following claims shall be satisfied and in the following order:

1. interest on claims of bankruptcy creditors, starting on the day of the opening of the proceedings,

2. costs incurred by the creditors during their participation in the proceedings,

3. monetary fines for criminal acts or infringements as well as costs resulting from a penalty for a criminal act or infringement,

4. claims demanding a free performance by debtor,

5. claims for repaying a loan used for substituting the capital of some member of the company, or similar claims.

2) Claims from paragraph 1. of this Article that are of the same priority shall be satisfied proportionally.

3) Claims that are, by agreement between the debtor and the creditor, to be treated of lower priority in the bankruptcy proceedings, shall be, in case of doubt, satisfied after the claims from paragraph 1. of this Article.

4) Interest on the claims of creditors of lower priority and the costs incurred by these creditors during the bankruptcy proceedings are of the same priority as the claims of these creditors.

Undue claims

Article 73

1) Undue claims shall be considered due on the day of opening of the bankruptcy proceedings.

2) If no interest has been paid on the claims from paragraph 1. of this Article, it shall be considered that interest at the rate provided by Law had to be paid, and the claims shall be reduced to the amount which would correspond to the full amount of the claim if the legal interest rate were applicable for the period from the opening of the proceedings until the claims would be due.

Claims subject to condition subsequent

Article 74

Claims subject to a condition subsequent shall be considered, in bankruptcy proceedings, as unconditional claims until such condition occurs.

Liability of more than one person

Article 75

The creditor to whom more than one person is liable for performing the same act in full, may, during the bankruptcy proceedings, request that each and every one of the debtors fulfill their obligation to the full amount of the claim at the time of opening of the bankruptcy proceedings until such creditor is satisfied in full.

Rights of joint and several debtors and guarantors

Article 76

1) Joint and several debtors and guarantors may, as creditors in bankruptcy, demand the return of what they have paid on behalf of the debtor before or after commencement of the case, if they have the right to regress.

2) Joint and several creditors and guarantors may demand security for the amounts that they shall pay on debtor's behalf, in proportion to the amount that they would be entitled to as creditors in bankruptcy.

Converting

Article 77

Non-monetary claims and claims that have no determined monetary amount shall be reported at the value which is estimated at the time of opening the bankruptcy proceedings. Claims in foreign currency or other monetary measurements shall be converted into domestic currency calculated at the average exchange rate of the National Bank of Croatia on the day of opening of the bankruptcy proceedings.

Periodic payments

Article 78

Claims which are the subject of periodic payments with determined amounts and duration shall be reported in the amount equal to the sum of outstanding payments decreased by the amount of the legal interest rate referred to in Article 73. paragraph 2. of this Law. If the duration for payment has not been determined, the provisions of Article 77. of this Law shall be applied accordingly.

6.3. Creditors with right for exemption

Exemption rights, Rights to claim return of the object

Article 79

1) A person who may prove, based on material or personal right, that a specific object does not belong to the bankruptcy estate, shall not be considered a bankruptcy creditor. The right to exempt such an object shall be determined according to the provisions for enforcing of such rights outside of bankruptcy proceedings.

2) If the right of a person from paragraph 1. of this Article has been inscribed in a public register, the debtor shall be bound to prove that the object belongs to the bankruptcy estate.

3) A seller who has not been paid the full purchase price may demand to have the goods returned to him, which were sent to the debtor from another place before the day of opening the bankruptcy proceedings and which did not reach the destination, or if the debtor didn't take it over. (Right for search)

4) A commission agent shall also have the right of claim to the purchased goods.

5) If the goods which reached the destination before the day of opening of bankruptcy proceedings were taken over by the debtor for safe-keeping only, the seller shall not have the right of claim but may exercise his rights in connection with those goods as a creditor with the right of exemption.

Compensation for the exempted right

Article 80

1) If the object that might have been exempted has been unrightfully alienated by the debtor prior to the opening of the proceedings, or by the trustee in bankruptcy after the opening of the proceedings, the creditor with a separate claim may demand that the right to a counter-performance be vested in him if the counter-performance has not been done by that time. He may demand the counter-performance from the bankruptcy estate if it can still be separated from the estate.

2) If the conditions of paragraph 1 of this Article are not fulfilled, the creditor with the right for exemption may demand compensation for the damage as a creditor in bankruptcy.

3) If the object that might have been exempted has been unrightfully alienated by the trustee in bankruptcy prior to the opening of the proceedings, the creditor with a right for exemption may, by his choice, demand that the right to accept the counter-performance be vested in him, if it has not been done by that time, or he may demand that the counter-performance be done out of the bankruptcy estate if it can be separated from the estate, or demand compensation for the damage as a creditor in bankruptcy.

6.4. Separate creditors

Separate satisfaction from objects and rights inscribed in public registers

Article 81

Creditors who have a separate claim against real estate, fixtures or rights that are inscribed in a public register, (land-register, register of vessels, aircraft register, register of intellectual property and similar) shall have the right to separate satisfaction according to the provisions of the Law on enforcement procedure.

Separate satisfaction

Article 82

1) The creditors who have claims secured by a lien on an object which is part of the bankruptcy estate and that has not been inscribed in a public register, shall have the right to separate satisfaction of their claim, interest and costs from the value of the object.

2) The statutory lien of a lessor may not be realized, within bankruptcy proceedings, for the due and unpaid lease payments for more than one year prior to the opening of the bankruptcy proceedings, nor for claims for damages resulting from termination of the lease by the trustee in bankruptcy. These limitations do not affect the lien of a lessor of agricultural property for the due lease.

Other separate creditors

Article 83

The following creditors shall have the same status as the creditors referred to in Article 80:

1. creditors who have received some fixture or interest from debtor as collateral for their claim,
2. creditors who have a right of retention on some object, since they have used something in favor of this object, to the extent that their claim based on this does not exceed remaining benefit,⁴
3. creditors who have a statutory right of retention,
4. the state and local government and administrative units and other public entities, if the object which is the subject of the obligation for payment of taxes or duties serves as collateral for these payments.

Separate creditors as creditors in bankruptcy

Article 84

Creditors with the right to separate satisfaction shall be creditors in bankruptcy if the debtor is personally liable to them. They are entitled to proportional satisfaction from the bankruptcy estate only if they waive the right to separate satisfaction or if they do not successfully realize the separate satisfaction.

6.5. Creditors of the bankruptcy estate

Obligations of the bankruptcy estate

Article 85

⁴4 This seems to be analogous to the concept of detrimental reliance.

- 1) The costs of the bankruptcy proceedings and the other obligations of the bankruptcy estate shall be settled first from the bankruptcy estate.
- 2) The costs of the proceedings shall be settled before the others obligations of the estate, proportionally to their amount.
- 3) Other obligations of the bankruptcy estate shall be settled proportionally to their amount.

Costs of the proceedings

Article 86

The costs of the bankruptcy proceedings are:

1. costs of the court in bankruptcy proceedings,
2. remuneration and compensation of the interim trustee in bankruptcy, trustee in bankruptcy, members of the creditor's committee,
3. other expenses to be settled as costs of the bankruptcy proceedings, as determined by this or any other law.

Other liabilities of the bankruptcy estate

Article 87

1) Other liabilities of the bankruptcy estate include:

1. liabilities caused by the actions of the trustee in bankruptcy, or in some other way by managing, reducing properties to money or distributing the bankruptcy estate, which are not costs of the bankruptcy proceedings,
2. claims of attorneys for services rendered during the six months prior to the commencement of the case, regarding the protection and execution of the rights of the debtor that enter the estate,
3. liabilities based on bilateral contracts if their performance is demanded on behalf of the estate or must be executed after commencement of the case,
4. liabilities based on the unjustified increase of the estate,
5. liabilities based on employment contracts with employees of the debtor for the period after opening the bankruptcy proceedings.

2) The obligations assumed by the interim trustee in bankruptcy authorized to dispose of the debtor's assets until the commencement of the case shall be considered obligations of the bankruptcy estate. The same applies to obligations based on a permanent legal relationship if the performance has been accepted by the interim trustee on behalf of the property managed by him.

Part three

LEGAL CONSEQUENCES OF OPENING THE BANKRUPTCY PROCEEDINGS

1. Basic legal consequences

Time of coming into effect

Article 88

- 1) The legal consequences of the opening of the bankruptcy proceedings shall come into effect on the day the notice of the opening of the bankruptcy proceedings has been put on the notice board of the court.
- 2) If the decision to open the bankruptcy proceedings has been revoked upon an appeal, and the proceedings have been reopened in a review procedure, the legal consequences of bankruptcy proceedings shall be deemed to have started on the day the first decision was put on the notice board of the court.

Transfer of authority from debtor's bodies to trustee

Article 89

The rights of the executive and other bodies of the debtor shall be transferred to the trustee in bankruptcy on the day of the opening of the bankruptcy proceedings. By opening of the bankruptcy proceedings the rights of the individual debtor to manage and dispose of the assets that should form the bankruptcy estate shall be transferred to the trustee in bankruptcy.

Suspension of alienation or encumbrance

Article 90

- 1) The suspension of alienation or encumbering that has been ordered against the debtor according to the general provisions in order to protect the interests of particular persons, shall be void in the bankruptcy proceedings.

2) The provision in paragraph 1. of this Article shall not apply to the limitations set on alienation and encumbering that are the result of the procedure for enforcing or securing an interest.

Disposal by debtor's bodies

Article 91

Disposal of properties of the bankruptcy estate made by earlier representatives of the debtor or individual debtor after opening of the bankruptcy proceedings have no legal consequences, except those disposals to which the general provisions on the protection of trust in public registers apply. The counter-performance shall be returned to the second party from the bankruptcy estate if it has increased the bankruptcy estate.

Performances in debtor's favor

Article 92

If a person fulfills his obligation directly to the representative of the debtor or the individual debtor, although he should have fulfilled the obligation in favor of the bankruptcy estate, his obligation shall be considered discharged if he proves that at the time of fulfillment he did not know that the bankruptcy proceedings had been opened. If the obligation was fulfilled prior to the announcement of the opening of the bankruptcy proceedings, it shall be considered that he had no knowledge of the commencement of the case.

Inheritance

Article 93

If an individual debtor receives an inheritance or a legacy before the opening or during the bankruptcy proceedings, only he shall be entitled to accept or waive the inheritance or legacy.

Division of assets of legal association

Article 94

1) If a debtor forms a co-ownership, partnership, or any other legal association, with a third person, division of their assets shall be executed outside of the bankruptcy proceedings. Obligations resulting from such a relation (co-ownership, partnership or other legal association) shall be separately satisfied from the debtor's part of the jointly owned assets.

2) Provisions that rule out the possibility of dissolution of associations from paragraph 1. of this Article, permanently or for a determined period, shall have no legal effect in bankruptcy proceedings. The same shall be applied to such provisions in a will (testament) on which the

association is based (property bequeathed to more than one person), and in a similar agreement made between the joint inheritors.

Assumption of commenced cases

Article 95

1) Legal proceedings that have commenced prior to opening the bankruptcy proceedings, involving property that is a part of the bankruptcy estate, shall be assumed by the trustee in bankruptcy on behalf of the debtor.

2) If the trustee, immediately after continuing with a suspended case, accepts the petition (in this assumed case) or rejects a petition, the other party may claim the costs of the proceedings only as a creditor in bankruptcy. If contrary, the costs of such a case shall be discharged as debts of the bankruptcy estate.

Claims of the creditors in bankruptcy

Article 96

The creditors in bankruptcy may charge their claims against the debtor only in the bankruptcy proceedings.

Annulment of rights acquired through enforcement or securement

Article 97

If a creditor in bankruptcy during the thirty days prior to filing a petition in bankruptcy, or after that, acquires the right to separate satisfaction by the enforcement of a claim or by a lien on the debtor's estate, these rights shall be annulled by the opening of the bankruptcy proceedings.

Interdiction of enforcement or securement

Article 98

1) After the opening of the bankruptcy proceedings, none of the creditors shall be entitled to demand security or enforcement against the debtor on the parts of the estate that comprise the bankruptcy estate or any other assets of the debtor.

2) The securement or enforcement of future claims of the individual debtor based on his employment contract, or the claims of the debtor based on the employment contract during the bankruptcy proceedings shall not be permitted, not even to the creditors that are not creditors in bankruptcy, except for the securities and enforcement fixed in order to fulfill claims for alimony and other claims that may be discharged from those parts of the debtor's employment income from which the other creditors may not be satisfied.

3) The proceedings from paragraphs 1. and 2. of this Article to execute or secure a claim that have already commenced shall be discontinued. If these proceedings shall be continued, the executing court shall suspend them.

4) After the opening of the bankruptcy proceedings, creditors with the right for exemption may, in order to execute their rights, initiate proceedings for execution or securing against the debtor according to the general provisions of execution proceedings. Any discontinued cases for execution and securement that have been initiated by these creditors prior to the bankruptcy proceedings, shall be continued by the execution court according to the provisions of execution proceedings.

5) After the opening of the bankruptcy proceedings, the separate creditors shall be entitled to initiate proceedings for execution or securing according to the general provisions of the execution proceedings. Any discontinued cases for execution and securement initiated by these creditors shall be continued by the executing court according to the provisions of execution proceedings.

6) The inscription into public registers shall be allowed after the opening of the bankruptcy proceedings, if the conditions for inscription have been met prior to commencement of the case.

Interdiction of enforcement resulting in claims against the estate

Article 99

1) The enforcement of claims against the bankruptcy estate that are not based on a legal transaction made by the trustee in bankruptcy shall not be allowed for six months after the opening of the bankruptcy proceedings.

2) The provision from paragraph 1. of this Article shall not apply to:

1. obligations of the bankruptcy estate based on a bilateral contract that the trustee has assumed,

2. obligations based on a permanent contract for the time after the first period during which the trustee could have avoided the contract,

3. obligations based on a permanent contract if the trustee has accepted the performance in favor of the bankruptcy estate.

4. taxes that form the revenues of the State budget, budget of local government or self-government, or revenues of pension or invalidity funds or Croatian Agency for health insurance.

Exclusion of other forms of legal acquiring

Article 100

- 1) After the opening of bankruptcy proceedings, no valid rights may be acquired on any part of the bankruptcy estate even in cases which are not based on the debtor's disposal of property, enforcement, or lien fixed on the property in favor of the creditor in bankruptcy.
- 2) The provision of paragraph 1. of this Article shall not apply to acquisitions based on a disposition by the trustee in bankruptcy, sale by the court, actions undertaken according to provisions of this Law, actions by the separate creditors and creditors with the right for exemption and acquisitions based on reliance on the public registers.

Joint damage

Article 101

Claims made by creditors in bankruptcy for the compensation of the damage incurred to all of them by the decrease of the value of property that forms the bankruptcy estate, before or after opening of the bankruptcy proceedings, (joint damage) may be filed only by the trustee in bankruptcy. If claims for compensation of the damage are made against the trustee in bankruptcy, they can be realized only by a newly appointed trustee.

Personal liability of the corporate members

Article 102

If the bankruptcy proceedings have been opened against a debtor whose members are personally liable for the debtor's obligations, the claims based on their personal liabilities may be realized during the bankruptcy proceedings only by the trustee in bankruptcy.

Retaining the right to offset claims

Article 103

If the creditor, at the time of opening of the bankruptcy proceedings, had been entitled to offset claims, based on the law or an agreement, commencement of the bankruptcy shall have no effect on this right.

Starting of offsetting

Article 104

1) If at the time of opening of the bankruptcy proceedings the claims or one of the claims that may be offset are subject to a condition subsequent, or are not due, or are still not directed to identical performances, the offsetting shall not begin until the necessary conditions have taken place. The provisions of Articles 71. and 72. are not to be applied in order to make the offset possible. The offset shall be ruled out if the counter-claim becomes unconditional and due before the offset becomes possible.

2) The offset shall not be ruled out if the claims have been made in different currencies, provided that these currencies can be freely exchanged at the place for payment. The exchange shall be made according to the exchange rate valid in the place of payment at the time when the statement on offset has been made.

Interdiction of offsetting

Article 105

The offset shall not be allowed:

1. if the creditor's obligation in favor of the bankruptcy estate occurred after commencement of the case.
2. if the claim has been ceded to the creditor by another creditor after the commencement of the case,
3. if the claim has been ceded to the creditor in the six months prior to the commencement of the case and he knew or ought to have known that the debtor was insolvent or that a petition in bankruptcy had been filed against the debtor.
Exceptionally, the offset shall be allowed if the claim has been ceded in connection with fulfillment of an unfulfilled contract or if the claim has come arisen as a result of successfully refuting the debtor's legal transaction,
4. if the creditor has obtained the right to offset by an invalid legal action,
5. if the creditor, who should be satisfied from exempted property of the individual debtor, is indebted to the bankruptcy estate.

Duty to inform and cooperate

Article 106

1)The debtor shall be bound to reveal to the bankruptcy court, trustee in bankruptcy, creditor's committee and, upon a court request, to all of the creditors, all the necessary information regarding the circumstances related to the proceedings. He shall be bound to reveal even the facts that, as a consequence, may result in prosecution for a criminal act.

- 2) The information given according to the provisions from paragraph 1. may be used against the debtor or his close relatives in criminal proceedings only with the debtor's consent.
- 3) The debtor shall be bound to provide assistance to the trustee in bankruptcy in discharging his duties.
- 4) The debtor is bound to cooperate and reveal information at any time, upon request of the court. He shall be bound to refrain from any activity that could make discharging of those duties more difficult.
- 5) The debtor is obliged to inform the court on any intention to leave the place of his abode. The court may interdict the debtor to leave the place of his abode. For justifiable reasons, the court may alter such a decision.

Arrest, custody, monetary penalty

Article 107

- 1) If it is deemed necessary in order to obtain the required statements, the court may order the hearing of the debtor. In case if the debtor does not obey, the court may subpoena the debtor.
- 2) The court may, after the hearing, hold the debtor in custody:
 1. if he has, in spite of the court order, refused to reveal necessary information or to cooperate with the trustee in bankruptcy in fulfilling his tasks,
 2. if the debtor is avoiding, or planing to avoid revealing information, and especially if he is planing to escape,
 3. if deemed necessary in order to prevent the debtor from undertaking such actions that would make it impossible or difficult to collect the necessary documentation and information, and especially to collect and protect the bankruptcy estate.
- 3) The tribunal of the first instance court may order arrest and detention lasting up to three months. The second instance court, following the proposal by the first instance court tribunal prolong the detention for another two months. The appeal against this decision is allowed, but it does not stay the execution. The Supreme Court of Republic of Croatia shall decide on appeal regarding second instance court decision to prolong the detention.
- 4) The appeal from previous paragraph may be lodged within three days. The court deciding on the appeal is bound to issue decision within three days.

5) In case of the detention of the debtor pursuant to paragraph 2. of this Article, the provisions on criminal procedure and detention shall be applied accordingly. The detention shall be suspended ex officio as soon as the reasons for detention cease to exist.

5) The court may enforce the revealing of the information from Article 106. of this Law by threat of a monetary penalty. A single penalty may not exceed 10.000 kunas. The provisions of the enforcement procedure related to enforcement of the action that can be undertaken only by the debtor, shall be applied accordingly to the ordering and enforcing of the penalty from the first two sentences of this paragraph.

6) The bankruptcy council may fine the debtor that does not fulfill his duties with the fine of 50.000 kunas, regardless of the provision from paragraph 5. of this Article.

7) The Minister of Justice shall issue the rules regulating the execution of detention sentences from previous paragraphs of this Article within six months from the day of effectiveness of this Law.

Support from bankruptcy estate

Article 108

1) The creditors, at their meeting shall decide whether financial support shall be given to the debtor and his family, and in what amount.

2) The trustee in bankruptcy, with the consent of the creditor's committee if it has been founded, may order the necessary support until the decision of the creditors has been reached. The support shall be granted in the same way to the persons that are being supported by the debtor, according to the provisions of the Family Law.

Legal representatives. Employees

Article 109

1) If the debtor is a legal entity, the provisions of Articles 106. and 107. shall be applied accordingly to the members of the executive or supervising bodies and to the members who are personally liable and have the authorization for representing the debtor. The provisions from Article 106, paragraph 1. and Article 107. of this Law shall be applied accordingly to the persons who have lost the capacities referred to in sentence 1. of this Article during the last two years prior to filing the petition in bankruptcy. Provisions of Article 108. of this Law shall be applied accordingly to the personally liable members of the debtor that have the authorization to represent the debtor.

2) The provision from Article 106, paragraph 1. shall be applied accordingly to the employees and ex-employees of the debtor, except those who have lost this capacity more than two years prior to filing the petition.

2. Fulfillment of legal transactions

Trustee's right of choice

Article 110

- 1) If the debtor and his contractual counter-part have not fulfilled, or have not fulfilled in full, some bilateral contract at the time of opening of the proceedings, the trustee in bankruptcy may fulfill the contract instead of the debtor and demand the counter-part to fulfill his obligation (assume the contract)
- 2) If the trustee rejects the fulfillment of the debtor's obligation, the other party may file his claims based on nonfulfillment only as a creditor in bankruptcy. If the other party calls upon the trustee to make a statement regarding his choice, the trustee shall be bound to inform the other party within eight days, by registered mail, whether he intends to demand fulfillment of the contract. If the trustee does not follow this procedure, he shall not be able to demand fulfillment (rejection of contract).

Fixed date transactions. Financial transactions with fixed date

Article 111

- 1) If a contract related to the delivery of goods that have a market price or a price based on a stock exchange established a fixed time or fixed time period for performance, and this time or period occurs after commencement of the bankruptcy proceedings, the other contractual party may not demand completion of the transaction but only compensation for the damages incurred by the nonfulfillment.
- 2) If a fixed time or a fixed time period has been set for performance of a financial transaction that has a market price or a price based on a stock exchange, and this time or period occurs after commencement of the bankruptcy proceedings, the other contractual party may not demand completion, but rather compensation for the damages.
- 3) The following shall be considered financial services for purposes of paragraph 2. of this Article:
 1. delivery of precious metals,
 2. delivery of securities or similar rights, if the acquisition of an interest in the company has not been made with an intent to establish a permanent relationship with the company,
 3. monetary transactions fulfilled in foreign currency or some accounting unit,

4. monetary transactions whose value is directly or indirectly determined by the exchange rate for the foreign currency or some accounting unit, interest rate on the claim, or by the price of other goods or services.

5. options and other rights on deliveries or monetary performances according to lines 1.-4. of this Article.

4) If the transactions regarding financial services are governed by one master contract that provides that, in case of the breach of the contract provisions, termination of the contract requires mutual consent, all of the transactions shall be considered as one bilateral contract in the spirit of Articles 107. and 108. of this Law.

5) The compensation for damage shall be equal to the difference between the contractual price and the market or stock price valid for contracts with the fixed time and place of fulfillment on the second working day after commencement of the bankruptcy proceedings. The other contractual party may realize its claim for such compensation only as a creditor in bankruptcy.

Divisible performances

Article 112

If the performances owed are divisible and the other contractual party has partly fulfilled its performance at the time of opening of the bankruptcy proceedings, this party may realize its claim for counter-performance which corresponds to its partial performance as a creditor in bankruptcy, even if the trustee in bankruptcy demands that the remaining performance be fulfilled (assumes the contract). Due to the nonfulfillment of its claim for counter-performance, the other party may not demand return of the value added to the debtor's assets by its partial performance prior to the commencement of the case.

Preliminary inscription

Article 113

1) If the preliminary inscription for securing the right to acquire or annul an interest in some of the debtor's real estate, or in some interest inscribed in the debtor's favor, or for securing the right to alter the contents or priority of this interest has been made in the land register, the creditor may discharge its claim from the bankruptcy estate. The same shall be applied in case the debtor has charged himself with further obligations towards the creditor and has failed, completely or partially, to fulfill them.

2) The provision from paragraph 1. of this Article shall be applied accordingly to the pre-inscriptions in the register of vessels, register of unfinished vessels and aircraft register.

Retention of Title or ownership

Article 114

1) If the debtor has, prior to the commencement of the case, sold some fixture with the retention of title and has delivered the object into buyer's possession, the buyer may demand the fulfillment of the contract. The same shall be applied if the debtor has charged himself with further obligations towards the buyer and has failed, completely or partially, to fulfill them.

2) If the debtor has bought the fixture prior to the commencement of the case with the reserved ownership and has received the object in possession, the trustee in bankruptcy shall have the right of selection (to assume or reject the contract) according to the provisions of Article 110. of this Law.

Lease and rent

Article 115

1) The lease and rental of premises does not cease by opening of bankruptcy proceedings.

2) Claims related to the time prior to the commencement of the case may only be discharged in bankruptcy.

Debtor as a lessee or rentee

Article 116

1) The lease agreement, based on which the debtor has entered premises as a lessee, may be canceled by the trustee in bankruptcy without regard to the agreed duration within the notice period provided by the Law. If the trustee cancels the contract, the other party may file a claim for compensation of the damage incurred by premature termination of the contract.

2) If at the time of commencing the bankruptcy proceedings the debtor has not yet entered the premises or real estate, the trustee and the other party may abstain from the contract. If the trustee cancels the contract, the other party may demand compensation for the damage incurred by premature termination of the contract as a creditor in bankruptcy. Each of the parties shall be bound to inform the other party of their decision regarding termination of the contract within fifteen days, or they shall lose the right to abstain.

Debtor as a lessor

Article 117

1) If the debtor as a lessor of real estate or premises, has had, before opening of the bankruptcy proceedings, a claim based on the lease agreement which are dischargeable at some future time, the disposal of this claim shall be valid only with respect to the part that relates to the lease or rent for the current month during which the bankruptcy proceedings have been opened. If the

case has commenced after the fifteenth day of the month, the claim shall have legal consequence for the following month.

2) The claim from paragraph 1. of this Article relates especially to collecting rent. The claim based on the enforcement equals the contractual claim.

3) The lessee may offset his claim with the debtor's claim resulting from the lease agreement related to the provision from paragraph 1. of this Article. The provision of this paragraph does not effect application of the provisions from Article 104. and 105., line 2. to 4. of this Law.

Alienation of the leased (rented) object

Article 118

The third party to whom the trustee in bankruptcy has transferred the real estate or premises that were leased by the debtor, and who therefore enters into the lease agreement instead of the debtor, may terminate this contract within the time provided by the Law.

Interdiction of cancellation

Article 119

If the debtor is a lessee, the other contractual party may not terminate the contract after the petition in bankruptcy has been filed:

1. for the reason that the debtor rent payments were due prior to the commencement of the case,

2. for the reason of deterioration of the debtor's financial situation.

Employment contracts

Article 120

1) Opening of bankruptcy proceedings shall not result in the termination of employment contracts with the debtor as an employer.

2) Opening of bankruptcy proceedings shall be deemed as a special justified reason for cancellation of employment contract.

3) After commencement of the case the trustee in bankruptcy, on behalf of the debtor-employer, and the employee may cancel the employment contract, regardless of the agreed duration of the contract or stipulated suspension of the possibility for regular dismissal, and regardless of the legal or contractual provisions regarding protection of the employee. The notice period shall be

one month, unless the Law provides for a shorter period. If the dismissal has been requested by the trustee, the other party may demand compensation for the damage incurred by the premature termination of employment as a creditor in bankruptcy.

4) If the employee believes that the termination of his employment is not legally valid, he may demand protection of his rights according to the provisions of the Labor Law.

5) The trustee in bankruptcy may, with the consent of the bankruptcy judge, conclude new, temporary, employment contracts in order to finish the commenced business activities and prevent the occurrence of damage.

6) The salaries and other income based on employment shall be determined by the trustee in bankruptcy, with the consent of the bankruptcy judge, and in accordance with the Labor Law and the collective agreement.

7) The salaries and other income based on employment from paragraph 3. of this Article shall be settled from the bankruptcy estate.

Cessation of the employees right to co-manage

Article 121

By opening of the bankruptcy proceedings the employees rights regarding participation in management (decision making) cease to exist. Agreements made with employees council shall not bind the trustee in bankruptcy.

Cessation of the orders and contracts

Article 122

1) Any order of the debtor that relates to the property comprising the bankruptcy estate shall terminate upon the commencement of the bankruptcy proceedings.

2) If the contractor, who, without his fault, did not know of opening of the bankruptcy proceedings continues with the ordered activity, it shall be considered that the order is still in force. The claims of the contractor related to the continuation of activities shall be satisfied as claims of a creditor in bankruptcy.

3) The contractor shall be bound to continue with the activities in order to prevent the occurrence of damage, even after commencement of the case, until the moment when the trustee in bankruptcy takes over. The claims of the contractor related to such continuation of activities shall be discharged as claims of a creditor in bankruptcy.

Offers

Article 123

Offers made to the debtor, as well as offers made by the debtor, shall lose their validity on the day of the opening of the bankruptcy proceedings, unless they have been accepted before that day.

Cessation of contracts on performance

Article 124

If, pursuant to a contract, a person has committed himself to perform certain activities on behalf of the debtor, the provisions from Article 122. of this Law shall be applied accordingly to these contracts.

Cessation of power of attorney

Article 125

- 1) A power of attorney issued by the debtor and related to property that is a part of the bankruptcy estate shall lose its validity by opening of the bankruptcy proceedings.
- 2) The provisions from Article 122. of this Law shall be applied accordingly to the power of attorney.

Void stipulations

Article 126

A contract stipulation that suspends or limits the provisions of this Law shall have no legal effect.

3. Refuting debtor's legal transaction

General provision

Article 127

- 1) Legal transactions undertaken prior to the opening of the bankruptcy proceedings that are detrimental to the uniform satisfaction of the creditors, (incurring damage to the creditors) or that are more favorable to certain creditors (favoring the creditor) may be refuted by the trustee in bankruptcy on the debtor's behalf, and the creditors in bankruptcy, in accordance with the provisions of this Law.
- 2) An omission shall be considered equal to a legal action.

Congruent discharge

Article 128

- 1) A legal transaction that assures or makes it possible to secure or satisfy one of the creditors, in the method and time congruent to the contents of his right (congruent settlement) and that has been undertaken within the last three months prior to the filing of the petition in bankruptcy, may be refuted if at the time of the transaction the debtor has been insolvent and if the creditor knew, or ought to have known, of this insolvency.
- 2) A legal transaction that assures, or makes it possible to secure or satisfy one of the creditors, congruent to the contents of his right, may be refuted if it has been undertaken after filing of the petition in bankruptcy and if the creditor, at the time of the transaction, knew or ought to have known of the insolvency or of the petition in bankruptcy.
- 3) It shall be considered that the creditor knew, or ought to have known of the insolvency or of the petition in bankruptcy if he knew of the circumstances from which it was apparent that the insolvency exists or that the petition in bankruptcy had been filed.
- 4) For the person who has been in close relations with the debtor at the time of the transaction, it shall be considered that the person knew of the insolvency and of the petition in bankruptcy.

Non-congruent cover

Article 129

- 1) The legal transaction that assures or makes possible the securement or satisfaction of one of the creditors that had no right to make a claim, or had no right to make a claim in the manner asserted and at that time, may be refuted:
 1. if it had been undertaken within the last month prior to the filing of the petition in bankruptcy or after the petition had been filed,
 2. if it had been undertaken within the third or second month prior to the filing of the petition and the debtor had been insolvent at that time,
 3. if the transaction had been undertaken within the third or second month prior to the petition and the creditor knew at the time of the transaction that it would incur damage to the creditors in bankruptcy.
- 2) It shall be considered that the creditor knew that the other creditors in bankruptcy would suffer damage if he knew of the circumstances based on which it would be necessary to conclude that damage to the creditors shall occur. For the person who has been in close relations with the debtor at the time of the transaction it shall be considered that the person knew that damage would be incurred to the creditors.

Legal actions resulting in direct damage to creditors

Article 130

1) The legal transaction of the debtor that directly results in damage to the creditors in bankruptcy may be refuted:

1. if it has been undertaken within three months prior to filing the petition in bankruptcy, if the debtor was insolvent at the time of the transaction and if the other party knew, or ought to have known, of the insolvency,

2. if it has been undertaken after the petition had been filed and if the other party knew, or ought to have known, at the time of the transaction, of the insolvency or that the petition in bankruptcy had been filed.

2) Any other legal action of the debtor that results in the loss of any of the debtor's rights, or that prevents the execution of any of debtor's rights, or any legal action based on which a claim against the debtor may be kept valid or enforced, shall be treated the same as legal transactions resulting in direct damage being incurred by the creditors.

3) In cases described in paragraphs 1. and 2. of this Article, the provisions of paragraphs 3. and 4. of Article 128. of this Law shall be applied accordingly.

Deliberate damage

Article 131

1) Legal transactions undertaken by the debtor during the 5 years prior to filing the petition in bankruptcy or thereafter with the intent to incur damages to its creditors, may be refuted if the other party knew of the debtor's intentions at the time of the transaction. Knowledge of the intent shall be presumed if the other party knew that insolvency threatens the debtor and that this transaction would cause damage to the creditors.

2) A contract resulting in payments which was made by the debtor and a person close to the debtor may be refuted if the creditors are directly damaged by it. This contract may not be refuted if it has been concluded more than two years prior to filing the petition in bankruptcy, or if the other party, at the time of concluding the contract, had no knowledge of debtor's intention to incur damage to the creditors.

Legal transactions with no compensation or with insignificant compensation

Article 132

- 1) Debtor's legal transaction without compensation or with insignificant compensation may be refuted, unless it has been undertaken more than four years prior to the filing of the petition in bankruptcy.
- 2) If it implies a common occasional present of insignificant value, the transaction may not be refuted.

Loan substituting capital

Article 133

A legal transaction by which a member of the society⁵ makes a claim for repayment of a loan used for substituting capital or some similar claim shall be void if:

1. it offers security and this transaction has been undertaken within five years prior to the filing of the petition in bankruptcy or thereafter,
2. it guarantees the satisfaction and the transaction has been undertaken within the year prior to filing the petition in bankruptcy or thereafter.

Silent (secret) partnership

Article 134

- 1) A legal transaction pursuant to which a silent partner receives back his stake, in full or in part, or by which his share of the incurred loss is pardoned, partially or in full, may be refuted if the contract on which such a transaction is based was concluded during the year prior to the filing of the petition in bankruptcy against the partnership (company) or thereafter. The same shall be applied in case of liquidation of a silent partnership⁶.
- 2) A legal transaction from paragraph 1. of this Article may not be refuted if the reason for opening the bankruptcy proceedings has occurred after the contract has been concluded.

Payments based on bill of exchange

Article 135

- 1) The debtor's payments based on the bill may, in case of congruent satisfaction, not be demanded back⁷ from the receiver, if according to the law on negotiable instruments, the receiver would, in case he refuses to accept the payment, lose the claim towards other debtors.

⁵An equity holder.

⁶Silent member refers to a secret member which is allowed pursuant to the Croatian Company Law.

⁷Similar to US concept of avoidance.

2) The amount paid on the bill has to be paid by the last regressive debtor, or, if he has sold the bill on behalf of a third person, this third person, if the last regressive debtor or the third person, at the time that it has sold the bill or offered it for sale, knew of the debtors insolvency or of the opening of the bankruptcy proceedings. The provisions from paragraph 3. and 4. of Article 128. shall be applied accordingly.

3) Paragraphs 1. and 2. of this Article shall be applied accordingly to debtor's payments based on checks.

Persons in close relation

Article 136

1) The following persons, according to this Law, shall be deemed as persons in close relations with the individual debtor:

1. a spouse of the debtor, even if the marriage was concluded after the legal transaction or if the marriage has ended during the year prior to the transaction,
2. relatives of the debtor or spouse from line 1. of this Article in straight line, brothers and sisters and half-brothers and half-sisters of the debtor or his spouse, as well as their spouses.
3. persons that live in the same household as the debtor or have lived in the same household as the debtor during the year prior to the transaction.

2) The following persons, according to this Law, shall be deemed as persons in close relations with a debtor-legal entity:

1. members of the administrative and supervising boards, members with personal liability and persons that hold more than 25% of the capital of the debtor,
2. a person or company that, based on their employment contract or legal status, has the opportunity to be familiar with the financial position of the debtor,
3. a person who has a personal relationship with a person described in paragraph 1. of this Article, or with one of the persons from lines 1. or 2. of this paragraph, unless the persons from line 1. and 2. are bound by law to keep confidential the information on debtor's business activities.

Calculating the time periods prior to filing the petition in bankruptcy

Article 137

1) The time periods set forth in Articles 128. to 136. of this Law start to run at the beginning of the day that by number corresponds to the day when the petition in bankruptcy has been filed in the court. If the day with that numbering does not exist, the time period shall start to run at the beginning of the next day.

2) In case more than one petition has been filed, the first petition allowed and explained shall be deemed relevant even if proceedings have been opened based on a later petition. The petition that has not been allowed shall be deemed relevant only if it has been denied for the reason of insufficiency of the bankruptcy estate.

Time of undertaking legal action

Article 138

1) A legal transaction shall be deemed to have been undertaken at the time when its legal effects have occurred.

2) If inscription in the land-register, register of vessels, register of vessels being built, or register of liens on aircraft is required for the legal validity of a legal transaction, the legal transaction shall be deemed to have been undertaken as soon as the other pre-conditions for validity are fulfilled, the debtor's intent becomes binding, and the other party files a request for inscription of the change of legal facts.

3) If the request for preliminary inscription in order to secure the change of legal facts has been filed, provision from paragraph 2. of this Article shall be applied accordingly.

3) If a legal transaction is subject to a condition precedent or a condition subsequent, the time when it has been undertaken shall be considered, and not the time of the occurrence of the condition.

Writ of execution

Article 139

A legal transaction for which a writ of execution has been obtained and a legal transaction undertaken within the process of forced execution may be refuted.

Cash transactions

Article 140

If the debtor has accepted a counter-performance of the same value as his performance, and if it has become part of his assets, the legal transaction that has resulted from this performance may be refuted only under the conditions of Article 131. of this Law.

Legal remedies and legal consequence of refuting

Article 141

- 1) Legal transactions of the debtor may be refuted by the creditors in bankruptcy and the trustee in bankruptcy on behalf of the debtor.
- 2) A legal action to refute a legal transaction may be filed within two years from the day of the opening of the bankruptcy proceedings and no later than the day of the main distribution hearing.
- 3) The action from paragraph 1. of this Article shall be filed against the person for whom the refuted transaction has been performed and against the debtor, if he is not the complaining party.
- 4) The trustee in bankruptcy may file the legal action to refute the legal transactions subject to approval from the bankruptcy judge.
- 5) If the request for refutation of a legal transaction has been granted, the refuted legal transaction shall have no legal effect against the bankruptcy estate and the other party shall be bound to return to the bankruptcy estate all material benefits acquired through the refuted transaction.
- 6) The person that has accepted a performance without compensation or with insignificant compensation shall be bound to return what he has received only if he has been enriched, unless he knew or ought to have known that his transaction would result in damage being incurred by the creditors.
- 7) The debtor's legal transaction may be refuted by complaining within a lawsuit without regard to the time limit referred to in paragraph 2. of this Article.

Rights of person opposed to refuting

Article 142

- 1) If the person opposed to refuting returns what he has received, his claim becomes valid again.
- 2) The person opposed to refuting shall be entitled to demand his counter-performance being returned to him from the bankruptcy estate if it may be exempted from the estate or if the estate has been enriched by it. Otherwise, the person opposed to refuting may assert his right to have the counter-performance returned as a creditor in bankruptcy.

Refuting against the legal successors

Article 143

- 1) A legal transaction may be refuted even against the heir or other universal successor to the person opposed to of refuting.
- 2) A legal transaction may be refuted against other legal successors of the opposer of refuting:
 1. if the legal successor knew, at the time of gaining⁸, of the circumstances based on which the gain of his legal predecessor is voidable,
 2. if the legal successor, at the time of gaining, could have been classified as a person in close relation to the debtor, unless he did not know, at that time, of the circumstances based on which the gain of his predecessor is voidable,
 3. if the objects gained have been transferred to the legal successor without, or with insignificant, compensation.

Legal transactions after commencement of the case

Article 144

- 1) A legal transaction undertaken after opening of the bankruptcy proceedings that remains valid according to the rules on protection of the trust in public registers, may be refuted according to the provisions on refuting legal transactions undertaken before the opening of the bankruptcy proceedings.
- 2) The statute of limitations from Article 141. starts to run from the moment the transaction is legally effective.

Part four

ADMINISTERING THE BANKRUPTCY ESTATE AND LIQUIDATION

1. Protection of the estate

Taking over of the estate

Article 145

⁸8 Receiving the benefits (or burdens) of the legal transaction.

- 1) After opening the bankruptcy proceedings, the trustee in bankruptcy shall be bound to immediately collect all the assets that form a bankruptcy estate and manage it.
- 2) The trustee may, based on executable decision on opening of the bankruptcy proceedings, within the execution proceedings, demand that the court order the debtor to turn over the property and determine what enforcement actions are necessary in order to execute this order. Along with the order for turning over, the court may determine the enforcement measures against the legal representative of the debtor- legal entity or the individual debtor from the Article 107. of this Law.

The debtor's accounts

Article 146

- 1) On the day of the opening of the bankruptcy proceedings the bank accounts of the debtor shall be closed and the authorization of the persons that were entitled to dispose of the debtor's assets shall cease.
- 2) The trustee in bankruptcy shall open a new bank account for the debtor, or two if the debtor has any hard currency, and appoint the persons that shall be authorized to dispose of the proceeds of these accounts.
- 3) The proceeds from closed accounts shall be transferred to the new accounts.

The debtors firm

Article 147

After opening of the bankruptcy proceedings the words In bankruptcy shall be affixed to the firm or name of the debtor, as well as the numbers of the debtor's new accounts.

Money and valuables

Article 148

- 1) The creditor's committee may decide where and under what conditions the money, securities and valuables shall be deposited. If the creditor's committee has not yet been founded or has not yet decided on the matter, the bankruptcy tribunal may issue a relevant decision.
- 2) If the creditor's committee has been founded, the trustee in bankruptcy may take over deposited money, securities or valuables only if the receipt has been co-signed by one of the

creditor's committee members. The instructions regarding the deposit made by the trustee shall be binding only if they are co-signed by one of the members of the creditor's committee.

3) The creditors may, at their meeting, issue a decision regulating the method of depositing money or other valuables.

4) If it is impossible for the trustee in bankruptcy to obtain a co-signature by the member of the creditor's committee, provided for in paragraph 2. of this Article, the bankruptcy judge may empower him, if necessary, to take over the deposited money, securities or other valuables himself.

Sealing

Article 149

The trustee in bankruptcy may, in order to secure the property that enters the bankruptcy estate, demand that an official of the court or notary public make a list of and seal the property of the debtor. The trustee shall be bound to display the protocol on sealing or removing of the seal in the court administrative office.

List of objects in the estate

Article 150

1) The trustee in bankruptcy shall be bound to make a list of the objects that form the bankruptcy estate. The individual debtor and the legal representatives of the debtor- legal entity are obligated to cooperate with the trustee, if possible, without delay.

2) For each of the objects, the value should be stated. If the value differs depending on whether the business shall be continued, both of the values should be stated. If necessary, the evaluation of certain parts of the property may be entrusted to an expert.

The list of creditors

Article 151

1) The trustee shall be bound to make a list of all the creditors he has learned of from the books and records of the debtor, reported creditors claims, or in any other way.

2) In the list of the creditors, creditors with the right to separate satisfaction and creditors classified according to their priority should be entered separately. For each of the creditors, his address, legal basis of his claim, and the amount of his claim should be stated. For creditors with a lien on some object in the estate, the particular object should be marked and the probable amount for which the creditor shall not be separately satisfied should be stated. The trustee may, if necessary, delegate the drafting of the list of creditors to the experts.

3) The list should state the possibilities for offset. An estimate of the obligations of the bankruptcy estate should be made in the case of continuing and uninterrupted reductions to cash of the estate.

Summary of assets and obligations

Article 152

1) The trustee in bankruptcy shall be bound to, taking into consideration the time of opening of the bankruptcy proceedings, create a systematic summary of the objects in the bankruptcy estate and the debtor's obligations and their values. The evaluation of the objects in the bankruptcy estate may be done according to the provisions of Article 150., and the evaluation of the obligations according to Article 151. of this Law.

2) After the summary of the assets has been made, the bankruptcy court, following the suggestion of the trustee, may order the debtor to make a statement regarding the completeness of the assets. In this case, the provisions of Articles 106. and 107. of this Law shall be applied accordingly.

Display in the court administrative office

Article 153

The list of the assets in the bankruptcy estate, list of creditors and the summary of the assets and obligations shall be on display in the court administrative office at least eight days prior to the report hearing.

Bookkeeping according to commercial and tax laws

Article 154

1) The debtor's obligations to maintain its business books according to the provisions of the commercial and tax law shall not be effected by the opening of the bankruptcy proceedings. Regarding the bankruptcy estate, these obligations should be fulfilled by the trustee in bankruptcy.

2) The opening of the bankruptcy proceedings starts a new fiscal year. Time elapsed to the day of the report hearing shall not be counted in the legal time periods determined for preparing and publishing the year end financial statement.

3) The provisions of the Commercial Law for appointing the auditor of the year end financial statement shall be applied in bankruptcy, bearing in mind that the auditor may be appointed

exclusively by the court of registration, following the trustee's suggestion. If the auditor has already been appointed for the fiscal year prior to the opening of the bankruptcy proceedings, the commencement of the case shall not influence the legal validity of this appointment.

2. Decision on liquidation

Report hearing

Article 155

- 1) During the report hearing the trustee in bankruptcy shall be bound to present a report on the financial situation of the debtor and the reasons that led to such situation; he should especially stress whether the possibility for operating the debtors company as a whole or in part exists and what the effect on satisfaction of the creditors would be.
- 2) The debtor, creditor's committee and the committee of the debtor's executive officers shall be able to give their statements on the trustee's report. The representatives of the chamber of commerce or chamber of small businesses may state their views as well.

Decision on further course of the proceedings

Article 156

- 1) The creditors shall decide on whether the debtor's operations should be suspended or temporarily continued. The creditors may alter their decision at later hearings (meetings).
- 2) The creditors may determine the methods and conditions of liquidation of the debtors assets.

Suspension of the company's operations prior to the creditor's decision

Article 157

- 1) If the trustee in bankruptcy determines that the debtor's operations should be closed before the date of the report hearing, he shall be bound to obtain the consent of the creditor's committee, if the committee has been formed.
- 2) Before the creditor's committee decides on the matter, or if the committee has not yet been founded, the trustee in bankruptcy shall be bound, prior to suspension of debtor's operations, to inform the debtor of the decision. The bankruptcy tribunal shall, upon a debtor's suggestion and after it hears the trustee, forbid the suspension of the debtor's operations if the suspension can be postponed until the report hearing, without considerably diminishing the estate.

Liquidation of the bankruptcy estate

Article 158

- 1) Following the report hearing, the trustee shall be bound to liquidate, without any delay, the assets that form the estate in bankruptcy, if it is not contrary to the decision of the creditors.
- 2) While liquidating the parts of the bankruptcy estate, the trustee shall be bound to obey the decisions made by the creditors and the instructions given by the creditor's committee.
- 3) The trustee may propose to the court that the liquidation of certain parts of the bankruptcy estate should be carried out according to the rules applied for court execution in order to collect the monetary claims.

Legal transactions of special importance

Article 159

- 1) The trustee in bankruptcy shall be bound to acquire the consent of the creditor's committee for legal transactions that are of special importance to the bankruptcy proceedings. If the creditor's committee has not been formed, the consent shall be given by the creditors.
- 2) The consent from paragraph 1. shall be necessary:
 1. for alienating an enterprise or a plant, or a commodity warehouse in whole⁹⁹, real estate, debtor's interest in another company which forms the basis of a permanent relationship with the other company, or claim for periodic payments,
 2. if it is for a loan that would considerably encumber the estate in bankruptcy,
 3. if it is for assuming, commencing, rejecting, avoiding, settling or arbitrating a case of considerable value.

Temporary suspension of the legal transaction

Article 160

In cases from Article 159. of this Law, the trustee in bankruptcy shall, prior to the creditor's committee or creditors assembly decision, inform the debtor, if possible without any delay. If the creditors have not given their consent, the bankruptcy tribunal may, following a suggestion made by the debtor or majority of the creditors from Article 57. paragraph 1. line 3. of this Law and after it hears the trustee, temporarily suspend undertaking of the legal transaction and convene the creditors meeting which will decide on undertaking of this transaction.

Alienation of an enterprise or plant to persons with a special interest

Article 161

⁹⁹ The entire unit.

1) An enterprise or a plant may be alienated only with the consent of the creditors if the acquirer or a person that has at least a one fifth ownership interest in the acquirer:

1. may be classified as a person in close relation to the debtor,

2. may be classified as a creditor with the right to separate satisfaction or a creditor that is not of lower priority and whose separate rights and claims, according to the court's estimate, equal one fifth of the amount of the value of all separate rights and claims of all creditors that are not of lower priority.

2) A person shall be considered to have an interest in the acquirer in the sense of paragraph 1., if this person has the requisite interest in an enterprise which has the requisite interest in the acquirer, or a third person, on behalf of this person or enterprise, has such interest.

Alienation of the company or a plant for less than its value

Article 162

1) Following the suggestion of the debtor or majority of the creditors described in Article 57. paragraph 1. line 3., and after hearing the trustee in bankruptcy, the bankruptcy court may decide that the intended alienation of an enterprise or a plant may be carried out only with the consent of the creditors, if the proposer makes it probable that the alienation to another acquirer would be more favorable to the bankruptcy estate.

2) If the proposer had any costs related to the proposition, he may demand to be compensated for them out of the bankruptcy estate as soon as the court reaches a decision from paragraph 1. of this Article.

Legal validity of the transaction

Article 163

1) The alienation of the debtor's assets contrary to the provisions of Articles 159. to 162. shall not effect the validity of the transaction undertaken by the trustee in bankruptcy.

2) The legal transactions undertaken by the trustee in bankruptcy on behalf of the debtor may be refuted according to the general provisions applied to refuting the legal actions and legal transactions.

3. Liquidation of objects on which the right for separate satisfaction exists

Liquidation of real estate, vessels and aircraft

Article 164

- 1) The real property against which separate right exists, shall be sold by the bankruptcy tribunal, upon a proposal of the trustee, in accordance with the provisions on enforcement against the real estate.
- 2) In the decision on the sale of real estate, the bankruptcy court shall state that the property is being sold in bankruptcy proceedings. The decision on sale of the property shall be recorded in the land register .
- 3) If the real property was not sold at the first hearing for sale for the determined amount, at subsequent hearings, it may be sold for a lower amount as determined by the tribunal.
- 4) If the separate creditor has initiated the procedure for execution over the real estate in order to enforce the satisfaction of his claim before the trustee in bankruptcy has proposed the sale of this real estate according to the provision from paragraph 1. of this Article, the real estate shall be sold within the execution proceedings initiated by the creditor.
- 5) The provisions of the above paragraphs of this Article shall be applied accordingly to the sale of vessels, vessels being built and aircraft.

Liquidation of fixtures and claims

Article 165

- 1) The trustee in bankruptcy may sell a fixture on which the right to separate satisfaction exists by a direct bargain (without any formal procedures), if the object is in his possession.
- 2) The trustee in bankruptcy may collect on, or in some other way reduce to money, the claim that has been ceded by the debtor in order to secure a certain interest.

Informing the creditor

Article 166

- 1) If the trustee has the right to liquidate some fixture according to the provision from Article 165. paragraph 1. of this Law, he shall be bound to inform the separate creditor, at his request, of the condition of this object. Instead of informing the creditor, the trustee may allow the creditor to inspect the object.
- 2) If the trustee is entitled to payment of the claim according to the provision of Article 165. paragraph 2. of this Law, he shall be bound to inform the separate creditor, upon his request, of this claim. Instead of informing him, the trustee may allow the creditor to inspect the books and the records of the debtor.

Announcement of intent to alienate

Article 167

- 1) Before the trustee in bankruptcy alienates (transfers) an object to a third person that he has the right to reduce to cash according to the provisions of Article 165. of this Law, he shall be bound to inform the separate creditor of the way in which he intends to alienate the object. The trustee shall give the creditor an opportunity to, within eight days, propose the reduction to cash of the object in a manner that would be more favorable to the creditor.
- 2) If a proposal shall be submitted within eight days, or prior to alienation, the trustee shall take into consideration the possibility of the more favorable method of reduction to cash suggested by the creditor.
- 3) The alternative method of reduction to cash may be that the creditor takes over the object. The method which diminishes the costs shall be considered as the more favorable possibility.

Protection of creditors from delay in reducing to cash

Article 168

- 1) Until the object that the trustee has the right to reduce to cash shall be so reduced according to Article 165. of this Law, the creditor shall be entitled to interest paid from the bankruptcy estate, calculated from the day of the report hearing.
- 2) If, prior to the opening of the proceedings, the creditor has been prevented from reducing to cash the object by some liens or pledges, the interest shall start to accrue not later than three months from the day that these measures have been lifted.
- 3) The provisions of paragraph 1. and 2. of this Article shall not be applied if the sum of the claims and value of other encumbrances are such that the creditor could not be satisfied.

Distribution of the proceeds of sales

Article 169

- 1) After the trustee receives money for some fixture or a claim, the amount necessary to compensate for the costs of identifying the claim and reducing it to cash shall first be paid to the bankruptcy estate. The remainder shall be used to satisfy the separate creditor, without delay.
- 2) If the trustee cedes some object that he is entitled to sell according to the provisions of Article 165. of this Law to the creditor to sell, the creditor shall be bound to pay the bankruptcy estate the amount necessary to cover the costs related to identifying the claim and the taxes.

Accounting for costs

Article 170

1) The costs of establishing the claim, which includes the costs of identifying the object and determining the liens on the object, shall be fixed at the flat rate of 5% of the amount realized by sale.

2) The costs of reducing the claim to cash shall be determined at the fixed rate of 5% of the amount realized by sale. If the real costs turn out to be considerably higher or lower than this fixed rate, the actual cost should be taken into consideration. If the bankruptcy estate becomes liable for some taxes as a result of the reduction to cash, the amount of these taxes shall be added to the cost.

Other dispositions of fixtures

Article 171

1) The trustee in bankruptcy may use, in favor of the bankruptcy estate, some fixture that he has the right to sell if he compensates the separate creditor for any resulting diminution in the value out of the estate.

2) The trustee may join together, mix or transform such a fixture if it does not impair the creditor's security.

3) If due to the trustee's actions from paragraph 2. of this Article, the separate creditor obtains security on some other object, it shall be limited to the value of the previous object of security.

Right of creditor to sell

Article 172

1) If the trustee has no right to sell an object or a claim on which a separate right exists, the creditor shall be entitled to sell it.

2) Based on the trustee's suggestion, and after hearing the creditor, the bankruptcy court may establish the time period during which the creditor must sell the object. After this period lapses, the right to sell the object shall pass to the trustee.

Part Five

SATISFACTION OF CREDITORS

1. Establishing claims

Reporting claims

Article 173

- 1) The creditors in bankruptcy shall report their claims to the trustee in bankruptcy in writing. Copies of the documents on which the claim is based or which prove the claim shall be enclosed with the claim.
- 2) The legal title and the amount of the claim should be stated in the report, as well as the number of giro-account or other account of creditor, if there is one.
- 3) If the claims which are being reported are the subject of a lawsuit, the court where the case is being conducted and the number of the case should be stated.
- 4) Separate creditors shall note in the report which part of the bankruptcy estate corresponds to their claim and the amount of their claim that is not going to be covered by the separate right.
- 5) Claims of the creditors of lower priority shall be reported only if the court asks these creditors to report their claims. In the report of such a claim it should be noted that it is a claim of lower priority and the rank to which the creditor shall be entitled.

The table

Article 174

- 1) The trustee in bankruptcy shall record each of the reported claims in the table along with the data referred to in Article 173. of this Law. During the time after the period for reporting claims and before the examination hearing, the record shall be available to the participants in the administration office of the court.
- 2) The bankruptcy judge may, if necessary, order the table with enclosed data to be displayed at some other place.

The course of the examination hearing

Article 175

- 1) During the examination hearing the reported claims shall be examined according to their amount and rank.
- 2) The trustee shall be bound to state whether he acknowledges or refutes each of the claims reported.
- 3) The claims that have been refuted by a trustee, individual debtor or any of the creditors, shall be discussed separately.

Subsequent reports

Article 176

- 1) Claims reported after the time period for reporting shall be examined at the examination hearing. If the trustee or any of the creditors in bankruptcy objects to this examination, or if the claim has been reported after the hearing, the bankruptcy court shall, at the expense of the creditor who files his report late, set a separate examination hearing. The same shall apply to subsequent changes of reports.
- 2) If the court, according to the provision of Article 173. paragraph 3. of this Law, has asked the creditors of lower priority to report their claims within a time period that ends later than eight days prior to the examination hearing, the separate hearing shall be set at the expense of the bankruptcy estate.
- 3) The invitation to a special hearing shall be announced. The creditors in bankruptcy that have reported their claims, trustee in bankruptcy and the individual debtor shall be separately invited to this hearing.

Establishing claims

Article 177

- 1) A claim shall be considered established if, during the examination hearing, it has not been refuted by the trustee or any of the creditors, or in the case that the refutation has been withdrawn. Refuting of the claim by an individual debtor shall not suspend the establishing of the claims.
- 2) The bankruptcy judge shall note in the separate table the extent to which each of the reported claims has been established, according to its amount and rank , and by whom it has been refuted. Refuting by an individual debtor shall also be noted in the table. The court clerk shall note that the claim has been established on the bills of exchange or other documents of debt.
- 3) Based on the table from paragraph 2. of this Article the bankruptcy tribunal shall issue a decision on the amount and rank of an established or refuted claim. By this decision, the

bankruptcy tribunal shall instruct the parties to initiate proceedings regarding establishing or refuting the claim.

4) The decision from paragraph 3. of this Article shall be published by putting it on the notice board of the court, and, generally in the form of excerpt, it shall be served on every creditor whose claim has been refuted or directed to a separate lawsuit. This decision may be refuted by a special appeal by each of the creditors regarding his claim or his refutation of the claim.

5) The decision from paragraph 4. of this Article shall be served on the trustee who may lodge a special appeal against it.

6) At subsequent hearings, it shall not be possible to refute claims that have been established at previous hearings.

Refuted claims

Article 178

1) If the trustee in bankruptcy or any of the creditors has refuted a claim, the court shall direct the creditor to institute legal proceedings in order to establish the refuted claim.

2) If the writ of execution for the refuted claim exists, the court shall direct the refuter to institute legal proceedings in order to prove the basis of his objections.

3) The creditors whose claims have been allowed shall not be separately informed of the fact, and the creditors shall be informed of this prior to the examination hearing. These creditors may, at their own expense, demand the verified excerpt of the decision.

4) If a person directed to institute legal proceedings does not institute them within the time determined by the tribunal's decision, it shall be considered that this person has waived its right to institute legal proceedings.

5) Following a request by the person that has been directed to institute the legal proceedings, the bankruptcy tribunal may decide that the case be solved by any of the arbitration in Republic of Croatia.

6) The request from paragraph 5. should be filed within 8 days from receiving the decision on instituting legal proceedings.

7) The bankruptcy tribunal decision from paragraph 5. of this Article may be completely substituted by the parties agreement on arbitration court.

8) Each of the bankruptcy creditors, and/or a debtor may join in the proceedings in front of the arbitration with the status of unique co-party.

9) The verdict of the arbitration by which a claim and its priority rank has been established, or refuted has an effect on each of the creditors in bankruptcy and the debtor. provisions of Article 181., paragraph 2. and 3. of this Law shall be applied accordingly.

Continuation of pending cases

Article 179

1) If at the time of opening of the bankruptcy proceeding, a proceeding related to the claim is pending, the proceedings for establishing the claim shall be continued by joining these proceedings. The petition for continuation of a civil procedure may be filed by the creditor whose claim has been refuted or by the refuter. The refuter shall continue the civil proceedings in the name and on behalf of the debtor.

2) If the court where the case has been joined is not a bankruptcy court, it shall decline its jurisdiction and turn the case over to the bankruptcy court. An appeal against this decision shall not be allowed.

Volume of establishing the claim and the amount in the pending case

Article 180

1) In the proceedings, the claim shall be established only according to the legal title, amount and payment rank of the claim as stated in the report of the claim or at the examination hearing.

2) The value of the object which is the subject of the claim that has been refuted by the trustee or a creditor, shall be determined according to the amount that can be expected to be distributed from the bankruptcy estate.

Effect of decision

Article 181

1) A valid court decision by which the claim and its priority rank has been established, or by which it is established that a claim does not exist, shall be effective against the debtor and all of the creditors.

2) The party that wins a case may demand that the bankruptcy court correct the table.

3) The creditors that have participated in the case without the participation of the trustee in bankruptcy may demand compensation for their costs from the bankruptcy estate if participation in the case has been beneficial to the bankruptcy estate.

Action against debtor

Article 182

If an individual debtor has refuted a claim during the examination hearing, the creditor shall be allowed to press charges against the debtor in order to establish his claim. If at the time of commencement of the case, proceedings regarding this claim were pending, the creditor may join this case.

2. Distribution

Satisfaction of creditors

Article 183

- 1) The satisfaction of creditors may begin only after the general hearing has been held.
- 2) The satisfaction of creditors shall be executed as cash enters the estate. The creditors of lower priority shall not be taken into consideration for partial distributions.
- 3) Distributions shall be made by the trustee in bankruptcy. Prior to each distribution he shall be bound to obtain the consent of the creditor's committee, or the judge, if one has not been established.

Distribution list

Article 184

Prior to the distribution, the trustee shall make a list of claims that shall be taken into consideration for the distribution. This list shall be displayed for the participants in the courts administration office. The trustee shall be bound to publicly announce the sum of claims and the amount that shall be distributed to the creditors.

Refuted claims

Article 185

- 1) A creditor in bankruptcy which has been directed to a civil proceeding in order to establish his claim shall be bound, within fifteen days from the announcement from Article 184. of this Law, to present evidence to the trustee that he has taken action to establish the claim, or that he has joined the pending case.
- 2) In the case described in paragraph 1. of this Article, the amount that would be distributed to the creditor if his claim was not refuted shall be exempted from distribution until the civil proceeding has been validly completed.

3) If the creditor fails to provide the evidence from paragraph 1. of this Article in time and personally, his claim shall not be taken into consideration during the partial distribution.

Separate creditors

Article 186

1) A creditor entitled to separate satisfaction shall, not later than fifteen days after the public announcement from Article 184. of this Law, submit evidence to the trustee that he has renounced the separate satisfaction and in what amount, or that he has not been separately satisfied. If he fails to submit such evidence on time, his claim shall not be taken into consideration during the partial distribution.

2) In order for a claim of a separate creditor to be taken into consideration during the partial distribution, it shall be sufficient that the creditor, within the time period from paragraph 1., proves to the trustee that the object on which he has a separate title is to be sold, and to prove existence of amount in which he shall not be separately satisfied. In this case, during the distribution, an amount equal to the unsatisfied part of the claim shall be exempted. If the conditions from paragraph 1. of this Article shall not be fulfilled until the final distribution, the amounts reserved for the satisfaction of the separate creditor shall be distributed among the other creditors.

3) If only the trustee is entitled to sell the object on which the separate right exists, the provisions of paragraphs 1. and 2. of this Article shall not be applied. During the partial distribution, the trustee shall, if he has yet not sold the object, estimate the amount of the claims of the separate creditor that shall not be partially satisfied and reserve the amount that corresponds to the unsatisfied part of the claim during the partial distribution.

Claim with condition subsequent

Article 187

1) Claims with a condition subsequent shall, during a partial distribution, be taken into consideration at their full amount. The portion related to these claims shall be reserved during the distribution.

2) During the final distribution, claims with a condition subsequent shall not be taken into consideration if the possibility of the occurrence of the condition is so remote that at the time of the distribution it has no material value. In this case, the amounts reserved during the previous distributions for satisfaction of this claim shall be included in the estate from which the final distribution shall be made.

Subsequent consideration

Article 188

The creditors that have not been taken into consideration during the partial distribution, and who subsequently fulfill the conditions from Article 185. and 186. of this Law, shall be paid the amount that makes them equal to other creditors from the balance of the bankruptcy estate during the next distribution. It shall only be possible to continue satisfying other creditors after this has been completed.

Changes to the distribution list

Article 189

The trustee in bankruptcy shall, within three days after the time determined in Articles 185. and 186. of this Law lapses, make revisions to the lists that have become necessary according to the provisions of Articles 185. to 188. of this Law.

Complaints against the distribution list

Article 190

- 1) Regarding a partial distribution, the creditors may submit a complaint to the trustee in bankruptcy against the distribution list within eight days after the time period from Article 185. paragraph 1. of this Law has elapsed.
- 2) The court decision rejecting the complaint shall be served on the creditor and the trustee in bankruptcy. The creditor may appeal this decision.
- 3) The decision by which the correction of the list has been determined shall be served on the creditor and the trustee and shall be made available in the court administrative office to all of the participants. The trustee and the creditors in bankruptcy shall be entitled to appeal this decision. The time period for the complaint shall start to run on the day when the decision has been made available.
- 4) A subsequent distribution may be started only after the decision from paragraph 3. of this Article becomes valid.

Determination of the amount of the partial distribution

Article 191

- 1) The creditor's committee shall determine, based on the proposal of the trustee, the amount that shall be paid in the partial distribution. If the creditor's committee has not been established, the amount of the portion shall be determined by the trustee.

2) The trustee shall give notice of the portion being paid to the creditors that are being taken into consideration for distribution.

Final distribution

Article 192

1) The final distribution shall commence as soon as the bankruptcy estate has been reduced to cash.

2) The final distribution shall be started only upon consent of the bankruptcy court.

Final hearing

Article 193

1) When giving the consent for the final distribution, the bankruptcy court shall determine the time of the final creditors assembly. In this hearing:

1. the trustees final account shall be discussed,
2. complaints against the final list shall be submitted,
3. the creditors shall decide on objects of the bankruptcy estate that have not been reduced to cash.

2) At least fifteen days, but not more than thirty days, should elapse between the announcement of the invitation for this hearing and the hearing.

3) Regarding the court decision on creditors complaints, the provisions of Article 190. paragraph 2. and 3. shall be applied accordingly.

Depositing the amounts reserved

Article 194

The trustee in bankruptcy shall, with the court's consent, and on behalf of interested persons, deposit with the court or the notary public the amounts that have been reserved during the final distribution.

Surplus after final distribution

Article 195

If, during the final distribution, all of the creditors in bankruptcy may be satisfied in full, the trustee in bankruptcy shall give the surplus to the individual debtor. If the debtor is not an individual person, the trustee shall give each person that has an interest in the debtor, the part of the surplus that this person would be entitled to in case of liquidation outside of bankruptcy proceedings.

3. Closing of bankruptcy proceedings

Decision on closing bankruptcy proceedings

Article 196

- 1) Immediately after the final distribution has been concluded, the bankruptcy tribunal shall issue a decision on closing the bankruptcy proceedings,
- 2) The decision and the basis on which it has been issued must be published. The announcement shall be published, as an excerpt, in the “Official Gazette” and according to the provision on the public announcement. The provisions from Article 65. of this Law shall be applied accordingly.
- 3) The decision from paragraph 1. of this Article shall be delivered to the court or other body that manages the register in which the debtor legal entity, or debtor-individual are registered, in order to delete him from the register. When deleted, the debtor ceases to exist.
- 4) The debtor in bankruptcy - craftsman shall be deleted from the register of craftsmen.

Rights of creditors after closing of proceedings

Article 197

- 1) The creditors may, after closing of the bankruptcy proceedings, pursue the rest of their claims against the individual debtor without limitation.
- 2) The creditors in bankruptcy, whose claims have been established and that have not been refuted by the debtor during the examination hearing, may initiate enforcement proceedings against the debtor based on the decision which established their claim. The claim that has been unsuccessfully refuted shall be treated the same as claims that have not been refuted at all.
- 3) The provisions of paragraphs 1. and 2. of this Article shall not effect the possibility of discharging the remainder of the debt.

Jurisdiction for execution

Article 198

In the case described in Article 197. of this Law, the court that has conducted the bankruptcy proceedings shall have exclusive jurisdiction for ordering and conducting the execution.

The conducting of the execution on non monetary assets of the debtor may be delegated by the court that has conducted bankruptcy proceedings to the municipal court with territorial jurisdiction.

Subsequent distribution

Article 199

1) The bankruptcy court shall, following the proposal made by the trustee, any of the creditors, or ex officio, order a subsequent distribution if, after the final hearing:

1. the conditions for distribution of reserved amounts to the creditors should occur,
2. amounts that have been paid out of the estate are returned to the estate,
3. assets that form the estate are recovered (found).

2) The court shall order a subsequent distribution regardless of the fact that the proceedings have been closed.

3) The court may abandon the subsequent distribution, and give the amount available for distribution among the creditors or recovered object to the individual debtor, if it deems that to be appropriate considering the insignificance of the amount or small value of the object and the costs of subsequent distribution. The court may condition the order of the subsequent distribution on the payment of a deposit that shall cover the costs of the subsequent distribution.

Legal remedies

Article 200

1) The decision by which the proposal for a subsequent distribution has been ruled out shall be served on the proposer. The proposer shall have the right to appeal such a decision.

2) The decision by which the subsequent distribution has been ordered shall be served on the trustee in bankruptcy, individual debtor, and if the distribution has been proposed by a creditor, this creditor. An individual debtor has the right to appeal this decision.

Conduct of the subsequent distribution

Article 201

After the subsequent distribution has been ordered, the trustee in bankruptcy shall distribute the amount that may be freely disposed of or the amount received by reducing to cash the subsequently found part of the estate according to the final list. The trustee shall render the final account to the bankruptcy court.

Exclusion of creditors of bankruptcy estate

Article 202

1) The creditors of the bankruptcy estate whose claims the trustee has learned of:

1. during the partial distribution, after the part for distribution has been determined,
2. during the final distribution, after the final hearing has been closed,
3. during the subsequent distribution, after the list has been published,

may demand satisfaction only from the remaining balance of the estate after the distribution.

4. Suspension of the bankruptcy proceedings

Suspension due to insufficiency of the estate

Article 203

1) If, after the commencement of the case, it turns out that the bankruptcy estate shall not be sufficient to cover the expenses of the proceedings, the bankruptcy court shall suspend the proceedings. The proceedings shall not be suspended if a sufficient deposit has been made; the provisions from Article 63. of this Law shall be applied accordingly.

2) Prior to the suspension, the bankruptcy court shall obtain the opinion of the creditors, and hear the trustee and the creditors in bankruptcy.

3) If there is cash in the bankruptcy estate, the trustee shall, prior to suspension of the case, settle the costs of the proceedings in proportion to their amounts. He shall not be bound to continue with reducing the objects of the estate to cash.

Reporting the insufficiency of the estate

Article 204

1) If the costs of the proceedings are covered , but the bankruptcy estate is not sufficient to cover the other due obligations of the estate, the trustee in bankruptcy shall submit a report on insufficiency of the estate to the bankruptcy court. He shall do so if it may be assumed that the estate shall not be sufficient for fulfillment of the other existing obligations of the estate when they become due.

2) The court shall announce the report on insufficiency of the estate and it shall be served on the creditors in bankruptcy separately.

3) The trustees duty to manage the estate and to reduce the estate to cash shall exist even after the report on insufficiency of the estate has been filed.

Satisfaction of the creditors of the estate

Article 205

1) The trustee in bankruptcy shall fulfill the obligations of the bankruptcy estate in this order:

1. costs of the bankruptcy proceedings,
2. obligations of the estate that have arisen after the report on insufficiency of the estate has been filed that are not included in the costs of the proceedings,
3. other obligations of the estate, but bearing in mind that the obligations based on the support allowed according to provisions of Article 108. and 109. paragraph 1. of this Law shall be last.

2) The following obligations shall be considered, according to the provisions of paragraph 1. sentence 2. of this Article, as obligations of the bankruptcy estate:

1. obligations based on a bilateral contract, if the trustee has chosen to fulfill them after he has filed the report on insufficiency of the estate,
2. obligations based on a permanent legal relationship for the time after the first period during which the trustee was entitled to terminate the relationship and after the report on insufficiency of the estate has been filed,
3. obligations based on permanent legal relationships if the trustee has accepted the counter- performance after the report on insufficiency of the estate has been filed.

3) If the obligations from paragraph 1. and 2. of this Article are of the same priority, they shall be settled in proportion to their amounts.

Injunction on execution

Article 206

As soon as the trustee files the report on insufficiency of the estate, the execution of the payments of the obligations of the estate from Article 205. of this Law shall not be allowed.

Suspension of the case after the report on insufficiency of the estate

Article 207

- 1) As soon as the trustee distributes the bankruptcy estate according to the provisions of Article 205. of this Law, the bankruptcy tribunal shall suspend the proceedings.
- 2) The trustee shall be bound especially to render his accounts after the report on insufficiency has been filed.
- 3) If objects belonging to the estate are found after the suspension of the proceedings, the court shall, following a proposal made by the trustee or creditors, or ex officio, order the subsequent distribution to be conducted. The provisions from Article 199. paragraph 3. and Article 200. and 201. of this Law shall be applied accordingly.

Suspension due to the subsequent disappearance of the reason for bankruptcy

Article 208

The bankruptcy proceedings shall be suspended, on the basis of a debtor's proposal, if a guarantee that the debtor shall not be insolvent or overburdened by debt after the case has been suspended has been given. This proposal shall be allowed only if the nonexistence of the reasons for bankruptcy should be made probable.

Suspension with debtor's consent

Article 209

- 1) Bankruptcy proceedings shall be suspended upon the proposal of the debtor-individual if, after the time period for reporting of claims expires, he files with the court a written consent of all of the creditors that have filed their claims. The court shall, based on its free judgment, decide whether the consent of the creditors whose claims have been refuted by the debtor or trustee or the separate creditors shall be necessary, and whether it is necessary to extend relevant security to this creditors.
- 2) The case may be suspended even before the time for reporting the claims expires if, apart from the creditors that have consented to the suspension, other creditors are not known.

Procedure following the proposal for suspension

Article 210

1) The proposal for suspension of the bankruptcy proceedings from Article 208. or Article 209. of this Law shall be announced. The proposal shall be displayed in the administration office of the court for all participants to see; in a case from Article 209. the statements on creditors consents shall be enclosed. The creditors may, within eight days from the day of announcement, file a complaint against this proposal, in writing or orally to the transcript.

2) The bankruptcy court shall decide on the suspension of the case after it hears the proposer, trustee in bankruptcy and creditor's committee, if one has been founded. If the complaint against the proposal has been filed, the court shall hear the plaintiff.

3) Prior to suspending the case, the trustee shall fulfill the indisputable claims out of the bankruptcy estate and extend necessary security for the disputable claims.

Announcement and effect of suspension

Article 211

1) The court shall announce the decision by which the bankruptcy proceedings are being suspended and the reason for suspension. Prior to this, the court shall inform the debtor, trustee and members of the creditor's committee of when the suspension shall become effective. In this case, the provisions from Article 196. paragraph 1. of this Law shall be applied accordingly.

2) By suspension of the bankruptcy proceedings the debtor shall again have the right to freely dispose of the bankruptcy estate. The provisions of Articles 197. and 198. shall be applied accordingly.

Legal remedies

Article 212

1) If the bankruptcy proceedings are being suspended according to Articles 203., 207., or 208. of this Law, each of the creditors in bankruptcy, and if the suspension has been ordered according to Article 203., the debtor, shall have the right to appeal this decision.

2) If the proposal from Article 207. or 208. of this Law should be rejected by the court, the debtor shall have the right of special appeal.

P a r t s i x

R E O R G A N I Z A T I O N

1. Preparing the reorganization of debtor

General provision

Article 213

1) After opening of the bankruptcy proceedings, the reorganization of the debtor pursuant to a reorganization plan may be started.

2) The reorganization, may be executed in following ways:

- retention by the debtor, in order to continue it's activities, of all or any part of the property of the estate,
- transferring all or part of the property of the estate to one or more existing entities or entities that will be established,
- merger or consolidation of the debtor with one or more entities,
- selling all or part of the property of the estate, subject to or free of any lien,
- distribution of all or part of the property of the estate to the creditors,
- determining the method of satisfying the creditors,
- satisfaction or modification of any lien,
- diminishing or postponing the discharge of debtors payments,
- turning the debtor's obligations into credit,
- issuing a guarantee or providing other collateral for fulfillment of the debtor's obligations,
- determining the debtor's liability after conclusion of the bankruptcy proceedings, etc.

Filing the plan

Article 214

1) The trustee in bankruptcy and the debtor shall be entitled to file a plan with the bankruptcy tribunal. The debtor may file a plan along with the petition in bankruptcy. A plan submitted after the final hearing shall not be taken into the consideration.

2) If the trustee has been instructed by the creditors to prepare a plan, he shall be bound to submit this plan to the bankruptcy tribunal within a reasonable period. The trustee, in a counseling capacity, the creditor's committee, if established, and the debtor-individual shall cooperate in the preparation of the plan.

Contents of plan

Article 215

The bankruptcy plan shall consist of the preparation basis and the implementation basis. The documentation from Articles 226. and 227. of this Law should be attached to the plan.

Preparation basis

Article 216

1) The preparation basis shall state the measures undertaken prior to the opening of the bankruptcy proceedings or those that should still be undertaken in order to create the basis for the planned realization of the rights of parties involved.

2) The preparation basis shall contain all other information relating to the basis and consequences of the plan that are significant for creditors decisions on the plan and the court confirmation of the plan.

Implementation basis

Article 217

The implementation basis shall contain information on how the legal positions of the debtor and other participants in the proceedings shall be effected by the execution of a plan.

Classifying the participants

Article 218

1) The plan shall classify the participants into separate groups, when establishing their rights. By the plan, the creditors with different legal status shall be classified in separate groups. Following should be differed:

1. creditors with the right for separate satisfaction, if the plan effects their rights,
2. creditors in bankruptcy that are not of lower priority,

3. creditors in bankruptcy of certain lower ranks, if their claims shall not cease to exist according to Article 221. of this Law.

2) Creditors of the same legal rank may be classified into groups according to the similarity of their economic interests. This sort of classification should be grounded on valid reasons. The criteria for classification should be stated in the plan.

3) The employees of the debtor shall form a special group, if they participate in the proceedings with claims that are not insignificant. A special groups may be formed for creditors with small claims.

Rights of separate creditors

Article 219

1) The right of separate creditors for satisfaction from the objects on which the rights for separate satisfaction exists (collateral)⁶⁶, must not be effected by the bankruptcy plan, unless expressly provided by the plan.

2) If the plan so provides, the implementation basis of the plan should state to what extent the rights of separate creditors shall be impaired, for how long their satisfaction shall be postponed, how their claims shall be secured and what other provisions of the plan shall affect them.

Rights of the creditors in bankruptcy

Article 220

For the creditors that are not of lower priority, the implementation basis of the plan should state to what extent their claims shall be impaired, for how long their satisfaction shall be postponed, how their claims shall be secured and what other provisions of the plan shall affect them.

Rights of the creditors of lower priority

Article 221

1) If not otherwise provided by the bankruptcy plan, it shall be considered that by acceptance of the plan, the claims of creditors of lower priority have ceased to exist.

2) If the plan deviates from the provision of paragraph 1. of this Article, the implementation basis shall state the information described in Article 220. for each of the groups of creditors of lower priority.

⁶⁶ Collateral

3) The liabilities of the debtor-individual for monetary fines and similar obligations after the conclusion of the bankruptcy proceedings, may not be excluded or limited by the plan.

Principle of equal treatment to all participants

Article 222

1) All of the participants classified in the same sub-group shall be granted equal treatment by the bankruptcy plan.

2) Different treatment of members of the same sub-group shall be allowed only with the consent of all effected participants. In this case, the statements expressing the consent of these participants should be attached to the plan.

3) Any agreement made by the trustee, debtor-individual and other persons with certain participants which promises these participants favors not provided for by the plan, in exchange for their particular behavior in voting on, or otherwise connected to the bankruptcy proceedings, shall be void.

Debtor's liability

Article 223

1) If not provided otherwise by the plan, by satisfying the creditors in bankruptcy in accordance with the implementation basis of the plan, the debtor shall be relieved of the rest of its obligations to these creditors.

2) If the debtor is a general partnership or a limited partnership, paragraph 1. of this Article shall be applied accordingly to the personal liability of the partners.

Material relations

Article 224

If, according to the plan, the debtor's interest in objects or rights should be established, changed, transferred or suspended, the required statements of intent of the participants may be entered into the implementation basis. The statements that need to be registered in the public registers must be given in accordance with the provisions regarding the land register or other applicable regulations.

Review of the estate, financial plan and plan of results

Article 225

If it has been presumed that the creditors shall be satisfied out of the revenues of the debtor's continued operations, whether conducted by the debtor or a third person, the review of the estate should be attached to the bankruptcy plan. In the review, the parts of the estate, along with their value, and the obligations that should be fulfilled if the plan becomes valid should be listed. The income and expenses expected during the period in which the creditors should be satisfied shall be stated, as well as the chronology of the income and expenditures that supports the enterprise's ability to make payments during this period.

Further supplements

Article 226

- 1) If the plan provides that the debtor-individual shall continue to manage his company, or his small business, the statement of the debtor stating that he is prepared to continue with his business activities in accordance with the plan should be attached to the plan. If the debtor is a general partnership or a limited partnership, the statement of personally liable members should be attached. The debtor's statement from sentence 1. of this Article shall not be necessary if the plan has been proposed by the debtor.
- 2) If the plan provides that some of the creditors acquire equity interests in the debtor-legal entity or become members of this entity or acquire certain rights relating to the activities of a debtor-individual, the statement of consent of these creditors should be attached to the plan.
- 3) If a third person shall assume obligations to creditors, in case of acceptance of the plan, the statement of this person should be attached as well.
- 4) If the plan provides for some change in the status of the debtor (consolidation, merger or similar), the statements of the legal entities that would participate in these changes should be attached.

Rejection of the plan

Article 227

- 1) The bankruptcy tribunal shall reject the bankruptcy plan ex officio:
 1. if the regulations regarding the rights on submission and the contents of the plan have not been respected, and if the submitter of the plan can not cure this fault or did not cure it within the reasonable time period determined by the court,
 2. if there is obviously no possibility for this plan to be accepted by the creditors or to be confirmed by the court,
 3. if the rights that should be gained by the participants according to the implementation basis of the plan submitted by the debtor may obviously not be realized.

2) If the debtor, during the bankruptcy proceedings, has already submitted a plan which has been rejected by the creditors, has not been confirmed, or has been withdrawn by the debtor after announcing the time for the hearing on the plan, the court shall reject the new plan proposed by the debtor if the rejection has been demanded by the trustee, with the consent of the creditor's committee, if established.

3) The submitter of a plan shall have the right to appeal the decision rejecting the plan.

Deciding on the plan

Article 228

1) If the bankruptcy plan has not been rejected, the bankruptcy tribunal shall request that the following participants state their opinion on the plan, within 30 days:

1. creditor's committee, if founded,
2. debtor, if the plan has been submitted by the trustee,
3. trustee, if the plan has been submitted by the debtor.

2) The bankruptcy council may invite the government bodies in charge of the debtor's activities and the chamber of commerce to give their opinion on the proposed plan.

Suspension of reducing the debtor to cash and satisfaction of creditors

Article 229

If the execution of the submitted plan would be imperiled by the continuation of reducing to cash and distributing the property of the estate, the bankruptcy tribunal, upon a proposal made by the debtor or the trustee, shall order the suspension of the reduction to cash and distribution of the estate. The court shall not order the suspension, or shall call off the decision on suspension, if, due to the suspension, the estate might incur considerable damage or if the trustee, with the consent of the creditor's committee or creditors, demands continuation of the reduction to cashing and distribution of the estate.

Presentation of the plan

Article 230

The bankruptcy plan with all supplements and statements shall be exhibited in the court administration room for the participants to inspect it.

2. Acceptance and confirmation of the plan

Hearing on discussing and voting on the plan

Article 231

- 1) The bankruptcy tribunal shall determine the time for the hearing during which the bankruptcy plan shall be discussed and voted on. The hearing must be held within 30 days from the day it has been ordered.
- 2) The hearing for discussion and voting must be announced. The announcement should state that the plan and the statements regarding the plan may be viewed at the court administration office.
- 3) The creditors in bankruptcy that have reported their claims, separate creditors, trustee in bankruptcy and the debtor-individual shall all be invited separately to attend the hearing for discussing and voting. A copy of the plan, or a brief summary of its main points, which should be provided by the petitioner, should be attached to the invitation.

Joinder with examination hearing

Article 232

The hearing on discussing and voting on the plan shall not be convened before the hearing for examination. These two hearings may be joined.

Creditors voting rights

Article 233

- 1) When voting on the bankruptcy plan, the provisions on determination of voting rights of the creditors in bankruptcy shall be applied accordingly. The separate creditors shall have the same voting rights as the creditors in bankruptcy only if the debtor is personally liable to them and if they waive their right for separate satisfaction or if they have not been separately satisfied.
- 2) Creditors whose claims have not been effected by the plan shall have no voting rights.

Separate creditors voting rights

Article 234

- 1) If the legal position of the separate creditors has also been regulated by the bankruptcy plan, the rights of these creditors, for each of them separately, shall be discussed at the hearing. Voting rights shall be granted to the separate creditors whose separate rights have not been refuted by the trustee, any of the separate creditors, or any of the creditors in bankruptcy. Regarding the voting rights of the bearers of refuted rights, undue rights or those under condition subsequent,

the provisions of this Law on regulating the voting rights of such creditors shall be applied accordingly.

2) Separate creditors whose claims are not being affected by this shall have no voting rights.

List of votes

Article 235

Based on the hearing, the trustee in bankruptcy shall establish the list of creditors and voting rights that they are entitled to.

Modification of a plan

Article 236

The petitioner shall be entitled to, based on the discussion at the hearing, modify certain provisions of the plan. The modified plan may be voted on at the same hearing.

Separate hearing for voting

Article 237

1) The bankruptcy tribunal may set a special hearing for voting on the plan. In this case, the time period between the discussion hearing and the voting hearing shall not be longer than one month.

2) All of the creditors with voting rights and the debtor shall be invited to this hearing. If the plan has been modified, these modifications should be pointed out.

Voting in writing

Article 238

1) If a special hearing for voting has been set, the creditors may vote in writing.

2) The bankruptcy tribunal shall send the ballot to the creditors with voting rights after the discussion hearing, and thus inform them of their right to vote. The ballot shall be counted only if it has been received at the court not later than three days prior to the voting hearing; the court shall caution the creditors of this when sending the ballots.

Voting in groups

Article 239

Each of the groups of creditors with voting rights shall vote separately on a bankruptcy plan.

Majorities needed

Article 240

1) It shall be considered that the plan has been accepted by the creditors if the majority of the creditors with right to vote in every group has voted in favor of the plan and if the sum of claims of the voters that have voted for the plan doubles the sum of claims of the creditors that have voted against the plan.

2) The creditors with a mutual right or whose rights have formed an unity until the occurring of reason for bankruptcy, shall be counted as one creditor when voting. The according procedure shall be binding on the bearers of the separate rights and the rights of usufruct.

Prohibition on obstruction

Article 241

1) It shall be considered that a voting group has accepted a plan, even if the necessary majority has not been reached, a) if the creditors forming that group are not put in a worse position by the plan than the position they would be in if there was no plan, b) if they adequately participate in the economic benefits afforded to the participants by the bankruptcy plan, and c) if the majority of the voting groups have accepted the plan with the necessary majority.

2) It shall be considered that the creditors of a certain group participate adequately in the economic benefits (paragraph 1. of this Article) if, according to the plan, a) none of the other creditors receives a benefit that exceeds the full amount of their claim, b) no benefit is received by a creditor which would, if there was no plan, be of lower rank than the creditor of this group, or by the debtor or a person with an equity interest in a debtor, and c) none of the creditors that would have the same priority rank, if there was no plan, is placed in a better position than the creditors of this group.

Acceptance by the creditors of lower ranks

Article 242

1) It shall be considered that the groups of creditors with claims for interest that is accumulating since the day of opening of the proceedings and creditors that are demanding compensation for the costs of their participation in the proceedings, have accepted the plan if the debtor is, according to the plan, relieved from these obligations, or if according to the provision of Article 221. of this Law, the debtor is deemed to be relieved of these obligations, and if, according to the plan, not even the main claims of these creditors shall be satisfied in full.

2) It shall be considered that the groups that are positioned one rank below the debtor's obligations based on monetary penalties and similar obligations have accepted the plan if none of

the creditors, according to the plan, has been put in a better position than the creditors of these groups.

3) If none of the creditors of a certain group or sub-group takes part in the voting, it shall be considered that this group has accepted the plan.

Acceptance by the debtor

Article 243

1) It shall be considered that the debtor has consented to the plan if he does not complain against the plan, orally at the hearing or by writing in the transcript, prior to the voting hearing.

2) The bankruptcy tribunal shall not take into consideration the complaint from paragraph 1. of this Article if the debtor has not been put, according to the plan, in a worse position than the one he would be in if there was no plan, and if none of the creditors shall receive an economic benefit that would exceed the full amount of his claim.

Court confirmation

Article 244

1) After the bankruptcy plan has been accepted by the creditors and the debtor, the bankruptcy tribunal shall decide whether to confirm the plan.

2) Prior to this, the bankruptcy tribunal shall hear the trustee, the creditor's committee, if one has been founded, and the debtor.

3) The decision on confirmation of the plan shall contain the implementation basis accepted by the creditors.

Conditional plan

Article 245

If the plan provides that prior to confirmation certain actions must be undertaken or some other measures instituted, the plan may be confirmed only if these preconditions have been satisfied. The court shall not confirm the plan if these preconditions are not fulfilled within the reasonable time period determined by the court.

Infringement of procedural provisions

Article 246

The bankruptcy tribunal shall, ex officio, refuse the confirmation if:

1. during the drafting of the plan the provisions regulating the contents and form of the plan or acceptance by the creditors or debtor have been substantially violated, unless these violations may be cured, or
2. the acceptance of the plan has been achieved in a improper way , especially by putting certain creditors in a more favorable position.

Protection of minority

Article 247

1) The court shall reject the confirmation of a plan on the basis of a creditor proposal if the creditor:

1. has complained about the plan prior to the voting hearing - orally or in writing in the transcript, and
2. has been put in a worse position than he would have been in if there was no plan.

2) A proposal referred to in paragraph 1. of this Article shall be allowed only if the creditor makes it probable that he has been put in a worse position.

Announcement of the decision

Article 248

1) The decision by which the plan has been confirmed or by which the confirmation has been rejected shall be announced at the voting hearing or at a separate hearing which should be convened within the 15 day period.

2) If the court confirms the plan, it shall serve a copy of the plan or a summary to the creditors in bankruptcy that have reported their claims and to the separate creditors, advising them of the decision on confirmation.

Legal remedies

Article 249

The creditors and the debtor shall have the right to appeal the decision confirming or rejecting the plan.

2. Effects of a confirmed plan and supervision of fulfillment

Basic effects of a plan

Article 250

- 1) Confirmation of a plan is effective against all of the participants from the moment of its validity. If creation, change, transfer or suspension of an interest in properties of an estate or a cession of an equity interest in some limited liability company has been provided by the plan, it shall be deemed that the statements of the participants encompassed by the decision have been stated in proper form; this shall be applied accordingly to the statements encompassed by the decision on assuming obligations which are the basis for creation, change, transfer or suspension of interests in properties of the estate or cession of equity interests. This shall be applied to creditors in bankruptcy that have not reported their claims and to the participants that have objected to the plan.
- 2) The bankruptcy plan effects only those of the separate creditors that have voted in favor of the plan.
- 3) Confirmation of a plan has no effect on the rights of creditors against the co-debtors and guarantors of the debtor, or on the rights of creditors on the properties that are not part of the estate, or based on a preliminary inscription that is related to these properties. Nevertheless, based on this decision, the debtor shall be relieved of his obligations to the co-debtors, guarantors or other persons entitled for regress, in the same way as to his creditors.
- 4) If a creditor has received more than he has been entitled to according to the plan, he shall not be bound to return what he has received.

Suspension of provision on postponing satisfaction of and relief from debt

Article 251

- 1) If by the decision on confirmation of the plan, the satisfaction of creditors claims has been postponed or the debtor has been partially relieved of the obligation, the postponement or relief shall cease to be effective against the creditor to whom the debtor has been considerably late in fulfillment of the plan. The debtor shall be deemed to have been considerably late in fulfillment of the plan if he has not paid the due obligation, after notice by the creditor, in writing, and although the creditor has offered him at least fifteen additional days for payment.
- 2) If prior to the full fulfillment of the plan, a new bankruptcy proceeding shall be opened against the debtor's assets, the postponement and relief shall cease to be effective against all of the creditors in bankruptcy.

Refuted claims and separate satisfaction

Article 252

1) If a claim has been refuted during the examination hearing or if the amount of the claim of a separate creditor has not been determined, the debtor shall not be deemed late in fulfillment of the plan according to Article 251. of this Law, if, until the final determination of the amount of that claim, the debtor considers that claim in the amount corresponding to the court's decision on the voting rights of the creditors when voting on the plan. If the court has not reached a decision on the voting rights, the court shall, following the debtor's or creditor's suggestion, subsequently determine the amount that should be temporarily taken in consideration by the debtor.

2) If the payment by the debtor is less than the final determination of the amount of the claim, he shall be bound to pay the balance. In this case, it shall be considered that a debtor is considerably late in fulfillment of the plan if he does not pay the balance after notice by the creditor, and an offer by the creditor of not less than fifteen additional days for payment.

3) If the payment by the debtor is more than the final determination of the amount of the claim, he may demand the return of the excess only if this excess exceeds the undue amount of the claim that the creditor is entitled to.

Execution based on decision confirming the plan

Article 253

1) Based on a perfected⁶ decision on confirmation of a plan, the creditors in bankruptcy whose claims have been established and that have not been refuted by the debtor at an examination hearing may initiate an enforcement procedure against the debtor. The claims that have been refuted, but the refutation has been rejected, shall be treated the same as established claims.

2) The provision of paragraph 1. of this Article shall be applied accordingly to enforcement against a third person, if according to the provision of paragraph 1., it has been established that this person has extended guarantees for fulfillment of the bankruptcy plan, except if it has retained the right for complaint of the prior charge⁷.

3) In case of a considerable delay in debtor's fulfillment of a plan, a creditor may enforce its rights on the basis of the decision confirming the plan, and the decision establishing his claim in the bankruptcy proceedings, if he makes it plausible that the debtor has received proper notice from him and that the additional period of time has elapsed. The creditor shall not be bound to prove that the debtor is late.

Conclusion of the bankruptcy proceedings

Article 254

⁶ A perfected decision is enforceable; all appeals have been completed and/or the time periods for lodging appeals have expired.

⁷ This appears to refer to the right to lodge a complaint in connection with the underlying claim.

- 1) The bankruptcy tribunal shall issue a decision on concluding the bankruptcy proceedings as soon as the decision on confirmation of the plan becomes perfected.
- 2) Prior to the conclusion of the proceedings, the trustee in bankruptcy shall be bound to fulfill the undisputed obligations of the estate, and provide adequate security for disputed ones.
- 3) The court shall announce the decision stating the grounds for conclusion of the bankruptcy proceedings. The court shall inform the debtor, trustee and creditor's committee members, in advance, of when the conclusion of the case shall become effective.

Effects of conclusion of the case

Article 255

- 1) The duties of the trustee in bankruptcy and creditor's committee members shall terminate upon issuance of the decision concluding the bankruptcy proceedings unless otherwise provided by this Law. The debtor shall again be free to dispose of the estate.
- 2) The provision of paragraph 1. of this Article does not refer to provisions on supervision of fulfillment of the bankruptcy plan.
- 3) A pending case concerning refuting a legal transaction undertaken by the debtor in connection with the bankruptcy proceedings, may be continued by the trustee after the conclusion of bankruptcy proceedings, if so provided by the decision on concluding the case. In this event, the case shall be continued on debtors behalf, if not otherwise provided by the plan.

Supervision of fulfillment of plan

Article 256

- 1) The decision on confirmation of a plan may provide that the implementation of the plan shall be supervised.
- 2) If supervision has been provided for, after the conclusion of the bankruptcy proceedings the debtor's fulfillment of his obligations to the creditors shall be supervised according to the decision from paragraph 1. of this Article.
- 3) If provided for by the decision from paragraph 1. of this Article, the supervision shall extend to the claims that the creditors, according to this decision, have against the corporations founded after conclusion of the proceedings for taking over or further managing the debtor's company or a plant. (Successor to the debtor)

Duties and authorities of the trustee in bankruptcy

Article 257

1) The supervision shall be executed by the trustee, creditor's committee and bankruptcy court. In this case, the offices of the trustee in bankruptcy and creditor's committee shall not terminate as a result of the conclusion of the case. The provisions on the interim trustee shall be applied accordingly to the duties and authorities of the trustee in bankruptcy.

2) During the supervision, the trustee shall be bound, once a year, to inform the creditor's committee, if one has been founded, and the court about implementation of the plan and on further possibilities for its fulfillment. This does not effect the right of the creditor's committee and the court to demand certain information or preliminary reports at any time.

Reporting of nonfulfillment

Article 258

If the trustee establishes that the claims that are being supervised are not being fulfilled or that they can not be fulfilled, he shall be bound to report this fact to the court and to the creditor's committee without delay. If the creditor's committee has not been founded, the trustee shall inform all of the creditors that, pursuant to the decision on confirmation of the plan, hold claims against the debtor or successor to the debtor.

Consent for transaction

Article 259

The decision on confirmation of a plan may provide that for certain legal transactions undertaken by the debtor or successor to the debtor during the supervision period to be valid, the prior consent of the trustee shall be necessary. The provisions of this Law on the debtor's transactions undertaken after the commencement of the bankruptcy proceedings, without the trustee's consent, shall be applied accordingly to debtor's transactions undertaken without the trustee's consent.

Credits

Article 260

1) The decision on confirmation of the plan may provide that the creditors in bankruptcy may be of lower priority than the creditors with claims based on credits or loans that are going to be used by the debtor or successor to the debtor during the supervision period or that have been left in force by a creditor of the bankruptcy estate during the supervision period. In this case, the total amount of credits of this type should be established (credit balance). The amount should not exceed the value of the estate as stated in the review of estate.

2) The creditors in bankruptcy referred to in paragraph 1. of this Article shall be satisfied only after the creditors with whom it has been agreed that the credit approved by them, including the

interest and costs, shall be stated in the credit balance, and this agreement has been approved in writing by the trustee.

Later payment rank of claims of new creditors

Article 261

Claims based on contractual relationships that have been closed during the supervision period shall be satisfied after claims based on the credits referred to in Article 260. paragraph 1. of this Article. Claims resulting from a permanent contractual relationship based on a contract signed prior to the supervision period, but which may not be terminated until after the beginning of the supervision period, shall have the same rank.

Taking the later payment rank into consideration

Article 262

- 1) The later payment rank of the creditors in bankruptcy and the creditors referred to in Article 261. of this Law shall be taken into consideration only in bankruptcy proceedings that are opened after the suspension of supervision.
- 2) In such new bankruptcy proceeding, the creditors from paragraph 1. of this Article shall be rank ahead of other creditors of later payment rank.

Announcement of supervision

Article 263

- 1) The decision of a bankruptcy tribunal which orders supervision over fulfillment of a plan shall be announced together with the decision on conclusion of the bankruptcy proceedings. Along with this, the list of transactions subject to prior consent of the trustee, estimated amount of the credit balance, and whether supervision of the successor to the debtor has been ordered, shall be announced if the pre-conditions set forth by this Law have been satisfied.
- 2) The information from paragraph 1. of this Article shall be inscribed in the relevant public registers.

Suspension of supervision

Article 264

- 1) The bankruptcy tribunal shall issue a decision on suspension of supervision :

1. if the claims whose fulfillment has been supervised have been satisfied or the satisfaction has been secured,
2. if three years have passed since conclusion of the bankruptcy proceedings and no petition for opening new proceedings has been filed.

2) The decision from paragraph 1. of this Article shall be announced. As a result of this decision, the inscriptions on supervision and limitations in connection with supervision shall be erased from the public registers.

Costs of supervision

Article 265

The costs of supervision shall be borne by the debtor. The successor to the debtor shall bear the costs of supervision related to it.

P a r t s e v e n

PERSONAL MANAGEMENT (DEBTOR IN POSSESSION)

Preconditions

Article 266

1) The bankruptcy tribunal may, by the decision on opening of the bankruptcy proceedings, entitle the debtor to manage and dispose of the estate under the supervision of the (receiver)⁸ in bankruptcy (personal management). The provisions set forth in Parts 1 to 6 of this Law shall be applied accordingly to personal management, unless otherwise provided in this part of the Law.

2) The court shall establish personal management if:

1. the debtor proposes it,
2. if the creditor that has filed the petition in bankruptcy consents to it,
3. if, according to the circumstances of the case, it may be expected that the establishment of personal management shall not result in a delay in the proceedings or in some other damage to the creditor's rights or interests.

⁸8 The translators have used the term "receiver" in parts 7. and 8. while the author used "Atrustee". In other parts of this draft law, the translators use the term "Atrustee" while the author used the term "Amanager in bankruptcy".

3) In the case of personal management pursuant to paragraph 1. of this Article, a receiver in bankruptcy shall be appointed instead of a trustee. The creditors shall report their claims to the receiver in bankruptcy. The condition of personal management shall not be inscribed in the land or other registers.

Subsequent establishment of personal management

Article 267

If the debtor's proposal on establishing personal management has been rejected by the bankruptcy tribunal and personal management is proposed by the assembly during the first assembly of creditors, the bankruptcy tribunal shall subsequently establish personal management. The person who has previously been appointed as the trustee in bankruptcy may be appointed as the receiver as well.

Suspension of personal management

Article 268

1) The bankruptcy court shall suspend personal management, following a proposal by:

1. the creditors,
2. a separate creditor or creditor in bankruptcy, if the creditor that has filed the petition in bankruptcy proceedings has withdrawn his consent to personal management, and
3. the debtor.

2) Before it reaches a decision on this proposal, the court shall hear the debtor. The creditor and the debtor shall have the right to a separate appeal against the decision on this proposal.

3) After the decision on suspension of personal management, the proceedings shall be continued according to the provisions on the bankruptcy proceedings. The trustee in bankruptcy shall be appointed by the court in the decision on suspension of personal management. The person that has served as the receiver so far, may be appointed as a trustee.

Public announcement

Article 269

A court decision establishing or suspending personal management that is issued after opening of the bankruptcy proceedings shall be announced.

Legal status of the receiver in bankruptcy

Article 270

- 1) The provisions of this Law on the trustee in bankruptcy shall be applied accordingly to appointment of the receiver, court supervision over him, his liabilities and remuneration.
- 2) The receiver in bankruptcy shall be bound to investigate the financial situation of the debtor, especially the costs of his business activities and, if it is a debtor individual, his personal expenses. The provision from Article 54. paragraph 2. of this Law shall be applied accordingly to the receiver in bankruptcy.
- 3) If the receiver in bankruptcy establishes that circumstances exist, from which it can be concluded that the continuation of personal management may result in damages to the creditors, he shall be bound to immediately inform the creditor's committee and the court of the matter. If the creditor's committee has not been founded, the bankruptcy court shall inform the creditors in bankruptcy that have reported their claims and the separate creditors.

Participation of receiver in bankruptcy

Article 271

- 1) Obligations that are not the result of regular business activities may be accepted by the debtor only with the receiver's consent. The debtor may not accept the obligations resulting from his regular business activities if the receiver does not consent.
- 2) The receiver in bankruptcy may demand that all moneys collected by the debtor should be turned over to the receiver and that all payments should be made by the receiver.

Participation of the creditor's committee

Article 272

The debtor shall be bound to obtain the consent of the creditor's committee for undertaking legal transactions of special significance for the bankruptcy proceedings. In the case described in the previous sentence, the provisions of this Law on especially significant legal transactions undertaken by the trustee in bankruptcy shall be applied accordingly.

Special cases requiring the receiver's consent

Article 273

1) Based on the creditors assembly proposition, the bankruptcy tribunal shall determine which legal transactions require the receiver's prior consent. With respect to legal transactions undertaken by the debtor without the receiver's consent, the provisions of this Law on legal transactions undertaken by the debtor without the consent of the trustee in bankruptcy shall be applied accordingly. If the receiver has consented to establishing of the obligation of the bankruptcy estate, the provisions of this Law on liabilities of the trustee in bankruptcy shall be applied accordingly to the receiver's liabilities to creditors for nonfulfillment of the obligations of the bankruptcy estate.

2) The prior consent requirement may be determined based on the proposal of a separate creditor or creditor in bankruptcy if it is necessary in order to avoid damage to the creditor. This proposal shall be allowed only if the creditor makes the existence of the possibility of damage probable.

3) The decision on requiring the consent shall be announced and inscribed in the public registers.

The means for debtors life

Article 274

1) The debtor-individual shall be entitled to receive the means, for himself and for persons that he is obliged to support according to Law, that shall enable him and supported persons to have a modest life, compared to his previous living conditions.

Bilateral legal relations

Article 275

During the personal management process, the provisions of this Law on fulfillment of legal transactions shall be applied accordingly, the authorities and liabilities of the trustee in bankruptcy shall be vested in the debtor in bankruptcy who shall discharge them in agreement with the receiver.

Liability and refuting of legal transactions

Article 276

The rights provided in Articles 101. and 102. of this Law may be discharged only by the receiver in bankruptcy, who shall be the only person authorized to refute legal transactions on behalf of the debtor according to Articles 127. to 144. of this Law.

Informing creditors

Article 277

- 1) The list of properties that comprise the estate, the list of creditors and the review of the assets shall be drafted by the debtor. The receiver in bankruptcy may examine the lists and the review, and state, in writing, according to the results of the examination whether complaints should be filed.
- 2) The debtor shall be bound to present a report during the report hearing . The receiver in bankruptcy shall be bound to present his opinion on the debtor's report.
- 3) The debtor shall be obliged to present his accounts. The provision of paragraph 1., sentence 2 of this Article shall be applied accordingly to the debtor's final account.

Cashing in the collateral

Article 278

- 1) The debtor shall be vested with the trustee's right to reduce to cash objects encumbered by liens. The costs related to identifying of the object and encumbrances shall not be determined. Only the costs actually incurred in reducing to cash and payment of (VAT) tax may be compensated.
- 2) The debtor shall discharge his right for cashing in pursuant to the agreement with the receiver.

Satisfaction of creditors in bankruptcy

Article 279

- 1) During the examination of claims, in addition to creditors in bankruptcy, the debtor and receiver in bankruptcy may refute reported claims. A claim that has been refuted by the trustee in bankruptcy, debtor or receiver shall not be deemed confirmed.
- 2) Distributions shall be conducted by the debtor. The receiver in bankruptcy shall be bound to examine the distribution lists and state, in writing, whether, according to the results of the examination, complaints should be filed against these lists.

The bankruptcy plan

Article 280

- 1) The creditors assembly may delegate the drafting of the bankruptcy plan to the receiver in bankruptcy or to the debtor. If the debtor should be commissioned to do this, the receiver shall participate in the drafting in a counseling capacity.

2) The receiver in bankruptcy shall supervise the implementation of the plan.

Insufficiency of the bankruptcy estate

Article 281

The receiver in bankruptcy shall be bound to report the insufficiency of the estate to the court.

P a r t e i g h t

DISCHARGE FROM REMAINING OBLIGATIONS

General provision

Article 282

If the debtor is an individual, he may, according to the provisions of this Law, be discharged from obligations to the creditors in bankruptcy which have remained unsatisfied during the bankruptcy proceedings.

Debtor's proposition (petition)

Article 283

1) The debtor may be relieved of his remaining obligations if he files a proper petition. The petition must be presented to the bankruptcy court in writing not later than the report hearing. This petition may be joined to the petition in bankruptcy.

2) The petition should be accompanied by the statement that debtor shall cede his claims related to employment or other relevant pending claims to the receiver appointed by the court for the period of seven years after conclusion of the bankruptcy proceedings,. If the debtor has already ceded these claims to some third person, he shall be bound to inform the court of that fact.

3) The agreements limiting or putting the cession of the debtor's claims from paragraph 2. of this Article under any conditions, shall have no legal effect if the effect of the statement on cession is limited by them or made impossible.

Suggestion of receiver

Article 284

The debtor and the creditor shall be entitled to suggest a person to serve as a receiver, providing that this person shall be appropriate according to the circumstances of particular case.

Bankruptcy tribunal decision

Article 285

- 1) The bankruptcy tribunal shall, during the final hearing, call for opinions on debtor's petition from the creditors in bankruptcy and the receiver. The bankruptcy tribunal shall decide on the petition by a decision.
- 2) Each of the creditors that has opposed the discharge during the final hearing and the debtor may appeal the decision from paragraph 1. of this Article The bankruptcy proceedings shall be concluded only after this decision becomes perfected. The perfected decision shall be announced along with the decision on concluding of the bankruptcy proceedings.
- 3) If the bankruptcy proceedings should be suspended, the debtor may be discharged from remaining obligations only if the bankruptcy estate, after announcement of the insufficiency of the estate, has been distributed according to the provision of Article 207. of this Law and if the suspension has been instituted according to the provision of Article 209. of this Law. The provision from paragraph 2. of this Article shall be applied accordingly in that case.

Rejection of the petition for discharge

Article 286

- 1) The bankruptcy tribunal shall reject the debtor's petition for discharge by the decision, if it has been suggested so by any of the creditors during the final hearing and if:
 1. the debtor has been convicted of a criminal act of causing the bankruptcy or damaging the creditors, or
 2. the debtor has, during the three years prior to the filing of the petition in bankruptcy or thereafter, by intent or negligence, given false or incomplete information regarding his financial condition in writing, in order to obtain credit, receive payments out of public funds or avoid payment of taxes or other public obligations, or
 3. during the ten years prior to the filing of the petition in bankruptcy or thereafter, the debtor has already been discharged from the remaining obligations or its discharge has been rejected according to the provisions of Articles 292. and 293. of this Law, or
 4. the debtor has, during the last year before the filing of the petition in bankruptcy or thereafter, by intent or negligence, prevented the satisfaction of creditors by charging himself with improper obligations, by wasting his assets or by postponing the opening of bankruptcy proceedings without any prospect for improvement of his financial position, or
 5. if the debtor has, during the bankruptcy proceedings, by intent or negligence, violated his duties regarding informing or cooperation, provided for by this Law.

2) A creditor's objections shall be permitted only if he has made probable the existence of any of the reasons for rejecting the debtor's petition for discharge from the remaining obligations.

Announcement of the discharge

Article 287

1) If it determines that reasons for rejecting the petition for discharge (Article 285), do not exist, the bankruptcy tribunal shall decide that the debtor shall be relieved of remaining obligations if he fulfills the obligations according to the provisions of Article 291. of this Law and/or if the facts provided in Article 292. and 294. of this Law do not occur.

2) By the same decision, the court shall determine the receiver to whom the debtor's claims shall be ceded according to the statement on cession.

Receiver's legal status

Article 288

1) The receiver shall be bound to inform the persons with payment obligations on cession. He shall be bound to hold, separately from his assets, the amounts that he receives on the basis of cession as well as other payments in favor of the debtor or a third person, and to distribute these amounts annually to creditors according to the final list. The receiver shall be bound to turn over to the debtor 10% of the amounts collected on the basis of cession or other payments four years after conclusion of the bankruptcy proceedings, 15% after five years and 20% after 6 years.

2) The creditors may charge the receiver with additional supervision of fulfillment of debtor's duties. In this case the receiver shall, without delay, inform the creditors if a breach of duty is established. The receiver shall be bound to assume this supervision only if the additional amount for remuneration that he would be entitled to based on this has been paid to him, or if an advance payment has been made.

3) The receiver shall present his accounts to the bankruptcy court after termination of his services. The provisions of this Law on supervision by the trustee and on the dismissal of the trustee shall be applied accordingly to the receiver, bearing in mind that any of the creditors in bankruptcy shall be entitled to propose dismissal and to appeal the court decision on dismissal.

Remuneration and compensation

Article 289

1) The receiver shall be entitled to remuneration for his work and to compensation for the reasonable expenses, in accordance with the time spent, and volume and complexity of his work.

2) The provisions of this Law on remuneration and compensation of the trustee in bankruptcy shall be applied accordingly to remuneration and compensation of the receiver.

Equal treatment of creditors

Article 290

- 1) During the time of cession, enforcement against the debtor's assets in favor of particular creditors shall not be allowed.
- 2) Any agreement made between the debtor and other persons or particular creditors in bankruptcy based on which any of them would gain a special advantage shall be null and void.
- 3) The claim regarding the amounts encompassed by the statement on cession may be refuted with the claims against the debtor by the person liable for these obligations, only if, in case of continuing of the bankruptcy proceedings, this person would have the right to refute.

Debtor's duties

Article 291

- 1) During the time of cession the debtor shall:

1. be bound to engage in appropriate occupation, and if he is unemployed, use his efforts to find appropriate employment, he must not reject appropriate employment or appropriate work,
2. be bound to hand over half of the value of property received by inheritance or in relation to future inheritance,
3. be bound to report to the receiver and to the court any changes in his abode, or place of work, without delay,
4. not suppress any amount encompassed by the statement on cession nor the property from line 2. of this paragraph, and shall be bound to inform the receiver and the court, on their demand, about his employment or his efforts to find employment and on his properties and his incomes,
5. be bound to execute all payments meant for satisfaction of creditors exclusively to the receiver, and must not grant any special advantage to any of the creditors.

- 2) If the debtor is a sole proprietor he shall be bound to satisfy the creditors by payments made to the receiver as if he had been adequately employed.

Breach of duties

Article 292

1) The bankruptcy court shall reject the discharge of the debtor from remaining obligations, following the creditor's suggestion, if during the time of cession the debtor breaches his duties and makes the satisfaction of creditors impossible. This suggestion must be filed within a year after the creditor has learned of the breach of duty. The suggestion shall be allowed only if the creditor makes it probable.

2) Before deciding on this suggestion the court shall hear the receiver, debtor and the creditors in bankruptcy. The debtor shall be bound to reveal the information on fulfillment of his duties. If the debtor, without valid reason, does not reveal the information demanded, or if he unjustifiably fails to attend the hearing that has been ordered by the court for obtaining the information, the discharge of remaining obligations shall be rejected.

3) The proposer and the debtor shall have the right to appeal the court's decision. The rejection of the discharge shall be announced.

Rejection of discharge

Article 293

1) The bankruptcy court shall, following the proposition of a creditor, reject the discharge if the debtor has, during the period from the final hearing to the conclusion of the case or during the time of cession, been convicted or criminal acts of causing the bankruptcy or damaging of creditors.

2) The proposition from Paragraph 1. of this Article may be filed within one year from the day when the creditor has learned of the perfected court judgment sentencing the debtor for these criminal acts. The proposition shall be allowed only if the creditor makes it probable.

Covering of minimal remuneration for the receiver

Article 294

1) The bankruptcy court shall, following the receiver's suggestion, reject the discharge if the amounts that have been paid to the receiver for his work during the previous year are not sufficient to cover the receiver's minimal remuneration, and the debtor does not pay the additional amount within fifteen days after the receiver has given him written notice and has warned him of the possibility of rejection of his discharge from remaining obligations.

2) Before it issues a decision, the court shall hear the debtor. If the debtor pays the remaining amount within fifteen days from the day when the court has instructed him to do so, the court shall not reject the discharge.

3) In cases from paragraphs 1. and 2. of this Article, the provisions of Article 292. paragraph 3. of this Law shall be applied accordingly.

Premature termination

Article 295

By perfected decision on rejection of the discharge from remaining obligations according to the provisions of Articles 292. 293. and 294. of this Law, the statements on cession, receivers office and limitations on the debtor's rights shall cease to have effect.

Decision on discharge from remaining obligations

Article 296

- 1) After the time of cessation lapses, if it has not been terminated before that, the bankruptcy court shall, after hearing the creditors in bankruptcy, receiver and debtor, decide on the discharge of the debtor from remaining obligations and issue a decision.
- 2) The bankruptcy court shall, following the suggestion of any of the creditors if it assesses that the reasons from Article 292. paragraph 1. or 2. or from Article 293. exist, or following the receiver's suggestion if it assesses that the reason from Article 294. exists, reject the discharge of the debtor from remaining obligations.
- 3) The decision from paragraph 1. shall be announced. If the court decides to discharge the debtor from remaining obligations, the excerpt shall be published in "Official Gazette". The debtor and any of the creditors that has suggested rejection of the discharge during the hearing from paragraph 1. of this Article shall have the right for special appeal against this decision.

Effect of discharge from remaining obligations

Article 297

- 1) The discharge from remaining obligations shall be effective against all of the creditors in bankruptcy, even those that have not reported their claims.
- 2) The discharge shall have no effect on the rights of the creditors against the co-debtors or guarantors of the debtor, nor against the rights of the creditors based on a preliminary inscription made in order to secure these rights, and/or against the rights that entitle the creditors to separate satisfaction within the proceedings. On the other hand, the debtor shall be relieved from all of his

obligations to co-debtors, guarantors or regressive creditors in the same way as from his obligations to creditors in bankruptcy.

3) If the debtor satisfies any of the creditors that had no right to demand satisfaction based on the discharge of the debtor, the creditor shall not be bound to return what he has been received.

Excepted claims

Article 298

Excepted from discharge are:

1. debtor's obligations resulting from intentionally undertaken prohibited action,
2. monetary penalties and similar obligations of the debtor.

Revocation of the discharge

Article 299

1) Following the suggestion of any of the creditors, the bankruptcy court shall revoke a particular discharge of the debtor from remaining obligations if it is established afterwards that the debtor had intentionally breached some of its duties and as a result the possibilities for satisfaction of the creditors in bankruptcy have been considerably diminished. The suggestion from paragraph 1. must be filed within one year from the date of perfection of the decision on discharge.

2) The timely creditor's suggestion shall be allowed only if the creditor makes probable the existence of the reasons set forth in paragraph 1. of this Article and that the creditor had no knowledge of these reasons prior to the perfection of the decision.

3) Prior to the decision, the court shall hear the debtor and the receiver. The proposer and the debtor shall be entitled to appeal this decision. The decision revoking the discharge from remaining obligations shall be announced.

P a r t n i n e

BANKRUPTCY PROCEEDINGS AGAINST THE ASSETS OF SMALL VALUE

Article 300

1) If during the preliminary proceeding it would be established that the assets of the debtor in bankruptcy do not exceed the amount of 1.000.000.- kuna, the bankruptcy tribunal shall decide

that the bankruptcy proceedings shall be conducted according to the provisions for the bankruptcy against the small value assets.

2) In the bankruptcy proceedings of small value the provisions of this Law regarding the creditor's committee shall not be applied.

3) After opening of the bankruptcy proceedings the tasks of the bankruptcy tribunal shall be performed by the bankruptcy judge.

P a r t t e n

INTERNATIONAL BANKRUPTCY

1. International jurisdiction of the court of the Republic of Croatia

Exclusive international jurisdiction

Article 301

1) The court of the Republic of Croatia shall have exclusive jurisdiction for conducting bankruptcy proceedings against a debtor that has the center of its business activities in the territory of the Republic of Croatia. It shall be presumed, until proven otherwise, that the debtor's center of business activities is in the place registered as the place of its head office.

2) The proceedings from paragraph 1. of this Article shall encompass debtor's entire estate regardless of whether it is situated in the Republic of Croatia or abroad. (Main bankruptcy proceedings)

International jurisdiction based on a business unit and/or assets of foreign debtor in the Republic of Croatia

Article 302

1) If a court of the Republic of Croatia would not have jurisdiction according to the provisions of paragraph 1. of the previous Article, this court shall have jurisdiction to conduct the bankruptcy proceedings if the debtor has a business unit that is not a legal entity, in the Republic of Croatia.

2) If neither the center of business activities nor a business unit of a debtor are situated in the territory of the Republic of Croatia, but only its assets, it shall be possible to open the bankruptcy proceedings in Republic of Croatia, if:

the bankruptcy proceedings against this debtor could not be instituted in the country where the debtor has the center of its business activity for reasons provided in the bankruptcy legislation of that country, although the reason for bankruptcy exists,

if, according to the laws of that country, the bankruptcy estate may encompass only the assets situated in the territory of that country,

3. if the opening of the bankruptcy proceedings in the Republic of Croatia is proposed according to the provisions of Article 334. of this Law,

4. if the opening of a special bankruptcy proceedings in the Republic of Croatia is proposed within the procedure for recognizing the foreign decision on opening of the bankruptcy proceedings.

3) The commercial court within whose (territorial) jurisdiction the business unit of a debtor is situated shall have jurisdiction over conducting of the proceedings from paragraph 1. and 2., lines 1., 2. and 3. of this Article, and if the debtor has no business unit in the territory of Republic of Croatia, the commercial court where the debtor's assets are situated shall have jurisdiction. If more than one commercial court would be authorized to conduct bankruptcy proceedings, the territorial jurisdiction shall be granted to the court that has received the petition in bankruptcy first

4) The proceedings from paragraph 1. and 2. of this Article shall be conducted only against the assets of the debtor that are situated in the territory of the Republic of Croatia. (Special bankruptcy proceedings)

5) In cases when a bankruptcy proceedings have commenced in the country where the debtor has the center of its business activities, when opening the bankruptcy proceedings according to the paragraphs 1., and/or 2. of this Article, the court shall not examine the existence of the reason for bankruptcy.

2. General provisions

General principle

Article 303

The bankruptcy proceedings and its effects shall be determined according to the laws of the country in which the bankruptcy proceedings have been opened, unless provided otherwise by further provisions of this Law.

Separate and exempted rights

Article 304

1) Regarding the separate and exempted rights on objects that are situated in the country where a decision on recognition of bankruptcy proceedings has been recognized, the laws of the country where the proceedings have been recognized shall be applied, unless the objects, at the moment of the opening of the foreign bankruptcy proceedings, were situated in the territory of the country where the proceedings have been opened.

2) If the rights regarding a certain object are inscribed in a public register, it shall be considered that the object is situated in the country where the particular register is kept.

Employment contract

Article 305

Regarding the effects of the bankruptcy proceedings on an employment contract and employment relations, the bankruptcy laws of the country whose laws govern the employment contract shall be applied exclusively.

Calculating in

Article 306

The creditor is allowed to keep whatever he has received as a result of a special bankruptcy proceeding that has been opened in another country and that has encompassed only the debtor's assets that are situated in that country. The amount received, after deduction of the costs that the creditor has had in realization of its rights in this special bankruptcy proceeding, shall be calculated in the bankruptcy quota that the creditor is entitled to within the main bankruptcy proceedings. This calculating-in shall not occur if the creditor has realized partial satisfaction of his claim within the special bankruptcy proceedings in the capacity of a separate creditor, or based on the allowed offsetting .

Cooperation between the trustees

Article 307

If along with the bankruptcy proceeding in the Republic of Croatia, that is opened following the provisions of Article 301., paragraph 1., or Article 302., paragraph 1. or 2. of this Law, a special bankruptcy proceeding is opened in some other country, based on the provisions of Article 302., paragraph 1. or 2. of this Law, the trustees in bankruptcy are bound to cooperate with each other. They shall be bound to exchange all legally permitted information that may be of importance for conducting both of the proceedings.

The preconditions and the procedure for recognition of foreign decision on commencing bankruptcy proceeding

Application of general rules for recognition of decisions of foreign courts

Article 308

The general rules of Croatian law on recognition of foreign court's decisions shall be applied accordingly to the recognition of foreign decisions on commencing the bankruptcy proceeding, unless otherwise provided by this Law.

Local jurisdiction and composition of the court

Article 309

- 1) The proposal for recognition shall be filed with the commercial court with the jurisdiction on the territory where the business unit of the debtor is located, or, if a debtor does not have a business unit in the Republic of Croatia, with the court on whose territory some of the debtor's assets are located .
- 2) If the debtor has business units in the territory of different commercial courts, or if his assets are located in the territory of different commercial courts, the first court that has put the notice from Article 313., paragraph 1. of this Law on its notice board shall have the local jurisdiction for deciding on recognition of the foreign decision.
- 3) If the assets of the debtor in the Republic of Croatia consisted of a claim, it shall be considered that the claim is located in the place where the debtors to the debtor in bankruptcy have their head offices or residence.
- 4) The bankruptcy tribunal shall decide on recognition of the foreign decision on opening of the bankruptcy proceedings and on opening of the bankruptcy proceedings in the Republic of Croatia based on such foreign decision.

Proposal for recognizing the foreign decision on opening of bankruptcy proceedings

Article 310

- 1) The proposal for recognizing the decision of a foreign court or other authorized body on opening of the bankruptcy proceedings may be filed by a foreign trustee in bankruptcy or creditor of a debtor in bankruptcy.
- 2) The following should be attached to the proposal for recognition of the foreign decision on opening of the bankruptcy proceedings:

1. original or authorized transcript of the decision and authorized translation into Croatian,
 2. attestation by foreign authorized body that the decision issued has been perfected and that it may be executed
 3. the list of debtor's known assets in the Republic of Croatia and the list of its creditors, along with appropriate evidence.
- 3) The court shall reject a proposal that is not accompanied by the enclosures from paragraph 2. of this Article if these defects are not cured within the appropriate time.

The preconditions for recognition of foreign decision
on opening bankruptcy proceedings

Article 311

- 1) A foreign decision on opening bankruptcy proceedings shall be recognized:
1. if it has been issued by a court or other body which has, according to Croatian laws, international authority,
 2. if according to the law of the state where the decision has been issued, the decision may be executed,
 3. if the recognition of this decision would not be contrary to the public order of the Republic of Croatia.
- 2) The court shall reject the recognition of the foreign decision if, following an objection made by the debtor or any other participant in the proceedings, it establishes that the notice on opening of the proceedings has not been properly served on the debtor according to the law of the state where the decision has been issued, and if the other basic debtor's rights for defense have been violated in these proceedings.
- 3) The foreign decision on opening of the bankruptcy proceedings shall be recognized even if it hasn't been perfected.

Determination of temporary measures and injunction
on enforcement and securing

Article 312

- 1) After filing the proposal for recognition, the bankruptcy tribunal may determine the security measures and/or appoint the interim trustee in bankruptcy according to the provisions of this Law on preliminary proceedings.
- 2) After the announcement from Article 313., paragraph 1. of this Law has been made, the civil proceedings and proceedings for enforcement and securing may not be instituted against the debtor while the proceedings for recognition are pending. The pending civil proceedings and proceedings for enforcement and securing shall be suspended on the day of announcement.
- 3) Exceptionally from the provisions of the previous paragraph, the separate creditors and the creditors with the rights for exception from Article 304. of this Law may, even while the proceedings are pending, commence or continue the suspended proceedings for execution and realization of their demands, or claims against the foreign debtor, but only under the condition that the foreign trustee gives his consent.
- 4) The bankruptcy tribunal shall decide, ex officio, that the proposal for recognition of foreign decision on opening of the bankruptcy proceedings, as well as the decision on temporary measures, and/or on appointment of temporary trustee, be immediately registered in public registers or other records from Article 54., paragraph 6. of this Law.

Announcement following the proposal for recognition

Article 313

- 1) After receiving the proposal for recognition, the bankruptcy tribunal shall, without delay, publish the announcement in the “Official Gazette” and put it on the notice board of the court. The announcement should state:
 1. information on the court publishing the announcement,
 2. information on the case along with the information on the foreign decision whose recognition has been demanded and its abbreviated contents,
 3. information on the foreign trustee in bankruptcy, and on the decision by which he has been appointed, if he has not been appointed by the decision on opening of the proceedings,
 4. call for creditors, the foreign trustee in bankruptcy and any other person that has a legal interest to report their claims to the bankruptcy tribunal within fifteen days from the day of announcement in the “Official Gazette”, and give their statements on existence of the preconditions for recognition of the foreign decision and possible difficulties in satisfying claims in foreign bankruptcy proceedings.

2) The bankruptcy tribunal shall send to the foreign debtor, foreign trustee and those of the creditors whose head office or residence in the Republic of Croatia is known, the letter with the report on proposal for recognition of the foreign decision, and the information and call from paragraph 1. of this Article.

Examination of preconditions for recognition

Article 314

1) When deciding on the proposal for recognition, the court shall limit its examination to whether the preconditions for recognition set forth in paragraphs 1. and 2. of Article 311. of this Law have been met. The court may request necessary explanations from the bodies whose decision has been recognized and from the participants in the proceedings.

2) The person who opposes the recognition, in writing, may be heard by the bankruptcy tribunal.

3) The bankruptcy tribunal shall especially pay attention to the need for an emergency decision on the proposal for recognition.

Decision on recognition

Article 315

1) The decision on recognition of a foreign decision on opening bankruptcy proceedings, shall have the same effect on the circle of persons on whom it has effect ^{1°} as the domestic court's decision on opening bankruptcy proceedings.

2) In the decision from paragraph 1. of this Article, the court shall specify what effects the recognized foreign decision shall have.

3) If, by the decision on recognition of a foreign decision on opening of the bankruptcy proceedings the opening of the bankruptcy proceedings in the Republic of Croatia has been determined, the decision on recognition shall have the same legal effect as the decision on opening of the bankruptcy proceedings.

4) The recognition of the foreign decision on opening of the bankruptcy proceedings shall be published in the "Official Gazette" and announced on the notice board of the court. The provisions of this Law on announcement of opening of bankruptcy proceedings shall be applied accordingly to the announcement from this paragraph.

^{1°} This may be a broader term than "interested persons".

5) The decision on recognition shall be served on the proposer, foreign trustee in bankruptcy, debtor in bankruptcy, banks in which the debtor has his accounts and the state attorney's office. The decision shall be delivered to the bodies that are responsible for the public registers from Article 54. paragraph 6. of this Law and these bodies shall, ex officio, based on the decision received, inscribe the recognition of the foreign decision on opening of bankruptcy proceedings.

Appealing the decision on recognition

Article 316

1) A foreign debtor in bankruptcy, foreign trustee in bankruptcy and the creditors may appeal the decision on recognition of a foreign decision on opening of bankruptcy proceedings.

The appeal shall not stay the execution of the decision on recognition.

The recognition of a foreign decision on opening of bankruptcy proceedings
as a preliminary question

Article 317

1) If a special decision on recognition of a foreign decision on opening of bankruptcy proceedings has not been issued, each of the courts, within its proceedings, may decide on recognition of that decision as a preliminary question, in which case it has effect only for that particular case.

2) The legal effects of recognition of a foreign decision on opening of bankruptcy proceedings shall start on the day that the decision on the matter as a preliminary question has been issued. In other cases, the legal effects are determined according to Articles 319. to 324. of this Law.

Effects of recognition of foreign decision on opening of bankruptcy proceedings

Recognition after the bankruptcy proceedings in the Republic of Croatia have been opened

Recognition of foreign decision in case of previously opened bankruptcy proceedings in the Republic of Croatia

Article 318

1) The foreign decision on opening bankruptcy proceedings that meets the preconditions from Article 311. of this Law shall be recognized even if prior to the proposal for recognition the bankruptcy proceedings against the debtor have been opened in the Republic of Croatia according to the provisions from Article 302. paragraph 1. or 2. of this Law.

2) The recognized foreign decision on opening of bankruptcy proceedings shall have the legal effects provided for in Articles 327. to 331. of this Law. The foreign trustee in bankruptcy may not refute claims that have already been established within the prior commenced bankruptcy proceedings in the Republic of Croatia. If more than 15 days have elapsed between the filing of the proposal for recognition of foreign decision on opening of the bankruptcy proceedings and the day of the announcement of the first distribution list within the bankruptcy proceedings conducted in the Republic of Croatia, the distribution within the bankruptcy proceedings in Republic of Croatia shall not be conducted based on the decision on distribution issued within the foreign bankruptcy proceedings.

4.2. Recognition without the consequence in opening of the bankruptcy proceedings in the Republic of Croatia

General provision

Article 319

1) The effects of recognition of a foreign decision on opening of the bankruptcy proceedings shall be determined according to the laws of the country in which the proceedings have been opened, except if they are contrary to the basic principles of Croatian bankruptcy legislation and unless otherwise provided by this Law.

2) The recognized foreign decision shall have effect from the day of announcement of the decision on recognition on the notice board of the court according to Article 315. paragraph 4. of this Law.

Execution and securement

Article 320

- 1) The satisfactions, realized through the execution proceedings in the Republic of Croatia during the time between opening of the foreign bankruptcy proceedings and the day of announcement of the proposal for recognition of the decision on opening of bankruptcy proceedings on the notice board of the court according to Article 313., paragraph 1. of this Law, as well as the separate rights created within this time period by execution proceedings or seurement proceedings in the Republic of Croatia, shall lose their legal effects.
- 2) In case of loss of the legal effect according to paragraph 1., the creditor shall be bound to give over to the trustee in bankruptcy whatever he has received in this way, after deducting the costs that he incurred during the execution proceedings and/or seurement proceedings.
- 3) Paragraphs 1. and 2. of this Article shall not be applied on satisfactions through execution, and/or on creditor's separate rights created within the execution proceedings, described in Article 304. and 326., paragraph 1. of this Law.
- 4) Paragraphs 1. and 2. of this Article shall not be applied if between the day of opening of the foreign bankruptcy proceedings and the day of announcement of the proposal for recognition on the notice board of the court more than one year has elapsed.

Debtor's disposals

Article 321

- 1) The disposals by the debtor, undertaken during the time between the day of opening of the foreign bankruptcy proceedings and the day of announcement of the decision on recognition of foreign decision on opening of the bankruptcy proceedings on the notice board of the court, Article 315., paragraph 4. of this Law, shall lose their legal effects if they are contrary to the interests of creditors, and if it would be proven that the other party knew, or ought to know that, at the moment of debtor's disposal, the bankruptcy proceedings against the debtor have been opened abroad. The other party has the right to counter-performance out of the foreign bankruptcy estate, if the disposition has increased the value of the foreign bankruptcy estate.
- 2) If the debtor's disposal took place after the announcement of the proposal for recognition in the "Official Gazette" according to the provision from Article 313., paragraph 1. of this Law, it shall be considered that the counter-party knew or should have known, at the moment of debtor's disposal, that the bankruptcy proceedings against the debtor have been opened abroad.

Performances in debtor's favor

Article 322

- 1) The person with the head office and/or residence in the Republic of Croatia, and who is a debtor to foreign debtor in bankruptcy, shall be bound, immediately after learning of the opening of the bankruptcy proceedings abroad, to inform the foreign trustee in bankruptcy of the existence of its obligation and of the moment when it's becoming due.

2) This person shall be bound to directly fulfill its obligation to the foreign debtor in bankruptcy if more than eight days have elapsed since this person has informed the foreign trustee in bankruptcy and the Croatian court has not, to that moment, and according to Article 312., paragraph 2. of this Law, determined the security measures or appointed the interim trustee in bankruptcy. Possible costs related to postponing of fulfillment of the obligation shall be deemed as costs of the bankruptcy estate.

3) If the foreign trustee in bankruptcy approves the direct fulfillment of the obligation to the foreign debtor in bankruptcy, the person may fulfill this obligation even before the time determined in paragraph 2. of this Article elapses.

4) If the obligation has been fulfilled directly to the foreign debtor in bankruptcy during the time between the day of opening of the foreign proceedings and the day of announcement of the decision on recognition of foreign decision on opening of the bankruptcy proceedings on the notice board of the court, according to Article 315., paragraph 4. of this Law, and the foreign trustee has not been informed of the existence of the obligation, the person from paragraph 1. of this Article shall not be relieved of its obligation if it is proven that at the time of direct fulfillment this person knew, or should have known that the bankruptcy proceedings have been opened against this debtor abroad.

5) If the obligation has been fulfilled directly to the foreign debtor in bankruptcy after the proposal for recognition of the foreign decision has been announced in “Official Gazette” according to Article 313., paragraph 1. of this Law, it shall be deemed that this person knew, or should have known that the bankruptcy proceedings have been opened against this debtor abroad.

Offsetting

Article 323

1) Offsetting shall not be allowed if the claim has been ceded during the time between the day of opening of the foreign bankruptcy proceedings and the day of announcement of the decision on recognition of foreign decision on opening of the proceedings on the notice board of the court, according to Article 315., paragraph 4 of this Law, and it is proven that the new creditor, at the moment of ceding, knew, or should have known that the bankruptcy proceedings against the debtor have been opened abroad.

2) If the claim has been ceded after the announcement in the “Official Gazette” - Article 313., paragraph 1. of this Law - it shall be deemed that the new creditor, at the moment of ceding, knew, or should have known that the bankruptcy proceedings against this debtor have been opened abroad.

Privileged claims

Article 324

- 1) The recognition of the foreign decision on opening of the bankruptcy proceedings shall have no effect on the creditor's right to satisfy his claims from Article 326., paragraph 1, line 1. and 2. of this Law in full amount, if the portion of debtor's assets that is not burdened by rights of third persons and that is situated in the Republic of Croatia at the moment of the announcement of the decision on recognition - Article 315., paragraph 4. - is sufficient for that.
- 2) For securing and executing their rights, the creditors from paragraph 1. of this Article shall be entitled, even after recognition of the foreign decision on opening of bankruptcy proceedings, to conduct the civil proceedings, as well as proceedings for execution and sequestration, against debtor's assets.
- 3) The court that is conducting the execution proceedings shall, following the proposal by foreign trustee in bankruptcy, stay the execution proceedings from paragraph 2. of this Article, if it is deemed necessary in order to succeed in satisfaction of creditors in larger quota. The stay may last no longer than until the first distribution in foreign bankruptcy proceedings.

4.3. Opening of the bankruptcy proceedings in the Republic of Croatia as a consequence of recognition

Recognition of foreign decision with the consequence of opening of the bankruptcy proceedings in the Republic of Croatia

Article 325

- 1) In the proposal for recognition of a foreign decision on opening of the bankruptcy proceedings, the foreign trustee in bankruptcy or a creditor may request the opening of the bankruptcy proceedings in the Republic of Croatia as a direct legal consequence of recognition.
- 2) In this case, the legal effects shall be determined exclusively by Croatian bankruptcy legislation, unless Articles 303. to 307. and 326. to 331. of this Law explicitly provide otherwise. Articles 320. to 323. of this Law shall be applied accordingly in this case.

5. Opening of the special bankruptcy proceedings in the Republic of Croatia as a consequence of recognition of foreign decision on opening of bankruptcy proceedings

Opening of the bankruptcy proceedings in the Republic of Croatia following the creditors' proposal

Article 326

1) The court shall always open domestic bankruptcy proceedings following the proposal of:

creditors with claims listed in Article 71., line 1. of this Law,

2. debtor's employees with the regular place of work in the Republic of Croatia regarding the claims listed in Article 71., line 2. of this Law,

3. creditors that would, according to the laws of the Republic of Croatia and in case of opening of the bankruptcy proceedings in the Republic of Croatia, have the legal status of separate creditors or of creditors with the right for exemption, if the object of their separate rights or rights for exemption, at the moment of opening of foreign bankruptcy proceedings, was not situated in the territory of the country where the proceedings are being instituted.

2) The court shall open the bankruptcy proceedings in the Republic of Croatia following the proposal of the creditors that are not the creditors described in paragraph 1. of this Article only if the creditor would make it probable that the satisfaction of his claim within the foreign bankruptcy proceedings would be linked with significant difficulties.

3) Exceptionally from paragraphs 1. and 2. of this Article, and in order to enable equal and fullest possible satisfaction of creditors on the international level, the bankruptcy tribunal shall not open the bankruptcy proceedings in the Republic of Croatia if it assesses that opening of this proceedings would be economically inappropriate, considering the amount of the claim of the creditors from paragraph 1. and 2. of this Article. The court may consult the foreign trustee in this matter.

Authority of foreign trustee in bankruptcy

Article 327

1) The foreign trustee in bankruptcy is, along with the trustee in bankruptcy and creditors which participate in bankruptcy proceedings in the Republic of Croatia, authorized to refute reported claims in these proceedings.

2) The foreign trustee in bankruptcy shall have the right to refute debtor's legal transactions, according to the Croatian bankruptcy legislation and within the bankruptcy proceedings conducted in the Republic of Croatia.

3) The costs of the foreign trustee in bankruptcy that were incurred by execution of authorities from paragraph 1. and 2. of this Article shall not be considered as costs of domestic bankruptcy proceedings.

Distribution (Satisfaction of creditors)

Article 328

- 1) After satisfaction of the costs and other obligations of the bankruptcy estate, of the separate creditors and creditors with the right for exemption, as well as the creditors from Article 326. paragraph 1. of this Law, the remainder of the estate shall be distributed among the creditors according to the decision on distribution issued by the bankruptcy tribunal, or on the distribution basis that has been reached in the foreign bankruptcy proceedings. If during the determination of the distribution basis in foreign proceedings, claims that have been reported in domestic proceedings have not been taken into consideration, the bankruptcy tribunal shall distribute the remainder of the bankruptcy estate among the creditors whose claims have been established in bankruptcy proceedings conducted in the Republic of Croatia, taking into consideration the extent to which some of them have been taken into consideration during the distribution of bankruptcy estate in foreign bankruptcy proceedings.
- 2) The bankruptcy tribunal shall not take the foreign decision on distribution into consideration if the distribution determined by it is a result of application of the rules that would be considered contrary to the Croatian public order. The same shall apply if the foreign decision on distribution has not been presented to the bankruptcy tribunal within the time period ordered by the tribunal.
- 3) The bankruptcy estate remaining after satisfaction of creditors according to the previous provisions of this Article shall be delivered to the foreign trustee in bankruptcy without delay.
- 4) If the bankruptcy estate is not sufficient to satisfy the claims established in domestic bankruptcy proceedings, according to paragraphs 1. and 2. of this Article, the creditors may satisfy the unsatisfied parts of their claims only in foreign bankruptcy proceedings and according to foreign bankruptcy legislation.

Special bankruptcy proceedings in a third country

Article 329

- 1) If a creditor partly satisfies his claims in the bankruptcy proceedings conducted against the debtor in some third country, and by which only the debtor's assets in that country are encompassed, the creditor may keep whatever he has acquired. The received amount, after deduction of costs that were incurred by the creditor in those foreign bankruptcy proceedings, shall be calculated in the bankruptcy quota to which the creditor is entitled in the bankruptcy proceedings conducted in the Republic of Croatia. This calculation shall not occur if the creditor has realized partial satisfaction in those foreign proceedings as a separate creditor or by allowed offsetting.
- 2) The provisions from paragraph 1. of this Article shall be applied when the creditor has partially satisfied his claim through executive proceedings in the third country, as well.

Realization of creditor's rights

Article 330

- 1) The Croatian trustee in bankruptcy shall be authorized to report the claim that has been reported in the special bankruptcy proceedings in the Republic of Croatia to the main bankruptcy proceedings conducted in foreign country. The creditor may withdraw this reported claim.
- 2) The Croatian trustee in bankruptcy shall have the power of attorney to vote in the foreign, main bankruptcy proceedings, based on the claim reported in special bankruptcy proceedings conducted in the Republic of Croatia if the creditor does not participate in voting himself.

Cooperation of the trustees in bankruptcy

Article 331

- 1) Apart from mutual exchange of information described in Article 307. of this Law, the trustee in special bankruptcy proceedings conducted in the Republic of Croatia shall be bound to enable the trustee in main, foreign proceedings to give his opinion regarding the methods of liquidation of the debtor's assets encompassed by the domestic, special bankruptcy proceedings.
- 2) The trustee in foreign, main bankruptcy proceedings shall be presented with the bankruptcy plan of the special bankruptcy proceedings conducted in the Republic of Croatia. He shall also be entitled to propose the bankruptcy plan for the special proceedings by himself.

6. Nonrecognition of foreign decision on opening bankruptcy proceedings

Rejection of proposal for recognition

Article 332

- 1) If it rejects the proposal for recognition, the bankruptcy tribunal shall, following the creditors suggestion and if it is necessary in order to ensure equal satisfaction of creditors, open the bankruptcy proceedings in the Republic of Croatia.
- 2) The suggestion from paragraph 1. of this Article may be filed by a creditor within eight days from the day when the decision on rejection of the proposal for recognition has been announced on the notice board of the court. The creditor may file this suggestion with the proposal to the bankruptcy tribunal based on Article 313., paragraph 1., line 1. of this Law.
- 3) The bankruptcy proceedings from paragraph 1. of this Article shall encompass only the debtor's assets situated in the territory of the Republic of Croatia.

The appeal

Article 333

1) The foreign debtor in bankruptcy, foreign trustee in bankruptcy and the creditors may appeal the decision on rejection of the proposal for recognition of the foreign decision on opening of bankruptcy proceedings.

2) The appeal shall not stay the execution.

Proposal for opening bankruptcy proceedings
when the foreign decision on opening proceedings
may not be recognized

Article 334

1) Each of the creditors shall be entitled to demand that bankruptcy proceedings be opened in the Republic of Croatia regardless of the fact that the main bankruptcy proceedings have been opened in another country, if the conditions for rejection of the proposal for recognition of the foreign decision have been met.

2) The court shall allow the opening of the bankruptcy proceedings in the Republic of Croatia, in a case from paragraph 1. of this Article, in order to satisfy the principle of equal satisfaction of all debtor's creditors.

3) When reaching the decision on opening bankruptcy proceedings from paragraph 1. of this Article, the bankruptcy tribunal shall decide on the impossibility of recognition of the foreign decision on opening of bankruptcy proceedings as on a preliminary question.

4) The bankruptcy proceedings from paragraph 1. of this Article shall encompass only the debtor's assets in the Republic of Croatia.

7. Foreign compulsory settlement and other bankruptcy proceedings

Foreign decision on allowing the compulsory settlement
or foreign bankruptcy plan

Article 335

The provisions of this Law on recognition of a foreign decision on opening bankruptcy proceedings shall be applied accordingly to the recognition of a foreign decision on confirmation of a forced settlement, bankruptcy plan, or a foreign decision issued in some other similar proceedings.

Part eleven

TRANSITIONAL AND CONCLUDING PROVISIONS

Substituting monetary fines with detention

Article 336

Monetary fines that are ordered according to the provisions of this Law that shall be impossible to enforce, shall be substituted with the penalty of detention, according to the related provisions of Criminal Law.

Application of previous law

Article 337

Bankruptcy proceedings and proceedings on forced settlement that have been opened prior to the day of implementation of this Law shall be concluded according to the provisions of the Law on Forced Settlement, Bankruptcy and Liquidation. (“Official Gazette” No. 54/94)

Article 338

The legal transactions of the debtor undertaken prior to coming into effect of this Law shall be refutable by the provisions of the Law, unless they have been excepted from refuting according to the provisions of the Law on Forced Settlement, Bankruptcy and Liquidation.

Implementation of this Law against the banks

Article 339

- 1) Untill the special law on bankruptcy and liquidation of the banks shall be passed, the provisions of the Part VI - Bankruptcy and Liquidation of Banks of the Law on Forced Settlement, Bankruptcy and Liquidation shall be applied to the bankruptcy and liquidation of banks.
- 2) The provisions of this Law shall be applied accordingly to the bankruptcy and liquidation of banks if they are not contrary to the provisions of Part VI of the Law on Forced Settlement, Bankruptcy and Liquidation.

Article 340

The provisions of this Law shall not be applied to the legal entities over which the process of consolidation (sanation) is being instituted according to the Law on Sanation of Certain Enterprises. ("Official Gazette" No. 56/95. and 109/95.)

Laws that cease to be valid

Article 341

On the day of coming into effect of this Law the Law on Forced Settlement, Bankruptcy and Liquidation, except Part VI of that Law shall cease to be valid.

Efectiveness

Article 342

This Law shall be published in the "Official Gazette" and shall come into effect on 1. January 1997.

Class: 423-05/95-01/01
Zagreb, 17. May 1996.

The Chamber of Representatives
of Sabor of the Rerpublic of Croatia

The President of
the Chamber of Representatives

Vlatko Pavletiaë, academic