

COMMENTARY

Bankruptcy Law

of

the Republic of Uzbekistan

Project on the Commentary on
the Bankruptcy Law of
the Republic of Uzbekistan



**Supreme Economic Court
the Republic of Uzbekistan**



**Japan International Cooperation Agency
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EDITORS' NOTE

1. Numbering of articles

The original text of the Law of the Republic of Uzbekistan “On Bankruptcy” does not number articles, but the English edition does for readers’ convenience.

2. Free distribution

The Commentary is not for sale.

The electronic data of the Commentary is available at the following sites of the Uzbekistan-Japan Centre for Human Development or the Ministry of Justice of Japan

<http://ujc.uz/?pid=1220> (the Uzbek edition)

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3. Explanations of key organisations in bankruptcy cases

Taking into account the specifics and involvement of various organisations of the Republic of Uzbekistan in bankruptcy proceedings and their frequent changes, explanations are given as follows.

(1) The Supreme Economic Court of the Republic of Uzbekistan (referred to as ‘SEC’).

According to the Article 1 of the Law of the Republic of Uzbekistan “On Courts” (approved by the Law of the Republic of Uzbekistan No 162-II, dated 14.12.2000), the court system of the Republic of Uzbekistan consists of:

- Constitutional Court of the Republic of Uzbekistan;
- Supreme Court of the Republic of Uzbekistan;
- Supreme Economic Court of the Republic of Uzbekistan
- Supreme Courts of the Republic of Karakalpakistan of civil and criminal cases;
- Regional and Tashkent city courts of civil and criminal cases;
- Interdistrict, district (city) courts of civil cases,
- District (city) courts of criminal cases;
- Military courts;
- Economic court of the Republic of Karakalpakistan,
- Economic courts of regions and Tashkent city.

Article 43 of the Law “On Courts” determines that the SEC is the highest body of court authority in the field of economic court proceedings, including bankruptcy proceedings. The SEC is authorised to oversee judicial activities of the economic court of the Republic of Karakalpakistan and economic

courts of regions and Tashkent city. The SEC considers cases as the court of first instance, and cassational and supervisory instances. This court also supervises the implementation of interpretations of the Plenum of the SEC (see the explanation on the Plenum of the SEC), inspects activities of lower economic courts, studies, summarizes and disseminates the positive experience in organising the activity of the economic courts. According to Article 44 of the Law “On Court”, the SEC consists of the chairman, its first deputy, its deputies, the chairmen of court boards and judges and operates in the following structure:

- Plenum of the SEC;
- Presidium of the SEC;
- Court Board for settling disputes in civil law;
- Court Board for settling disputes in administrative law.

(2) The Plenum of the Supreme Economic Court

According to Article 45 of the Law of the Republic of Uzbekistan “On Courts” (approved by the Law of the Republic of Uzbekistan No 162-II, dated 14.12.2000), the Plenum of the SEC operates in the following composition: judges of the SEC and the chairman of the Economic Court of the Republic of Karakalpakistan. The general prosecutor attends sessions of the Plenum of the SEC, while the chairman of the Constitutional Court, the chairman of the Supreme Court, the Minister of Justice, judges and members of the research-advisory council under the SEC may also participate in sessions of the Plenum.

According to the Article 47 of the Law “On Courts”, the Plenum of the SEC has the following authorities:

- to consider materials of the summarised court practice and issue interpretations to issues regarding the application of the legislation;
- to approve, upon proposals of the chairman of the SEC, the composition of the Presidium of the SEC, personnel and chairmen of the court boards, and the secretary of the Plenum of the SEC;
- to hear the report of the chairmen of the economic court of the Republic of Karakalpakistan, economic courts of the region courts and Tashkent city court about the practical implementation of the interpretations of the Plenum of the SEC on issues of the application of the legislation;
- to conduct others in accordance to the Law. For more details, see Article 47 of the Law “On Courts”..

The Resolution of the Plenum of the SEC is accepted by the majority of its members present at the session and comes into force from the time of adoption. The Resolution of the Plenum is signed by the chairman of the SEC and the secretary of the Plenum. Interpretations of the Plenum of the SEC on issues of the application of the legislation are binding on economic courts, other bodies, enterprises, establishments, organisations and officials which apply the legislation on which interpretations are made.

(3) The State Committee of the Republic of Uzbekistan on Demonopolisation, Support for Competition and Entrepreneurship (referred to as “the Demonopolisation Committee”)

The Demonopolisation Committee is currently recognised as the state body for bankruptcy proceedings. This committee was created in accordance with the Decree of the President of the Republic of Uzbekistan No. UP-3602, dated 30.04.2005 “On establishment of the State Committee of

the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship”, through merging three bodies, i.e. the State Committee of the Republic of Uzbekistan on Demonopolisation and Support for Competition, the Committee on affairs of Economically Insolvent Enterprises under the Ministry of Economy and the Department of Development of Small and Private Entrepreneurship of the State Committee on Management of the State Property and Support of Entrepreneurship. The Demonopolisation Committee is assigned the following tasks:

- to analyse carefully the financial-economic status and competitiveness of enterprises, and implement efficient measures in the field of antimonopoly regulation, including those to divide and restructure large monopoly enterprises, based on which to create private self-sustained industries which are competitive in the internal and external markets;
- to represent the interests of the state when deciding on economic insolvency of the enterprises, and implement functions of the state regulation in the field of restructuring and bankruptcy of enterprises.

The Demonopolisation Committee has its branches in the Republic of Karakalpakstan, regions and Tashkent city.

The committee has the authority:

- to issue instructions to local bodies of the state management, local bodies of the state authority, business entities and their officials about the abolition of decisions taken by these bodies or entities or termination and liquidation of consequences of actions which violate the legislation in the field of antimonopoly regulation, bankruptcy, the development of competition and entrepreneurship, and to supervise the implementation of the issued instructions;
- to institute lawsuits in the court against unfair competitors, bodies and officials of the state and economic management, and local bodies and officials of the state authority in case they violate the legislation in the field of antimonopoly regulation, bankruptcy, the development of competition and entrepreneurship;
- to issue instructions to monopoly enterprises, enterprises which have indications of bankruptcy or which are in position of pre-bankruptcy about the necessity to divide and restructure them, and enforce these instruction, upon a court decision, in the manner established by the legislation.

(4) The Committee on affairs of Economically Insolvent Enterprises

The Committee on affairs of Economically Insolvent Enterprises was established by the Decree of the President of the Republic of Uzbekistan No. UP-1658, dated 11.12.1996 “On Measures to Implement the Legislation on Bankruptcy of Enterprises”. Its activities are regulated by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 465 dated 28.12.1996 “On Issues of Organisation and Activities of the Committee on affairs of Economically Insolvent Enterprises under the State Committee on Management of the State Property”. The abovementioned Decree also determined that:

- the committee is the working body of the Governmental Commission on Bankruptcy and Rehabilitation of Enterprises;
- the committee represents the interests of the state when deciding on economic insolvency of business entities the charter capital of which partially or wholly belongs to the state;

- ensures the protection of the interests of creditors and property rights of shareholders in the course of bankruptcy processes or prejudicial rehabilitation of economically insolvent enterprises of different types of ownership.

Later by the Decree of the President of the Republic of Uzbekistan No. UP 2342, dated 23.07.1999 “On Improvement of the Mechanism of Bankruptcy and Rehabilitation of Enterprises” the committee was transferred from the State Committee on Management of the State Property to the Ministry of Macroeconomics and Statistics (At present the Ministry of Economy).

Although the mentioned legislation lost its power after the committee was merged to the new State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship, some legislation still keeps reference to this non-existing committee.

(5) The Governmental Commission on Bankruptcy and Rehabilitation (currently abolished)

The structure of the Governmental Commission on Bankruptcy and Rehabilitation was approved by the Decree of the President of the Republic of Uzbekistan No. UP-1658, dated 11.12.1996 “On Measures to Implement the Legislation on Bankruptcy of Enterprises”. This commission are assigned the following tasks:

- to implement the state policy intended to strengthen the financial status of enterprises and prevent their bankruptcy;
- to adopt decisions on economically insolvent economic entities the charter capital of which partially or wholly belongs to the state, and (or) which are indebted to the Republic of Uzbekistan on monetary obligations, and simultaneously make proposals to the economic court to introduce bankruptcy processes;
- to consider and adopt decisions on the responsibility of persons who have perform illegal actions, and accordingly led to bankruptcy;
- to approve the main principles and manner of conducting rehabilitation of the debtor-enterprises, and conditions of participation of authorised bodies and organisations in this process;
- to supervise the purposeful and efficient utilization of funds for rehabilitation of enterprises;
- to adopt decisions on voluntary liquidation of the debtor-enterprises and approve decisions of the debtor-enterprise on voluntary liquidation;
- to approve plans of liquidation of bankrupt-economic entities and reports on the completion of the liquidation process;
- to supervise the progress in bankruptcy processes of enterprises the charter capital of which partially or wholly belongs to the state;
- to adopt decisions to close productive facilities of economically insolvent enterprises the charter capital of which partially or wholly belongs to the state, with its subsequent approval of the Cabinet of Ministers.

In 2005, this commission was abolished by the Decree of the President of the Republic of Uzbekistan No.UP-3675, dated 06.11.2005 “On regulation of activities of the Republican Commissions and Councils”, which states that all its functions are assigned on the State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship.

4. Abbreviations

Apart from abbreviations which are mentioned individually, the following abbreviations are used in the Commentary.

Abbreviation	Name
CC	The Civil Code of the Republic of Uzbekistan
CEP	The Code of Economic Procedure of the Republic of Uzbekistan
CM	The Cabinet of Ministers of the Republic of Uzbekistan

5. As to 'Item'

In this Commentary when an article is composed of a main text with a list of items, the first sentence in the list is referred to as "Item 1" and the second sentence as "Item 2" (When "Item 1" is referred to, it means the first sentence of the list, not the main text).

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the Regulation annexed as No.2 to the Resolution of the Cabinet Ministers No.362 on 26.07.1999

the Resolution of the Cabinet Ministers No.327 on 03.07.1999.

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The Resolution of the State Tax Committee and State Committee on Demonopolisation, Support of Competition and Entrepreneurship “On approval of the Rule on the procedure of voting of the state tax committee representatives at the creditor’s meeting in bankruptcy processes” dated 11 June 2007, No.2007-43 and No. 5 ...**403**

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PREFACE

Implementation of the bankruptcy mechanism of insolvent economic entities is one of the urgent needs for development of the Uzbekistan's Economy. The bankruptcy mechanism allows to achieve aims on replacing the inefficient owners, preserving of socially important and potentially profitable productions and on the contrary conversion of the unprofitable enterprises, ensuring the stability of the property relations and securing the employment of the workers.

Bankruptcy Institution facilitates the recovery of the market, through first of all, terminating the commercial activity of the bad debtors, and secondly, giving opportunity to carry out restructuring procedures and restoring the paying capacity for the economic entities in trouble.

Bankruptcy Institute was introduced to the legislation of the republic of Uzbekistan through the Law of the Republic of Uzbekistan "On Bankruptcy" adopted in May 5th 1994. That Law was small in volume, had only 35 articles and properly did not reflect all problems emerging during the bankruptcy. During the first year after its adoption the Law actually did not work, only 2 cases on adjudicating the debtors to be a bankrupt were brought to the economic courts of the Republic of Uzbekistan.

Government of Uzbekistan issued Resolution on July 17th 1995 "On measures on implementation of the Law "On Bankruptcy", and in accordance to it Governmental Commission on considering the economic-financial activity of the unprofitable enterprises was established. Following that by the January 1996 economic courts adjudicated 47 enterprises to be a bankrupt.

In order to establish state regulation and supervision of the bankruptcy issues President of Uzbekistan issued Decree "On measures on implementation of the legislation on bankruptcy of the enterprises" on December 11th 1996 and special state body – Committee on Insolvent enterprises was established. In 1997 economic courts of Uzbekistan adjudicated 137 organisations as bankrupts.

Efficiency of the applying legislation on bankruptcy was improved after adopting the Law "On making amendments to the Law of the Republic of Uzbekistan On Bankruptcy" on August 28th 1998, which introduced new version of the Law "On Bankruptcy". Compare to the old version, new version was supplemented with big amount of new articles (if the old version contained 35 articles, new had 133), it regulated in detail considering the bankruptcy cases of certain categories of debtors, added new procedure – External Management, considerably expended the rights of the creditors. Most importantly, in the second edition of the Law the indications of the bankruptcy were changed: from the non-payment it changed to sing on insolvency. Growth dynamics of the bankruptcy cases after the accepting the second edition is as following: in 1998 -439 debtors were adjudicated to be bankrupt; in 2002 – 1,250.

Growth of the number of cases considered, continuous analysis of the court practice allowed to accumulate the experience of solving these cases, as well as uncovered the shortcomings and gaps in legal regulation of the relations, dealing with bankruptcy. Need for eliminating the existing gaps the legislation on the bankruptcy generated necessity for introducing amendments to the second edition of the Law "On Bankruptcy". On April 24th 2003 new amendments were introduced to the Law of the Republic of Uzbekistan "On Bankruptcy" and Law itself were adopted in new (third) version. Now the Law consists of 192 articles, contains many new provisions, related to the bankruptcy indications and reorganisation procedures, which aimed on restoring the paying capacity of the debtor. Two additional Chapters, devoted to the new procedures of bankruptcy: Supervision and Judicial Rehabilitation were introduced to the Law. All procedures are carried out by the court receivers, who have their own name in each procedure (Interim Receiver – in the Supervision, Rehabilitation Manager – in the Judicial Rehabilitation, External Manager – in the External Management and Liquidation manager in the

liquidation proceedings). All court receivers are assigned by the economic court and operate under its monitoring. Adopting the new version of the Law has considerably improved application of the legislation on bankruptcy. Number of the cases of this category is constantly growing: 1,742 debtors were adjudicated to be bankrupt in 2004, 3,677 in 2005 and 3,545 in 2006.

At the same time survey of the bankruptcy cases shows that level of the knowledge of entrepreneurs, staff of the state and economic management, as well as the court receivers about the basic notions and signs of the bankruptcy, legal status of the court receivers, reorganisation procedures and specifics of the bankruptcy of certain categories of the debtors, lives much to be desired. There is very limited literature, devoted to the bankruptcy issues, available in Uzbekistan and no Commentary to the Law “On Bankruptcy” existed.

Present Commentary is developed under the framework of the joint JICA – Supreme Economic Court of the Republic of Uzbekistan “Drafting Commentary to the Law of the Republic Of Uzbekistan On Bankruptcy”. In order to implement above-mentioned project Uzbek working group of authors were established, which developed commentary with consultative assistance of the Japanese experts and International Cooperation Department, Research and training Institute, Ministry of Justice of Japan. Draft of the Commentary was written over two years, during this period members of Uzbek working group participated at the trainings in Japan, while Japanese experts visited Uzbekistan to exchange opinions and conduct follow up seminars.

Staff of the Supreme Economic Court and State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship, who drafted article-by-article Commentary to the Law “On Bankruptcy” believe that present commentary will be useful in understanding the complex problems, arising in the implementation of the bankruptcy legislation and therefore will contribute to proper implementation of the Law in practice.

Team of the authors is deeply grateful to Japan International Cooperation Agency (JICA) and Ministry of Justice of Japan for rendered methodological and financial support.

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CHAPTER I. GENERAL PROVISIONS

This Chapter outlines general provisions for bankruptcy processes, to which the subsequent Chapters are devoted.

The purpose of the Law “On Bankruptcy” (hereinafter referred to as ‘this Law’) is a compulsory regulation of relations between economically insolvent legal entities or individual entrepreneurs and creditors, associated with the debtor’s performance of obligations, as well as with its financial recovery. To achieve this objective, this Law provides special procedures of liquidation and rehabilitation. This Chapter defines:

- cognizance of economic courts over bankruptcy cases;
- persons entitled to apply to the economic court for the declaration of the debtor’s bankruptcy ;
- grounds for the economic court to commence a bankruptcy case;
- types of bankruptcy processes initiated by the economic court upon considering the case;
- the manner for carrying out each bankruptcy process.

This Chapter defines the concepts commonly used throughout bankruptcy proceedings in general. They are firstly such concepts as ‘bankruptcy’, ‘mandatory payments’, ‘moratorium’, ‘monetary obligations’, secondly, bankruptcy processes such as ‘amicable agreement’, ‘supervision’, ‘prejudicial rehabilitation’, ‘judicial rehabilitation’, ‘external management’, ‘liquidation proceedings’, thirdly, persons participating in a bankruptcy case, such as: ‘creditor’, ‘representative of the creditors’ meeting (creditors’ committee)’, ‘court receiver’, ‘debtor’, ‘representative of founders (participants) or the property owner of the debtor’, ‘representative of the debtor’s employees’.

Since the consideration of bankruptcy proceedings reflects the will of the creditors’ meeting, this Chapter envisages a series of provisions devoted to the creditors’ meeting, such as those regarding its organisation, the procedure for its convocation, its authority, the procedure for passing its resolutions. Taking into account the importance of activities of a court receiver in each stage of bankruptcy processes, this Chapter also includes provisions regarding court receivers: the procedure for their election and appointment, their functions, rights, duties, responsibilities, etc. As it is very important in bankruptcy proceedings to establish the composition and amount of creditors’ claims, court receivers bear an obligation to maintain the creditors’ register.

Article 1. Purpose of this Law

The purpose of this Law is to regulate relations of legal entities and individual entrepreneurs in the area of bankruptcy.

This Article outlines the purpose of this Law. In its version dated 24 April 2003, this Law has introduced significant changes into the current legal regulations. This Law aims both at protecting creditors’ property rights (interests) and at setting up legal guarantees for preventing bankruptcy and liquidation of enterprises; namely the main purpose is to protect property claims of creditors, and at the same time to grant the debtor an opportunity to rehabilitate and restructure itself.

This Law regulates many-sided relations that arise in connection with the declaration of bankruptcy and liquidation of insolvent business entities. This Chapter clearly states that only legal entities (see the definition of ‘legal entity’ in Art.39,CC) or individual entrepreneurs (see the definition of ‘individual

entrepreneur’ in Art.4,Para.1 and Art.6,Para.1, the Law “On Guarantees of Freedom of Entrepreneurship”) may be declared bankrupt. An individual entrepreneur is a citizen who has registered in the prescribed manner and carries out business without establishing a legal entity.

There are exceptions regarding bankruptcy of legal entities to which this Law does not apply. These exceptions are state unitary enterprises and state-financed institutions, which operate entirely at the expense of the state budget. Political parties and religious organisations are also exceptional because they are regarded as social associations (see Art.2, Para.2). Under the legislation of the Republic of Uzbekistan, individuals may not be declared bankrupt, unless they have a status of individual entrepreneur.

Any legal and physical person participates in multitude property relations and takes various commitments, which often have a monetary content. The failure to fulfil these commitments, more or less, undermines the stability of civil transactions, for which a debtor may be declared bankrupt.

On this ground, all bankruptcy legislation is based on one idea: unreliable participants shall be excluded from the property relations. Along with this, it is clear that each entrepreneur acts on its own risk and responsibility, and the risk of bankruptcy is recognised as the maximum expression of such risk. However, it should not be affirmed that the society regards bankruptcy of business entities as desirable. The legislation envisions an opportunity of rehabilitation procedures. All versions of the Law “On Bankruptcy” provide the possibility of the financial recovery of the debtor. For instance, the 1994 version of this Law (hereinafter referred to as ‘this Law 1994’) provided a rehabilitation process to retain an enterprise as a business unit. The 1998 version of this Law (hereinafter referred to as ‘this Law 1998’) provided an additional chance to save a bankrupt enterprise by applying external management. The latest version of this Law (hereinafter referred to as ‘this Law 2003’) has introduced a new scheme – judicial rehabilitation, which also aims at the financial rehabilitation of business entities. Besides, all versions of this Law provided the opportunity of an amicable agreement, and stipulated the manner and conditions of a specific agreement entered into by the debtor and its creditors, for which the enterprise debtor could stay in business trade and continue to trade.

The threat of bankruptcy forces the public authorities to take measures for the rehabilitation, financial recovery and improvement of commercial structures. Initially, this task was assigned to a special body – the Committee on Economic Insolvency of Enterprises, which was established under the Decree of the President “On measures for implementation of the legislation of enterprises bankruptcy” dated 11 Dec. 1996 No.UP-1658 (It was invalidated by the Decree of the President dated 6.Nov.2005 No.UP-3675) . This body was responsible for setting up infrastructural, economic and other conditions to implement insolvency (bankruptcy) regulations in respect of state owned enterprises; later it was reorganised into the State Committee on Demonopolisation, Support of Competition and Entrepreneurship (hereinafter referred to as ‘the Demonopolisation Committee’). This Law 2003 expects such a figure as court receiver to play a significant role, as court receivers must not take a biased view in bankruptcy proceedings in favour of the debtor or its creditors. In this regard, this Law sets the provision that court receivers should not be an interested party in relation to the debtor or its creditors, which ultimately serves the realisation of the objectives of this Law.

Article 2. Legislation on Bankruptcy

- 1 The legislation on bankruptcy consists of this Law and other legislative acts.**
- 2 This Law shall not be applied in respect of state-financed organisations.**

3 If an international treaty of the Republic of Uzbekistan establishes the rules different from those envisaged by the legislation of the Republic of Uzbekistan on bankruptcy, the rules of the international treaty shall be applied.

The current bankruptcy legislation comprises a series of legal rules, which are incorporated not only in this Law itself, but also in other legal acts. Besides this, this Article provides that governmentally financed organisations may not be declared bankrupt. This Article also promulgates the priority of international law.

1. Taking into account that Paragraph 1 of this Article determines that “the legislation on bankruptcy consists of this Law and other legislative acts”, it is considered that this Law is the main legislative act within the legal framework of insolvency (bankruptcy).

The Civil Code is another instrument that establishes the basic legal framework of bankruptcy: for individual entrepreneurs it is Article 26 of the Civil Code, whereas for legal entities it is Article 57 of the Civil Code. It was recognised at the time of adopting the Civil Code that it was impossible to regulate economic insolvency without a special set of laws. It is indeed in view of this recognition that the Civil Code provides a general reference rule to a special law (Art.57, Para.4, CC).

Because the society had been economically and socially developed since 1995, when the Civil Code (Part I) was adopted, and this Law was newly enacted in 2003, certain bankruptcy provisions in the Civil Code do not comply with this Law. In case of collisions, this Law precedes the Civil Code. One of its examples is the provision on the range of legal entities to which this Law applies (Art.57, CC). Another is the provision of the Civil Code on the self declaration of bankruptcy of a legal entity, which this Law 2003 no longer employs.

Importantly, substantive aspects of the basic features of the bankruptcy institute are regulated by the Civil Code, the Law “On Pledge” and other substantive laws. There are several cases of discrepancy between substantive provisions of this Law and general provisions of the civil legislation, when this Law precedes the others. For example, in general, claims of secured creditors which are not covered by the value of its security are satisfied prior to claims of other unsecured creditors (Art.134, Para.5). In case the whole property of the enterprise debtor is subject to security and proceeds from its sale prove to be less than or equal to the amount of secured claims, the secured creditor is paid after judicial expenses and salaries are discharged (Art.133, Para.3).

Several rules of the Civil Code, which do not directly regulate bankruptcy issues, are significant in settling a large range of matters which arise in the course of bankruptcy of legal entities. For instance, rules on the organisational forms of legal entities; right of ownership and other property rights; obligations and claims; liabilities for violations of obligations; the procedure for concluding, amending and terminating contracts. As to the procedural aspects, the Code of Economic Procedure is applied (see the comment on Art.35, Para.2).

Along with this, other laws and regulations are allowed to be enacted in order to rule certain groups of legal relations in detail with their specific peculiarities. In this case, however, this Law indicate all such cases where a specific regulation is permitted.

Such are the special Law “On Rehabilitation of Agricultural Enterprises”, special Regulations approved by Resolutions of the Cabinet of Ministers which stipulate the appointment, attestation and activities of court receivers or those Regulations that aim at raising the effectiveness of the restructure and financial recovery of economically insolvent enterprises. Additionally, the Supreme

Economic Court gives its interpretation by issuing a Resolution of the Plenum of the Supreme Economic Court to solve problems raised in the course of law implementation in practice. The Resolution of the SEC Plenum No.142 greatly assists in preparation of the present Commentary.

2. Paragraph 2 of this Article provides that this Law does not apply to state-financed organisations. It means that those enterprises and organisations which function entirely at the expense of the state budget may not be declared bankrupt. These are state unitary enterprises with a right of operative management¹ and institutions which are governmentally financed. These include state educational and pre-school institutions, medical institutions, law enforcement and justice agencies. This is also provided by the Resolution of the SEC Plenum No.142 (Para.1). This Law does not apply to political parties and religious organisations either, due to specific characters of their activities, although this Law does not directly rules out this. This Law applies to legal entities, except the above mentioned, and to individual entrepreneurs (Art.1). Since this Law sets the scope of its application in this way, it is considered necessary to amend Article 57 of the Civil Code.
3. As a result of expanding international relations, namely, expanding trade, there might be cases where legal entities and individuals have assets in different countries, the bankruptcy legislation of which differs from each other. If the insolvent debtor has assets in several jurisdictions or there are foreign creditors, this is the case of transnational bankruptcy.

Paragraph 3 of this Article determines the possibility of preventing conflicts between international and national legislation in case of transnational bankruptcy. These conflicts are avoided by applying the international law, as a similar rule is provided by the Constitution of the Republic of Uzbekistan. Currently, there is no bankruptcy treaties signed by the Republic of Uzbekistan.

As regards the recognition of decisions of foreign states' courts on bankruptcy cases, it should be noted that an international treaty should be applied if any, while if there is no such treaty, a court decision may be recognised on the reciprocity principle. For example, when a bankruptcy case is commenced in a foreign state and the debtor's property is located in another country, a question arises about the recognition of a decision of a foreign court and vice versa. In practice, when there is no international treaty, parties execute court decisions on the reciprocity basis.

It is considered that the national regime of bankruptcy proceedings is applied to foreign creditors, which should not be less favourable to foreigners than national creditors, i.e. conditions for all creditors must be equal (see Art, 23, CEP).

Within the framework of international bankruptcy, it has to be noted that the UN Commission on International Trade Law (UNCITRAL) has prepared a Model Law on Cross-Border Insolvency. This model law is recommended to be incorporated by states in their national legislation (UN General Assembly Resolution 52/158 dated 15 December 1997). In this regard, it is necessary to introduce appropriate additional provisions into this Law.

Article 3. Basic Terms

In this Law the following basic terms shall be applied:

***bankruptcy (economic insolvency)* – the inability of a debtor, which has been recognised by an economic court, to satisfy in full creditors' claims for monetary obligations and (or) to perform duties on mandatory payments;**

¹ Art.72, CC

amicable agreement – agreement of parties on the termination of judicial disputes on the ground of mutual concessions;

creditors – legal entities or individuals to which the debtor is liable for monetary obligations and (or) for duties on mandatory payments, other than citizens to which the debtor is liable in damage to life or health, and other than founders (participants) of the debtor being a legal entity (hereinafter referred to as the “legal entity debtor”) in respect of obligations incurred by their participation in the legal entity;

representative of the creditors’ meeting (creditors’ committee) – person authorised by the creditors’ meeting or creditors’ committee to participate in a bankruptcy case;

supervision – bankruptcy process applied by the economic court to the legal entity debtor from the date when the court accepts a petition for the declaration of the debtor’s bankruptcy until a subsequent process is taken, for the purpose of preserving the debtor’s property and analysing the debtor’s financial situation;

mandatory payments – taxes, charges and other mandatory payments to the state budget and state special purpose funds;

moratorium – suspension of the legal entity debtor’s performance of monetary obligations and (or) duties on mandatory payments;

monetary obligation – duty of the debtor to pay a certain amount of money to its creditor under a civil law contract and on other grounds envisaged by the legislation;

court receiver (interim receiver, rehabilitation manager, external manager, liquidation manager) – person appointed by the economic court to carry out bankruptcy processes;

prejudicial rehabilitation – measures taken by founders (participants) or the property owner of the legal entity debtor, by creditors and other persons for the purpose of restoring the debtor’s financial ability and preventing the debtor’s bankruptcy;

judicial rehabilitation – bankruptcy process applied by the economic court to the legal entity debtor for the purpose of restoring its financial ability and repaying its debts to creditors, without the transfer of powers to manage the debtor’s affairs to the rehabilitation manager;

external management – bankruptcy process applied by the economic court to the legal entity debtor for the purpose of restoring its financial ability with the transfer of powers to manage the debtor’s affairs to the external manager;

liquidation proceedings – bankruptcy process applied by the economic court to the debtor declared bankrupt, for the purpose of satisfying creditors’ claims in pro rata to the amount of each claim and declaring the debtor to be free of obligations;

township-forming enterprise and enterprise equalled thereto – legal entity with employees (including their family members) which comprise not less than a half of the population of the relevant population centre, or legal entity with employees of not fewer than three thousand or legal entity engaged in the state defence and security, or legal entity in a natural monopoly industry;

debtor – legal entity or individual entrepreneur which is incapable to satisfy creditors’ claims for monetary obligations and (or) to perform duties on mandatory payments;

representative of founders (participants) or the proper owner of the debtor – person authorised by founders (participants) or the property owner of the debtor when bankruptcy processes are carried out;

representative of the debtor’s employees – person authorised by the debtor’s employees to

represent their interests when bankruptcy processes are carried out;

***agricultural enterprise* – agricultural cooperative (shirkat), farming enterprise and peasants' enterprise incorporated as a legal entity, and also other legal entities which primarily produce marketable agricultural products.**

The objective of this Article is to define the basic concepts, i.e. the terms used throughout this Law. This Law 2003 provides a wider range of terms than this Law 1998, and several legal concepts need additional interpretation.

In this Law, the terms “*bankruptcy*” and “*economic insolvency*” are used as synonyms. They are defined as the inability of the debtor to satisfy in full creditors' claims for monetary obligations and (or) to perform duties on mandatory payments, when such inability has been recognised by the economic court. Unlike this Law 1998, this Law 2003 excludes a possibility for the debtor to voluntarily declare its bankruptcy (Ch. III, this Law 1998).

It should be pointed out that the aforementioned definition of bankruptcy does not cover the concept of bankruptcy. Indeed, the declaration of the debtor's bankruptcy is grounded not only on the economic court's recognition of the debtor's inability to satisfy in full creditors' claims, but also on an aggregate series of conditions. The debtor's inability to pay is established in connection not with any creditors, but only with those with claims for monetary obligations and mandatory payments. Moreover, the amount of indebtedness to be taken into consideration is not the total amount of indebtedness, but that which is calculated as per requirements of Paragraph 2 of Article 5.

The following major features of the “*bankruptcy*” concept can be outlined: firstly, it is the inability to pay all creditors for monetary obligations, including mandatory payments; secondly, the mentioned inability comprises failure to pay, which is transmitted to the “*economic insolvency*” only when the economic court reveals indications of bankruptcy.

Amicable agreement is an agreement between the individual entrepreneur debtor, a manager of the legal entity debtor or a court receiver, and the representative of the creditors' meeting, based on a resolution of the creditors' meeting passed by a majority in value of all creditors and with consent of all secured creditors. The objective of an amicable agreement is to terminate bankruptcy proceedings by mutually conceding in relation to the amount and terms of debts and so on. An amicable agreement is made in writing and enters into force after the economic court approves it. An amicable agreement may be entered into at any stage of bankruptcy processes. An amicable agreement may be recognised to be invalid, even after the court approval, on grounds of a relevant application, for instance, in case an agreement includes a condition favourable or unfavourable for certain creditors. In this case, bankruptcy proceedings are reopened. The debtor remains indebted even after an amicable agreement is concluded, thus in case the debtor fails to perform its obligations envisaged in the amicable agreement, creditors are entitled to make their claims for payment in the economic court and can have their claims satisfied by executing the court decision.

The concept “*creditors*” is given a particular definition in this Law. Bankruptcy proceedings are the process of satisfaction of creditors' claims in the established manner and in the prescribed order of priority. Persons who are recognised as a creditor according to this Law are included in the creditors' register and recognised as a person participating in a bankruptcy case. On the other side, there is no possibility for them to realise their claims individually, therefore, they may receive the satisfaction of their claims only within the framework of this Law.

The concept “creditors” as used in this Law differs from the generally used term “creditors”.

Firstly, under the civil legislation, a creditor is granted a right to demand the debtor to perform certain actions, while under this Law, a creditor has other non-civil law relations. For instance, in case of creditors being authorised bodies with claims for mandatory payments, they have public law relations; in case of creditors being the debtor's employees with claims for severance payments and remuneration of labour, they have labour law relations.

Secondly, according to this Law, creditors are understood as those who have claims against the debtor for payment of a certain sum of money. Creditors with claims for non-monetary obligations (with claims of non-property character) are not considered as a creditor in this Law. Both Uzbek and foreign legal entities and individuals can participate in a case as creditors (see Art.23, Para.3, CEP).

Thirdly, this Law excludes from the concept "creditors" those with claims for damage to life or health (indemnity), and founders (participants) of the debtor. Those with claims for damage to life or health (indemnity) are both employees of the debtor enterprise (in this case the Regulation "On compensation of employees for severe injury, occupational disease or other damage to health caused in the course of their performance of professional duties", approved by the CM Resolution (dated 11 Feb. 2005 No.60) shall be applicable), and persons who are not employees of the debtor (in this case, general rules, for instance, Art.1005 of CC are applicable). Accordingly, these creditors do not get their claims discharged in the general procedure (inclusion in the creditors' register) and priority established by this Law. Thus, creditors whose health or life was damaged get reimbursed for this, as a creditor of superpriority, regardless of priority of other claims, so, they may be paid individually in any process of bankruptcy proceedings. Such conclusion is grounded on the fact that they have social law relations pertaining to values common to all mankind.

It is considered that the same rules could be applied to creditors with claims for moral damage (Arts.1021 and 1022, CC). Although there is no reference to this in this Law, from the purport of certain provisions (e.g. Arts.63 and 125), it follows that such creditors may not be attributed to the concept of "creditors" in the context of this Law. Compensation for moral damage is also associated with the social protection of citizens and should be satisfied individually in any process of bankruptcy proceedings. In this regard, these creditors are not included in the creditors' register, and their claims are preferentially satisfied as superpriority claims, regardless of priority of other claims. This Law defines the concept of "creditors" exactly in this way. It should be, however, kept in mind that in practice the range of persons who are actually recognised as creditors and included in the creditors' register is much narrower.

As to founders (participants) and the property owner of the debtor, they have a right to receive their shares only in case there is property left after settlements with other creditors (Art.134, Para.11) (although the property owner is not directly envisioned here). That is exactly why such creditors have been excluded from the general concept of creditors in the context of this Law, they are not included in the creditors' register and do not take active part in bankruptcy proceedings, and they are not required to prove their right through participation in the creditors' meetings.

Below follows the classification of creditors which are included in the creditors' register and entitled to receive satisfaction of their claims only in the manner and priority established by this Law, and those who are not included in the creditor' register and may be preferentially reimbursed beyond the manner and order of priority provided by this Law.

Creditors to whom the debtor is liable for obligations which arise before the court accepts a petition for the declaration of the debtor's bankruptcy, and mature before the introduction of the relevant bankruptcy process are subject to inclusion into the creditors' register.

The following are not included in the creditors' register: (1) monetary obligations and mandatory payments which are incurred after the economic court accepts the petition, and (2) monetary obligations and mandatory payments which mature after a bankruptcy process concerned is introduced. Such claims are considered as current payments and discharged preferentially as superpriority claims, that is, ahead of claims of the first priority. It should also be noted that in case of failure to satisfy the above (2) current payments within a bankruptcy process during which they have matured, they are not considered as current payments in a subsequent bankruptcy process, but included in the creditors' register and subject to satisfaction in the manner established by this Law. This is explained in Paragraph 19 of the Resolution of the SEC Plenum No.142.

Creditors with non-monetary claims (claims of non-property nature), claims for damage to health or life, claims for moral damage are not included in the creditors' register, even if these claims have emerged before the acceptance of the petition and even if they have matured before the introduction of a bankruptcy process concerned. Such claims are regarded as superpriority claims. Persons with claims for the return of apportionment of their shares are not included in the creditors' register, either; however, their claims may be satisfied not ahead of creditors of the first priority, but after claims of all priorities are satisfied.

It is necessary to specially mention secured creditors. Their claims must also be included in the creditors' register, provided that such claims arise before the court accepts the petition and mature before the respective bankruptcy process is introduced. In a bankruptcy case, secured creditors are not entitled to file their secured claims individually or to realise property over which they hold security in their own right. Nevertheless, they are granted the preferential right to be satisfied from their security ahead of other creditors, according to the rules provided by Article 133.

From the intent of this Law, it follows that claims for current payments and other superpriority payments subject to preferential satisfaction ahead of claims of all the priorities, that is beyond the order of priority may be classified depending on bankruptcy processes (usually in practice, court receivers keep a separate list of these payments aside from the creditors' register):

1) Supervision

In supervision, current payments are such as monetary obligations and mandatory payments which mature after the introduction of supervision, and monetary obligations and mandatory payments which emerge after the economic court accepts a petition for the declaration of the debtor's bankruptcy. Current payments also include all payments subject to preferential satisfaction, which are listed in Paragraph 1 of Article 134 and Item 1 of Paragraph 1 of Article 63, i.e. salaries, remuneration under copyright agreements, alimony (borne by the employer according to Art.137 of the Family Code), and compensation for damage to life or health and for moral damage. In this regard, it should not be understood that they may not be redeemed without execution documents in the course of supervision. Indeed, these payments should be made in the course of supervision in order to ensure the social protection of citizens;

2) Judicial rehabilitation.

In the process of judicial rehabilitation, current payments are monetary obligations and mandatory payments which arise after the court accepts the petition, and those payments which arise before the court accepts the petition, but mature after the introduction of judicial rehabilitation against the debtor, as is provided in Paragraph 19 of the Resolution of the SEC Plenum No.142, and also payments of claims subject to preferential satisfaction stipulated in Article 134. It is considered that payments of claims of citizens which are incurred out of labour

law relations and claims for alimony and for remuneration under copyright agreements, and also claims of citizens to whom the debtor is liable for damage to life or health and moral damage should be preferentially made, regardless of the order of priority of other claims. Such claims are not subject to inclusion in the creditors' register;

3) External management.

In the process of external management, claims for current payments are claims for monetary obligations and mandatory payments which mature after the introduction of external management and those which arise after the court accepts the petition or the introduction of supervision and (or) judicial rehabilitation. As is provided in Article 93, despite the moratorium, it is allowed to discharge claims of citizens which occur from labour law relations and claims for alimony, for remuneration under copyright agreements, for damage to life or health. It is considered that compensation of moral damage should also be included in this group. All claims mentioned in Paragraph 1 of Article 134 are also subject to preferential satisfaction. All claims outlined above do not need to be included in the creditors' register;

4) Liquidation proceedings.

In liquidation proceedings, current payments are judicial expenses and expenses for remuneration of court receivers, current utility and operational charges, expenses for the insurance of the debtor's property, and monetary obligations and mandatory payments which are incurred after the commencement of a bankruptcy case (regardless of their maturity date, but excluding mandatory payment incurred after the initiation of liquidation proceedings), and payments of claims of citizens to whom the debtor is accountable for damage to life or health according to the legislation (Art.134, Para.1). The abovementioned payments are included in the creditors' register, but are subject to preferential satisfaction, beyond the order of priority.

It is considered that claims for moral damage are subject to preferential satisfaction. Paragraph 1 of Article 134 does not mention them, but since the enterprise debtor is going to be liquidation, these claims should be preferentially satisfied.

The concept of creditors is slightly different in case of bankruptcy of individual entrepreneurs (Arts.174 and 180) and, accordingly, there is another order of priority established for the satisfaction of creditors' claims (see the comment on Art.183).

The term "creditors" as defined in this Law means creditors with claims against the debtor for payment of money. Therefore, non-monetary claims (claims of non-property nature) may be lodged individually. In this respect, however, once liquidation proceedings are initiated, non-monetary claims may be lodged to the debtor only within the framework of these proceedings under Item 6 of Paragraph 1 of Article 125, except claims for the recognition of ownership right, for the repossession of property held unlawfully by other parties, for the restitution of unjust enrichment, for the invalidation of transactions and application of consequences of the invalidity thereof. In this case, the liquidation manager converts non-monetary claims into money terms and include them in the creditors' register, which are subject to satisfaction as per the rules established by Article 134.

With all this going on, attention should be paid to the fact that creditors being a legal entity or an individual entrepreneur have a right to petition the court for the declaration of the debtor's bankruptcy. If claims of creditors being an individual entrepreneur are of personal nature, then such persons are not entitled to petition the economic court. Although creditors being a physical person are not eligible to file the petition in the court, they may be included in the creditors' register after the commencement of a bankruptcy case.

Representative of the creditors' meeting (creditors' committee) is a person authorised, accordingly, by the creditors' meeting (creditors' committee) to attend sessions of the economic court in cases provided by this Law, as a participant in a bankruptcy case. Such figure as the representative is induced, inter alia, because conflicts often take place between creditors and court receivers. In a bankruptcy case, the creditors' meeting (creditors' committee) represents the interests of all creditors and perform all actions against the debtor on behalf of creditors (Art.10, Paras.1 and 2), nevertheless the creditors' meeting (creditors' committee) is a group of persons, which causes the necessity to appoint such person as would represent all creditors in a court session or in other places. A representative of the creditors' meeting (creditors' committee) is elected by the creditors' meeting (creditors' committee) and acts in the interests of creditors on the basis of a resolution of the creditors' meeting (creditors' committee).

The representative of the creditors' meeting (creditors' committee) is authorised to participate in a bankruptcy case in cases stipulated, for example, by Paragraph 2 of Article 36, Paragraph 3 of Article 77, Paragraph 5 of Article 79, Paragraph 1 of Article 88, Article 147, etc., where he/she acts aimed at realising the will of the creditors' meeting (creditors' committee).

The creditors' committee consists of members elected by the creditors' meeting and its representative may participate as a participant in a bankruptcy case, on behalf of the creditors' meeting to perform actions in the interests of all creditors, except such actions as are within the exclusive competence of the creditors' committee (Art.10, Para.5).

Supervision is one of the bankruptcy processes which is introduced by the economic court from the moment of the commencement of a bankruptcy case. Supervision is carried out from the moment when the economic court accept a petition for the declaration of the debtor's bankruptcy up to the following process, for the purpose of preserving the debtors' property and analysing the debtor's financial situation.

From the date of the introduction of supervision, the execution of execution documents upon the debtor's property is suspended, except for particular claims (e.g. for salaries, etc.), while creditors' claims can be lodged and satisfied in principle only within bankruptcy processes to be introduced following supervision. Besides this, during supervision, the consent of the interim receiver is required when the debtor conducts major transactions of real property, in order to maintain control over actions of the manager and management bodies of the debtor. The interim receiver must compose the creditors' register in order to identify creditors eligible to participate in the first creditors' meeting with the right to vote. Supervision is generally conducted for the period not exceeding three months, and ends by virtue of the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, or the introduction of external management or judicial rehabilitation, or by the conclusion of an amicable agreement. In supervision the manager of the debtor is not dismissed unlike in other bankruptcy processes (external management and liquidation proceedings). In general, supervision is a process of preparatory character destined for the introduction of a subsequent bankruptcy process.

The concept **mandatory payments** covers the debtor's all obligations of public law nature. It includes taxes, duties, insurance and other charges, other mandatory payments to the state budget and off-budget funds². The need to single out this category of creditors is called forth by a special procedure for regulating the fulfilment of obligations of public nature. For example, authorised bodies cannot in fact sign an amicable agreement. In order to sign, they have to present a power of attorney

² It is considered to be a synonym of state special purpose funds. They include such social funds as pensions fund and such economic funds as road funds.

that indicates their authority to sign thereof; however, in practice nobody would give such authority to the representative of tax authorities to “remit” debts owed to the state budget.

“Tax” means an obligatory payment, individually and unilaterally imposed on organisations and individuals by collecting monetary assets which they own in form of ownership, business management or operative management, for the purpose of maintaining the vital activities of the state and (or) local government bodies.

“Duty” means a mandatory fee collected from business subjects and individuals, where this payment is one of the conditions for state authorities, local self-government bodies, other authorised bodies and officials to perform legally significant actions in respect with payers of such duties, including the provision of certain rights or the issuance of licenses.

Moratorium is literally translated as “suspension” and in bankruptcy proceedings means a temporary suspension of the satisfaction of creditors’ claims which mature before the introduction of external management. It remains effective for the whole period of external management, from the date of its introduction up to its end (until the economic court issues a ruling to terminate bankruptcy proceedings, a ruling to shift to settlements with creditors, or a decision to declare the debtor bankrupt and initiate liquidation proceedings – depending on the results of the consideration of a report of the external manager). Within the moratorium period, the debtor does not need to discharge its existing indebtedness, except for claims that arise before the court accepts the petition and mature after the introduction of external management; claims which arise after the court accepts the petition; claims arising from labour law relations; claims for alimony; and claims for damage to life or health. Apart from the above, it is not allowed to enforce execution documents, and penalties and other financial sanctions stop accruing.

The moratorium plays a vital role during external management, as it provides an opportunity for the debtor to recover its financial ability in the course of external management, because the debtor does not have to make settlements with creditors included in the creditors’ register, and those assets which might be destined for such settlements may be used by the external manager for measures to restore the debtor’s solvency and improve the debtor’s financial situation. More detailed information about the moratorium is given in the comment on Article 93.

Monetary obligation is an obligation to pay a definite amount of money on grounds of civil law contracts and on other grounds envisaged in the legislation. The definition of a monetary obligation emphasises its monetary nature.

Generally, it is a civil law contract that gives a ground of monetary obligations. Virtually, all these contracts are onerous contracts, since it is presumed in the property trading that any civil law contract is an onerous contract. With all this, only those onerous contracts which entail payment of money in return for goods, works, and services can constitute a ground of monetary obligations.

Obligations may arise in other way, in addition to contracts. For example, an obligation to compensate for damage can be classified as non-contractual types of monetary obligations. An obligation to restitute unjust enrichment may hold monetary nature.

Court receiver is the general concept which encompasses figures functioning in bankruptcy processes who are appointed by the economic court from those who are not parties of a case. They are one of the major participants in a bankruptcy case. The concept of court receiver takes different forms in each bankruptcy process: the interim receiver in the course of supervision; the rehabilitation manager in the course of judicial rehabilitation; the external manager in the course of external management; and

the liquidation manager in the course of liquidation proceedings. Their status, powers, rights and obligations are specifically stipulated for each bankruptcy process.

Under this Law 2003, a court receiver is a new concept which was not provided in the previous versions of this Law. The previous versions of this Law stipulated only the external manager and the entrusted person. Earlier the external manager was appointed by the economic court, while the entrusted person was only approved (basically the liquidation commission headed by the entrusted person was formed as a body dealing with bankruptcy). Under this Law 2003, all court receivers are appointed by the economic court.

The main authorities of court receivers depend on each concrete bankruptcy process, but the basic functions are to ensure justice, and the legality of all the bankruptcy processes and the proportionate satisfaction of creditors' claims, to maintain the creditors' register and to manage the debtor's property, where court receivers must secure the interests of not only creditors, but also the debtor. Regarding the appointment of court receivers, and their performance of duties, there established several conditions of their qualification, and it is also provided that they should insure themselves against their liabilities (see the comment on Art.18). General provisions of court receivers, including their rights and obligations are provided in Articles 19 through 22; powers of court receivers in each bankruptcy process are specifically explained in the respective Chapters of this Law.

Prejudicial rehabilitation may also be categorised as a recovery procedure, therefore, provisions on prejudicial rehabilitation are set in this Law (rehabilitation – recovery) so as to draw attention to unprofitable debtors before a bankruptcy case is commenced. The purpose of *prejudicial rehabilitation* is to prevent the debtor's bankruptcy and to restore its financial ability. In judicial rehabilitation and external management, the recovery of the debtor enterprise takes place within the framework of court proceedings, i.e. within a commenced bankruptcy case, and therein lies a difference between prejudicial rehabilitation and such recovery processes as judicial rehabilitation and external management.

Prejudicial rehabilitation may be applied to the debtor which is not in position to satisfy claims of creditors for its monetary obligations and (or) mandatory payments.

Judicial rehabilitation is a new bankruptcy process introduced by this Law, which represents a process applied by the court in order to recover the legal entity debtor financially and to satisfy creditors' claims against the legal entity debtor.

The purpose of judicial rehabilitation is to restore the debtor' financial ability by settling with creditors according to the approved debt repayment schedule within the time-framework set for this process. The restoration of the debtor's financial ability is also the purpose of external management, but the methods to achieve this purpose differ between these two bankruptcy processes. In judicial rehabilitation, the management of the debtor's business is, in principle, not transferred to the rehabilitation manager, but retained by the debtor's management bodies under some restrictions. In judicial rehabilitation, the debtor's manager, its founders and other persons draw a judicial rehabilitation plan that enables the debtor to recover financially and thus pay its debts. This plan is subject to approval of the creditors' meeting and the economic court, and the debtor is financially recovered by implementing the plan. The total period of judicial rehabilitation should not exceed twenty-four months.

External management represents a process introduced by the court against the legal entity debtor for the purpose of the restoration of the debtor's financial ability and the satisfaction of its creditors' claims, with the transfer of its powers to manage its business and dispose of its property to the external manager. Compared to judicial rehabilitation, which has the same purpose, the distinctive feature of

external management is that management bodies of the legal entity debtor, including its manager, lose all powers of management over the debtor's matters and property. External management is introduced by the court by virtue of an application of the creditors' meeting, which constitute a ground for introducing the moratorium on payments to creditors. The external manager drafts an external management plan, which is approved by the creditors' meeting and provides the main purpose – the restoration of the debtor's solvency and the satisfaction of creditors' claims in the manner set by this Law. External management can be, as a general rule, conducted for no more than twenty-four months.

Liquidation proceedings aim at terminating the debtor's obligations in way of realising the debtor's property and thus discharging its debts, as a result of which the debtor is liquidated.

Liquidation proceedings are applied to the legal entity debtor and the individual entrepreneur-debtor. Compared to liquidation of the legal entity debtor, the distinctive features of liquidation proceedings of the individual entrepreneur debtor lie in that only creditors with claims concerning the debtor's business are qualified to petition the court for the declaration of the debtor's bankruptcy and that a court receiver is, in general, not appointed. Liquidation proceedings of the legal entity debtor are carried out by the liquidation manager. The liquidation manager inventories and evaluates the debtor's property and drafts a liquidation plan. In liquidation proceedings of the individual entrepreneur debtor, the debtor's property is sold by an execution officer, and after this process, the debtor is released from obligations to discharge unsatisfied claims. The total period of liquidation proceedings should not exceed, in principle, one year.

The concept ***township-forming enterprise and enterprise equalled thereto*** is defined in this Article. It should be emphasised that this concept is wider than that in the previous version of this Law, Township-forming enterprises in the current version of this Law include also those business subjects employees of which are not less than three thousand, those which are engaged in the state defence and security, and those in a natural monopoly industry. Paragraph 34 of the Resolution of the SEC Plenum No.142 gives explanation as which documents prove the above circumstances (features of enterprise).

The concept "***debtor***" under this Law essentially differs from the traditional understanding in civil law. Usually in civil law, this concept means a party which bears an obligation to perform certain acts as is claimed by its creditor: to deliver goods, to perform work, to provide service, to pay money, etc. Under this Law, the debtor is understood as a party which is only accountable for monetary obligations to pay some money to its creditors. It should also be noted that under this Law, not only persons with civil law obligations, but also those who are obliged to pay taxes, duties and other payments to the state budget and off-budget funds, i.e. to fulfil public law obligations are regarded as the debtor.

In this connection, the economic court does not accept a petition for the declaration of the debtor's bankruptcy which is file by a creditor to whom the debtor is liable for non-property obligations (non-monetary obligation). Creditors which have claims of non-monetary nature against the debtor are authorised to lodge their claims outside bankruptcy proceedings. Upon the consent of creditors, claims of non-monetary nature may be evaluated in monetary value and resort to the debtor by lodging claims in the manner prescribed by this Law.

In this Law, the term "***debtor***" encompasses both a legal entity and an individual entrepreneur. The debtor is a major figure in bankruptcy proceedings and considered as a participant in a bankruptcy case (Art.36, Para..2, Item 1).

In practice, it is usually the manager who represents the debtor. The debtor's manager is an individual executive body of the legal entity debtor. The manager has a right to represent the interests of this debtor without a power of attorney. This Law stipulates a concrete situation where the debtor's

manager must petition the court for the declaration of the debtor's bankruptcy (Art.8, Para.1). This petition should be filed in writing and signed by the debtor's manager (Art.37, Para.1). For this, a resolution of founders (participants) or the property owner of the debtor is required (Art.38, Para.2, Item 5), except for cases provided by Items 1 and 4 of Paragraph 1 of Article 8.

In judicial rehabilitation, the debtor's manager is not dismissed from his/her position to manage business and dispose of property, but goes on carrying out his/her professional duties under the control of the rehabilitation manager, and implements the judicial rehabilitation plan and the debt repayment schedule. Nevertheless, in case the manager fails to implement or implements inaccurately the judicial rehabilitation plan, it is quite possible that the debtor's manager might be dismissed (Art.79,Para.4). In external management and liquidation proceedings, the authorities to manage the debtor's business and dispose of its property pass over to the external manager and liquidation manager, and the debtor's manager is deprived of such powers.

Founders or participants of the debtor are legal entities or individuals which make a contribution to the charter capital or hold apportionment in the debtor. According to this Law, these persons cannot directly participate in a bankruptcy case; their representative participates on their behalf in proceedings. The **representative of founders (participants)** of the debtor is recognised as an individual elected by the assembly of founders (participants) to represent the interests of founders (participants) of the debtor in the course of bankruptcy processes. The procedural status of the representative is that he/she is recognised as a person participating in a bankruptcy case (Art.36, Para.2) and granted appropriate powers to protect the rights and interests of the debtor's founders (participants) in cases envisaged by this Law. As a general rule, a representative of founders (participants) is elected after a petition for the declaration of the debtor's bankruptcy is filed, although he/she may well be elected on an earlier stage (Art.37, Para.5). The representative is elected by a majority vote at the assembly of founders (participants) of the legal entity. This Law does not mention any restrictions concerning the number of representatives, but generally only one is elected. The representative can be replaced during bankruptcy proceedings by a resolution of the assembly of founders (participants).

Representative of the property owner of the debtor is a person appointed by the property owner or a body authorised by the property owner of the unitary enterprise debtor based on the right of business management³, and of the private one-man enterprise debtor⁴. The representative of the property owner of the debtor is recognised as a person participating in a bankruptcy case in cases envisaged by this Law.

The representative of founders (participants) or the property owner of the debtor is authorised to participate in the creditors' meeting with a right to counsel (Art.10,Para.3;Art.71,Para.3); to apply to the court for the dismiss court receivers (Art.18. Para.3); to obtain a copy of a petition for the declaration of the debtor's bankruptcy (Art.37, Para.5), and enjoys other rights granted to persons participating in a bankruptcy case in instances provided by this Law.

Representative of the debtor's employees is recognised as a person participating in a bankruptcy case in instances envisaged by this Law (Art.36, Para.2), and, accordingly, he/she enjoys the procedural and other rights granted to such persons, i.e. he/she is entitled to participate in court sessions, to appeal judicial acts rendered in bankruptcy proceedings, and to participate in the creditors' meeting with a

³ Art.71, CC

⁴ Law of the Republic of Uzbekistan "On Private One-Man Enterprise"

right to counsel (Art.10,Para.3;Art.71,Para.3). Employees cannot individually participate in proceedings or the creditors' meeting, and, all the more, are not granted a right to vote.

Since the debtor's employees are persons who have a labour contract with the debtor, it follows then that their representative can also be considered as a member of such labour collective. A representative of the debtor's employees is elected at the general meeting of employees by majority vote. In bankruptcy proceedings, it is not each employee that lodges with court receivers claims for wages or severance payments, but the representative of the debtor's employees lodges claims of all employees as a whole. If an individual employee does not agree to the filed sum of claims, he/she is still entitled to apply individually to the court of general jurisdiction, and after getting a court decision in his/her favour, to present the decision, not to an execution officer, but a court receiver (or the debtor in the course of supervision and judicial rehabilitation) in order to receive payment.

The representative of the debtor's employees has a right to file with the economic court complaints in connection with disputes between court receivers and the debtor's employees about the amount and composition of payments arising from labour law relations (Art.59, Para.2, Item 1). Employees are not entitled to lodge such objections and complaints individually.

The concept *agricultural enterprises* has also been widened; now it includes peasants' enterprises incorporated as a legal entity, and also other legal entities the primary activities of which are to produce marketable agricultural products.

Agricultural enterprise is defined as a legal entity which primarily produces and processes agricultural products: agricultural cooperative (shirkat⁵), farming enterprise⁶ and peasants' enterprise incorporated as a legal entity⁷. Organisations that only process agricultural products (without their production) do not fall within this category of the debtor. Such are meat-packing factories, dairies, alcoholic beverage enterprises, sugar refineries and so forth. The distinctive features of bankruptcy processes with respect to agricultural enterprises are, for example, the application of a specific out of court procedures for the restoration of their financial ability, the extension of terms of supervision, prejudicial and judicial rehabilitation, external management in case of sales (assignment) of the debtor's property (Arts.161, 162 and 163).

Article 4. Indications of Bankruptcy

When the debtor has not satisfied creditor's claims for monetary obligations and (or) to perform duties on mandatory payments within three months from the maturity date, such inability shall be recognised as indications of its bankruptcy.

This Article gives definition of bankruptcy indications, as it is provided in this Law.

This Law 1994 defined indications of bankruptcy of business subjects as the inability to satisfy creditors' claims for payment of goods (works, services), including the inability to make mandatory payments to the state budget and off-budget funds, and the excess of the debtor's obligations over its assets (asset deficiency). Thus, bankruptcy is defined as the inability to pay and the excess of

⁵ Law of the Republic of Uzbekistan "On Agricultural Cooperative (Shirkat)"

⁶ Law of the Republic of Uzbekistan "On Farmer Business"

⁷ Law of the Republic of Uzbekistan "On Dekhkan Business"

obligations over assets. In this regard, this Law 1994 did not separately envision bankruptcy of individuals, but regulated business subjects as a whole.

Under this Law 1998, indications of bankruptcy were defined separately for legal entities and for individuals. Indications of bankruptcy of legal entities were recognised as the inability to satisfy creditors' claims for monetary obligations and (or) to fulfil duties on mandatory payments, if these obligations and (or) duties had not been performed by the debtor for six months from their due date. Indications of bankruptcy of individuals (persons who carry out entrepreneurship activities not in the form of legal entity) were recognised as the inability to satisfy creditors' claims for monetary obligations and (or) fulfil duties on mandatory payments, if these obligations and (or) duties had not been performed by the debtor for three months from their maturity day, and obligations exceed the value of property. Thus, the asset deficiency was established as indications of bankruptcy, only in respect of individual entrepreneurs. As to legal entities, the fact of the inability to pay within six months from the due date had significance.

This Law 2003 defines indications of bankruptcy of both legal entities and individuals (individual entrepreneurs) as the inability to pay debts, i.e. "the financial inability". Thus, the basic indications of bankruptcy remain, while only the requisite period in which the debtor is incapable to discharge its debts was changed. The financial inability is defined according to the following presumption: if the debtor fails for a long time (over three months) to settle due accounts with creditors and to make mandatory payments to the state budget and off-budget funds, then it is presumed that the debtor is not capable to do so, that is, the debtor is financially incapable. Here it should be noted that the overdue period of three months is established (instead of six months, as was established in the earlier version of this Law), so as to follow the current legislation, in particular, the Decree of the President "On measures for increasing liability of managers of enterprises and organisations for timeliness of settlements in the economic relations" dated 12 May 1995 No.UP-1154, where it is provided that payments shall be considered overdue if these payments have not been made within ninety days (three months) from the date of the actual shipment of goods, etc.; a liability for overdue payments is provided in form of fines in the Code of Administrative Liability. It can be concluded that the amount of indebtedness does not matter here, because such amount has a meaning only as a condition of the commencement of a bankruptcy case.

This definition is based on an adequate understanding of the modern needs of the property trading, in which participants should pay in due time for sold goods, performed works or provide services, and repay in due time their loans, i.e. they must fulfil in good faith their obligations and public law duties. That is why this Article excludes the fact of the excess of debts over assets from mandatory conditions. In the present time of economic development, it is considered that the total amount of the debtor's assets is not important, but only the fact of the inability to pay debts is of significance, namely, the debtor enterprise in the present time of market relations should either find ways and opportunities to discharge its debts or otherwise liquidate itself and withdraw from the commercial trading.

In most cases, it is banks, tax service authorities, registration authorities, i.e. regional government (Khokimiyats) and others that identify enterprises which have not paid their debts for three months from the due date. A 'Regulation' was approved in order to ensure the implementation of the Resolution of the Cabinet of Ministers "On the procedure for liquidation of enterprises which do not carry out financial and economic activity or failed to form their charter capital within the terms fixed in the law" dated 3 Jul. 1999 No.327. According to the Regulation, in case enterprises have been involved in no financial and economic activities by way of carrying out currency operations through bank

accounts with commercial enterprises and intermediates for three months, and with other business subjects being legal entities for six months, commercial banks should, within three days, submit such information to tax service authorities where these enterprises are registered, indicating the date of opening their bank account or the date of their last operation; the availability of money in these bank accounts; accounts receivable and accounts payable, the existence of Card Index No.2 with details of credits; officials of the enterprise. After a court decision to suspend operations through bank accounts is rendered, the banks should, within the next day, close accounts of business subjects. The aforementioned Regulation regulates in details the procedure for tax and registration authorities to deal with such business subjects.

This Article provides the general rule of indications of bankruptcy. In cases where this Law provides for special rules with regard to specific categories of the debtor, these particular rules are applied. Such particular rules are set for the declaration of bankruptcy of township-forming enterprises and enterprises equalled thereto (see the comment on Art.156).

Article 5. Consideration of Bankruptcy Cases

- 1 A bankruptcy case shall be considered by the economic court.**
- 2 A bankruptcy case may be commenced by the economic court, when indications of bankruptcy are verified, if aggregate claims against the legal entity debtor amount to not less than a five hundred-fold minimum wage, and claims against the debtor being an individual entrepreneur (hereinafter referred to as the ‘individual entrepreneur debtor’) - not less than a thirty-fold minimum wage, except as envisaged by this Law.**

The purpose of this Article is to provide the exclusive jurisdiction of economic courts over bankruptcy cases, and to determine the conditions for commencing a bankruptcy case.

1. According to Paragraph 1 of Article 5, bankruptcy cases are considered only by the economic court, i.e. this Paragraph defines the jurisdiction over bankruptcy cases. This rule of this Law complies with Paragraph 1 of Article 23 of the Code of Economic Procedure, which defines that the consideration of such cases is within the competency of economic courts; consequently, courts of general jurisdiction are not entitled to accept petitions for the declaration of the debtor’s bankruptcy.

The rules of the general territorial jurisdiction over bankruptcy cases are discussed in the comment on Article 35.

The rules of Articles 31 and 32 of the Code of Economic Procedure regarding the exceptional territorial jurisdiction and agreement territorial jurisdiction do not apply to bankruptcy cases. The rules of Article 25 of the Code of Economic Procedure regarding the transfer of a case to third party arbitration courts do not apply to bankruptcy cases, either.

2. The commencement of a bankruptcy case is conditional on the observance of the amount of claims established by this Law, namely against the legal entity debtor – not less than five hundred-fold minimum wage; and against the individual entrepreneur debtor – not less than thirty-fold minimum wage, provided that the debtor has been incapable to discharge them for three months from their maturity date. It follows then that a condition for the commencement of a bankruptcy case is: the inability for more than three months to pay the mentioned amount.

As is known, the minimum wage and the minimum rate of pension and allowance are determined by the Decree of the President. For example, by the Decree dated 12 October 2006, the minimum wage from 1 November 2006 is determined in the amount of 12420 Soums⁸.

In order to determine the amount of five hundred-fold and thirty-fold minimum wage, the courts should refer to the latest set amount of minimum wage.

In practice, bankruptcy proceedings are recognised as a cumbersome and complicated process. A significant amount of the debtor's assets are supposed to be spent to handle bankruptcy processes (court fees, evaluation, audit, publication in press, etc.). Bankruptcy proceedings involve large expenses, so that it is not reasonable to initiate bankruptcy proceedings where claims are relatively of small scale compared to expected expenses, because in such cases, these small claims can be, as a matter of principle, recovered without commencing a bankruptcy case, but through a court decision granted in general court proceedings to collect debts from the debtor's property. In order to prevent a lot of bankruptcies based on such small claims, the threshold of the commencement of a bankruptcy case is established as follows: the total sum of debts should be not less than five hundred-fold minimum wage for legal entities and thirty-fold minimum wage for individual entrepreneurs, and these debts should be three month or more overdue.

According to Paragraph 7 of the Resolution of the SEC Plenum No.142, the economic court should make sure that when accepting a petition for the declaration of the debtor's bankruptcy, a judge need to examine the existence of documents evidencing that the legal entity debtor has debts the total amount of which is not less than five hundred-fold minimum wage or that the individual entrepreneur debtor has debts the amount of which is not less than thirty-fold minimum wage, and these debts are three month overdue. In case such documents are not presented, the petition is subject to return in accordance with Paragraph 6 of Article 45 of this Law and Item 1 of Paragraph 1 of Article 118 of the Code of Economic Procedure. In this case, a judge should make a reference to Item 5 of Paragraph 2 of Article 112 of the Code of Economic Procedure in the statement part of a court ruling to return the petition.

This Law envisions an exception to the established general rule of conditions for the commencement of a bankruptcy case. In particular, as an exception, the commencement of a case upon the initiative of the debtor itself can be taken, where neither the certain amount of indebtedness nor the certain overdue period has no meaning (Arts.7 and 8). Apart from this, bankruptcy of township-forming enterprises and enterprises equalled thereto is also considered as an exception (Ch.IX, Art.156), where the requisite amount of indebtedness is not less than five thousand-fold minimum wage and these debts should be not less than six month overdue. It can be also possible to take, as an exception, bankruptcy of the debtor in liquidation and the absent debtor, where property of the legal entity debtor which has entered liquidation by virtue of a decision on liquidation is insufficient to satisfy creditors' claims. Such legal entity is liquidated in bankruptcy proceedings, regardless of the amount of claims (Art.185) and the overdue period. This is true with bankruptcy of the absent debtor provided in Article 188 (the amount of debts and the overdue period do not matter).

Article 6. Right to Petition Economic Court

⁸ The current minimum wage is 18630 Soum from 16 November 2007 in accordance with the President's Decree dated 23 October 2007.

- 1 The debtor, creditors and the prosecutor shall have the right to file in the economic court a petition for the declaration of the debtor's bankruptcy in connection with unfulfilled monetary obligations.**
- 2 The debtor, the prosecutor, state taxation service authorities and other authorised bodies shall have the right to file in the economic court a petition for the declaration of the debtor's bankruptcy in connection with overdue mandatory payments.**

The purpose of this Article is to explain a provision of who is eligible to petition the economic court for the declaration of the debtor's bankruptcy .

1. In the presence of overdue monetary obligations, a right to petition the economic court is granted to the debtor itself, its creditors and the prosecutor. It should be noted here that only legal entities and individuals with a status of individual entrepreneur are admitted as a debtor or a creditor (Art. 23, CEP).

Firstly, the debtor is referred to. The debtor has a right to petition the economic court for the declaration of its bankruptcy when there are circumstances evidencing that the debtor is going to be unable to satisfy monetary obligations within three months from their maturity date, e.g. in case of expected bankruptcy (Art.7). The procedure for the debtor to file the petition is provided by Articles 37 and 38. Additionally the debtor are also authorised to file the petition, if it has debts unfulfilled for three months from their maturity date (Art.4), and such debts amount to not less than the established indications (Art.5, Para.2). Besides, this Law envisions not only the right, but the duty of the debtor to petition for the declaration of its bankruptcy in certain cases (Art.8).

A creditor is also entitled to file in the court a petition for the declaration of the debtor's bankruptcy. Creditors acquire the right of filing in case their claims against the debtor are three months overdue (Art.4), and such claims in aggregate are not less than the established indications (Art.5, Para.2). Such claims should not, however, have personal characters. The detailed procedure for creditors to file the petition is provided by Article 39 "Creditor's Petitioning", Article 40 "Consolidation of Creditors' Claims" and Article 41 "Documents Attached to Creditor's Petition". Uzbek and foreign legal entities and individuals having a status of individual entrepreneur (Art.23, CEP) can be considered as creditors on monetary obligations.

It should be noted that the prosecutor is qualified to file the petition on grounds of both Paragraphs 1 and 2 of this Article. For more details of the prosecutor's filing of the petition, see the comment on Article 44.

There is one more party who has a right to petition for the declaration of the debtor's bankruptcy in connection with overdue monetary obligations, although this is not stipulated in Paragraph 1 of this Article. This is the state body for bankruptcy proceedings. This state body may file the petition against enterprises the charter capital of which partially or wholly belongs to the state and (or) which are indebted to the Republic of Uzbekistan on monetary obligations (Art.25, Para.3, Item 2).

2. According to Paragraph 2 of this Article, the debtor, the prosecutor, state taxation service authorities and other authorised bodies can file the petition in connection with overdue mandatory payments.

As concerns the debtor and the prosecutor, their petition is filed in the same manner as stipulated by Paragraph 1 of this Article.

As state taxation service authorities and other authorised bodies, authorised bodies in charge of collecting taxes, charges and other mandatory payments (levies) to the state budget of the Republic of Uzbekistan and other state special-purpose funds can be considered. These authorities are qualified to file the petition after they have taken measures to recover mandatory payments from the debtor in accordance with the Regulation on the procedure for collection of arrears of mandatory payments to the budget.

In case a bankruptcy case is commenced by an authorised body based on overdue mandatory payments, its petitioning should follow the following sequence of “pre-court” actions of the authorised (tax) bodies: issuing an act (order, claim) that obligates the debtor to pay arrears in the out of court procedure; attempting to recover arrears from the debtor’s bank account by presenting the relevant payment document to the bank (Paras.1 through 3, the Regulation on the procedure for collection of arrears of mandatory payments to the budget). When arrears cannot be recovered, a tax service authority renders a decision to exercise its claims over the debtor’s property and exacts arrears from the debtor’s property (Paras.4 and 5, the Regulation on the procedure for collection of arrears of mandatory payments to the budget). Only after this, i.e. when the recovery in such way proves impossible, state taxation service authorities and other authorised bodies are eligible to petition the economic court for the declaration of the debtor’s bankruptcy (see the comment on Art. 43, Para.2).

It is understood that the state body for bankruptcy proceedings is entitled to petition for the declaration of the debtor’s bankruptcy, if the debtor owes debts to the state, including debts of mandatory payments (Art.25, Para.1, Item 2).

The rules applicable to creditors are applied to tax and other authorities as well, unless otherwise envisaged by this Law.

Article 7. Grounds for Debtor to Petition Economic Court

- 1 The debtor shall be entitled to file in the economic court a petition for the declaration of its bankruptcy, if there are circumstances evidencing that the debtor will not be able to perform monetary obligations and (or) duties on mandatory payments within a period established by Article 4 of this Law.**
- 2 The legal entity debtor shall file in the economic court a petition for the declaration of its bankruptcy by virtue of a resolution of its founders (participants) or its property owner, or a resolution of a body authorised by its property owner, unless otherwise envisaged by this Law.**

This Article shows the grounds when the debtor itself is entitled to petition the economic court for the declaration of the debtor’s bankruptcy. The debtor acquires such right in case of expected insolvency. Basically, a resolution of founders (participants) or the property owner of the debtor is required when the debtor petitions the court.

1. Expected insolvency, that is, the inability to make monetary and (or) mandatory payments in future, is stipulated in Paragraph 1 of this Article as a ground for petitioning the court.

In this Article, the initiation of bankruptcy proceedings is not conditioned upon the certain amount of debts (with respect to the legal entity debtor – not less than five hundred-fold minimum wage, with respect to individual entrepreneur debtor – not less than thirty-fold minimum wage) and the

overdue period, because the debtor is deemed to be incapable to discharge its debts. This Article makes an exception to the general rules on conditions of the petitioning and the commencement of a bankruptcy case. This is provided also by the Resolution of the SEC Plenum No.142 (Para.3). Since the inability to pay is just assumed in case of this Article, it is considered that there is no need to require such certain amount of debts and overdue period, established by this Law.

2. Paragraph 2 of this Article provides a special requirement which the filing of the petition by the legal entity debtor should meet - a resolution of an appropriate management body of the debtor. It follows then that a resolution of an appropriate bodies empowered by founding documents of the legal entity debtor to make a decision on its liquidation should precede the filing of the petition by the legal entity debtor (Paragraph 2 of Article 38 requires a document evidencing of such resolution to be attached to the petition.). The petition for the declaration of the debtor's bankruptcy is signed by the manager of the legal entity debtor (Art.37), but a decision on liquidation or termination in other way is beyond the competence of the manager.

Exceptionally, the debtor petitions the court without the abovementioned resolution in case the manager of the legal entity debtor is obliged to petition for bankruptcy (Art.8, Para.1, Items 1 and 4), because it is such an exigent situation that it is impossible to wait for such resolution. It is true to the mandatory petitioning of the liquidation commission (liquidator) under Paragraph 2 of Article 8, when a resolution on liquidation by founders or the property owner of the debtor is not required.

Article 8. Obligation of Debtor, Liquidation Commission or Liquidator to Petition Economic Court

- 1 The manager of the debtor and the individual entrepreneur debtor shall be obliged to file in the economic court a petition of the debtor, if:**
 - **the satisfaction of claims of one or more creditors results in the debtor being impossible to perform its monetary obligations and (or) duties on mandatory payments to other creditors in full;**
 - **a body of the legal entity debtor which the debtor's founding documents authorises to pass a resolution on liquidation of the debtor has passed a resolution to file in the economic court a petition of the debtor;**
 - **a body authorised by the property owner of the debtor being a unitary enterprise has passed a resolution to file in the economic court a petition of the debtor;**
 - **when creditors' claims are executed upon the debtor's property, there are grounds to believe that such execution will preclude the debtor's business.**
- 2 The liquidation commission (liquidator) shall be obliged to file in the economic court a petition of the debtor, if it is confirmed in course of the liquidation of the legal entity debtor that the debtor is incapable to satisfy creditors' claims in full.**
- 3 The petition of the debtor, its liquidation commission or its liquidator must be forwarded to the economic court within one month from the date when circumstances envisaged by Paragraph 1 and Paragraph 2 of this Article arise.**

Unlike the previous version of this Law, which consider the filing of a petition for the declaration of the debtor's bankruptcy as the debtor's right, Article 8 of the present version of this Law envisages

situations where such petition must be filed without fail by the manager of the legal entity debtor, the individual entrepreneur debtor, and the liquidation commission (liquidator) of the legal entity debtor.

1. In particular, Paragraph 1 of this Article stipulates the following situations where it is obligatory for the manager of the legal entity debtor and the individual entrepreneur debtor to file in the economic court a petition of the debtor (in this case it is understood that indications of bankruptcy, such as the prescribed amount of indebtedness and the inability to pay off debts within three months are not required as an indispensable condition) when:

1) the satisfaction of claims of one or more creditors results in the debtor being impossible to perform its monetary obligations and (or) duties on mandatory payments to other creditors in full.

It should be noted that the above situations may take place, when the debtor has to satisfy first of all creditors' claims in the largest amount. In this case, interests of "subsequent" creditors may suffer; such situation may happen when several court decisions have been rendered against the debtor. The execution of earlier court decisions often makes it impossible to execute other court decisions rendered later.

Thus, this Paragraph aims at protecting legal interests of all creditors of the debtor, at creating an opportunity of the proportionate and possibly full satisfaction of all creditors' claims by considering them in court proceedings, and at preventing a collusion between the debtor and individual creditors to the prejudice of other creditors;

2) a body of the legal entity debtor which the debtor's founding documents authorises to pass a resolution on liquidation of the debtor has passed a resolution to file in the economic court a petition of the debtor.

Usually, it is the general assembly of founders (participants) that is a body of the legal entity debtor which is authorised by the debtor's founding documents to pass a resolution on liquidation of the debtor. A resolution petitioning the economic court for the declaration of bankruptcy of a legal entity can be passed by a body authorised thereto by its founding documents, provided only that there are indications of bankruptcy or expected bankruptcy. If the debtor apprehends a danger of bankruptcy, a bankruptcy case should be commenced against such debtor. In this connection, the manager of the debtor is levied a duty to file a requisite petition with the court;

3) a body authorised by the property owner of the debtor being a unitary enterprise has passed a resolution to file in the economic court a petition of the debtor;

This situation is analogous to the previous Item, because the obligation of the debtor's manager to petition the economic court arises from the will of the owner. The difference from the previous Item is, first of all, there is only one owner and, secondly, that the enterprise should be of a unitary type. Such case may occur to unitary enterprises⁹, including state-owned enterprises which are not fully financed out of the state budget, or for unitary enterprises based on private property¹⁰;

4) in case creditors' claims are executed upon the debtor's property, there are grounds to believe that such execution will preclude the debtor's business.

⁹ Art.71, CC

¹⁰ It is considered as a private one-man enterprise (Law of the Republic of Uzbekistan "On Private One-Man Enterprise")

This Law does not clarify the concept “preclude the debtor’s business” after claims are executed upon the debtor’s property; this is resolved in each case individually by the debtor’s manager or by the individual entrepreneur debtor.

This prerequisite may be considered as one of instances of expected bankruptcy. In principle, the debtor is capable to pay to a creditor, however this payment may make the debtor-enterprise’s business impossible and cause significant losses to the debtor’s partners, other creditors, and it is such situation that the debtor’s manager has to provision bankruptcy. Following this logic, the above circumstances oblige the debtor’s manager to petition the court for the declaration of the debtor’s bankruptcy.

2. Another obligation to petition the economic court according to Paragraph 2 of this Article is placed on the liquidation commission (liquidator):

The liquidation commission (liquidator) is obliged to file the petition of the debtor in the economic court, if it establishes the impossibility to satisfy creditors’ claims in full, when carrying out liquidation of the legal entity debtor. In this case, streamlined bankruptcy processes are applied here in line with the procedure prescribed by Chapter XI (Art.185).

It should be emphasised that this rule is a progressive step in the improvement of the bankruptcy legislation, because this forestalls the avoidance of discharging debts by way of self-liquidation, which used to take place often in wrong situations, or possible conspiracies with unfaithful officials.

It should be kept in mind that an obligation to file the petition with the economic court under the above circumstances is imposed not only on the chairman of the liquidation commission, but also other members of the liquidation commission, because Article 9 stipulates a liability not only of the chairman of the liquidation commission, but also of members of the commission.

3. Paragraph 3 of this Article determines the period for filing the debtor’s petition:

The petition of the debtor’s manager, the liquidation commission (liquidator) must be presented to the economic court not later than one month from the date when circumstances envisaged by Paragraphs 1 and 2 of this Article arise.

It should be noted that in case a resolution applying to the economic court for the declaration of the debtor’s bankruptcy is passed by a body authorised by founding documents to make a decision on liquidation, or the manager of a private one-man enterprise, or an authorised state body¹¹, the period of one month for filing the petition is calculated from the date when such resolution is passed.

When other circumstances are revealed, i.e. grounds for the mandatory filing of the petition, it is necessary to take account of not only the date when the mentioned circumstances are actually revealed, but also the moment when the debtor’s manager or the liquidation commission (liquidator) should have noticed such circumstances that evidenced the debtor’s insolvency if they had acted reasonable and in good faith.

Article 9. Responsibility of Debtor’s Manager, Members of Liquidation Commission or Liquidator for Failure to Perform Obligation to File Debtor’s Petition in Economic Court

Failure of the manager, members of the liquidation commission or the liquidator of the debtor to file a petition of the debtor in the economic court shall result in them being subsidiarily liable

¹¹ The property owner of a private one-man enterprise and its manager shall be the same person (Arts.3 and 14, Law “On Private One-Man Enterprise”). As to a state unitary enterprise, its property owner is an authorised state body.

for the debtor's monetary obligations and (or) mandatory payments to creditors which arise after the expiry of a period envisaged by Paragraph 3 of Article 8 of this Law.

This Article envisions the liability of the debtor in the person of its manager (or the individual entrepreneur debtor) and its liquidation commission (its chairman and members) or liquidator for breach of an obligation to apply to the economic court for the declaration of the debtor's bankruptcy.

This Article is a new scheme in this Law. As it follows from the meaning and content of this Article, the legislator intended to put pressure upon unfair managers or members of the liquidation commission in order to exclude the possibility of breaching the rule in Article 8 and, thus, to improve the mechanism to reveal insolvent legal entities and involve them in bankruptcy proceedings.

This Article consists of one paragraph and stipulates the following provision:

Failure of the manager, members of the liquidation commission or the liquidator of the debtor to file a petition of the debtor in the economic court results in them being subsidiarily liable¹² to creditors for monetary obligations and (or) mandatory payments which arise after the expiry of a period envisaged by Paragraph 3 of Article 8 .

It should be mentioned that the subsidiary liability provided in this Article is not within the coverage of special rules of this Law defining the procedure for the external manager and the liquidation manager to file claims against third parties which bear subsidiary liabilities for monetary obligations of the debtor in connection with bringing the debtor to bankruptcy (Art.97, Para.3; Art.128, Para.2, Item 5. In this case, the amount of their liabilities is determined based on the difference between the sum of creditors' claims and the liquidation estate),

The default of the debtor's manager and members of the liquidation commission (liquidator) is not in that they have brought the debtor to bankruptcy, but in that they failed to apply to the economic court when they were indispensably required to do so.

Creditors are entitled to file these claims by themselves. It is considered that the liquidation manager may not pursue such claims to the mentioned persons or include assets recovered from them in the liquidation estate of the debtor's property.

A lawsuit against the debtor's manager or members of the liquidation commission (liquidator) can be lodged individually by each of creditors outside liquidation proceedings. The amount of such claims of creditors is calculated based on the difference between the aggregate volume of the debtor's obligations to creditors and the amount of obligations paid off actually in the course of bankruptcy proceedings. It would be possible to determine this difference only after the termination of liquidation proceedings.

Article 10. Creditors' Meeting

1 When bankruptcy processes are applied, the interests of all creditors shall be represented by the creditors' meeting or creditors' committee formed in accordance with this Law. From the date when the economic court accepts a petition for the declaration of the debtor's bankruptcy, creditors shall not be entitled to demand the satisfaction of their claims from the debtor individually.

¹² Art.329, CC

- 2 Any actions against the debtor on behalf of all creditors shall be taken by the creditors' meeting or creditors' committee.
- 3 Creditors shall participate in the creditors' meeting with the right to vote, and the state taxation service authorities and other authorised bodies shall participate in the creditor's meeting in respect of claims for mandatory payments. The representative of the debtor's employees, court receivers, the representative of founders (participants) or the property owner of the debtor shall participate in the creditors' meeting with the right to counsel.
- 4 In case only one creditor participates in a bankruptcy case, resolutions within the exclusive competency of the creditors' meeting shall be passed by this creditor.
- 5 The following resolutions shall be within the exclusive competency of the creditors' meeting:
 - entering into an amicable agreement;
 - electing members of the creditors' committee, determining its numerical composition and terminating early their powers;
 - applying to the economic court for the introduction of judicial rehabilitation or external management and the extension thereof;
 - applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings;
 - approving a judicial rehabilitation plan and debt repayment schedule;
 - approving an external management plan.
- 6 The creditors' meeting shall be arranged and held by a court receiver.
- 7 The creditors' meeting shall be legally qualified, provided that attending creditors with the right to vote hold claims of not less than two thirds in value of the total claims for monetary obligations and (or) mandatory payments of the debtor. Creditors may participate in the meeting by proxy as well. If the quorum has not been reached, a recurrent meeting shall be convened within ten days, which shall be legally qualified, irrespective of the number of creditors attending the meeting, provided that they have been duly notified of the date, time and place of the recurrent creditors' meeting.
- 8 Creditors shall have the right to vote at the creditors' meeting, if they hold claims against the debtor which are admitted.
- 9 Minutes shall be taken at the creditors' meeting.
- 10 The following must be attached to minutes of the creditors' meeting:
 - the creditors' register as of the date of the creditors' meeting;
 - documents confirming powers of creditors' representatives;
 - registration sheets of participants of the creditors' meeting;
 - materials provided to participants of the creditors' meeting for review and (or) approval;
 - evidences of proper notification of the date, time and place of the creditors' meeting to creditors and authorised bodies;
 - ballot papers;
 - other documents at the discretion of a court receiver or a resolution of the creditors' meeting.
- 11 Minutes of the creditors' meeting and documents attached thereto must be transferred to the economic court within five days from the date of the creditors' meeting.

The purpose of this Article is to regulate relations related to arranging and holding the creditors' meeting, the representation of creditors' interests, the scope of the competency of the creditors'

meeting, issues of arranging and holding the meeting, a series of matters within the exclusive competency of the creditors' meeting, a duty of taking minutes of the meeting and transferring them to the economic court.

1. A creditor is one of the major participants in bankruptcy processes, since if there are no creditors, there would be no indications of bankruptcy. Bankruptcy processes are aimed at protecting creditors' rights for the fair satisfaction of their claims. In this regard, this Law contains special provisions with respect to creditors.

According to this Article, the creditors' meeting (creditors' committee) represents the interests of all creditors, which are defined as any creditors that have lodged their claims against the debtor in the manner provided by this Law. Once the economic court accepts a petition for the declaration of the debtor's bankruptcy, creditors are not entitled to approach the debtor with a purpose of the individual satisfaction of their claims until bankruptcy proceedings terminate (with exception of cases where this Law allows the individual lodging of claims against the debtor). This is derived from the need to follow the principle of the fair satisfaction of creditors' claims.

If a creditor files individually a lawsuit to recovery from the debtor debts which have arisen before the filing of the petition, the court should, on the ground of Item 1 of Paragraph 1 of Article 177 of the Code of Economic Procedure, refuse to accept such lawsuit. If there is a case commenced by a court regarding the recovery of debts from the debtor and it is revealed in this case that a bankruptcy case has already been commenced against the same debtor, the court should render a ruling to terminate proceedings of this case regarding the recovery of debts, with reference to Item 1 of Article 86 of the Code of Economic Procedure (Para.6,the Resolution of the SEC Plenum No.142). All execution proceedings against the debtor enterprise terminate, and new execution documents are not accepted by an execution officer.

In order to protect the interests of all creditors, the creditors' meeting (creditors' committee) may appeal to the court against conduct (negligence) of court receivers or apply for the replacement or dismissal of court receivers (Arts.13 and 15).

2. Paragraph 2 of this Article sets a provision that each creditor does not independently manifest its actions, its attitude towards the debtor, but the intention of creditors must be expressed only through the creditors' meeting (creditors' committee).
3. According to Paragraph 3 of Article 10, all creditors which participate in the creditors' meeting and are recorded in the creditor' register have a right to vote. Those with claims for mandatory payments are also given the right to vote, which can be exercised by representatives of state taxation service authorities or other authorised bodies (for instance, representatives of the off-budget Pensions Fund or the Republican Road Fund).

Even if creditors fail to lodge their claims in any of processes, they are still entitled to lodge their claims later (in the next process), but accordingly they are included in the creditor' register later and, only after this, they may participate in the creditors' meeting with a right to vote.

If creditors lodge their claims, which are not, however, included in the creditors' register (for example, because their claims are objected and under consideration of the court), such creditors may join the creditors' meeting, but without the right to vote (see the comment on Art.70, Para.4).

Although the representative of the debtor's employees, court receivers, the representative of founders (participants) or of the property owner of the debtor are not creditors, they can attend the creditors' meeting with a right to counsel, which means that they are not authorised to participate in

passing resolutions at the creditors' meeting. This Law allows the abovementioned persons to participate in the creditor's meeting, because the meeting might discuss issues essential to the debtor.

Apart from this, representatives of the state body for bankruptcy proceedings can participate in the creditors' meeting, especially if this body has petitioned for the declaration of the debtor's bankruptcy and if the charter capital of the debtor belongs to the state partially or wholly. It is considered that the representative of the prosecutor's office may also attend the creditors' meeting to supervise the observance of the legislation.

Only creditors included in the creditors' register have a right to vote at the creditors' meeting. In this point, it should not be forgot that although claims for salaries, for remuneration under copyright agreements and for alimony, and other claims are included in the creditor' register in liquidation proceedings, creditors with such claims do not participate in the creditors' meeting and do not have a right to vote. However, it is not prohibited to be personally present at the meeting.

4. There might be a situation where the debtor has only one creditor. In such case, this sole creditor independently takes resolutions which belong to the exclusive competence of the creditors' meeting.
5. Paragraph 5 of Article 10 regulates issues which are within the exclusive competency of the creditors' meeting. Along with the conclusion of an amicable agreement (in line with Ch.VIII), the election of members of the creditors' committee, the determination of its numerical composition and the early termination of its powers, the creditors' meeting have the exclusive competency, according to this Paragraph, over resolutions applying to the economic court for the introduction of judicial rehabilitation or external management and the extension thereof, and for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings. In this regard, it has to be noted here that according to Paragraph 3 of Article 75, if in the course of supervision the first creditors' meeting passes a resolution applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, or none of its resolutions is produced in the economic court, the economic court may render a ruling to introduce judicial rehabilitation upon an application of founders (participants) or the property owner of the debtor, the state body for bankruptcy proceedings and a third party (parties), provided that these applicants grant security for the performance of the debtor's obligations according to the debt repayment schedule.

Resolutions approving a judicial rehabilitation plan and debt repayment schedule, and an external management plan are also within the exclusive competence of the creditors' meeting. According to Paragraph 3 of Article 83, the debt repayment schedule must be approved also by the economic court.

6. According to this Law, all actions related to the arrangement of the creditors' meeting, including the publication of announcement thereof in mass media, and its administration are carried out by court receivers. In this case, they individually decide where and when such meeting is held.
7. Paragraph 7 of this Article sets requirements to the quorum of the creditors' meeting. The meeting is legally qualified (i.e. its resolutions are considered valid), provided that there attend creditors with the right to vote lodging claims of not less than two thirds in value of the total claims for monetary obligations and (or) mandatory payments of the debtor included in the creditors' register. If there is no quorum, the meeting cannot be held.

If there is no quorum, a recurrent meeting is convened within ten days, and it is legally qualified, irrespective of the number of creditors present at the meeting, provided that creditors have been duly notified of the date, time and place of the recurrent meeting. It is very significant at present to calculate accurately the total number of votes and the number of votes of creditors present at the

meeting, for the purpose of assessing activities of court receivers and the legality of resolutions of the creditors' meeting. It should be noted here that creditors may attend the meeting by proxy. In practice, as a rule, the voting is carried out by means of a questionnaire list, i.e. creditors or their representatives write "Yes" or "No" in the list or write other issues to be voted. Voting by post is not applied.

8. According to Paragraph 8 of this Article, creditors have the right of vote at the creditors' meeting, provided that they hold claims against the debtor which are recognised and included in the creditors' register (as to fixing the number of votes, see the comment on Art.13, Para.2). Disputes on the validity of claims which are not recognised are settled by the court (i.e. those claims against which objections are raised). In case of disputes, the economic court determines the amount of creditors' claims in line with Articles 59, 70, 84, 100 and 128. If the court does not satisfy creditors' objections at all, claims of such creditors are not included in the creditor' register and, consequently, such creditors are not granted a right to vote. If a court receiver lodges an objection against the amount claimed by creditors and this objection is rejected by the court, the amount claimed by the creditor is recorded in the creditor' register.
9. Minutes should be taken at the creditors' meeting. Usually, it is a court receiver who takes minutes, or he/she may assign it to somebody present in the meeting, provided that a court receiver retains strict control over the way minutes are taken. Minutes are an important document, through which the court is able to check the legal qualification of the creditors' meeting, actual participation of creditors', trustworthiness of information. Therefore, taking minutes is a crucial mission
10. The documents listed in Paragraph 10 of this Article should be attached to minutes of the creditors' meeting, namely: the creditors' register as of the date of the meeting; documents confirming powers of creditors' representatives; registration sheets of participants of the creditors' meeting; materials provided to participants of the meeting for review and (or) approval; evidences of proper notification of the date, time and place of the meeting to creditors and authorised bodies (they include a postal notification with the receipt or a receipt with creditors' signature); ballot papers; and other documents at the discretion of court receivers or a resolution of the creditors' meeting.
11. Minutes of the meeting and documents attached thereto are submitted to the economic court within five days from the date of the creditors' meeting, which is considered as a duty of court receivers.

Article 11. Notification on Creditors' Meeting

- 1 The following shall be recognised as a proper notification: the forwarding of a notice of the creditors' meeting to creditors, authorised bodies, and to other persons vested with the right to participate in the meeting by Article 10 of this Law by postal service not later than two weeks prior to the date of the meeting or in other way which ensures the receipt of such notice not less than five days prior to the date of the meeting.**
- 2 If it is impossible to reveal information necessary for personal notification to creditors or other persons eligible to participate in the creditors' meeting or if there are other circumstances which preclude personal notification to the specified persons, the publication of information in an official gazette in the manner determined by the Cabinet of Ministries of the Republic of Uzbekistan shall be recognised as a proper notification.**
- 3 The notice of the creditors' meeting must contain the following information:**

- **the name and location of the legal entity debtor;**
- **the date, time and place of the creditors' meeting;**
- **the agenda of the creditors' meeting;**
- **the procedure for familiarising materials to be reviewed by the creditors' meeting;**
- **the procedure for registering participants in the creditors' meeting;**
- **the surname, name, patronymic and place of residence of the individual entrepreneur debtor.**

This Article sets the detailed procedure of notification to participants about the creditors' meeting.

The purpose of this Article is to protect creditors' interests, which is expressed by the requirement of personal notification to each creditor by forwarding a notice of the creditors' meeting, and by the list of the content of the notice.

1. It should be noted that all participants are notified, i.e. both those who have a right to vote and those who do not but are entitled to take part in the creditors' meeting as per Paragraph 3 of Article 10 should receive notification.

This Article provides three ways of notifications to the above persons.

The first way is to forward a notice by mail not later than two weeks before the creditors' meeting in such way as ensures proof of its forwarding. Postal receipts or postal notifications can serve as such proof. In this case, creditors take the risk of late arrival of the notice due to the fault of a postal company.

The second way is to forward the notice by other way which ensures the receipt of such notice not less than five days before the creditors' meeting. The provision is considered to mean transmitting the notice by phone, fax, e-mail, courier, etc., and the basic condition is to ensure the receipt of this notice.

Thus, the forwarding of the notice by mail two weeks prior to the creditors' meeting and by other way (i.e. delivery or handing) which ensure the personal receipt five days prior to the meeting is considered as a proper notification. In practice, court receivers personally deliver notices to creditors, if creditors are located in the same area as they are. If personal delivery is impossible, then the rules of Paragraph 2 of this Article are applied, i.e. notification is made through mass media.

If creditors did not receive notification of the meeting, which was held without these creditors, and the meeting was not legally qualified, these creditors may appeal a resolution of this creditors' meeting, except for the cases envisaged by Paragraph 2 of this Article (Art.13, Para.5).

2. The third way of notification is stipulated in Paragraph 2 of this Article:

If it is impossible to reveal information necessary for personal notification to creditors or other persons eligible to participate in the creditors' meeting, or, if there are other circumstances which make personal notification to the above persons impossible, a proper notification to them is made by the publication of information in an official gazette in the manner determined by the Cabinet of Ministries of the Republic of Uzbekistan, i.e. in the manner determined by a special resolution of the government of the Republic of Uzbekistan. This manner is not defined at present.

It is necessary to note a special explanation given by the Resolution of the SEC Plenum No.142 (Para.18) – until the Cabinet of Ministers of the Republic of Uzbekistan defines an official gazette, publication of required information stipulated by Articles 52 and 53 is made through republic-wide and region-wide issues.

3. The notice should contain information listed in Paragraph 3 of this Article, so that all creditors know the purpose and importance of the creditors' meeting

As to the procedure of registration, it is usually defined where, when and who are registering creditors (or their representatives) summoned to participate in the creditors' meeting.

Article 12. Procedure for Convening Creditors' Meeting

- 1 The creditors' meeting shall be convened on the initiative of a court receiver, at the request of the creditors' committee, creditors whose claims for monetary obligations and (or) mandatory payments comprise not less than one third in value of the total claims for monetary obligations and (or) mandatory payments included in the creditors' register, or on the initiative of creditors representing one third in number of the total creditors.**
- 2 A request to hold the creditors' meeting must contain matters to be included in an agenda of the creditors' meeting.**
- 3 A court receiver shall not be entitled to amend matters of an agenda of the creditors' meeting convened at the request of the creditors' committee or creditors specified in Paragraph 1 of this Article.**
- 4 At the request of the creditors' committee or creditors specified in Paragraph 1 of this Article, the creditors' meeting shall be convened by a court receiver within thirty days after the relevant request is filed in a court receiver.**
- 5 The creditors' meeting shall be held at the place of location (place of residence) of the debtor unless otherwise established by the creditors' meeting or creditors' committee. If it is impossible to hold the first creditors' meeting at the place of location (place of residence) of the debtor, the place of the first meeting shall be determined by a court receiver.**

1. The persons listed in Paragraph 1 of this Article are entitled to initiate the creditors' meeting, namely: court receivers; the creditors' committee; creditors whose claims for monetary obligations and (or) mandatory payments comprise not less than one third in value of the total claims for monetary obligations and (or) mandatory payments in the creditors' register; or creditors who represent one third in number of all creditors in the creditor' register. Thus, not all persons eligible to participate in the meeting under Article 10 may request convocation of the meeting.

All the above persons (except court receivers) enforce their right to initiate the creditors' meeting by resorting to court receivers. In the procedural meaning, the words "initiative" and "request" do not have any difference which would cause any consequences thereof.

2. Paragraph 2 of this Article stipulates that the abovementioned persons formulate their request by indicating issues to be discussed at the meeting, i.e. items to be entered in an agenda of the meeting. It is considered that if they do not form issues which they want to discuss at the creditors' meeting, i.e. if they do not indicate their reason for convening the creditors' meeting, a court receiver may refuse to convene the creditors' meeting.
3. It must be especially emphasised here that according to Paragraph 3 of this Article, a court receiver is not entitled to make any changes to the formulation of questions in an agenda of the meeting, which is to be convened at the request of the creditors' committee or creditors mentioned in Paragraph 1 of this Article. It means that a court receiver is not empowered to change the

formulation of matters proposed by the abovementioned persons, but it is indeed allowed to add to the agenda matters that need to be discussed at or agreed with the creditors' meeting.

4. In accordance with Paragraph 4 of this Article, having received a request of convocation of the meeting, a court receiver must convene the meeting within thirty days after he/she receives the request. It should be understood that this provision refers to the convocation of the meeting, not to the forwarding of notification (see Art.11) or others.
5. Paragraph 5 of this Article states that the creditors' meeting is held at the place of location of the debtor (where individual entrepreneurs are concerned, it is the place of its residence), unless otherwise established by the creditors' meeting (creditors' committee). If it is impossible to hold the first creditors' meeting at the place of location (place of residence) of the debtor, the place of the first meeting is determined by a court receiver. It follows from the above provision that, as a general rule, the first creditors' meeting is held at the place of location (residence) of the debtor. In practice, it is common that a court receiver holds the creditors' meeting at the place which is convenient to him/her, i.e. usually at the place of his/her location (work, office).

Article 13. Procedure of Creditors' Meeting for Passing Resolutions

- 1 Resolutions of the creditors' meeting on matters put to a vote shall be passed by a majority vote in value of creditors attending the meeting.**
- 2 Each creditor shall have votes in proportion to its claims in the total account payable as of the date of the creditors' meeting.**
- 3 The creditors' meeting shall, by a majority vote in value of all creditors, pass the following resolutions:**
 - **entering into an amicable agreement;**
 - **applying to the economic court for the introduction of judicial rehabilitation or external management and extension of thereof;**
 - **applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings;**
 - **applying to the economic court for the appointment, replacement or dismissal of court receivers.**
- 4 If creditors' votes casted at the creditors' meeting are short of the requisite votes to pass resolutions envisaged by Paragraph 3 of this Article, a recurrent creditors' meeting shall be convened, which is legally qualified to pass such resolutions by a majority vote in value of creditors attending the meeting, provided that creditors have been duly notified of the date, time and place of this recurrent creditors' meeting.**
- 5 Persons participating in a bankruptcy case shall be entitled to appeal against resolutions of the creditors' meeting to the economic court.**

This Article determines two ways the creditors meeting passes its resolutions, and also provides for the procedure for calculating the number of votes of each creditor, lists resolutions passed by a majority vote at the creditor's meeting, the possibility of holding the recurrent creditors' meeting and of appealing against resolutions of the meeting in case such resolutions are disagreed to.

1. Paragraph 1 of this Article sets the general procedure of voting at the creditors' meeting and elucidates that resolutions are passed by a majority vote in value of creditors attending the meeting.

The quorum for holding the creditors' meeting is stipulated by Paragraph 7 of Article 10. The general procedure of voting is applied to any kinds of resolutions, except those most important ones explicitly mentioned in this Law. The procedure of qualified majority voting established by Paragraph 3 of this Article is an exception to the general procedure of voting.

It shall be noted that this Law sets a special procedure of voting to pass resolutions on certain matters. In case of the substitution of the debtor's assets (Art.115, Para.2; Art.137, Para.1), all creditors in the creditor's register claims are required to vote for this. In case of the liquidation plan of the enterprise debtor declared bankrupt (Art.129,Para.2), the consent of creditors representing not less than two third in value of claims is required to approve the plan.

2. According to Paragraph 2 of this Article, the number of votes which creditors possess at their meeting (creditors, and state taxation service authorities and other authorised bodies as concerns claims for mandatory payments) is determined by this Law classically, i.e. by the proportion of their claims in the total accounts payable (including penalties and other financial (economic) sanctions along with primary debts) as of the date of the creditors' meeting. Hence, creditors with the larger amount of claims have more influence on resolutions passed at the meeting, which is logical, but the interests of minor creditors need a certain level of protection as well. This matter is especially obvious in cases where a majority vote (51 per cent and more in value) is held by one creditor, while the rest of votes are held by a majority in number of creditors, and in this situation the major creditor pursues a policy which is supported neither by the rest of creditors nor the debtor. It should be noted that any creditor is entitled to appeal against resolutions of the creditors' meeting, regardless of the number of its votes, if such resolutions breach the legislation and its rights and interests (this Article,Para.5).
3. Paragraph 3 determines the special procedure for passing resolutions, according to which, a resolution is passed at the creditors' meeting by a majority vote in value of all the creditors. This procedure is applied to resolutions entering into an amicable agreement, applying to the economic court for the introduction of judicial rehabilitation or external management and the extension thereof, for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, and for the appointment, replacement or dismissal of court receivers.

The list outlined in Paragraph 3 of this Article is a closed list. However, it would be advisable to include in this list resolutions on such issues as the formation of the creditors' committee, its composition and powers, the early termination of authorities of the creditors' committee, the election of the new creditors' committee, and the approval of a judicial rehabilitation plan and a debt repayment schedule, and also the approval of an external management plan, as these issues are also crucial for the future fate of the insolvent enterprise debtor.

4. Paragraph 4 of this Article provides that if creditors' votes necessary to pass resolutions by qualified majority mentioned in Paragraph 3 are not represented at the creditors' meeting, a recurrent creditors' meeting is convened, which is legally qualified to pass such resolutions by a majority vote in value of creditors attending the meeting, provided that creditors have been duly notified of the date, time and place of the creditors' meeting. Thus, resolutions passed at the recurrent meeting are considered to be legally qualified if a majority in value of creditors attending the meeting vote for them.

5. Under Paragraph 5 of this Article, persons participating in a bankruptcy case (listed in Art.36) are entitled to appeal against resolutions of the creditors' meeting to the economic court, including creditors, regardless of the amount of their claims. The court may find such resolutions invalid if an appeal is recognised to be justified. However, it should be noted here that this Law does not determine the term in which persons participating in a bankruptcy case may apply to the economic court for the invalidation of resolutions of the creditors' meeting. It is considered that such term should be restricted, depending on type of bankruptcy processes concerned. For example, if liquidation proceedings are almost finished, the debtor's property has been sold off and settlements with creditors have been fulfilled. In this case, there is no sense to review a resolution of the creditors' meeting, in view of interests of all the other creditors. If there is no ground for refusing to accept filed complaints, then such complaints are accepted and considered. As a result of consideration a ruling should be rendered to satisfy or to reject such complaints

As is explained in the Resolution of the SEC Plenum No.142 (Para.21), a ruling of the court rendered upon the results of consideration of complaints against resolutions of the creditors' meeting is appealable, but within the short term according to Article 60.

Article 14. Creditors' Register

- 1 The creditors' register shall be maintained by court receivers.**
- 2 Creditors' claims in the creditors' register shall be recorded in the national currency of the Republic of Uzbekistan. Creditors' claims in foreign currency shall be recorded in the creditors' register in the manner established by the legislation. Information on each creditor and the confirmed amount of its claims for monetary obligations and (or) mandatory payments, the priority of each of claims shall be specified in the creditors' register.**
- 3 When lodging their claims, creditors shall be obliged to specify information on themselves, including their full business name, location (postal address), passport details (for individual) and also bank account details (if any).**
- 4 Persons with claims recorded in the creditors' register shall be obliged within one week to inform a court receiver of changes of their data and also changes of the amount and composition of their claims against the debtor, including the assignment of claims to third parties. In case they fail to provide or provide late such data, court receivers and the debtor shall not be liable for losses caused in this connection.**
- 5 The possibility for creditors to know the creditors' register must be ensured. Court receivers shall be obliged, at the request of creditors or their representative within five business days from the date of the request, to forward to the requesting creditors or their representative an extract from the creditors' register on the amount, composition and the priority of satisfaction of their claims. Expenses for preparing and forwarding the extract shall be imposed on the requesting creditors.**
- 6 Controversies arising during the forming of the creditors' register shall be considered by the economic court.**

This Article regulates issues of forming and maintaining of the creditors' register.

1. The creditors' register is one of the significant documents characterising bankruptcy proceedings. Creditors entered in the creditors' register gain the status of participants in a bankruptcy case (Art.36, Para.1) and may be reimbursed for their claims exclusively under this Law. Creditors not in the creditors' register cannot receive satisfaction, except those with current payments and claims against the debtor for damage to life or health, for wages, alimony, remuneration under copyright agreements and moral damage (regardless of whether they are granted execution documents or not). These exceptional persons are not included in the creditors' register, but receive payment of their claims in each bankruptcy process preferentially ahead of other creditors.

The creditors' register is maintained solely by court receivers. It need to be noted that each subsequent court receiver takes over the creditors' register which was compiled in the previous bankruptcy process and enters relevant changes in the register, depending on circumstances at the time, i.e. as processes go, information in the creditor' register changes in various processes and the residual amount of claims against the debtor is recorded. If some creditors fail to lodge their claims in a certain process, they are entitled to lodge their claims later, but are included in the creditors' register later accordingly (in the next process).

In case a court receiver reveals later any mistakes or inaccuracies in the creditors' register, he/she corrects the register, and must notify such correction to creditors related to the correction (Art.14, Para.1). In this regard, creditors are authorised by Article 59 to apply to the economic court for a settlement of conflicts between them and court receivers.

2. Paragraph 2 of this Article defines the procedure for maintaining the creditors' register and its content.

It has to be noted, first of all, that the creditor' register is maintained in the national currency of the Republic of Uzbekistan, i.e. in Soums.

Maintaining the records in the creditors' register in foreign currency is against this Law, which is resulted from this Article. If the debtor's indebtedness is expressed in foreign currency, for purpose of holding the first creditors' meeting, the amount of creditors' claims to be included in the creditors' register is determined at the official exchange rate as of the date when the economic court accepts a petition for the declaration of the debtor's bankruptcy; and in subsequent procedure it is determined at the official exchange rate as of the date of the introduction of the relevant bankruptcy process, unless a contract made between a creditor and the debtor stipulates otherwise. The above explanation is expressly given in the Resolution of the SEC Plenum No.142 (Para.19).

The creditor' register contains information on each creditor, the confirmed amount of its claims against the debtor, the priority of satisfaction thereof, according to Article 133, Paragraphs 2 through 7 of Article 134 and other data.

As is provided in the Resolution of the SEC Plenum No.142 (Para.19), creditors are included in the creditors' register, if the debtor's obligations to such creditors are incurred before the economic court accepts the petition and mature prior to the introduction of the relevant bankruptcy process. Where the debtor's obligations arise after the economic court accepts the petition, or they mature after the introduction of a bankruptcy process, claims for these obligations are recognised as current payments and not included in the creditors' register. It should be noted that such claims for damage to life or health, for moral damage, for wages, for remuneration under copyright agreement and for alimony are not recorded in the creditor' register (regardless of whether there are execution documents or not), because they are considered as superpriority claims to be preferentially satisfied. It should also be emphasised that in liquidation proceedings, as a rule, all creditors shall be included

in the creditor' register, regardless of their priority (here, it is meant that superpriority claims arising before the initiation of liquidation proceedings are entered in the register). This is to enable both court receivers and creditors to know the overall volume of the debtor's obligations. Out of claims stipulated in Paragraph 1 of Article 134, it is unclear at the moment of compiling the creditors' register how much expenses for carrying out liquidation proceedings, current utility and operational charges and the like will be incurred, so that, these kinds of claims might be entered in the creditor' register partially.

In practice, in processes of supervision, judicial rehabilitation and external management, court receivers maintain separately the general creditors' register and the list of superpriority claims, while in liquidation proceedings the liquidation manager usually compiles the single creditor' register, in which all claims subject to satisfaction (including superpriority claims to be preferentially satisfied regardless of the order of priority of other claims) are entered, because the enterprise debtor is going to be liquidated completely and it is necessary to have a clear picture of the overall amount of payments due and expenses. It does not mean, however, that all persons entered in this creditor' register become participants in a bankruptcy case and are accordingly granted a right to vote at the creditors' meeting. As a rule, persons whose claims are superpriority claims to be preferentially satisfied attend neither court sessions at all, nor the creditors' meeting, because they are sure that their rights are under the protection of this Law and in any case they are reimbursed for their claims. Usually, claims that arise from labour law relations are lodged by the representative of the debtor's employees in their total amount and included in the creditor' register (in the list) in aggregate, not on each employee.

It is to be pointed out that secured creditors need to be recorded in the creditors' register. As a general rule, secured creditors are included in the creditors' register in the third priority. Proceeds from sales of secured property are, under Article 133, intended to satisfy their secured claims. If these proceeds prove insufficient, the remaining part of their claims must be satisfied in the third priority established by Article 134.

Along with principal debts, claims for penalties (fines, late payment interest) and other accrued economic (financial) sanctions (interest) confirmed by the abovementioned acts are also included in the creditors' register.

It is stipulated in Paragraph 19 of the Resolution of the SEC Plenum No.142 that the amount of monetary obligations and mandatory payments which arise before the commencement of a bankruptcy case, but mature after this commencement is fixed as of the date of the introduction of a bankruptcy process concerned (judicial rehabilitation or external management).

When the debtor is declared bankrupt and liquidation proceedings commences, the amount of creditors' claims for monetary obligations and (or) mandatory payments is in any case determined as of the date of the initiation of liquidation proceedings, regardless of the date of their maturity date. This is explained by the fact that according to Paragraph 1 of Article 125, obligations arising before the initiation of liquidation proceedings are considered to mature. This rule does not cover claims mentioned in Paragraph 1 of Article 134, because liquidation proceedings may last for a long time and judicial expenses and current expenses (if the enterprise debtor still operates) may increase, which would change the amount the debtor owes to pay.

As a general rule, claims are included in the creditor' register in the manner established by this Law if they are recognised by the debtor and (or) court receivers, or if they are confirmed by a judicial act that sets their composition and amount (decision, resolution, judgment, ruling, order of

court) and has taken effect, or if they are confirmed by acts of other state bodies, invoices, contracts, payment documents and the like, which is indicated in the creditor' register.

3. When filing their claims, creditors are obliged to specify information on themselves (their name, surname and patronymic of individuals, passport details (for individuals), and their business name and location (for legal entities) and bank details (if any).
4. Persons whose claims are entered in the creditors' register are obliged within a week to inform a court receiver of changes of their data and also changes of the amount and composition of their claims against the debtor, including the assignment of their claims to third parties. In case creditors fail to provide in due time their data and their bank details (and also information on changes of these data), such creditors bear the risk of losses thereof, i.e. court receivers and the debtor are not liable for any loss caused in this connection.

It is understood that information in the creditor' register is not considered confidential; therefore, its publicity and accessibility have a positive sense, especially for creditors.

5. Paragraph 5 of this Article provides that only creditors (and their authorised representatives) have an access to information in the creditor' register, regardless of the percentage of their claims out of the overall amount of claims in the creditor' register. Court receivers are obliged, at the request of creditors or their representative within five business days from the date of the receipt of such request, to forward a copy of the creditor' register authenticated by the economic court. Expenses for preparing and forwarding registry copies are borne by the requesting creditors. In case a court receiver refuses to provide copies, creditors may lodge a complaint against this conduct of the court receiver in line with Paragraph 2 of Article 59.

There is another aspect in the significant publicity of the creditor' register. This Law entitles any person at any stage to satisfy claims of all creditors, which leads to the termination of bankruptcy proceedings. Such satisfaction is performed according to the creditor' register (it is understood that this is allowed in supervision, judicial rehabilitation procedures and external management under Article 113). Basically, the creditors' register is accessible by any creditor and, it would be presumed that it is also accessible by anyone who intends to satisfy all creditors' claims. As is mentioned above, the creditor' register does not contain secret information, therefore, this Law should provide that it shall be allowed to provide a copy of the creditor' register to anyone in interest upon their request (this might be important, for instance, for potential partners of the debtor).

6. According to Paragraph 6 of this Article, controversies among creditors, the debtor and court receivers arising in course of compiling the creditors' register as regards the priority, composition and amount of monetary obligations or mandatory payments (e.g. controversies mentioned in Articles 70 and 100) are considered by the economic court in line with Article 59.

Article 15. Creditors' Committee

- 1 The creditors' committee shall represent the interests of creditors and oversee activities of court receivers.**
- 2 The creditors' committee shall consist of representatives of creditors, the number of which is determined by the creditors' meeting.**
- 3 If creditors are less than twenty, the creditors' meeting may adopt a resolution imposing the functions of the creditors' committee on the creditors' meeting.**
- 4 To carry out the functions imposed on it, the creditors' committee shall be entitled to:**

- request court receivers to provide information on the debtor's financial situation and the progress of bankruptcy processes;
 - appeal against actions (omission) of court receivers to the economic court;
 - elect its representative to participate in a bankruptcy case;
 - carry out other actions envisaged by this Law and by the judicial rehabilitation plan or the external management plan.
- 5 The creditors' committee shall be entitled to pass resolutions:**
- convening the creditors' meeting;
 - recommending the creditors' meeting to apply to the economic court for the appointment, replacement and dismissal of court receivers;
 - approving or refusing to approve major transactions of the debtor or transactions of the debtor involving interested parties.
- 6 When considering matters at the creditors' committee session, each member of the creditors' committee shall have one vote. The members shall not be allowed to transfer their voting right to any other person.**
- 7 Resolutions of the creditors' committee shall be passed by a majority vote of the total creditors' committee members.**
- 8 The representative of the debtor's employees, court receivers, the representative of founders (participants) or the property owner of the debtor may participate in the creditors' committee sessions with the right to counsel.**

This Article defines the status and powers of the creditors' committee.

1. The creditors' committee is a special body of creditors that is considered to be a subject of the bankruptcy legislation (although it is not a subject of civil law). Paragraph 1 of this Article provides for two principal functions of the creditors' committee: firstly, it represents creditors' interests, secondly, it supervises activities of court receivers. In this regard, the creditors' committee does not hold a status of a representative in the sense of civil law (the creditors' committee is not a subject of civil law; besides, it is not each creditor that individually grant authority, but the creditors' meeting, which is not a subject of civil law, either).
2. A resolution to establish the creditors' committee is passed by the creditors' meeting according to Paragraph 5 of Article 10 (this is within the exclusive competency of the creditors' meeting). According to Paragraph 2 of Article 15, the creditors' committee is composed of representatives of creditors in the number determined by the creditors' meeting. In particular, members of the creditors' committee are elected by the creditors' meeting (Art.10, Para.5; Arts.16 and 72), and the committee elects its representative (this Article, Para.4). The creditors' committee is convoked and operates on the basis of its regulation, which is approved by the creditors' committee and determines the internal issues of its activity. The regulation of the creditors' committee may stipulate who shall hold the creditors' committee sessions.
3. According to Paragraph 3 of this Article, the creditors' committee is organised by a resolution of the creditors' meeting in case the number of creditors is more than twenty, which concludes that it is obligatory to establish the creditors' committee in case provided there are twenty or more creditors. If creditors are less than twenty, the functions of the creditor's committee may be imposed on the creditors' meeting, in respect of which a relevant resolution is passed at the creditors' meeting.

4. According to Paragraph 4 of this Article, one of the prime functions of the creditors' committee is to oversee activities of court receivers. In view of this, the creditors' committee may:

- request on a regular basis court receivers to provide information on the debtor's financial situation and the progress of bankruptcy process;
- appeal against unlawful conduct of court receivers in the economic court;

To represent the creditors' interests in bankruptcy proceedings, the creditors' committee may elect a representative from its members to participate in bankruptcy processes. (Art.36, Para.2). The creditors' committee may also take other measures envisaged, for instance, by the judicial rehabilitation plan or the external management plan.

5. Paragraph 5 of this Article provides a series of the committee's rights which it may enforce when carrying out its functions:

- the creditors' committee is entitled to request court receivers to convoke the creditors' meeting, when necessary (Art.12, Para.1);
- in case the creditors' meeting is summoned and held, the creditors' committee may pass a resolution applying to the economic court for the replacement, dismissal or new appointment of court receivers (and recommend all creditors present in the meeting). Since the creditors' committee has a right to file an objection with the economic court against conduct (omission) of court receivers, it is considered that the committee are also entitled in this connection to apply to the court for the dismissal of court receivers;
- the creditors' committee may pass a resolution approving or refusing to approve major transactions of the debtor or transactions of the debtor involving interested parties. For example, transactions stipulated in Paragraph 5 of Article 79 (in judicial rehabilitation) or Paragraph 3 of Article 101 (in external management).

6. Paragraph 6 of this Article regulates the issues of voting. Each member of the creditors' committee has one vote, and it is not allowed for a member of the committee to transfer its right to vote to any other person.

7. According to Paragraph 7 of this Article, the creditors' committee passes resolutions by the majority vote in number of the total members of the creditors' committee. This Law does not set any requirements to the quorum in sessions of the committee, however it follows from the purport of this Article, resolutions require a majority vote of all members of the committee, not of those present at its session.

This Article does not stipulate the voting method at the committee's sessions, in particular whether it is allowed to vote when not attending a session. As there is no explicit provision, it might be allowed, but it is advisable to set a provision that all matters are resolved (voted) only at sessions of the creditors' committee.

8. Paragraph 8 of this Article defines that the representative of the debtor's employees, court receivers, the representative of founders (participants) or the property owner of the debtor may participate in sessions of the creditors' committee. However, these persons are not authorised to vote in the process of making resolutions of the committee. They participate with the right to counsel.

Article 16. Election of Creditors' Committee

1 Members of the creditors' committee shall be elected by the creditors' meeting in the period of judicial rehabilitation, external management and liquidation proceedings. Powers of all

members of the creditors' committee may terminate ahead of time by a resolution of the creditors' meeting. Such resolution may be passed only in respect of all members of the creditors' committee simultaneously.

- 2 Candidates who gained the majority of the votes shall be deemed to be elected to the creditors' committee.**
- 3 Members of the creditors' committee may elect a chairman of the creditors' committee from themselves.**
- 4 If there are more than five members in the creditors' committee, its chairman must be elected.**

This Article regulates the election of the creditors' committee, the termination of the committee's powers ahead of time, and the possibility and necessity of electing a chairman of the committee.

1. The creditors' committee operates during judicial rehabilitation, external management and liquidation proceedings, since according to Paragraph 1 of this Article its members are elected in the period of judicial rehabilitation, external management and liquidation proceedings. In case the creditors' meeting passes a resolution terminating powers of members of the creditors' committee ahead of time, such resolution is allowed only in respect of all members of the creditors' committee simultaneously. Although Article 72 provides that the creditors' committee may be elected for the period of supervision, the creditors' committee actually starts operating and exercising its powers in subsequent bankruptcy processes, since the main objective of supervision is just to perform the financial analysis and preserve the debtor's property.
2. According to Paragraph 2 of this Article, candidates who win a majority vote are elected to the creditors' committee. Since there are two methods of election – electing one by one or by a general list. Once the voting method is chosen, each creditor expresses its opinion by voting.
3. It follows from this Article that it is not mandatory to elect a chairman of the creditors' committee, since Paragraph 3 stipulates that “members of the creditors' committee may elect a chairman of the creditors' committee from themselves.” However, if a chairman is not elected, then the regulation of the creditors' committee should indicate who shall sign minutes of the committee's sessions, i.e. it would be necessary to elect a chairman of the session of the creditors' committee. In this case, minutes are signed by this chairman of the session.
4. However, Paragraph 4 of this Article provides that if there are more than five members in the creditors' committee, a chairman of the committee must be elected.

Article 17. Interested Parties

- 1 The following shall be recognised as interested parties in relation to the legal entity debtor:**
 - a legal entity which is a controlling entity or dependent entity in respect of the debtor in accordance with the legislation;**
 - a manager and members of the supervisory board or the collegial executive body, a chief accountant (an accountant) of the debtor, and also those persons who used to be such in case their labour contracts terminated within one year prior to the commencement of a bankruptcy case;**
 - founders (participants) of the legal entity debtor.**

- 2 In relation to the individual entrepreneur debtor, his/her spouse, ascendants, descendants, sisters, brothers and their descendants, his/her spouse's parents, sisters and brothers shall be considered interested parties in this Law.**
- 3 Interested parties in relation to court receivers or creditors shall be determined in accordance with Paragraph 1 and Paragraph 2 of this Article.**

This Article determines persons considered as interested parties. Transactions with such parties should follow special requirements (e.g. Art.15, Para.5; Art.79, Para.5; Art.101, Paras.2 and 4; Art.103, Para.2; Art.146, Para.3). It should be noted that interested parties in relation to the debtor or creditors cannot be appointed as court receivers (Art.18, Para.2) and that interested parties in relation to the debtor or court receivers are not allowed to act as a tender organiser (Art.110, Para.10; Art.135, Para.6). These restrictions are imposed to ensure justice in carrying out bankruptcy proceedings.

1. As interested parties in relation to the legal entity debtor, the following are recognised:
 - 1) a legal entity which is a controlling entity or dependent entity in respect of the debtor in accordance with the legislation. According to Article 68 of the Civil Code, a business company is recognised dependent when another participating company (a controlling entity) possess more than twenty per cent of voting shares of this business company;
 - 2) the debtor's manager and members of the supervisory board¹³, and of the collegial executive body¹⁴, a chief accountant (an accountant), and those who used to be such in case their labour contracts terminated within one year prior to the commencement of a bankruptcy case, i.e. before the court accepts the petition;
 - 3) founders (participants) of the legal entity debtor.
2. In this Law an interested party in relation to the individual entrepreneur debtor is his/her spouse, ascendants and descendants (parents and children), sisters, brothers and their descendants, his/her spouse's parents, sisters and brothers.
3. Paragraph 3 of this Article explains that in order to determine interested parties in relation to court receivers or creditors, the rules provided in Paragraph 1 and Paragraph 2 of this Article should be applied. In particular, in relation to court receivers, interested parties are persons mentioned in Paragraph 2 of this Article. As regards creditors, the rule of Paragraph 1 of this Article applies to creditors being legal entities, while the rule of Paragraph 2 applies to creditors being individuals.

Article 18. Court Receivers

- 1 Persons who have a higher education, working experience of not less than two years and also hold a formal certificate of the state body for bankruptcy proceedings may be appointed as court receivers.**
- 2 The following persons may not be appointed as court receivers:**
- **interested parties in relation to the debtor or its creditors;**
 - **persons having outstanding conviction or overturned conviction;**
 - **individual entrepreneurs in relation to whom a bankruptcy process has been introduced;**

¹³ Art.81, Law of the Republic of Uzbekistan "On Joint-Stock Companies and Protection of Shareholders Rights"

¹⁴ Art.86, Law of the Republic of Uzbekistan "On Joint-Stock Companies and Protection of Shareholders Rights"

- persons who earlier caused losses to the debtor or creditors while conducting their duties as court receiver and have not compensated for the specified losses;
 - persons who are ineligible to manage affairs and (or) property of other persons (disqualified persons).
- 3 The economic court shall be entitled to refuse to appoint proposed candidates or dismiss court receivers from their duties on the grounds specified in Paragraph 2 of this Article, if there are evidences provided by persons participating in a bankruptcy case.
 - 4 Court receivers within ten days from the date of their appointment by the economic court must insure against their liability for damage to persons participating in a bankruptcy case in the manner determined by the legislation.
 - 5 The requirements specified in Paragraph 4 of this Article shall not be applied to court receivers carrying out a streamlined bankruptcy process.
 - 6 The creditors' meeting shall be entitled to request court receivers to enter into an agreement for an insurance on the debtor's property.

This Article provides for the grounds for appointing and refusing to appoint a court receiver, an obligation of court receivers to insure their liabilities and an exemption of such obligation, and the need of insurance contacts on the debtor's property.

1. Court receivers act in all bankruptcy processes as interim receiver, rehabilitation manager, external manager and liquidation manager. In order to be appointed as any court receiver, candidates should meet certain requirements, which might be relatively classified as positive (i.e. shall exist) and negative (shall not be present).

The positive requirements are provided in Paragraph 1 of this Article (and in Para.11, the Resolution of the SEC Plenum No.142, in Para.7, the Regulation on certification of court receivers). The following are considered to be positive requirements:

- 1) higher education. This Law does not specify which higher education court receivers should obtain (legal, economic, technical, etc.);
- 2) working experience of not less than two years (except for court receivers in streamlined bankruptcy processes);
- 3) formal certificate granted by the state body for bankruptcy proceedings.

There are four categories of certificates of court receivers. The first category certificate is valid for all bankruptcy processes, the second category certificate - for all processes except external management, the third category certificate - for supervision and liquidation proceedings and the fourths category certificate - for streamlined bankruptcy processes. The procedure for conducting formal certification (recertification) and granting certificates is set in the Regulation on certification of court receivers.

Additionally, in order to consolidate the formal certification of court receivers, to ensure proper calculation of working experience, Paragraph 8 of the Regulation on certification of court receivers sets the following requirements to working experience of court receivers in appointment:

- 1) for carrying out supervision and liquidation proceedings, experience of not less than two years as a manager of medium grade is required;
- 2) for carrying out judicial rehabilitation, experience of not less than two years in the executive position or experience of not less than one year as a court receiver of third category is required;

- 3) for carrying out external management, experience of not less than five years as a manager of medium grade and of not less than three years out of these five years in the executive position, or experience of administering judicial rehabilitation and (or) liquidation proceedings as a court receiver at least twice with a certificate of the second category is required;
- 4) for carrying out streamlined bankruptcy processes, court receivers are appointed from officers of state taxation service authorities or the state body for bankruptcy proceedings who hold a certificate of the fourth category.

It should be noted additionally that only physical persons can be appointed as court receivers. Since this Law does not restrict the legal capacity of foreign citizens and stateless persons, it follows from Paragraph 1 of this Article that citizens of both the Republic of Uzbekistan and other states and stateless persons may be appointed as court receivers.

A person who has been acting as court receiver in the previous bankruptcy process may also be appointed as court receiver in the next process (provided that he/she holds a relevant certificate). However, the procedure of election and appointment should be followed each time.

2. Paragraph 2 of this Article lists the negative grounds (i.e. those that candidates should not have. These are also mentioned in Para.12, the Resolution of the SEC Plenum No.142), namely:

- 1) interests in relation to the debtor or creditors, which is determined as per the rules of Article 17.

The rationale behind this restriction is that if a court receiver is an interested party in relation to the debtor or creditors, he/she would not act justly and impartially in respect of such persons (Art. 19, Para.5)

- 2) outstanding conviction or overturned conviction. These convictions are defined by Articles 78 and 79 of the Criminal Code;

- 3) a bankruptcy process of individual entrepreneurs introduced to candidates. It should be noted that according to Article 28, amicable agreement and liquidation proceedings are applied with respect to the individual entrepreneur debtor;

- 4) losses which candidates caused to the debtor or its creditors and have not yet be compensated. Paragraph 2 of Article 21 stipulates that the debtor and its creditors are entitled to claim from court receivers compensate for losses caused by court receivers' conduct (omission). Therefore, those who did not compensate such losses may not be reappointed as court receiver;

- 5) restrictions imposed on candidates to manage affairs and (or) property of other persons (disqualification). This Article does not explicitly defines what kind of restrictions and for which positions and in which procedure persons are restricted; it is considered, however, that such restrictions are taken into consideration in the presence of a judicial act that restricts a person to manage affairs or to be involved in business as a business subject.

3. Paragraph 3 of this Article specifies the right of the economic court to refuse to appoint a proposed candidate or dismiss court receivers on the grounds specified in Paragraph 2 of this Article, if there are evidences provided by persons participating in a bankruptcy case. Persons who present to the court a candidate for a court receiver should produce full information on this candidate. Persons participating in a bankruptcy case are entitled in court proceedings to challenge a proposed candidate's capability as court receiver, in which case these persons should produce evidences proving their arguments. From the point of principles of the economic procedure, it is considered that a judge should not settle the dismissal or replacement of court receivers upon its own initiative.
4. The legislator has endeavoured to solve the problem that court receivers are liable for damage which they cause. Paragraph 4 of this Article obligates court receivers to insure against their liability

for damage to persons participating in a bankruptcy case within ten days of their appointment, in the manner to be determined by insurance laws.

5. The requirement stipulated in Paragraph 5 of this Article does not apply to court receivers who are engaged in streamlined bankruptcy processes, i.e. in cases of bankruptcy of the debtor in liquidation or the absent debtor.
6. Paragraph 6 of this Article grants the creditors' meeting a right to request court receivers to enter into an agreement for the insurance on the debtor's property in line with insurance laws. This provision does not stipulate at whose expense such insurance is made. Such insurance may be concluded at the expense of either court receivers themselves or the debtor's property. Creditors may establish a deadline for entering into such insurance agreement and determine an approximate insurance amount. In practice, an insured party determines the value of property subject to insurance and, accordingly, determines the amount of insurance payments.

Article 19. Rights and Obligations of Court Receiver

1 Court receivers shall be entitled to:

- convene the creditors' meeting;
- request to convene the creditors' committee in cases envisaged by this Law;
- file in the economic court lawsuits and other petitions without advance payment of state duty;
- receive remuneration in accordance with Article 22 of this Law;
- engage other persons on a contractual basis at the expense of the debtor in order to ensure the exercising of their own powers, unless otherwise established by an agreement with creditors;
- apply to the economic court for the early termination of their duties.

2 Court receivers may also have other rights in accordance with the legislation.

3 Court receivers shall be obliged to:

- take measures to protect the debtors' property;
- maintain the creditors' register;
- analyse the debtor's financial situation;
- discharge duties determined by the economic court;
- compensate for losses to the debtor, its creditors and third parties in case these persons suffer from damage caused by court receivers' non-performance or improper performance of duties.

4 Court receivers may also bear other obligations in accordance with the legislation.

5 When carrying out a bankruptcy process, court receivers shall be obliged to act in good faith and reasonably in the interest of the debtor and its creditors.

This Article provides general powers, i.e. general rights and obligations of court receivers. It also sets ethic principles in a sense, stating that court receivers should act in good faith and reasonably.

1. From the viewpoint of civil law, it is impossible to define the status of court receivers: they are neither a organisation of the legal entity debtor, nor a representative of the debtor, and not a trusted

person; they hold the elements of each mentioned person, and enjoys particular powers which are not attributable to any subject of civil law. These powers are provided by this Law.

At the same time, court receivers are authorised to act independently just like a manager both in their own name and on behalf of the debtor. In case they act in their own name, it is the debtor which acquires rights or obligations. Besides the above, court receivers conduct themselves in the interests of both the debtor and creditors (this Article, Para.5). Court receivers act in all bankruptcy processes as interim receiver, rehabilitation manager, external manager or liquidation manager. Court receivers in a subsequent process become an assignee of a court receiver in a previous one.

It follows from the above that court receivers are a special subject of law, who enjoys a special status determined by the need to perform activities in bankruptcy processes. This determines the set of rights and obligations of court receivers.

Court receivers enjoy in course of bankruptcy processes the following rights to:

- 1) convene the creditors' meeting and request the convocation of the creditors' committee. Along with this, court receivers may include in an agenda of the creditors' meeting (creditors' committee) matters which they think important (e.g. Art.97, Para.2, Art.128,Para.4);
- 2) file in the economic court lawsuits and other petitions without advance payment of state duty.

According to Article 91 of the Code of Economic Procedure, the state duty is paid by organisations and individuals for filing lawsuits and applying for the declaration of the debtor's bankruptcy. In this respect, Paragraph 3 of the abovementioned article stipulates that laws may provide for exemptions from the state duty.

As provided in the Resolution of the SEC Plenum No.142 (Para.16), lawsuits and other petitions filed by court receivers in bankruptcy proceedings are accepted without payment of state duty and postal expenses in accordance with Paragraph 1 of Article 19 of this Law and Paragraph 4 of Article 91 of the Code of Economic Procedure.

- 3) receive remuneration in accordance with Article 22 (Article 22 stipulates the procedure for determining remuneration of court receivers);
- 4) engage other persons on a contractual basis at the expense of the debtor in order to ensure the exercising of their powers, unless otherwise established by an agreement with creditors. In this case, court receivers sign contracts, agreements and orders, because they hold the authority of the manager of the debtor enterprise. According to Article 92, the manager of the debtor is dismissed from his/her post as of the date of the introduction of external management, and the management of the debtor's affairs is imposed on the external manager. Along with this, the powers of the debtor's manager and the debtor's other management bodies pass over to the external manager, except for cases provided by this Law. Following this, court receivers acquire the status of the debtor's manager. The same happens in case of the declaration of the debtor's bankruptcy and initiation liquidation proceedings.

There are bankruptcy processes (supervision, judicial rehabilitation) in which the manager is not removed from the management of the debtor's affairs, or in judicial rehabilitation the debtor's management bodies continue to function within limitations, where the manager retains the powers to enter into employment contracts. In these cases, court receivers are entitled to enter into other contracts in line with the rules of the Civil Code. Remuneration of persons hired by court managers may be paid from funds of the debtor;

- 5) apply to the economic court for the early termination of their duties. Under certain circumstances which prevent them from effectively administering a bankruptcy process (bad

health, existence of interests, lack of required skills and knowledge, etc.), court receivers may apply to the economic court for the termination of their duties ahead of time.

2. Besides the above mentioned rights, court receivers may be granted other rights by the legislation. Each bankruptcy process provides a separate scope of rights which a court receiver enjoys (Arts.66, 81, 97 and 128 provide additional rights of court receivers in supervision, judicial rehabilitation, external management and liquidation proceedings respectively).
3. Court receiver shall bear the following obligations to:
 - 1) take measures to protect the debtors' property (both legally and actually);
 - 2) maintain the creditors' register. The procedure for maintaining it is stipulated in Article 14;
 - 3) analyse the debtor's financial situation. A thorough analysis is required to give opinions on the reasonableness of bankruptcy processes and on concrete measures to be taken in each process;
 - 4) discharge duties determined by the economic court. Since a bankruptcy case is started by the economic court, which is authorised under the legislation to render various judicial acts, court receivers are obliged to fulfil these acts;
 - 5) compensate for losses to the debtor, its creditors and third parties in case court receivers have impaired these persons by failing to perform duties imposed on them.

According to Article 11 of the Civil Code, compensation for losses is recognised as one of the means to protect civil rights. The debtor, its creditors and third parties are entitled to file in the economic court lawsuit on compensation for losses (see also Art.21,Para.2).
4. Beside the obligations stipulated by Paragraph 3 of this Article, there are other obligations that court receivers bear. For example, according to Paragraph 3 of Article 52, they must send data on a bankruptcy case subject to publication to a specially established publishing body for purpose of announcement in mass media, and they must also:
 - arrange and hold the creditors' meeting, ensure to keep its minutes (Art.10, Para.6);
 - carry out duties envisaged in Articles 67, 82 , 98 and 128;
 - perform activities in bankruptcy processes as provided by the Regulation on court receivers.
5. Court receiver are obliged to act in good faith and reasonably to the benefit of the debtor and its creditors, since they are appointed by the economic court for the purpose of administering a bankruptcy process introduced by the court to protect the rights of both creditors and the debtor.

Article 20. Professional Associations of Court Receivers

- 1 Professional associations of court receivers shall represent non-governmental non-profit organisations uniting court receivers on a voluntary basis.**
- 2 Professional associations of court receivers are intended to facilitate the development and support of the professional level of court receivers, protection of their interests.**
- 3 Professional associations of court receivers shall:**
 - elaborate training programmes for court receivers and submit them to the state body for bankruptcy proceedings for approval;**
 - organise training and professional qualification improvement for their members;**
 - analyse activities of court receivers who are members of professional associations.**
- 4 Professional associations of court receivers may also exercise other powers in accordance with the legislation.**

This Article explains associations of court receivers, the purposes of their establishment and their powers.

1. Paragraph 1 of this Article defines the status of a professional association of court receivers as a non-governmental non-profit organisation, which does not pursue income (profit) as a primary aim of its activity and does not distribute income (profits) to its founders (participants). Professional associations of court receivers are established and operate in compliance with the Law “On Non-Governmental Non-Commercial Organisations” and other laws and regulations.
2. The institution of court receivers in the practice of our country is an innovation employed by this Law 2003 and considered relatively new. The success of court receivers’ activities depends mainly on their professional level. At the same time, court receivers still need legal protection of their interests. In order to settle these issues, this Law provides the establishment of professional associations of court receivers, which in line with Paragraph 2 of this Article are called for promoting the development and maintaining the professional level of court receivers and protecting their interests. It should be emphasised here that professional associations should prove their significance in promoting the institution of court receivers in practice, i.e. they should strengthen their authority, on which how many members they may obtain.
3. The functions of professional associations of court receivers depend on purposes of their activities, which are the following:
 - to elaborate training programmes for court receivers and submit them to the state body for bankruptcy proceedings for its approval, organise training and improve the professional level of their members, because the professional level of court receivers determines the result of all bankruptcy processes. Along with this, information both on activities of members of an association and bankruptcy processes administered by them should be kept disclosed;
 - analyse activities of court receivers who are members of a professional association. In case violations of laws by court receivers are revealed, the association should immediately take measures, including that to propose their liabilities. Professional associations of court receivers are also empowered to maintain a data base of court receivers.
4. A professional association of court receivers is a legal entity and acts on basis of its charter in compliance with laws. Under Article 31 of the Law “On Non-Governmental Non-Commercial Organisations”, professional associations of court receivers being non-governmental non-commercial organisations may carry out their business activities within the limits defined by its charter goals. They may enjoy other powers in accordance with the legislation.

Article 21. Responsibility of Court Receiver

- 1 Court receivers’ non-performance or improper performance of duties imposed on them in accordance with this Law which resulted in losses to the debtor or its creditors may constitute a ground for their dismissal.**
- 2 The debtor and its creditors shall be entitled to request from court receivers compensation for losses caused by their conduct (omission).**

This Article provides for two consequences of court receiver’s failure to perform or improper performance of their duties: their dismissal and compensation for losses.

1. This Article provides the dismissal of court receivers due to their non-performance or improper performance of their duties stipulated in Paragraphs 3 and 4 of Article 19 and other duties which have caused losses to the debtor or its creditors. In this case, creditors, the debtor and other persons participating in a case may apply for their dismissal (Art.36).

Besides this, as a ground for the dismissal of court receivers, it is possible to take their failure to perform or improper performance of duties imposed by other laws. In this case, the creditors meeting is authorised to apply for their dismissal, even if no loss has been incurred (Art.73 regarding the interim receiver, Art.80 regarding the rehabilitation manager, Art. 96 regarding the external manager, Art.140 regarding the liquidation manager).

In particular, as a ground for the dismissal of court receivers, repeated breaches or a single gross breach of laws can be taken, regardless of whether losses have been caused or not. It is considered that in such case an application for their dismissal may be filed by persons participating in bankruptcy proceedings. The same is provided in the Resolution of the SEC Plenum No.142 (Para. 13). The dismissal of court receivers is decided in the court session. In the same court session, an appointment of a new court receiver and the initiation of a criminal case, the imposition of administrative and (or) material liabilities on the former court receiver dismissed from his/her duties may also be addressed.

In case the abovementioned application is filed, the economic court considers and renders a ruling to dismiss the court receiver, which is appealable in line with the procedure stipulated in Article 60. It should be noted that a ruling to dismiss the interim receiver is not subject to appeal (see the comment on Art.60).

2. Paragraph 2 of this Article gives the debtor and creditors a right to request from court receivers compensation for losses which these court receivers have caused by their conduct (omission).

If court receivers refuse to compensate for losses to the debtor or its creditor voluntarily, such compensation may be received by way of applying to the court of general jurisdiction (Para.14, the Resolution of the SEC Plenum No.142).

It needs to be noted that in case a liability for compensation is established, court receivers are accordingly responsible for it; in this case, special attention in considering the matter of liability shall be drawn to proving the existence of a cause-effect relation between court receivers' conduct (omission) and losses.

Besides the above, Article 18 stipulates that it is not allowed to appoint a court receiver from those persons who caused losses to the debtor or its creditors while they acted as court receiver and have not compensated for such losses.

Article 22. Remuneration of Court Receiver

- 1 The amount of remuneration of court receivers for their functions and the procedure for paying it shall be established by the creditors' meeting and approved by the economic court, and remuneration is paid from the debtor's property, unless otherwise envisaged by the agreement with creditors.**
- 2 The creditors' meeting may pass a resolution paying additional remuneration to court receivers, which is paid on the performance basis.**

This Article provides for the amount of court receivers' remuneration and the way of its payment, to which they are entitled according to Paragraph 1 of Article 19 (general rules), Article 65 (with respect to the interim receiver) and Paragraph 2 of Article 97 (with respect to the external manager).

1. Under the general rule of Paragraph 1 of this Article, remuneration of court receivers are paid from the debtor's property. The determination of the amount of this remuneration and procedure for its payment is within the competence of the creditor's meeting, while its approval is within the competence of the economic court. Only in case of the initial appointment of an interim receiver, the amount of remuneration and procedure for its payment are established not by the creditors' meeting (because it has not been yet convened), but by the economic court. The amount of remuneration may be changed by way of a resolution of the creditors' meeting, which is subject to approval of the court as well.

The availability and amount of remuneration may depend on the success of court receivers and on the value of the debtor's property. The Resolution of the SEC Plenum No.142 (Para.15) explains that the value of the debtor's property and the scope of works to be done are taken into consideration when determining the amount of remuneration of court receivers. The amount of remuneration cannot be less than the amount of the former manager of the debtor.

An exception to the above rule is a case where an agreement between a court receiver and creditors provides another source of financing, when the provision of this Paragraph does not apply. In the same manner, creditors decide the matter of payment of remuneration of court receivers in case the debtor does not have property. If creditors fail to reach a consensus on this matter, then expenses for remuneration, by analogy with Paragraph 6 of Article 52, are borne by a creditor who has petitioned for the declaration of the debtor's bankruptcy.

In streamlined bankruptcy processes, a court receiver, as a general rule, is appointed from officers of the state tax service who have a certificate of court receiver of the fourth category and due to that, they are not particularly paid remuneration as court receiver.

2. Paragraph 2 of this Article provides that court receivers are entitle to additional remuneration on the performance basis, by virtue of a resolution of the creditors' meeting (Para.15, the Resolution of the SEC Plenum No.142). Additional remuneration to be paid from the debtor's property does not contradict with this Law and, unlike the primary remuneration (this Article, Para.1), it does not require approval of the economic court.

Additional remuneration is paid from the debtor's property, unless otherwise provided by a agreement with creditors.

Article 23. State Regulation in Area of Bankruptcy

- 1 The state regulation in the area of bankruptcy shall be performed by the Cabinet of Minister of the Republic of Uzbekistan and the state body for bankruptcy proceedings.**
- 2 Resolutions passed by the state body for bankruptcy proceedings within its powers shall be binding on ministries, state committees, agencies, other bodies of state administration, legal entities and individuals.**

This Article provides that the Cabinet of Ministers of the Republic of Uzbekistan and the state body for bankruptcy proceedings regulate the area of bankruptcy, and also provides that resolutions of the state body for bankruptcy proceedings are subject to mandatory execution.

1. The Cabinet of Ministers of the Republic of Uzbekistan carries out regulation within the powers set by the legislation of the Republic of Uzbekistan. Article 24 gives a list of powers of the Cabinet of Ministers of the Republic of Uzbekistan.

Along with the Cabinet of Ministers of the Republic of Uzbekistan, the state body for bankruptcy proceedings is in charge of the state regulation in the area of bankruptcy. According to the Regulation “On the Committee on Economic Insolvency of Enterprises under the Ministry of Economy of the Republic of Uzbekistan “(Annex No.1 to the CM Resolution dated 18.Feb.2004, No. 77, the state body for bankruptcy proceedings used to be the Committee on Economic Insolvency of Enterprises. However, by the Decree of the President ”On Establishment of the State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship” dated 2.May.2005 No.UP-3602, all functions of the body for bankruptcy proceedings have been transferred to the Demonopolisation Committee, which was established mainly on the basis of the Committee on Economic Insolvency of Enterprises under the Ministry of Economy of the Republic of Uzbekistan and the State Committee of the Republic of Uzbekistan on Demonopolisation and Development of Competition.

The primary objectives of this state body for bankruptcy proceedings are to realise the state policy aimed at preventing insolvency of enterprises, to represent interests of an owner of state owned enterprises in the economic court, to organise to establish the legal and methodical data base for the implementation of this Law, to organise to find investors in financing restructuring procedures. In addition, this state body is vested with a task to train court receivers, who under this Law 2003 are central, key figures in carrying out any bankruptcy processes.

One of the tasks of the Demonopolisation Committee is to represent the state interests in resolving issues of economic insolvency of enterprises and regulating the area of restructuring and bankruptcy of enterprises.

2. Paragraph 2 of this Article provides for the mandatory execution of resolutions which this body for bankruptcy proceedings passes within its authority by ministries, state committees, other bodies of state regulation, legal entities and individuals.

The newly established Demonopolisation Committee has a right to pass resolutions within its competence defined by the legislation. If the Committee passes a resolution beyond its competence, the abovementioned subjects may appeal against such resolution to the court. Filing lawsuit against resolutions of state bodies is regulated by the Code of Economic Procedure (Art.24, Para.2, Item 9,CEP).

**Article 24. Powers of the Cabinet of Ministries of the Republic of Uzbekistan
in Area of Bankruptcy**

The Cabinet of Ministries of the Republic of Uzbekistan shall:

- **approve a uniform procedure for lodging claims of the Republic of Uzbekistan for monetary obligations and (or) mandatory payments in bankruptcy processes as a creditor;**

- **approve a procedure for the certification of court receivers, requirements of the capability and professionalism for acting as court receiver and a procedure for maintaining the uniform register of court receivers;**
- **approve a regulation for activities of court receivers;**
- **determine a procedure for forming and using the rehabilitation fund;**
- **determine a procedure for realising property of bankrupt enterprises the charter capital of which partially or wholly belongs to the state;**
- **exercise other powers in accordance with the legislation.**

This Article defines the competence of the Cabinet of Ministers of the Republic of Uzbekistan in the area of bankruptcy.

This Article provides for the following powers of the Cabinet of Ministers of the Republic of Uzbekistan to:

- approve a uniform procedure for lodging claims of the Republic of Uzbekistan for monetary obligations and (or) mandatory payments in bankruptcy processes as a creditor. This means that the Cabinet of Ministers represents the state interests in the area of bankruptcy;
- approve a procedure for the certification of court receivers, requirements of the capability and professionalism for acting as court receiver and a procedure for maintaining the uniform register of court receivers. On the 23 March 2004, the Cabinet of Ministers passed the Resolution No.138 “On measures for organisation of activities of court receivers of economically insolvent enterprises”. This Resolution approved the Regulation on certification of court receivers, which provide the procedure of certification of court receivers;
- approve a regulation for activities of court receivers. By the abovementioned Resolution the Cabinet of Ministers also approved the Regulation on court receivers, which defines activities of court receivers;
- determine a procedure for forming and using the rehabilitation fund. This procedure is defined in the Regulation “On enterprises rehabilitation fund under the Committee on Economic Insolvency of Enterprises” approved by the Resolution of the Cabinet of Ministers dated 26 Jul.1999, No.362 (the Regulation became invalid). Currently there is the Regulation “On the procedure for formation and use of the fund on support of entrepreneurship and restructuring of enterprises at the State Committee on Demonopolisation, Support of Competition and Entrepreneurship”, approved by the CM Resolution dated 4 Aug. 2005, No.185;
- determining a procedure for realising property of bankrupt enterprises the charter capital of which partially or wholly belongs to the state. As concerns this matter, there is the Resolution of the Cabinet of Ministers dated 18 Apr. 2003, No.188, which has approved the Regulation on the procedure for evaluation and realisation of property of enterprises under restructuring and bankruptcy processes.

This Article does not provide for all powers of the Cabinet of Ministers. The Cabinet of Ministers is entitled to perform other powers in line with the legislation.

Article 25. Powers of State Body for Bankruptcy Proceedings

1 The state body for bankruptcy proceedings shall:

- **monitor the financial situation of enterprises the charter capital of which partially or wholly belongs to the state, in order to reveal enterprises which are incapable to pay, unprofitable and economically insolvent;**
 - **file in the economic court a petition for the commencement of a bankruptcy case against enterprises the charter capital of which partially or wholly belongs to the state and (or) which are indebted to the Republic of Uzbekistan for monetary obligations;**
 - **provide certification of court receivers and maintain the uniform register of court receivers;**
 - **coordinate the prejudicial rehabilitation plan, the judicial rehabilitation plan and the external management plan of enterprises the charter capital of which partially or wholly belongs to the state;**
 - **oversee the progress of prejudicial rehabilitation with the governmental support and the progress of bankruptcy processes of enterprises the charter capital of which partially or wholly belongs to the state;**
 - **oversee the legitimacy of activities of court receivers, apply to the economic court for the dismissal of court receivers from his/her duties, when repeated breaches or a single gross breach of the legislation is revealed in their activities;**
 - **impose penalties on managers or other officials of enterprises the financial situation of which is being monitored, for failing to provide or providing late materials on financial and economic activities of these enterprises;**
 - **exercise other powers in accordance with the legislation.**
- 2 Regulations on the state body for bankruptcy proceedings shall be approved by the Cabinet of Ministers of the Republic of Uzbekistan.**

This Article provides for the powers of the state body for bankruptcy proceedings.

1. According to this Article, the functions of the state body for bankruptcy proceedings (at present this body is the Demonopolisation Committee) are the following:
 - monitoring the financial situation of enterprises the charter capital of which partially or wholly belongs to the state, in order to reveal enterprises which are incapable to pay, unprofitable and economically insolvent. This monitoring is carried out by way of collecting and analysing financial information on enterprises the charter capital of which partially or wholly belongs to the state. Upon the results of the analysis, a list of economically insolvent and unprofitable enterprises is drawn (i.e. enterprises which have indications of bankruptcy);
 - petitioning the economic court for the commencement of a bankruptcy case against enterprises the charter capital of which partially or wholly belongs to the state and (or) enterprises which are indebted to the Republic of Uzbekistan for monetary obligations (Art.42, Para.1), i.e. for both obligations under civil law contracts and mandatory payments, although in practice it is usually tax service bodies that petition against enterprises responsible for mandatory payments;
 - providing certification of court receivers and maintaining the uniform register of court receivers. For purposes of certification of court receivers, the Demonopolisation Committee is governed by the Regulation on certification of court receivers. This Regulation envisages requirements to the certification and grounds for terminating the certification;

- coordinating the prejudicial rehabilitation plan, the judicial rehabilitation plan and the external management plan of enterprises the charter capital of which partially or wholly belongs to the state;
- overseeing the progress of prejudicial rehabilitation with the governmental support and the progress of bankruptcy processes of enterprises the charter capital of which partially or wholly belongs to the state. When overseeing the effectiveness of the governmental support, the Demonopolisation Committee analyses data regarding financial and economic conditions of enterprises;
- overseeing the legitimacy of activities of court receivers, and applying to the economic court for the dismissal of court receivers when repeated breaches or a single gross breach of the legislation is revealed in their conduct, irrespective of whether losses have been caused or not (Para. 35, the Rule on the Certification Commission of Court Receivers). This Law does not stipulate that the Demonopolisation Committee controls activities of only those court receivers who work for enterprises the charter capital of which partially or wholly belongs to the state. Hence, it follows that the Demonopolisation Committee controls activities of all court receivers;
- imposing penalties on managers or other officials of enterprises, the financial situation of which is being monitored, for failing to provide or providing late materials on financial and economic activities of those enterprises. Penalties are imposed in line with Article 215 of the Code of Administrative Liability. Penalties may be imposed on a manager or an official.

The powers of the state body for bankruptcy proceedings listed in this Article are not all. The legislation may provide for additional powers.

Besides the above listed powers, Article 36 envisages rights to act as person participating in a bankruptcy case (at the filing the petition and when the charter capital of the debtor partially or wholly belongs to the state.); to participate in the creditors' meeting with the right to counsel (Art.10, Para.3); to propose a candidate for an interim receiver, rehabilitation manager, external manager and liquidation manager (Art.65, Para.1; the comment on Art.73, Para.2; Art.94, Para.2; Art.126. regardless of whether the charter capital of the debtor partially or wholly belongs to the state.); and to apply for the introduction of judicial rehabilitation (Art.75, Para.3) and of external management (Art.91, Para.1) with respect to enterprise the charter capital of which partially or wholly belongs to the state. Additionally, Paragraph 35 of the Rule on the Certification Commission of Court Receivers provides for the right to apply for the dismissal of a court receiver in other instances, in addition to cases of repeated breaches or a single gross breach of the legislation. Such instances include non-fulfilment of a resolution (order) of the Demonopolisation Committee within a period established for excluding the revealed breach, and failure to perform or improper performance of duties vested with court receivers by the bankruptcy legislation, which has caused losses to the debtor and creditors.

2. It is within the competence of the Cabinet of Ministers of the Republic of Uzbekistan to approve a regulation on the state body for bankruptcy proceedings. Such regulation may be approved by decrees of the President as well. For example, the Regulation "On coordination of activities on the State Committee on Demonopolisation, Support of Competition and Entrepreneurship" was approved by the Resolution of the President (dated 2 May 2005 No.PP-66).

Article 26. Powers of Territorial Administrations of State Body for Bankruptcy Proceedings of the Republic in Karakalpakstan, Regions and Tashkent City¹⁵

Territorial administrations of the state body for bankruptcy proceedings in the Republic of Karakalpakstan, regions and Tashkent city shall:

- **form the electronic data base of the financial condition of enterprises the charter capital of which partially or wholly belongs to the state, in order to reveal enterprises which are incapable to pay, unprofitable and economically insolvent;**
- **by order of the state body for bankruptcy proceedings, apply to the economic court for the commencement of a bankruptcy case against enterprises the charter capital of which partially or wholly belongs to the state and (or) which are indebted to the Republic of Uzbekistan for monetary obligations;**
- **oversee the progress of prejudicial rehabilitation with the governmental support and the progress of bankruptcy processes of enterprises the charter capital of which partially or wholly belongs to the state and which are located within the relevant territory;**
- **monitor bankruptcy processes of enterprises within the relevant territory;**
- **oversee the legitimacy of activities of court receivers, file in the state body for bankruptcy proceedings a petition regarding the necessity to dismiss court receivers from their duties in the established manner;**
- **have the right to propose to the economic court candidates for court receivers when a streamlined bankruptcy process is initiated, and also when liquidation proceedings are initiated with regard to enterprises the charter capital of which partially or wholly belongs to the state;**
- **impose penalties on managers or other officials for failing to provide or providing late materials on financial and economic activities of enterprises the charter capital of which partially or wholly belongs to the state;**
- **exercise other powers in accordance with the legislation.**

This Article determines the powers of territorial administrations of the state body for bankruptcy proceedings.

Currently territorial administrations of the Demonopolisation Committee function as territorial administrations of the state body for bankruptcy proceedings (Para.3, the Decree of the President “On establishment of State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship” dated 30 Apr. 2005, No.UP-3602) and these territorial administrations carry out all those powers envisioned in this Article.

This Article provide for the following powers of territorial administrations to:

- form the electronic data base of the financial situation of enterprises the charter capital of which partially or wholly belongs to the state, in order to reveal enterprises which are incapable to pay, unprofitable and economically insolvent. On the basis of data submitted by business entities, a territorial administration forms the electronic data base of the financial situation of enterprises the charter capital of which partially or wholly belongs to the state, in order to reveal unprofitable

¹⁵ In the Republic of Uzbekistan, Tashkent City is only one city equal to regions in its status.

enterprises and enterprises with indications of bankruptcy. This data base is then transmitted to the upper body;

- apply to the economic court for the commencement of a bankruptcy case against enterprises the charter capital of which partially or wholly belongs to the state and (or) which are indebted to the Republic of Uzbekistan for monetary obligations (and on mandatory payments). On the basis of information contained in the data base, a territorial administration petition the court for the commencement of a bankruptcy case against the debtor the charter capital of which partially or wholly belongs to the state, in accordance with an order of the Council of the Demonopolisation Commission or by an instruction of its upper body;
- oversee the progress of prejudicial rehabilitation with the governmental support and the progress of bankruptcy processes of enterprises the charter capital of which partially or wholly belongs to the state and which are located at the relevant territory. Territorial administrations have a right to control over the progress of prejudicial rehabilitation with the governmental support and the progress of bankruptcy processes of enterprises the charter capital of which partially or wholly belongs to the state and which are located at the relevant territory. Practically it means that territorial administrations are authorised to inspect activities of enterprises under rehabilitation with the governmental support and of enterprises the charter capital of which partially or wholly belongs to the state, against which bankruptcy processes have been applied;
- monitor bankruptcy processes of enterprises at the relevant territory, i.e. by examining, supervising, collecting information and statistical report data on unprofitable enterprises, issuing opinions;
- oversee the legitimacy of activities of court receivers. Since territorial administrations are considered to be within the structure of a body which carries out certification of court receivers, they are entitled to control court receivers' observance of the legislation. In case it is revealed that court receivers have committed repeated breaches or a single gross breach of the bankruptcy laws, territorial administrations apply to the economic court for their dismissal or to the upper body for the necessity of taking measures against them, including measures to revoke their issued certificate;
- proposing to the economic court candidates for court receivers in streamlined bankruptcy processes, and also in liquidation proceedings of enterprises the charter capital of which partially or wholly belongs to the state. Territorial administrations, along with the creditors' meeting, are entitled to propose candidates for court receivers of enterprises the charter capital of which partially or wholly belongs to the state. This right of the state body is stipulated also in Article 126. Although the text of this Article specially stipulates "enterprises the charter capital of which partially or wholly belongs to the state", territorial administrations may present candidates for court receivers in streamlined bankruptcy processes and liquidation proceedings, regardless of whether the charter capital of the debtor partially or wholly belongs to the state (see the comments on Arts. 126 and 188);
- impose penalties on managers or other officials for failing to provide or providing late materials on financial and economic activities of enterprises the charter capital of which partially or wholly belongs to the state. Penalties are imposed in line with Article 215 of the Code of Administrative Liability. They may be imposed on a manager or an official.

The powers of territorial administrations of the state body for bankruptcy proceedings listed in this Article do not cover all their powers. The legislation may provide for additional powers.

Approval of the Regulation on the Territorial Administration used to be within the competence of the Committee on Economic Insolvency of Enterprises, but at present of the Demonopolisation Committee.

Article 27. Obligation to Provide Information on Economic Solvency of Enterprises

When indications of bankruptcy are revealed, state taxation service authorities and state statistics authorities shall be obliged to provide the state body for bankruptcy proceedings and its territorial administrations with information on enterprises the charter capital of which partially or wholly belongs to the state, and also other information on economic solvency of enterprises at the request of the state body for bankruptcy proceedings.

This Article determines state bodies and their duty to provide information to the state body for bankruptcy proceedings and its territorial administrations (at present, the Demonopolisation Committee, and its territorial administrations).

The duty is to provide information when the mentioned bodies reveal indications of bankruptcy of a business entity the charter capital of which partially or wholly belongs to the state, and other information on the economic solvency of such entity upon request of the state body for bankruptcy proceedings. This information is necessary to implement requirements provided by Articles 25 and 26, and also to realise the right of the state body to commence a bankruptcy case in the economic court.

It should be noted that the Code of Administrative Liability (Art.215 “Violation of the Procedure for Providing Materials on Financial and Economic Activities of Enterprises”) defines the amount of administrative penalties for failure to furnish the mentioned materials.

Articles 25 and 26, and Article 268-1 “Bodies for Demonopolisation, Support of Competition and Entrepreneurship” of the Code of Administrative Liability, provides that the Demonopolisation Committee and its territorial administrations have jurisdiction over cases on administrative violations related to failure to provide information on financial and economic activities of enterprises and are competent to impose fines on persons found guilty. These administrative penalties may be imposed not only on managers of enterprises, but also on officials of bodies of state tax service, bodies of state statistics who have failed to provide materials at the request of the state body.

Article 28. Bankruptcy Processes

1 When a bankruptcy case of the legal entity debtor is considered, the following processes shall be applied:

- supervision;
- judicial rehabilitation;
- amicable agreement;
- external management;
- liquidation proceedings.

2 When a bankruptcy case of the individual entrepreneur debtor is considered, the following processes shall be applied:

- amicable agreement;

- liquidation proceedings.

This Article stipulates bankruptcy processes and subjects to which they are applied in the course of the consideration of a bankruptcy case by the court.

1. Paragraph 1 of this Article lists bankruptcy processes applied to the legal entity debtor: supervision; judicial rehabilitation; external management; liquidation proceedings and; amicable agreement. Each of these processes pursues its own goal and is provided by separate Chapters (Ch. IV-VIII).

Supervision is the first judicial process introduced by the court on the day of the commencement of a bankruptcy case. Supervision is introduced with a purpose of preserving the debtor's property and analysing the financial situation of the debtor. At the same time, this process aims at preventing the deterioration of the debtor's material condition. When the debtor has much property and many creditors, supervision shall indeed be introduced with respect thereto. During supervision, the interim receiver compiles a creditors' register (Art.67, Para.1, Item 3), assesses the debtor's financial situation, deals with the debtor's obligations and considers the possibility of restoring the debtor's financial ability (Art.69, Para.1). It is the interim receiver that reports to the first creditors' meeting on the debtor's financial situation and presents materials in order to decide the future steps to be taken with respect to the debtor enterprise (Art.67, Para.3). Supervision lasts up to the first court session, when a decision or ruling is taken regarding the future of the bankrupt enterprise. A decision or ruling regarding a subsequently applied process depends on creditors' opinion. Supervision may be followed by judicial rehabilitation, external management, liquidation proceedings or amicable agreement. As a general rule, supervision is carried out for up to three months (Art.49), but this term in exceptional cases might be extended for up to two months. In view of the necessity to settle a case in due times, however, it is advisable for the interim receiver to complete the supervision process within the possibly shortest term, taking any requisite measures. Supervision is not applied in a streamlined bankruptcy process with respect to a legal entity (Art.186,Para.2; Art.189,Para.2), because there is no need to conduct activities stipulated by this Law with regard to the supervision process and there is no choice other than liquidation proceedings. Supervision is not applied either in bankruptcy of individual entrepreneurs (Art.28, Para.2).

Judicial rehabilitation is a rehabilitation procedure applied by the economic court based on a resolution of the creditors' meeting, which is passed thereby when the debtor, founder (participant), the property owner or a third party applies to the creditors' meeting, with a view of restoring the enterprise debtor's financial ability and satisfying creditors' claims in such a way as the debtor's manager usually retains its power to manage affairs. The purpose of this process may be achieved if there is a possibility of recovering the debtor's standing by applying relevant rehabilitation measures and if its bankruptcy is not due to a bad management of the debtor. When skills of the debtor's manager are questionable, it is not appropriate to apply this procedure. From the moment when judicial rehabilitation is introduced, founders (participants) and the property owner of the debtor are required to oversee the debtor's activity in order to secure their interests, to prevent mismanagement and fraudulent/unfair alienation (amortisation) of property. Judicial rehabilitation is carried out under monitoring of the economic court and under control over the rehabilitation manager. The economic court approves a debt repayment schedule and makes amendments thereto, considers any disputes (complaints) that may arise in course of this rehabilitation process, and considers a report of the

rehabilitation manager. Judicial rehabilitation is applied for a term of up to twenty-four months. When it is not the debtor, but third parties that apply for judicial rehabilitation, this process is applied provided that the applying parties ensure the fulfilment of the debtor's obligations, and that the judicial rehabilitation plan and the debt repayment schedule are approved. The debtor still bears an obligation to fulfil its obligations, and the parties who ensure these obligations become liable only from the moment when the court renders a ruling to terminate or complete judicial rehabilitation (Art.88, Para 1).

An amicable agreement is a process applied by the economic court when creditors and the debtor agree to the conditions of the satisfaction of creditors' claims on ground of mutual concessions as concerns the amount and manner of fulfilment of claims, etc. An amicable agreement may be concluded at any stage of bankruptcy proceedings as per a resolution of the creditors' meeting, passed by the majority vote of all the creditors. The economic court approves an amicable agreement provided that its parties observe conditions stipulated by Chapter VIII and all secured creditors agree, and on condition that all claims stipulated in Paragraph 1 of Art. 134 and wages are discharged. It is very important to consider and establish conditions of an amicable agreement, to which a majority of creditors and all secured creditors would agree, because an amicable agreement makes it possible to terminate bankruptcy proceedings and to avoid a subsequent complicated bankruptcy process. If the debtor has many creditors, then it is important to take in an opinion of major creditors towards the conclusion of an amicable agreement. Even after an amicable agreement is approved, it may be found invalid by virtue of a relevant application if there are grounds for the invalidity, such as terms and conditions favourable for certain creditors or impairing rights other creditors (Art.153). In this case, bankruptcy proceedings are recommenced. An amicable agreement is recognised as a rehabilitation procedure, because it terminates proceedings and enables the debtor enterprise to continue its business and get restored. Unlike judicial rehabilitation and external management, however, it does not require any plan or schedule to conclude an amicable agreement. Approval of an amicable agreement and termination of bankruptcy proceedings end powers of a court receiver. The court does not control the fulfilment of an amicable agreement. In this point, therefore, when the debtor's capacity to fulfil an amicable agreement is doubtful, creditors should better control the debtors' activities to perform its obligations. Creditors should keep in mind that in case an amicable agreement is not duly fulfilled, they would not receive payment for their claims, accordingly if this may take place, then there is no sense of making an amicable agreement.

External management is a rehabilitation procedure applied by the economic court by virtue of a resolution of the creditors' meeting or an application of the state body for bankruptcy proceedings. External management is applied for no more than twenty-four months (Art.91, Para.3). The purposes of external management are also to ameliorate the debtor's financial position and to satisfy creditors' claims accordingly by means of the mandatory transfer of powers of the debtor's manager to run businesses and dispose of property to the external manager. These purposes can be achieved by carrying out a series of rehabilitation activities by the external manager. External management is an appropriate option in case the debtor's manager should be dismissed from his/her position and his/her powers should pass over to the external manager, for example, when the mismanagement of the manager has run the debtor enterprise into financial difficulty. On the other hand, in case the management "know-how" of the debtor's manager is necessary to continue to trade, it is not advisable to enter external management, since the external manager cannot make use of or undertake such know-how of the debtor's manager, including personal connections. The moratorium on

payments begins at the introduction of external management, but does not apply to current payments, claims arising from labour law relations and so on. (Art.93, Para.1, 5 and 6). Therefore, in case the debtor has the huge amount of these payments, external management may not be viable. There are two major ways of discharging debts: one is to discharge some debts by obtaining a court ruling to commence settlements with creditors of a specific priority after some measures for financial recovery as set forth in the external management plan have been successfully implemented (Art.120); the other is to pay out all debts by obtaining a court ruling to terminate external management and shift to settlements with creditors (Art.119). It is important to consider all the circumstances to decide which way would be more effective, which, inter alia, depends on the external management plan. Like judicial rehabilitation, external management is carried out under monitoring of the economic court and under control over the external manager.

Liquidation proceedings are a process initiated when a court decision to declare the debtor bankrupt and initiate liquidation proceedings is granted (Art.124, Para.1). Inevitably the debtor is deprived of its powers of management and disposal of its property (Art.125, Para.3). This process is conducted by the liquidation manager; and its total period is set to be one year (Art.124, Para.2). The purpose of liquidation proceedings is to proportionally satisfy creditors' claims by selling the debtor's property and liquidating the debtor enterprise.

In order to prevent any obstacles that might be posed by the debtor by means of concealing or alienating property, the liquidation manager immediately takes over all accounting documents, stamps, seals from the former manager of the debtor, maintains the creditors' register (Art.128, Para.4, Item 6), takes inventory of and evaluates the debtor's property (Art.131, Para.1), and makes a liquidation plan (Art.129). The liquidation plan must include information on the bankrupt's financial situations, conditions of payments to creditors, methods of sales of property, etc. In making a liquidation plan, opinions of creditors should be taken into account, because the liquidation plan must be approved by creditors presenting not less than two thirds in value of all creditors. In order to ensure fairness and legality, property is sold on the open tender (Arts.135 through 137). Upon the completion of liquidation proceedings, all creditors' claims are deemed to be discharged, regardless of whether they have been fully or partly satisfied after sales of the property (Art.138, Para.5). In the meantime, liquidation proceedings might be over when a bankruptcy case terminates as a result of the conclusion of an amicable agreement, or when the debtor has extinguished its debts and is capable to carry on its business, or when the debtor with the possibility of financial recovery enters external management from liquidation proceedings.

2. Paragraph 2 of this Article lists bankruptcy processes applied to the individual entrepreneur debtor, namely: amicable agreement and liquidation proceedings.

An amicable agreement with respect to the individual entrepreneur debtor aims at terminating bankruptcy proceedings by reaching an agreement between the debtor and its creditors on ground of mutual concessions. To conclude an amicable agreement, consent needs to be obtained at the creditors' meeting from creditors who represent the majority in value of all creditors, and consents of all secured creditors are also necessary (Art.145,Para.2). An amicable agreement represents a rehabilitation procedure, which is concluded in written form (Art.147,Para.1) and comes into force after the economic court approves it (Art.145,Para.6). Since supervision is not applied to the individual entrepreneur debtor, there are some problems in confirming creditors. As is provided by Article 182, the court confirms creditors and determines the amount of their claims. Since neither judicial rehabilitation nor external management can be applied to the individual entrepreneur debtor,

an amicable agreement is the only method for its rehabilitation. Although an amicable agreement may be made at any stage of bankruptcy proceedings (Art.145, Para.1), there are indeed few chances when it can be reached. Therefore, the individual entrepreneur debtor which wants to return to trading has to consider thoroughly creditors' opinions and positions when drafting an amicable agreement and preparing itself to negotiate with creditors.

Liquidation proceedings of the individual entrepreneur debtor have certain peculiarities. If creditors are not against, the court may approve a debt repayment plan submitted by the individual entrepreneur debtor (Art.176, Para.2). Accordingly, bankruptcy proceedings may be suspended up to two months for the debtor to repay debts. In case debts are completely discharged in accordance with the mentioned plan, bankruptcy proceedings terminate (Art.176,Para.5), and the individual entrepreneur debtor thereby can avoid the declaration of its bankruptcy and continue to trade. Since rehabilitation of the individual entrepreneur debtor is achievable only with a workable debt repayment plan, the debtor has to deliberate over the practicability of this plan. If debts are not redeemed, the individual entrepreneur debtor is declared bankrupt and released from liabilities for the remaining obligations, except for certain category of obligations, such as compensation for damage to life or health, etc. (Art.184,Para.1).

Article 29. Out of Court Procedures

Prejudicial rehabilitation or voluntary liquidation (the cessation of activities) of the debtor may be an out of court procedure.

This Article determines out of court procedures that can be applied to the debtor. As is provided in this Article, prejudicial rehabilitation and voluntary liquidation (the cessation of activities) are not considered as a bankruptcy process, nevertheless they have close ties with bankruptcy proceedings and play a supplementary role.

Prejudicial rehabilitation is defined in Articles 30 through 34. Prejudicial rehabilitation is applied before the commencement of a bankruptcy case (Art.30, Para.1) and aims at restoring the debtor's financial ability (Art.3, Item 10), i.e. it has the same aim as a rehabilitation type of bankruptcy processes. However, the court does not take part in the course of prejudicial rehabilitation, which distinguishes this procedure from judicial rehabilitation and external management. This Law does not provide for special provisions that would regulate relations between the debtor and its creditors in the course of prejudicial rehabilitation. Therefore, it may be concluded that the mechanism of the application of prejudicial rehabilitation is more flexible than other procedures the implementation of which is strictly regulated by this Law. This may cause difficulties as well, however, again this Law does not show how they are resolved.

Since prejudicial rehabilitation is an out of court procedure, the economic court does not participate in this procedure. Nevertheless, in case of prejudicial rehabilitation with the governmental support, the state body for bankruptcy proceedings, namely, the Demonopolisation Committee plays a significant role.

Voluntary liquidation is defined by Articles 53 through 56 of the Civil Code and by the Law "On Joint-Stock Companies and Protection of Shareholders Rights" and other laws and regulations that provide a legal status of various corporations.

Along with this, it should be noted that liquidation proceedings as provided in this Law and voluntary liquidation pursue the same goal – the distribution of property of a legal entity among its creditors and its liquidation after settlements with its creditors. However, liquidation proceedings in this Law are initiated when there are indications of bankruptcy, while voluntary liquidation is initiated due to other reasons, for example, due to the expiry of the term, failure to complete the charter capital and so forth. The grounds for voluntary liquidation are stipulated in Paragraph 2 of Article 53 of the Civil Code. Item 1 of the mentioned paragraph provides the initiation of liquidation by virtue of a resolution of founders (participants) or of a body of a legal entity empowered by its founding documents, while Item 2 of the mentioned paragraph provides the initiation of liquidation by virtue of a court decision.

It may be concluded that voluntary liquidation and liquidation proceedings are closely tied up because voluntary liquidation often precedes liquidation proceedings in practice.

It should also be noted that if a decision on liquidation of a legal entity is rendered under Article 53 of the Civil Code as it is engaged in no financial or economic activities and (or) it fails to form its charter capital within the period set by the legislation, and the value of its property is insufficient to satisfy its creditors' claims, a bankruptcy case is considered under a streamlined bankruptcy process upon a petition of the liquidation commission (liquidator) of such entity and such entity is subject to liquidation in a streamlined process (Art.185; Para..36, the Resolution of the SEC Plenum No.142).

CHAPTER II. THE PREJUDICIAL REHABILITATION

This Chapter sets prejudicial rehabilitation.

Prejudicial rehabilitation is out of court procedure, applied to the debtor for the purpose of restoring the debtor's financial ability and preventing its bankruptcy.

The subjects of prejudicial rehabilitation may be founders (participants) of the legal entity debtor, the property owner of the debtor, state bodies and other persons who are taking measures to restore the debtor's financial ability on the basis of the agreement with the debtor.

During prejudicial rehabilitation, for restoring the debtor's financial ability, measures such as buy-out of overdue debts, conversion of business, financial assistance to the debtor, postponement and (or) division of payments to the creditors, reduction of debts, reorganisation of the debtor shall be taken.

Prejudicial rehabilitation can be divided into the following types: with the governmental support and without the governmental support. Prejudicial rehabilitation with the governmental support is applied to enterprises, the charter capital of which partially or wholly belongs to the state.

The implementation procedure of prejudicial rehabilitation with the governmental support shall be established by the Regulation "On the procedure for prejudicial rehabilitation" (Annex No 2 to the CM Resolution (dated 26 Jul.1999 No.362, hereinafter referred to as 'the Regulation on the procedure for prejudicial rehabilitation).

The petition for carrying out of prejudicial rehabilitation with the governmental support to enterprises, the charter capital of which partially or wholly belongs to the state, shall be submitted to the Demonopolisation Committee. Prejudicial rehabilitation with the governmental support shall be introduced for a period from twelve up to twenty four months and shall be terminated in connection with the expiration of the period established for the implementation of prejudicial rehabilitation or by the decision of the Council of the Demonopolisation Committee in case it recognises the inefficiency of prejudicial rehabilitation.

This Chapter consists of only five Articles. It should be noted that the mechanism of prejudicial rehabilitation is not sufficiently covered by this Law. The Regulation on the procedure for prejudicial rehabilitation sets the mechanism of prejudicial rehabilitation in detail. The commencement and implementation of prejudicial rehabilitation of agricultural enterprises shall be regulated by the Law "On Rehabilitation of Agricultural Enterprises". The special provision of application to the above mentioned Law is also established in the Section 2 of Chapter IX of this Law

Article 30. Ground of Prejudicial Rehabilitation

- 1 Prejudicial rehabilitation shall be carried out before the commencement of a bankruptcy case.**
- 2 In case of the occurrence of indications of bankruptcy envisaged by Article 4 of this Law, the manager of the debtor shall be obliged to notify this to founders (participants), management bodies or the property owner of the debtor in writing.**
- 3 In order to prevent bankruptcy, founders (participants), the management body or the property owner of the debtor shall take measures intended to the financial recovery of the debtor until they file in the economic court a petition for the declaration of the debtor's**

bankruptcy. Measures intended to the financial recovery of the debtor may be taken by creditors or any other persons on the basis of an agreement with the debtor.

This Article determines the grounds for applying prejudicial rehabilitation towards the debtor. In accordance with the Article 29, prejudicial rehabilitation is an out of court procedure.

1. Prejudicial rehabilitation is carried out before economic court initiates a bankruptcy case. A bankruptcy case is commenced from the date when the economic court renders a ruling to accept the petition for the declaration of bankruptcy of the debtor.

An exception to this rule is the provision of the Article 61, when decision on the applying of prejudicial rehabilitation can be adopted after the commencement of a bankruptcy case towards a enterprise, the charter capital of which partially or wholly belongs to the state. In such occasion, the bankruptcy case shall be terminated due to the commencement of prejudicial rehabilitation.

2. Paragraph 2 of this Article provides that in case of the occurrence of indications of bankruptcy envisaged by Article 4 of this Law, the manager of the debtor shall be obliged to notify this to founders (participants), management bodies or the property owner of the debtor in writing.

The manager of debtor shall notify occurrence of indications of bankruptcy in written form (through sending the letter, notification or other message in written form).

The founders (participants), management bodies or the property owner of the debtor may be both legal entities and physical persons.

This Paragraph is introduced to this Law 2003 in order to ensure timely notification to the founders (participants), management bodies or the property owner of the debtor, so they could take measures in order to prevent bankruptcy of the debtor.

3. Prejudicial rehabilitation is applied before the commencement of a bankruptcy case in order to prevent the debtor's bankruptcy. Therefore, prior to the filing with the economic court for the declaration of bankruptcy of the debtor, the founders (participants), the management body or the property owner of the debtor may take measures intended to the financial recovery of the debtor. As a rule, a business plan is developed for the financial recovery of the debtor. This business plan reflects planned activities and expected results. In case of enterprises, the charter capital of which partially or wholly belongs to the state, this business plan shall be agreed with the state body for bankruptcy proceedings (Art.25, Para.1, Item 4).

Article 31. Object and Subjects of Prejudicial Rehabilitation

- 1 An object of prejudicial rehabilitation shall be the debtor.**
- 2 Subjects of prejudicial rehabilitation may be founders (participants) of the legal entity debtor, the property owner of the debtor, state bodies and other persons.**

This Article determines the object and subjects of prejudicial rehabilitation.

1. An object of prejudicial rehabilitation is the debtor. In accordance to Article 3, the debtor is a legal entity or an individual entrepreneur which is incapable to satisfy creditors' claims for monetary obligations and (or) to perform duties on mandatory payments. With regard to the agricultural

enterprises in case of making decision on applying prejudicial rehabilitation towards them the Law “On Rehabilitation of Agricultural Enterprises” may be applied as well.

2. This Law does not limit the scope of persons who may be subjects of prejudicial rehabilitation. Founders (participants) of the legal entity, the property owner of the debtor, state bodies and other persons may be the subjects of prejudicial rehabilitation.

Article 32. Basic Measures of Prejudicial Rehabilitation

- 1 The basic measures of prejudicial rehabilitation shall be:**
 - buy-out of whole or partial overdue debts;
 - conversion of business to manufacturing competitive products;
 - outsourcing of highly qualified specialists;
 - training and re-training of personnel;
 - financial assistance by legal entities and individuals interested in the debtor’s financial recovery and continuation of its activity;
 - agreement between the debtor and creditors on the postponement and (or) division of payments to the creditors or on the reduction of debts, for the continuation of the debtor’s activity;
 - postponement of the discharge of duties on mandatory payments and loans repayment for the period of prejudicial rehabilitation;
 - reorganisation of the legal entity debtor.
- 2 The prejudicial rehabilitation procedure may also include other measures.**
- 3 Prejudicial rehabilitation with the governmental support shall be carried out on the basis of a resolution of the body authorised by the Cabinet of Minister of the Republic of Uzbekistan.**
- 4 The procedure for prejudicial rehabilitation with the governmental support shall be governed by the legislation.**
- 5 When prejudicial rehabilitation with the governmental support is carried out, Soum and (or) foreign currency account for rehabilitation shall be opened for the debtor in its servicing bank, and accounts which have operated earlier shall be suspended. The procedure for operating the rehabilitation account shall be determined by the legislation.**

This Article determines the basic measures of prejudicial rehabilitation of the debtor, which are defined both by this Article and the other legislation.

1. The measures of prejudicial rehabilitation may be divided into the following group; economic measures: buy-out of whole or partial overdue debts, conversion of business to manufacturing competitive productive, financial assistance by legal entities and individuals interested in the debtor’s financial recovery and continuation of its activity; legal measures: agreement between the debtor and creditors on the postponement and (or) division of payments to the creditors or on the reduction of debts, for the continuation of the debtor’s activity, postponement of the discharge of duty on mandatory payments and loans repayment for the period of prejudicial rehabilitation; organisational measures: outsourcing of highly qualified specialists, training and re-training of personnel, reorganisation of the legal entity debtor.

2. The measures of prejudicial rehabilitation may also include other measures (including the measures with the governmental support) in order to aim at recovering the debtor's financial ability, ensuring the debtor' financial resources, and avoiding the declaration of bankruptcy of the debtor .
3. In accordance to Paragraph 9 of the Regulation on the procedure for prejudicial rehabilitation, prejudicial rehabilitation may be carried out with or without state funds, both onerous or gratuitous base, including competitive base. The body authorised the power to make a decision on carrying out prejudicial rehabilitation with the governmental support by the Cabinet of Ministers of the Republic of Uzbekistan, is the Demonopolisation Committee. In accordance to the Paragraph 12 of the Regulation on the procedure for prejudicial rehabilitation, prejudicial rehabilitation with the governmental support and to enterprises, the charter capital of which partially or wholly belongs to the state, is carried out on the basis of the decision of the Council of the Demonopolisation Committee.

Prejudicial rehabilitation with state funds (with the governmental support) may be carried out in following forms (Para.10, the Regulation on the procedure for prejudicial rehabilitation):

- allocation of the Fund of Support of Entrepreneurship and Restructuring of the Enterprises to development and implementation of the restructuring programs within the approved limits and estimates based on the decision of the Council of the Demonopolisation Committee;
 - postponement or division of payments of mandatory payments and state loans repayment, or forgiveness of late payment interest and fines for the period of prejudicial rehabilitation based on the decision of the Republican Commission for decrease in outstanding claims and debts and strengthening the discipline of the payments to the budget. The rehabilitation procedure with state funds may also include other measures based on the decision of the government. For example, they are state loan, gratuitous assistance, writing-off of mandatory payments or principal debt on the state loan and etc.
4. The procedure for prejudicial rehabilitation with the governmental support is governed by the Regulation on the procedure for prejudicial rehabilitation. In accordance with the Paragraph 13 of the Regulation on the procedure for prejudicial rehabilitation, regarding the petition for prejudicial rehabilitation against the debtor-enterprise, the charter capital of which partially or wholly belongs to the state or the petition for prejudicial rehabilitation with the governmental support, such petition is submitted to the Demonopolisation Committee, which on the basis of the analysis and assessment of the financial and economic activity of the debtor-enterprise provides conclusion about the actual possibility for restoring financial recovery of the debtor-enterprise.

In order to complete conclusion the debtor-enterprise shall provide following documents to the Demonopolisation Committee:

- balance sheet for the current period of the reporting year and previous year;
- copies of the founding documents;
- financial rehabilitation plan approved by the owner, which contains a detailed analysis of possibilities to use internal reserves, including the availability of profitable demand for its product, confirmed by corresponding agreements;
- statement of verification with the local state taxation service authorities on the debts of the debtor-enterprise;
- certificate issued by the servicing bank on state of accounts. On the basis of the analysis and evaluation of the financial and economic activity of the debtor-enterprise and business plan for financial recovery of the debtor-enterprise, agreed with the Ministry of Finance and the State

Tax Committee, the Council of the Demonopolisation Committee issues a resolution carrying out of prejudicial rehabilitation (Para.14, the Regulation on the procedure for prejudicial rehabilitation).

In case of the necessity of applying to the debtor-enterprise for prejudicial rehabilitation with the governmental support such as postponement or division of payments of mandatory payments and state loans repayment, or forgiveness of late payment interest and fines, the resolution of the Demonopolisation Committee is forwarded to the Republican Commission for decrease in outstanding claims and debts and strengthening the discipline of the payments to the budget. Monitoring of prejudicial rehabilitation with the government support for the enterprises of all types property is carried out by the Demonopolisation Committee (Para.15, the Regulation on the procedure for prejudicial rehabilitation).

5. When prejudicial rehabilitation with the governmental support is carried out, Soum or foreign currency account for rehabilitation shall be opened for the debtor in its servicing bank, and accounts which have operated earlier shall be suspended. In accordance to the Paragraph 10 of the Regulation on the procedure for prejudicial rehabilitation, the procedure for operating the account for prejudicial rehabilitation is determined by the Demonopolisation Committee and the Central Bank of the Republic of Uzbekistan.

Therefore the Regulation "On the procedure for operating the special account for prejudicial rehabilitation"(approved by the Demonopolisation Committee and the Central Bank, registered by Ministry of Justice, on 3 Nov.2006 No.1636) is approved by the Demonopolisation Committee and the Central Bank of the Republic of Uzbekistan. This Regulation determines the mechanisms of the operation of the special account of the debtor-enterprise for prejudicial rehabilitation.

Article 33. Period of Carrying Out of Prejudicial Rehabilitation with Governmental Support

Prejudicial rehabilitation with the governmental support shall be carried out for a period from twelve up to twenty four months.

This Article determines the period of prejudicial rehabilitation with the governmental support.

Prejudicial rehabilitation with the governmental support is applied to the debtor — legal entity, charter capital of which partially or wholly belongs to the state for a period from twelve up to twenty four months, on the basis of a resolution of the Council of the Demonopolisation Committee.

However, this Law does not determine a minimal and maximal period of prejudicial rehabilitation without the governmental support, except the agricultural enterprises, for which such period is limited by the Article 13 of the Law "On Rehabilitation of Agricultural Enterprises". Article 161 of this Law also determines the possibility to extend the period of prejudicial rehabilitation towards the agricultural enterprises.

Article 34. Termination of Prejudicial Rehabilitation with Governmental Support

Prejudicial rehabilitation with the governmental support may terminate in connection with the expiration of the period established for carrying out prejudicial rehabilitation or with the inefficiency of prejudicial rehabilitation.

This Article determines the grounds for the termination of prejudicial rehabilitation with the governmental support.

Prejudicial rehabilitation with the governmental support may be terminated in connection with the expiration of the period established for carrying out prejudicial rehabilitation, the inefficiency of prejudicial rehabilitation, non-fulfilment of the requirements of the Regulation on the procedure for prejudicial rehabilitation or other reasons stipulated by the legislation.

In accordance with the Paragraph 16 of the Regulation on the procedure for prejudicial rehabilitation, the resolution on the termination of prejudicial rehabilitation with the governmental support is issued by the Council of the Demonopolisation Committee.

CHAPTER III. CONSIDERATION OF BANKRUPTCY CASES IN THE ECONOMIC COURT

This Chapter determines legal relations between persons participating in a bankruptcy case, and the court in connection with the bankruptcy case consideration.

A bankruptcy case on the ground of a petition filed by an eligible person in the economic court is considered by the court at the place of location (residence) of the debtor in an open court session. This Chapter provides that for the commencement of a bankruptcy case, there needs to be a petition for the declaration of the debtor's bankruptcy which indicates grounds for commencing a case, information on the debtor depending on the category of petitioners, documents attached to the petition and so on. As a result of considering these factors, the economic court decides whether to accept, refuse or return the petition. Under the general rule, within three months from the date when a ruling to accept the petition is rendered, the economic court renders a judicial act on a bankruptcy case: a decision to declare the debtor bankrupt and initiate liquidation proceedings; a decision to refuse to declare the debtor bankrupt; a ruling to introduce judicial rehabilitation; a ruling to introduce external management; a ruling to terminate bankruptcy proceedings and the like. In order to ensure transparency, these judicial acts are rendered upon considering the case in an open court session, and information on rendered acts is published in an official gazette.

Supervision is introduced before bankruptcy processes of rehabilitation (non-terminal) or liquidation (terminal) types are applied by the court, in order to preserve the debtor's property and analyse its financial situation. A judge examines the validity of objections lodged by the debtor or the interim receiver against creditor's claims if any, and prepare for the court hearing of a bankruptcy case.

The economic court considers controversies regarding the confirmation of claims and those related to violation by court receivers of their duties in course of a bankruptcy process, upon which the court hands over its ruling. In case persons participating in a bankruptcy case do not agree to the court ruling, they are qualified to appeal it pursuant to the provisions of laws and regulations.

Thus, this Chapter identifies persons eligible to participate in each bankruptcy process, the procedure and term for the court to consider a case, the possibility of appealing against violations of rights and legitimate interests in order to ensure due and timely consideration of a case and take decisions thereon.

Article 35. Grounds for Initiation of Bankruptcy Case

- 1 A bankruptcy case shall be commenced by the economic court at the place of location (place of residence) of the debtor on the ground of a petition of persons (bodies) eligible to file in the economic court in accordance with Article 6 of this Law.**
- 2 Bankruptcy cases of the debtor shall be considered by the economic court under the rules envisaged by the Code of Economic Procedure of the Republic of Uzbekistan with the specifics established by this Law.**

This Article defines the following:

- bankruptcy cases are commenced on the ground of a petition of persons eligible to file a petition for the declaration of the debtor's bankruptcy;

CHAPTER III.(Art.35-61) CONSIDERATION OF BANKRUPTCY CASES
IN THE ECONOMIC COURT

- bankruptcy cases are within jurisdiction of the economic court at the place of location (residence) of the debtor;
- bankruptcy cases are considered in compliance with the rules set by the Code of Economic Procedure with the specifics stipulated by this Law.

1. This Article provides that bankruptcy cases are commenced by the economic court on the ground of a petition of persons (organs) which have the right to file in the economic court under provisions set by Article 6. In some cases, however, organs other than those listed in Article 6 have such right. The petition may be filed not by everyone, but only by eligible persons. As for persons vested with such right, see the comment on Article 6.

In addition, this Article provides for the territorial jurisdiction of bankruptcy cases. In regard with the legal entity debtor, this is the place of its location, while in regard with the individual entrepreneur debtor, this is the place of its residence. Regardless of a petitioner for the declaration of the debtor's bankruptcy (the debtor itself, its creditors, authorised governmental bodies or the prosecutor), a bankruptcy case is subject to consideration in the economic court at the place of location (residence) of the debtor. This rule complies with the provision of Article 30 of the Code of Economic Procedure. This rule is defined as exclusive jurisdiction and aims at ensuring the most favourable conditions for fair hearings of a bankruptcy case, as it makes it easier both to collect evidences related to the debtor's insolvency and to decide various procedural issues concerning a case. The rules of Articles 31 and 32 of the Code of Economic Procedure regarding the exclusive and agreement jurisdiction do not apply to bankruptcy cases. A bankruptcy case is not general court proceedings, therefore the provisions of Article 25 of the Code of Economic Procedure concerning transfer of cases to third party arbitration courts do not apply to bankruptcy cases.

2. In regard with procedural rules, this Law prevails over other laws and regulations. Procedural rules of this Law are established to take into account the specifics of bankruptcy cases, which is why this Law has priority over the Code of Economic Procedure. In case procedural legal relations in bankruptcy cases are not covered by this Law, they are regulated as per the Code of Economic Procedure.

In the following cases, this Law envisages particular provisions which are different from those of the Code of Economic Procedure:

- unlike general court proceedings based on a lawsuit, bankruptcy cases are not considered in adversary proceedings filed by a plaintiff against a defendant. A person who applies for the declaration of the debtor's bankruptcy files in the economic court not a lawsuit, but a petition for the declaration of the debtor's bankruptcy (Art.37 through 44). It should be also noted that counterclaims (Art.120, CEP) are not filed in bankruptcy proceedings;
- bankruptcy processes are implemented in accordance with this Law for the fair satisfaction of creditors' claims from the value of the debtor's property, along with regulations about interests between creditors and the debtor, and for the restoration of the debtor's financial ability, and these procedures aim at regulating collectively relations related to the insolvent debtor and to the involvement of the court. This Law sets provisions for each stage of proceedings, such as the organisation of the first creditors' meeting in order to determine a bankruptcy process to be applied to the debtor; the appointment of a interim receiver upon an application of creditors or the state body for bankruptcy proceedings; the analysis of the debtor's financial and economic

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activities; the identification of creditor's claims for the purpose of compiling the creditors' register, etc. A certain period of time is required to carry out these processes.

Therefore, this Law sets for a longer term of the consideration of a bankruptcy case than that of the hearing of general court proceedings. The Code of Economic Procedure provides, regarding general economic disputes, that a case shall be considered within one month from the date when a ruling to prepare a case for court proceedings is rendered and that in exceptional cases, this term may be extended for not exceeding one month (Art.125,CEP). On the other hand, this Law provides that a bankruptcy case shall be considered within three months from the date when a ruling to accept the petition is rendered, and that in exceptional cases, the hearing (consideration) of a case may be extended for up to two months (Art.49).

Since this Law aims at the collective regulation of relations connected with the debtor's insolvency, the following specifics, apart from the above mentioned, are included:

- from the moment when a bankruptcy process is applied, any actions against the debtor are taken by the creditors' meeting (Art.10, Para.2). Therefore the creditors' will with respect to the debtor is expressed by way of a resolution passed at the creditors' meeting (in a session of the creditors' committee). For example, when an amicable agreement is reached between the debtor and its creditors under a bankruptcy case, a decision on behalf of creditors as to its execution is taken by the creditors' meeting (Art.145, Para.2). An amicable agreement between the debtor and particular creditors without a resolution of the creditors' meeting is not permitted. In a word, Article 132 of the Code of Economic Procedure (conclusion of amicable agreement) is not applied in bankruptcy cases;
- this Law envisages provisions for the publication in an official gazette of information on judicial acts rendered by the economic court and on the progress of bankruptcy proceedings (Arts.52 and 53), which is not envisaged in the Code of Economic Procedure. Such provisions are also intended to collectively rule relations connected with the debtor's insolvency;
- this Law provides that the representative of the debtor's founders (participants) (Art.3) and the representative of the debtor's employees (Art.3) and others are recognised as persons participating in a bankruptcy case in instances provided by this Law (Art.36, Para.2). In the Code of Economic Procedure (Art.34, CEP), they are not defined as persons participating in a case, while this Law grants these persons a status of participants in a bankruptcy case and entitles them to file with the economic court complaints when they have certain grounds to do so (Art.59, Para.2, etc.).

In comparison with the Code of Economic Procedure, this Law sets a number of provisions aimed at expediting proceedings. They are made for the need to prevent the diminution of the debtor's property after the filing of the petition, by way of rendering relevant judicial acts promptly and satisfying creditors' claims early through the smooth implementation of bankruptcy processes. The following examples prove the above:

- the Code of Economic Procedure provides that when a lawsuit is filed, a judge should decide on the matter of accepting it within ten days from the date of its filing (Art.116, CEP), while this Law provides that a judge decides whether to accept a petition for the declaration of the debtor's bankruptcy and commence a bankruptcy case, or to refuse to accept it, or to return it within five days after the petition is presented (Art.45, Para.1);
- in case of disagreement to a decision of the economic court, under the Code of Economic Procedure, appeal against the decision is filed within one month after a court of first instance

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issues the decision (Art.158, CEP), which is subject to hearing within one month after an appeal is filed (Art.167, CEP)¹⁶. On the other hand, under this Law, appeals against rulings of the economic court rendered upon considering controversies in a bankruptcy case are filed within ten days of the rendition of rulings, and should be considered by the court within ten days after appeals are instituted, and rulings of the appeal court are not subject to review in the cassational and supervisory instances (Art.60, Paras.4 and 5), except for rulings stipulated in Article 50, Paragraph 2 of Article 91, Paragraph 4 of Article 124 of this Law, which are subject to appeal under the rules of the Code of Economic Procedure (Para.21,the Resolution of the SEC Plenum No.142);

- The Code of Economic Procedure states that decisions to recognise resolution of state bodies or civil self-government bodies to be invalid and to approve an amicable agreement are subject to immediate enforcement (Art.146,Para.5), namely, only specific judicial acts must be immediately enforced, whereas this Law provides that judicial acts rendered within bankruptcy proceedings are generally subject to immediate enforcement (Art.50, Para.2).

Article 36. Persons Participating in Bankruptcy Case

1 Persons participating in a bankruptcy case shall be:

- **the debtor;**
- **court receivers;**
- **creditors which have lodged their claims against the debtor in the manner established by this Law;**
- **the state body for bankruptcy proceedings;**
- **the prosecutor, if a bankruptcy case is considered upon its petition.**

2 In cases envisaged by the legislation, the representative of the debtor's employees, the representative of founders (participants) or the property owner of the debtor¹⁷, the representative of the individual entrepreneur debtor, the representative of the creditors' meeting (creditors' committee) and other persons may participate in a bankruptcy case.

This Article lists persons entitled to participate in a bankruptcy case.

1. Subjects of relations that arise along bankruptcy who are recognised as a person participating in a bankruptcy case acquire the rights and obligations provided by Article 35 of the Code of Economic Procedure. They enjoy all the rights of a subject in the procedural law within the framework of a bankruptcy case and bankruptcy processes envisaged by this Law. The procedural rights and duties of a person participating in a bankruptcy case are explained in Paragraph 5 of Article 13, Paragraph 3 of Article 18, Paragraph 2 of Article 36, Paragraph 5 of Article 37, Paragraphs 1 and 5 of Article 46, Paragraph 1 of Article 47, Paragraph 4 of Article 57, Paragraph 3 of Article 124, Paragraph 3 of Article 176, Paragraph 2 of Article 177.

¹⁶ According to Art.172 of CEP,an appeal against rulings and decisions are considered in the same manner.

¹⁷ The original text provides "the property owner of the debtor", but in view of the comment and so on, it should be understood as "the representative of the property owner of the debtor".

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1.1. The debtor – a legal entity or individual entrepreneur incapable to satisfy creditors' claims for monetary obligations and to fulfil duties on mandatory payments.

The debtor may join as a petitioner, one of persons participating in a bankruptcy case, when the debtor files a petition for the declaration of its own bankruptcy, and may also participate when claims of a creditor (creditors) or authorised bodies are filed against the debtor for the purpose of declaring the debtor bankrupt.

1.2. Court receivers (the interim receiver, the rehabilitation manager, the external manager, the liquidation manager) become a participant in a bankruptcy case at the moment of their appointment by the economic court.

1.3. Creditor becomes a participant in a case at the moment when they lodge their claims against the debtor as per the procedure established by this Law. Creditors may lodge their claims against the debtor in two ways. Firstly, they petition the economic court for the declaration of the debtor's bankruptcy, and thereby commence a bankruptcy case against the debtor. Secondly, they present their claims against the debtor within a bankruptcy case already commenced, so as to attend the creditors' meeting, be recorded in the creditors' register and receive satisfaction of their claims. The rules of the procedure for lodging claims are provided by Paragraph 1 of Article 70, Paragraph 1 of Article 99.

1.4. The state body for bankruptcy proceedings is a specialised authority in the area of legal regulation of relations related to bankruptcy (economic insolvency) of business entities. The powers of the state body for bankruptcy proceedings are listed in Article 25.

It need to be noted that the state body for bankruptcy proceedings is recognised as a person participating in a bankruptcy case which is commenced upon its own petition, and also in such a case against the debtor the charter capital of which partially or wholly belongs to the state, regardless of whether the case is commenced upon its own petition or not.

1.5. The prosecutor, by virtue of filing a petition for the declaration of the debtor's bankruptcy, becomes a person participating in a case. According to Article 43 of the Code of Economic Procedure, the prosecutor has a right to participate in court sessions of any cases, but it need to be noted here that according to this Article, the prosecutor becomes a person participating in a case only if a case is commenced upon its own petition.

2. Paragraph 2 of this Article envisages other persons who may participate in a bankruptcy case in cases stipulated by this Law, apart from those mentioned in Paragraph 1 of this Article.

The representative of the debtor's employees is entitled to participate in a bankruptcy case on condition that a meeting of the debtor's employees has been held and elected a representative of employees. This representative acts in the interests of employees and represents them in bankruptcy proceedings. The representative of the debtor's employees has a right to receive a copy of a petition for the declaration of the debtor's bankruptcy in case the representative is elected prior to the filing of the petition (Art.37, Para.5). The representative is also entitled to file with the economic court complaints about controversies with court receivers as concerns the amount and composition of claims for wages and severance payments to those working under an employment contract (Art.59,Para.2,Item 1). It should be mentioned, however, that employees themselves have no right to file such complaints individually.

Founders (participants) and the property owner of the debtor are not considered to be persons participating in a bankruptcy case, because they are not granted a status of creditors under this Law,

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in regard to claims against the debtor for their apportioned shares (although they are granted the rights as a person to participate in liquidation proceedings. Paragraph 4 of Article 125).

Nevertheless, this Paragraph allows the representative of founders (participants) or the property owner of the debtor to represent them as a person participating in a bankruptcy case in cases stipulated by this Law with a view to protecting their rights and legitimate interests. The representative of founders (participants) or the property owner of the debtor has the right to receive a copy of a petition of the debtor for the declaration of the debtor's bankruptcy if the representative is appointed before the filing of the petition (Art.37, Para.5). The representative is also authorised to file with economic court complaints against conduct (omission) of court receivers that infringe rights and legitimate interests of founders (participants) or the property owner of the debtor (Art.59, Para.2, Item 2). The representative may also acquire the status of a person participating in a case, when they apply to the economic court for the introduction of judicial rehabilitation (Art.75, Para.3; Art.76, Para.1), attaching the judicial rehabilitation plan, the debt repayment schedule, minutes of the general meeting of founders of the debtor specifying the list of founders who have voted for the application to the creditors' meeting for the introduction of judicial rehabilitation and documents that they ensure the debtor's implementation of the debt repayment schedule.

The right to participate in a case is also granted to the representative of the creditors' meeting (creditors' committee). The representative of the creditors' meeting can be a person participating in a case, provided he/she is elected by the creditors' meeting as a person who is delegated the power to sign an amicable agreement with the debtor (Art.147, Para.2).

Other persons participating in a bankruptcy case may be third parties who undertake obligations to repay the debtor's debts to creditors in a bankruptcy process applied by the economic court (Art.75, Para.3; Art.76, Para.1; Art.113, Para.2) and participants (founders) of the debtor (Art.125, Para.4). When a bankruptcy case against township-forming enterprises and enterprises equalled thereto is considered, the relevant local body of state power, the relevant ministry, state committee, agency, body of economic administration may be recognised as a person participating in a case (Art 156, Para.2). The local bodies of state power may also stand as a person participating in a case when bankruptcy of an agricultural enterprise is considered by the court (Art.161, Para.3). In addition, there are certain specifics provided by this Law with respect to bankruptcy cases against banks, insurance companies and professional participants in the securities market (Art.165, Para.3 ;Art.166; Art.170,Para.1).

Apart from the abovementioned procedural rights, persons participating in a case (the state body for bankruptcy proceedings, the prosecutor, the representative of the debtor's employees, the representative of founders (participants) or the property owner of the debtor, the representative of the individual entrepreneur debtor, the representative of the creditors' meeting (creditors' committee) and other persons (e.g., third parties)) are granted the right to attend the creditors' meetings (see the comment on Art.10, Para.3).

Article 37. Debtor's Petitioning

- 1 The petition of the debtor for the declaration of its bankruptcy shall be filed in the economic court in writing and shall be signed accordingly by the manager of the legal entity debtor, or by the individual entrepreneur debtor, or by their representative.**
- 2 The following must be specified in the petition filed by the debtor.**

- **the name of the economic court in which the petition is filed;**
 - **the amount of creditors' claims for monetary obligations which the debtor does not contest;**
 - **the amount of compensation for damage to life or health, wages and severance payments to be paid to the debtor's employees;**
 - **the amount of remuneration due under copyright agreements;**
 - **the amount of mandatory payments;**
 - **grounds of the inability of the debtor to satisfy creditors' claims in full;**
 - **information on lawsuits against the debtor accepted by courts and also on execution documents¹⁸ and other documents lodged for out-of-court writing-off¹⁹ (writing-off without acceptance of the debtor);**
 - **information on the debtor's property including information on monetary assets and accounts receivable;**
 - **the debtor's account numbers in a bank, postal address of the bank;**
 - **the list of attached documents.**
- 3 The petition filed by the debtor for the declaration of its bankruptcy may also specify other information necessary for the appropriate settlement of a bankruptcy case, and applications if the debtor has any.**
- 4 When the debtor is an individual entrepreneur, information on the debtor's obligations which are not associated with its entrepreneurial activities shall be also specified in the petition filed by the debtor.**
- 5 The debtor shall be obliged to forward a copy of the petition to its creditors and other persons participating in a bankruptcy case. A copy of the petition shall be forwarded to the representative of founders (participants) or the property owner of the debtor, and the representative of the debtor's employees if they have been elected (appointed) prior to the petitioning of the debtor.**

This Article sets provisions concerning the contents of the debtor's petition.

1. According to the provisions stipulated by this Article, the petition of the debtor is filed with the economic court in writing. It is signed by the manager of the legal entity debtor (in case the legal entity debtor has enter liquidation, its petition should be signed by the liquidation commission in the person of its chairman or by the liquidator) or by the individual entrepreneur debtor. The legislator also allows the representative of the debtor to sign the petition by virtue of a power of attorney. The authority of the representative to sign the petition should be stipulated in a power of attorney. It is necessary to pay attention to a requirement that a power of attorney (or its duly certified copy) should be enclosed to the petition, when the petition is signed by the representative of the debtor based on such power of attorney.
2. This Law establishes requirements to the main part of the debtor's petition. Unlike the creditor's petition, the requirements to the debtor's petition are regulated in detail. Paragraph 2 of Article 37 stipulates the list of mandatory data which should be included in the debtor's petition.

¹⁸ Art.7, Law of the Republic of Uzbekistan "On Execution of Judicial Acts and Acts of Other Authorities

¹⁹ Art.200, CC

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This Paragraph requires the debtor's petition to indicate the amount of claims which are not challenged by the debtor. This is because in accepting the petition, the court needs to establish that the debtor has debts the amount of which exceeds the sum stipulated Paragraph 2 of Article 5. Even when the debtor files a petition for the declaration of the debtor's bankruptcy on the ground of Article 8, which does not require the indebtedness in the amount specified by Paragraph 2 of Article 5, all the same, the economic court needs to comprehend the indebtedness of the debtor when accepting the petition.

The sum of the following claims must also be specified in the petition of the debtor: compensation for damage to life or health; for wages and severance payments to the debtor's employees; remuneration due under copyright agreements; mandatory payments and other liabilities of the debtor to creditors. These claims must be specified in the petition in order that the court, court receivers, creditors and others could know what kind of debts in what amount the debtor owes. The claims specified in this Paragraph are set to be obligatory information which should be specified in the petition of the debtor for the declaration of the debtor's bankruptcy. Besides, the debtor can specify in its petition any other debts which it has, specifying their amount (this Article,Para.3).

The basis of the inability to satisfy creditors' claims should also be specified in the petition of the debtor. This aims at presenting important information which is necessary to choose a bankruptcy process applied after the commencement of a bankruptcy case against the debtor, by way of informing the economic court, court receivers and creditors of the reasons of the inability to satisfy claims. Such information is also necessary in case the debtor petitions the economic court for the declaration of its bankruptcy under Paragraph 1 of Article 7 when it is evident that the debtor is going to be unable to fulfil obligations in the period of three months from their maturity date, in order to establish the existence of this ground. Here, too, it should be noted that such information is required to examine the ground for the petitioning, when the manager of the debtor or the individual entrepreneur debtor is obliged to file with the court a petition for the declaration of the debtor's bankruptcy in a situation stipulated by Item 1 of Paragraph 1 of Article 8, that is, in case "satisfaction of claims of one or more creditors results in the debtor being impossible to perform its monetary obligations and (or) duties on mandatory payments to other creditors in full".

Data on lawsuits against the debtor accepted by courts and on execution documents and other documents for out-of-court writing-off (writing-off without acceptance of the debtor) should also be specified in the petition of the debtor.

If it is revealed in the consideration of general court proceedings that a bankruptcy case has commenced in respect of the defendant, the proceedings on this economic dispute are subject to termination according to Item 1 of Article 86 of the Code of Economic Procedure. (Para.6, the Resolution of the SEC Plenum No.142). Therefore, the economic court which has accepted the petition should forward its ruling to commence a bankruptcy case to the court which considers a lawsuit where the defendant is the debtor. In this connection, this Paragraph requires information on lawsuits which the court has accepted based on claims against the debtor.

Execution documents and other documents for out-of-court writing-off (writing-off without acceptance of the debtor) should be clarified, because the economic court which has accepted the petition should send its ruling to commence a the bankruptcy case to execution agencies, in order to suspend the execution of these instruments. Besides, the debtor may file the petition "when creditors' claims are executed upon the debtor's property, there are grounds to believe that such execution will

preclude the debtor's business." (Art.8, Para.1, Item 4); therefore data about execution documents are necessary so that the court could check up the presence of such grounds.

Other documents or out-of-court writing-off (writing-off without acceptance of the debtor) mean collection orders of the state taxation service authorities, the state customs service authorities and other authorised state bodies which have the right to confiscate money from the debtor's bank account by way of out-of-court writing-off (writing-off without acceptance of the debtor), according to the Regulation on Clearing Settlements in the Republic of Uzbekistan (approved by the Resolution of the Board of the Central Bank, registered by the Ministry of Justice (dated 15 Apr.2002 No.1122).

It should be taken into account that information on the debtor's property, monetary assets and accounts receivable specified in the petition should conform with those in the balance sheet of the debtor as of the latest accounting date, which must be attached to the debtor's petition (Art.38, Para.2). The concept of accounts receivable is defined by Paragraph 2 of the Decree of President "On measures of increase of responsibility of managers of enterprises and organisations for timely settlements in the economy" (dated 12 May 1995 No.UP-1154. Accounts receivable do not encompass penalties, other sanctions or loss subject to payment to the debtor, including those subject to payment on the ground of judicial acts in force. As regards monetary assets, they mean money in any bank accounts of the debtor, bank deposits of the debtor and cash at the debtor enterprise.

3. Other information necessary for the appropriate settlement of a bankruptcy case may also be specified in the petition of the debtor. They may include data as to execution documents in favour of the debtor which are left unexecuted and returned according to Article 40 of the Law "On Execution of Judicial Acts and Acts of Other Authorities ".
4. Alongside with the above stated, the petition of the individual entrepreneur debtor for the declaration of its bankruptcy must specify obligations of the debtor which arise out of its business activities, for example, disable members of its family, a duty to pay alimony, etc.
5. Copies of the petition are sent by the debtor to its creditors and other persons participating in a bankruptcy case, and also to the elected (appointed) representative of founders (participants) or the property owner of the debtor, and the representative of the debtor's employees in cases provided by this Article.

Article 38. Documents Attached to Debtor's Petition

- 1 Besides documents envisaged by the Code of Economic Procedure. of the Republic of Uzbekistan, documents that confirm the indebtedness, the inability of the debtor to satisfy creditors' claims in full, and other circumstances on which the debtor's petitioning is based shall be attached to the petition filed by the debtor for the declaration of its bankruptcy.**
- 2 The following shall also be attached to the petition filed by the debtor:**
 - founding documents of the legal entity debtor, and documents about the state registration of the legal entity or individual entrepreneur debtor;**
 - the list of the debtors' creditors and debtors with the breakdown of accounts payables and accounts receivable and specification of their postal addresses;**
 - the balance sheet as of the latest reporting date or documents substituting it;**
 - documents on the composition and value of property of the individual entrepreneur debtor;**

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- a resolution of founders (participants) or the property owner of the debtor, filing in the economic court a petition of the debtor for the declaration of its bankruptcy;
- minutes of the debtor's employees meeting which has elected a representative of the debtor's employees to participate in the consideration of a bankruptcy case, if such meeting was held prior to the petitioning.

3 The documents specified in Paragraphs 1 and 2 of this Article shall be attached in original or in the form of copies duly certified.

This Article outlines documents attached to the petition for the declaration of bankruptcy.

1. Documents "envisaged the Code of Economic Procedure." are understood as documents stipulated by Article 114 of the Code of Economic Procedure. They are documents that prove that:

- the debtor has paid a state duty in the established manner and amount;
- the debtor has sent a copy of the petition to its creditors and other persons participating in a case.

If the petition is signed by the representative of the debtor, a power of attorney confirming the authority of a signing person is attached to the petition.

As examples of documents that evidence the debtor's indebtedness, proof confirming creditors' claims, payment claims acknowledged by the debtor, collection orders of state taxation service authorities, judicial acts legally in force to recover debts from the debtor can be taken.

Documents that prove the debtor's inability to satisfy creditors' claims in full include an inventory certificate of the debtor's property, an auditor's report and other documents which specify that the debtor lacks assets, property and monetary assets.

As documents confirming other circumstances on which the debtor's petition is grounded, document showing that the debtor is categorised as a township-forming enterprise or an enterprise equalled thereto (Para.34, the Resolution of the SEC Plenum No.142) may be cited.

According to the first sentence of Paragraph 6 of Article 45, if documents listed in this Article are not enclosed to the petition, the petition is returned, except for a case stipulated in the second sentence of Paragraph 6 of Article 45.

2. When the petition for the declaration of the debtor's bankruptcy is filed with the economic court, a judge decides whether this Law is applicable with respect to the debtor concerned. This Law is applied only to legal entities (except state-financed legal entities, political parties and religious organisations) and to individual entrepreneurs (see the comment on Art.2, Para.2). In this respect, this Paragraph requires founding documents of a legal entity and documents certifying the state registration of the debtor as a legal entity or an individual entrepreneur to be attached to the petition.

Founding documents of the legal entity debtor are its charter (memorandum of association) and (or) contract of founders (articles of association).

A document certifying the registration of a legal entity or an individual entrepreneur is a certificate of the state registration issued by the registration authority in the prescribed manner and form.

A resolution of founders (participants) or the property owner of the debtor regarding the petition of the debtor to the economic court for the declaration of the debtor's bankruptcy is attached as an evidence that these subjects have taken a decision to petition the economic court, as Paragraph 2 of Article 7 provides such requirement. The kind of such resolution depends on an organisational-legal form of the legal entity debtor. If the debtor is a joint-stock company, a resolution of the general

meeting of shareholders is attached. If the debtor is a limited liability company, a resolution of the general meeting of founders is required. A resolution of the property owner of the debtor may be adopted in the form of a document called 'decision', 'resolution' or 'order'.

This Paragraph also requires the attachment of minutes of the debtor's employees meeting, at which the representative of the debtor's employees has been elected for the participation in the consideration of a bankruptcy case, if such meeting is held prior to the filing of the petition for the declaration of the debtor's bankruptcy. In case the representative of the debtor's employees is elected, the interim receiver is obliged to send him/her a copy of a notice of the first creditors' meeting (Art.71, Para.1). In bankruptcy processes, claims of the debtor's employees for wages and severance payments are filed with the debtor, not by each employee, but by their representative in the aggregate amount of claims of all employees. The representative of the employees is entitled to file complaints with the economic court in connection with controversies with court receivers as regards the amount and composition of claims of the debtor's employees for wages and severance payments under an employment contract (Art.59, Para.2, Item 1). Therefore, the representative of the debtor's employees plays a vital role in bankruptcy processes, hence the rule of this Paragraph is set in view of the importance of information about a person who is elected to be a representative of the employees for the economic court and the court receiver.

3. All documents which are required to be attached to the debtor's petition should be enclosed in original or in the form of duly certified copies. By virtue of this, documents should be certified with a seal of a legal entity or individual entrepreneur, or should be notarised.

Article 39. Creditor's Petitioning

- 1 The petition of a creditor for the declaration of the debtor's bankruptcy shall be filed in the economic court in writing. In case a creditor is a legal entity, its petition shall be signed by its manager or its representative, and in case a creditor is an individual entrepreneur, its petition shall be signed by itself or its representative.**
- 2 The following must be specified in the petition filed by a creditor:**
 - the name of the economic court in which the petition is filed;
 - the name (surname, name, patronymic) of the petitioning creditor and its postal address;
 - the name (surname, name, patronymic) of the debtor and its postal address;
 - the amount of the debtor's monetary obligation to the creditor from which the creditor's claims arise, and also their maturity date;
 - evidences of the validity of the creditor's claims, including a court decision which has come into legal force²⁰, evidences confirming that the debtor has acknowledged the specified claims, and a notarised document of execution;
 - the list of attached documents.
- 3 The petition filed by a creditor may also specify other information necessary for the appropriate settlement of a bankruptcy case and applications if the creditor has any.**
- 4 The petitioning creditor shall be obliged to forward a copy of its petition to the debtor.**

²⁰ Art.146, CEP: decisions rendered under the Code of Economic Procedure become effective one month after their rendition.

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This Article sets the form and the content of a creditor's petition.

1. A creditor's petition is filed with the court in writing. If a petition is presented by a creditor being a legal entity, it is signed by the manager of this legal entity or by its accredited representative, while if a creditor is an individual entrepreneur, a petition is signed by this individual entrepreneur or by its representative.

This represents that a creditor being a legal entity has the authority to petition the court for the declaration of the debtor's bankruptcy, and also a physical person registering as individual entrepreneur has such authority when his/her claims against the debtor result from its business activities (Art.23,CEP).

2. The following must be specified in the petition of a creditor:
 - the name of the economic court in which the petition is filed;
 - the name of a petitioning legal entity or physical person (the surname, name, patronymic of a petitioning individual entrepreneur) and its postal address;
 - the name of the legal entity debtor (the surname, name, patronymic of the individual entrepreneur debtor) and its postal address;
 - the amount of the indebtedness for which the debtor is liable to the petitioning creditor and its due date. Such amount should be specified in order to check its conformity to the required minimum amount of the indebtedness as established by Paragraph 2 of Article 5. The specification of a due date is important for purpose of examining the compliance with the requirement established by Article 4, that is, of checking the overdue duration, which should be not less than three months. The requirement of the specification of these data is necessitated because these information constitute a ground for the court to accept the petition pursuant to Paragraph 2 of Article 5 and Article 45;
 - evidences of the validity of the petitioning creditor's claims, including a court decision legally in force, evidences confirming that the debtor has acknowledged the claims, and a notarised document of execution. These proofs confirm the validity of the creditor's petitioning and are required to protect the debtor against the unreasonable petitioning on its bankruptcy. In case the debtor disagrees to these evidences enclosed by the creditor to the petition, the debtor may present its response to the economic court on the ground of Article 47.
3. Information on contracts between the petitioning creditor and the debtor which have incurred monetary obligations may be specified in the creditor's petition as 'other information'.

In the general part of the petition, applications of the creditor for assignment of an expert examination, for provisional measures to preserve creditors' claims and the like can be specified.

4. The debtor has an opportunity to present to the court a response to the petition of a creditor (Art. 47). In case the petition of a creditor is accepted, the debtor faces certain restrictions in enforcing its rights, according to Paragraphs 2 and 3 of Article 46 and so on. In view of these provisions, the debtor should be immediately notified of the filing of the petition for the declaration of its bankruptcy. Thus, the legislator provides for the requirement regarding sending a copy of the petition to the debtor.

Article 40. Consolidation of Creditors' Claims

- 1 The petitioning of a creditor for the declaration of the debtor's bankruptcy may be grounded on consolidated claims for various obligations.**
- 2 Creditors shall be entitled to consolidate their claims against the debtor and file one petition in the economic court. In this case, the petition shall be signed by the creditors claims of which are consolidated.**

This Article lays down conditions for consolidating creditors' claims.

1. When filing a petition for the declaration of the debtor's bankruptcy, a creditor may consolidate its various claims against the debtor. However, it needs to be noted that only claims resulted from business activities may be subject to consolidation. Claims of personal nature cannot be consolidated, namely, claims for damage to life or health, for alimony and the like. Claims for apportioned share of founders (participants) may not be consolidated either, because founders (participants) are not considered as creditors in regard to such claims and not granted the right to petition for the declaration of the debtor's bankruptcy.
2. Paragraph 2 of this Article allows creditors to participate jointly in proceedings, where a petition can be filed by several creditors. Along with this, it is allowed to file a petition based on consolidated creditor's claims, the aggregate amount of which comprises not less than five hundred-fold minimum wage in case of the legal entity debtor, or not less than thirty-fold minimum wage in case of the individual entrepreneur debtor (Art.5,Para.2), provided that there are indications of bankruptcy as stipulated by Article 4. Such petition is signed by managers of petitioning legal entities or individual entrepreneurs which consolidate their claims.

Article 41. Documents Attached to Creditor's Petition

- 1 Besides documents envisaged by the Code of Economic Procedure. of the Republic of Uzbekistan, documents that confirm the debtor's monetary obligations to the petitioning creditor, the existence and the amount of these obligations, and other circumstances on which the creditor's petitioning is based shall be attached to the petition filed by the creditor.**
- 2 In case of the petition signed by the creditor's representative, a power of attorney that confirms the authority to sign shall be attached to the petition.**
- 3 The following (if any) shall be attached to the petition filed by a creditor:**
 - a decision of the court which has considered the creditors' claims against the debtor;
 - an execution document (writ of execution, payment demands accepted by the debtor, notarised document of execution and the like) or evidences confirming that the debtor has acknowledged this creditor's claims.

This Article provides for the list of documents that must be attached to the creditor's petition.

1. Documents "envisaged by the Code of Economic Procedure." mean documents stipulated by Article 114 of the Code of Economic Procedure.. These documents are those that confirm that:
 - the petitioning creditor has paid a state duty in the established procedure and amount;
 - the petitioning creditor has sent a copy of its petition to the debtor and other persons participating in a case.

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Apart from the above-named documents, this Paragraph requires documents confirming the existence and amount of the debtor's liabilities to the petitioning creditor, and other circumstances on which the creditor's petitioning is grounded are attached to the creditor's petition. As documents confirming the existence and the amount of the indebtedness, invoices, transport way-bills and other documents can be cited.

In this regard, it should not be forgotten that according to Paragraph 7 of the Resolution of the SEC Plenum No.142, when accepting a petition for the declaration of the debtor's bankruptcy, a judge should examine documents to show that the indebtedness of the legal entity debtor comprises not less than a five hundred-fold minimum wage in aggregate and that of the individual entrepreneur debtor amounts to not less than a thirty-fold minimum wage, and such debts are three months overdue.

As an example of documents confirming other circumstances on which the creditor's petitioning is ground, it is appropriate to mention documents confirming the absence of the individual entrepreneur debtor or the manager of the legal entity debtor and the impossibility of finding out their whereabouts in case of the filing of the petition for the declaration of the debtor's bankruptcy under a streamlined bankruptcy process (Para.35, the Resolution of the SEC Plenum No.142).

2. The petition signed by the creditor's representative should be attached with a power of attorney confirming the authority of the signing person. The authority of the creditor's representative is confirmed by a power of attorney which must be made in the manner stipulated by Article 138 of the Civil Code, and be specified actions which the representative is authorised to take.
3. Paragraph 3 of this Article provides that the following documents are attached to the petition, where available:
 - a decision of the court which has considered the creditor's claims against the debtor;
 - an execution document (writ of execution, payment demands accepted by the debtor and the like) or evidences confirming that the debtor has acknowledged the creditor's claims, which might be certificates of settlements, accounting reports on financial and economic activities where the debtor itself calculates the amount of taxes and other mandatory payments subject to payment, etc.

These documents that confirm the reasonableness of the creditor's petition for the declaration of the debtor's bankruptcy is required in order to protect the debtor against unreasonable petitions. The presentation of these documents at the filing of the petition also accelerates bankruptcy proceedings.

Article 42. Petitioning of State Body for Bankruptcy Proceedings

- 1 The state body for bankruptcy proceedings shall petition the economic court in writing for the declaration of bankruptcy of an enterprise the charter capital of which partially or wholly belongs to the state and (or) an enterprise which is indebted to the Republic of Uzbekistan on monetary obligations, attaching to its petition documents that confirm the economic insolvency of the debtor enterprise.**
- 2 The petition of the state body for bankruptcy proceedings shall be filed in the economic court subject to the requirements envisaged by Article 39 and Article 41 of this Law.**

This Article stipulates the requirements for the petitioning of the state body for bankruptcy proceedings.

1. This Law recognises the state body for bankruptcy proceedings as a person eligible to petition the economic court for the declaration of bankruptcy of the debtor enterprise the charter capital of which partially or wholly belongs to the state, or the debtor enterprise which is indebted to the Republic Uzbekistan on monetary obligations (Art.6; Art.25.Para.1,Item 2).

The petition of the state body for bankruptcy proceedings is presented to the economic court in writing, with documents confirming the debtor's economic insolvency. As for this Paragraph, "documents that confirm the economic insolvency of the debtor enterprise" is those confirming that the requirements stipulated in Article 4 and Paragraph 2 of Article 5 are met.

As such documents, "documents that confirm the debtor's monetary obligations to the petitioning creditor, the existence and amount of these obligations" stipulated by Paragraph 1 of Article 41 are recognised, that is, acts of settlements, collection orders of state taxation service authorities , invoices, way-bills, etc.

2. Paragraph 2 of this Article sets that the petition of the state body for bankruptcy proceedings is filed with the economic court in line with the requirements stipulated by Articles 39 and 41. Along with this, Article 114 of the Code of Economic Procedure which is referred by Article 41 of this Law requires that the petition must be enclosed with a document confirming payment of a state duty as per the established procedure and amount. It is necessary to mention, however, that according to Paragraph 2 of Article 4 of the Law "On State Duty" the financial and tax authorities and the bodies of the Demonopolisation Committee are exempted from payment of state duties on all cases considered in the economic court. The same is provided in Paragraph 2 of the Resolution of the SEC Plenum No.142. Hence, in case the state body for bankruptcy proceedings files the petition under this Article, no document confirming payment of a state duty is required.

In case the petition is filed in the court against an enterprise the charter capital of which partially or wholly belongs to the Republic of Uzbekistan, the petition should provide information on the state share in the charter capital of the enterprise. Besides, a document confirming such state share should be enclosed to the petition.

Article 43. Petitioning of State Taxation Service Authority and Other Authorised Body

- 1 The petition filed in the economic court by the state taxation service authority and other authorised body for the declaration of the debtor's bankruptcy based on mandatory payments must meet the requirements envisaged by Article 39 and Article 41 of this Law.**
- 2 Evidences that measures have been taken to collect outstanding mandatory payments in accordance with the legislation must be attached to the petition filed by the state taxation service authority and other authorised body.**

This Article lays down the requirements to the petition of the state taxation service authority or other authorised body.

1. This Law classifies the state taxation service authorities and other authorised bodies as persons eligible to file with the economic court a petition for the declaration of the debtor's bankruptcy, due to the debtor's failure to make mandatory payments (Art.6, Para.2). It need to be noted here that the

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state taxation service authorities and other authorised bodies are eligible to petition the economic court exclusively due to the debtor's failure to make mandatory payments, but not due to the debtor's failure to fulfil monetary obligations liable to creditors. This Article contains a reference rule, namely, it refers to Articles 39 and 41. Article 39 sets general rules of the filing of a petition, namely: a copy of petition must be sent to the debtor, a petition must be filed in written and indicate the following six mandatory attributes:

- the name of the economic court in which the petition is filed;
- the name of a petitioning legal entity debtor or physical person (the surname, name, patronymic of a petitioning individual entrepreneur debtor) and its postal address;
- the name of the legal entity debtor (the surname, name, patronymic of the individual entrepreneur debtor) and its postal address;
- the amount of the indebtedness for which the debtor is liable to the petitioning creditor. Such amount should be specified in order to check its conformity to the required minimum amount of the indebtedness as established by Paragraph 2 of Article 5. The specification of the due date is also necessary.
- a court decision legally in force, evidences that the debtor has acknowledged mandatory payments, and evidences of the validity of mandatory payments;
- the list of attached documents

The petition is attached, in accordance with the general rules under Article 114 of the Code of Economic Procedure. and Article 41 of this Law, with the following documents:

- documents confirming that the petitioner has sent a copy of the petition and attached documents to the debtor;
- documents confirming the existence and amount of the debtor's obligations on mandatory payments, and other circumstance on which the petitioning of the state taxation service authority or other authorised body is grounded;
- a power of attorney of the representative of the state taxation service authority and other authorised body, if the petition is signed by the representative.

In addition, the following must be attached if any:

- a decision of the court which has considered the claims against the debtor;
- an execution document (writ of execution, payment demands accepted by the debtor and the like) or evidences confirming that the debtor has acknowledged the claims, which might be certificates of settlements, accounting reports on financial and economic activities where the debtor itself calculates the amount of taxes and other mandatory payments subject to payment, etc.

Although Article 114 of the Code of Economic Procedure requires that the petition should be enclosed with a document confirming the payment of a state duty, however, the financial, tax bodies and bodies of the Demonopolisation Committee are exempted from such payment in all cases falling under the jurisdiction of the economic courts, in accordance with Paragraph 2 of Article 4 of the Law "On State Duty". The same is provided in Paragraph 2 of the Resolution of the SEC Plenum No.142. Consequently, in case the state taxation service authorities file the petition, a document confirming the payment of a state duty is not required. (see also the comment on Art. 6,Para.2).

2. The difference of the petitioning of a state taxation service authorities or other authorised body under this Law from the petitioning of other subjects is a requirement that the former should attach

to its petition evidences that it has taken measures to receive mandatory payments in accordance with The CM Resolution "On approval of the Regulation on the procedure for collection of arrears of taxes and mandatory payments to the budget from assets of enterprises and organisations" dated 8 Nov. 1996, No.387.. The same is mentioned in Paragraph 4 of the Resolution of the SEC Plenum No.142.

As such attached documents, a payment claim (collection order) for out-of-court writing-off of arrears from a legal entity which was submitted to a bank, but not executed because of the lack of money in the debtor's account. In case the debtor has property, the petition should be accompanied with a decision of the economic court to collect arrears from the debtor's property. If the collection of arrears from the debtor's property was tried, but failed, the petition is attached with a writ of execution where an execution officer indicates the failure due to the absence of property.

Article 44. Prosecutor's Petitioning

- 1 The prosecutor shall be entitled to petition the economic court for the declaration of the debtor's bankruptcy:**
 - when the prosecutor reveals indications of concealment of bankruptcy;
 - in the interests of creditors.
- 2 The petition of the prosecutor shall be filed in the economic court subject to the requirements envisaged by Article 39 and Article 41 of this Law.**

This Article establishes the conditions and order in which the public prosecutor files the petition.

1. This Article sets two conditions in case the prosecutor files the petition:
 - a) when the public prosecutor reveals any signs of concealed bankruptcy in the course of inspection within the framework of its general supervision or during investigation of criminal cases or supervision over investigations carried out by other preliminary investigation bodies, or in the course of carrying out the authorities of the public prosecutor in court (in the presence of the requirements of Art.4 and Para.2 of Art.5).

The concept to indications of concealed bankruptcy is defined in Article 181 of the Criminal Code, according to which the concealment of bankruptcy is recognised when a business entity intentionally hides its insolvency by way of presenting false data or documents, distorting accounting reports, or in any other way which results in large damage to creditors. This shall entail criminal liabilities;

b) in the interests of creditors.

According to Article 41 of the Law "On Office of Public Prosecutor", the public prosecutor has the authority to petition the court for the purpose of protecting the rights and legitimate interests of citizens, legal entities and the state at large.

A ground for the public prosecutor to file the petition in the interests of creditors is such creditors' pleading to the public prosecutor. Thus, unlike the petitioning grounded on concealed bankruptcy, the primary initiative to initiate the petitioning of the public prosecutor belongs to creditors.

There might be several reasons that creditors plead for the protection of their legitimate interests, not to the court, but to the public prosecutor: no assets to pay a state duty; no legal

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department in their organisation and, as a consequence, little knowledge as to where to plead; and when creditors file the petition, they need to specify in the petition, with indications of bankruptcy, other facts which should be dealt with by the public prosecutor, for example, criminal acts of the debtor's managers and officials, etc. However not all creditors may resort to the public prosecutor to initiate a bankruptcy case against the debtor, but only those creditors whose claims against the debtor meet the conditions set by Article 4 (as concerns the overdue duration) and Paragraph 2 of Article 5 (as concerns the amount of claims) .

Based on creditors' pleading, the public prosecutor examines grounds of the pleading, demands (discovers) requisite documents, undertakes explanatory and other verifying actions. If the grounds of the pleading are confirmed and proved by documents, the public prosecutor (as a rule, by the regional public prosecutor or the public prosecutor equalled thereto) petitions the economic court for the declaration of the debtor's bankruptcy.

It is necessary to note that the presence of grounds for the public prosecutor to petition for the declaration of the debtor's bankruptcy under this Article does not entail a duty of the public prosecutor to file such petition. As it is provided in Article 41 of the Law "On Office of Public Prosecutor", the public prosecutor's petitioning in the court in the interests of the legal entities and citizens is its authority, not its obligation.

2. Like the previous Article, this Article contains reference to Articles 39 and 41, in which the general rules of filing the petition are outlined, namely: the petition indicating six obligatory elements should be filed in writing and its copy is sent to the debtor.

In all other respects, the list of documents attached to the petition of the public prosecutor is similar to that provided by the previous Article and should be determined in line with general provisions of Article 114 of the Code of Economic Procedure and special provisions of Article 41 of this Law.

At the same time, it is necessary to emphasise that no evidence of payment of a state duty is required by virtue of Paragraph 2 of the Resolution of the SEC Plenum No.142. As regards this, Paragraph 2 of Article 4 of the Law "On State Duty" provides that the public prosecutor is exempted from payment of state duties regarding lawsuits brought to the economic court in the interests of legal entities, while Paragraph 2 of the Resolution of the SEC Plenum No.142 applies this exemption without any restriction to petitions.

Article 45. Commencement of Bankruptcy Case

- 1 A judge shall, within five days after the petition for the declaration of the debtor's bankruptcy is presented, decide whether to accept the petition and commence a bankruptcy case, or refuse to accept the petition, or return the petition.**
- 2 A judge shall accept the petition that complies with the requirements of the Code of Economic Procedure of the Republic of Uzbekistan and this Law.**
- 3 Accepting the petition, a judge may render a ruling to introduce supervision and appoint an interim receiver.**
- 4 The economic court shall forward its ruling to accept the petition and commence a bankruptcy case to the state taxation service authorities and other authorised bodies, and an**

execution officer ²¹at the place of location (place of residence) of the debtor. The debtor is obliged to forward copies of the ruling to commence a bankruptcy case to the aforementioned persons (bodies) at the places of location of its representative offices and branches.

5 A judge shall refuse to accept the petition, if the petition does not comply with the conditions envisaged by Article 5 of this Law.

6 A judge shall return the petition, if the petition does not comply with the requirements envisaged by Articles 37 through 44 of this Law. In case the manager of the debtor is obliged to petition and documents envisaged by Article 38 of this Law are not attached to the petition, such petition shall be accepted by the economic court and requisite documents shall be reclaimed in the course of preparation of the bankruptcy case for court proceedings.

This Article sets the procedure for commencing a bankruptcy case and accepting, and refusing to accept and returning a petition for the declaration of the debtor's bankruptcy.

1. As envisaged by Paragraph 1 of this Article, a judge must, within five days after the petition is presented, solely takes a decision on the matter whether to accept, or refuse to accept, or return the petition, that is, a judge should give the so called "legal evaluation" of the filed petition and proofs attached thereto within this period of time.

In this situation, the court does not apply the rule provided by Paragraph 3 of Article 116 of the Code of Economic Procedure., which states that a judge renders a ruling to accept a lawsuit within ten days after the lawsuit is presented.

2. If a petition for the declaration of the debtor's bankruptcy is filed in line with the requirement provided by Articles 112, 113 and 114 of the Code of Economic Procedure. and also in line with Paragraph 2 of Article 5 and Articles 37 through 44 of this Law, a judge accepts the petition and gives a ruling thereof. This ruling is sent to persons participating in a bankruptcy case within five days after it is rendered in accordance with Paragraph 1 of Article 153 of the Code of Economic Procedure. When the petition is accepted, a bankruptcy case is commenced simultaneously. It is mandatory for a judge to render at one time a ruling to accept the petition and a ruling to commence a bankruptcy case.

This Paragraph sets a special rule with regards to the procedure for accepting the petition as provided by Article 116 of the Code of Economic Procedure; but with all this, neither this Law nor the Code of Economic Procedure envisages an appeal against a ruling to accept the petition. Consequently, this ruling can not be appealed (see the comment on Art.60). Along with this, if the debtor does not agree to this ruling, it is entitled to file its response to the petition under Article 47.

The economic court indicates the commencement of a bankruptcy case against the debtor and specifies the date of the first creditors' meeting in its ruling to accept the petition (Art.71,Para.1).

3. According to the rule set in this Paragraph, when accepting the petition for the declaration of the debtor's bankruptcy, a judge may render a ruling to introduce supervision and appoint an interim receiver, along with a ruling to accept the petition. The ruling to accept the petition may state the introduction of supervision and the appointment of an interim receiver. In this case, according to the meaning of Article 62, it needs not to render a separate ruling to introduce supervision. However, if it is impossible to render the above two rulings at the same time for some reasons or in some

²¹ Art.3, Law of the Republic of Uzbekista "On Execution of Judicial Acts and Acts of Other Authorities"

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circumstances (for example, no candidate for an interim receiver is proposed at the time of rendering a ruling to accept the petition, etc.), the court may separately render a ruling to introduce supervision and appoint an interim receiver within ten days from the date when the petition is filed (Art. 48,Para.2). In this case, it should be noted that the period of supervision is calculated from the date not when the ruling to accept the petition is rendered, but when the ruling to introduce supervision and appoint an interim receiver is rendered.

4. This Paragraph provides for the strictly defined list of persons to whom the economic court sends a ruling to accept the petition and commence a bankruptcy case. They are state tax service authorities, execution officers and other authorised bodies at the place of location (residence) of the debtor. The legal entity debtor, in its turn, sends copies of this ruling to state taxation service authorities and other authorised bodies at the place of location of its representative offices and branches. The ruling must be sent to execution officers as well, because execution proceedings where execution officers are enforcing execution documents over the debtor must be suspended upon the commencement of a bankruptcy case against the debtor, according to Item 2 of Paragraph 1 of Article 34 of the Law “On Execution of Judicial Acts and Acts of Other Authorities” and Item 1 of Paragraph 1 of Article 63 of this Law. The court thereby prevents sales of the debtor’s property, which is a vital point in bankruptcy proceedings. Sales of the debtor’s property are carried out within the framework of bankruptcy proceedings (judicial rehabilitation, external management, liquidation proceedings).

It should also be noted that in case of the debtor the charter capital of which partially or wholly belongs to the state, the economic court must notify the state body for bankruptcy proceedings of the commencement of a bankruptcy case against this debtor (Art.61,Para.1) within five days from the date when it hands over a ruling thereof in accordance with Paragraph 1 of Article 153 of the Code of Economic Procedure.

5. If the petition for the declaration of the debtor’ bankruptcy does not comply with the requirements set by Paragraph 2 of Article 5, a judge refuses to accept it on the ground of Paragraph 5 of this Article. However, this is not the only ground for the court to refuse to accept the petition. The provision of this Paragraph is laid down as a special rule to provisions of Article 117 of the Code of Economic Procedure., namely, it sets a special ground for such refusal in addition to those of the Code of Economic Procedure, taking into consideration the specifics of bankruptcy proceedings. Therefore, a judge refuses to accept the petition on the grounds provided not only in Paragraph 5 of this Article, but also in Article 117 of the Code of Economic Procedure. To refuse to accept the petition, the court must render a ruling, which is appealable by persons participating in a case in line with Paragraph 3 of Article 117 of the Code of Economic Procedure.
6. The general grounds on which the petition for the declaration of the debtor’s bankruptcy can be returned are stipulated by Article 118 of the Code of Economic Procedure. For instance, the petition is returned based on Item 2 of Paragraph 1 of Article 118 of the Code of Economic Procedure, if it is signed by a person illegible to sign it.

An additional ground envisaged in this Article on which the petition may be returned is the incompliance of the content and form of the petition with the requirements provided by Articles 37 through 44. In such case, the court returns the petition.

The only exception is where the petition does not meet the requirement set in Article 38 regarding documents which must be annexed to the petition. As provided in this Paragraph, when it is mandatory for the debtor’s manager to file a petition, the petition is accepted by the economic court even without documents envisaged by Article 38. These documents are reclaimed in the course of

the preparation of a bankruptcy case for court proceedings. It should be noted that this Paragraph applies only in cases, where it is mandatory for the debtor's manager to file with the court a petition for the declaration of the debtor's bankruptcy (Art.8, Para.1), while it is not applied to cases where this obligation is imposed on the liquidation commission (liquidator) (Art.8, Para.2; Art.185, Para.2). This exception is justified as follows. When petitioning the economic court, the liquidation commission (liquidator) has a possibility of attaching to the debtor's petition all the documents listed in Article 38, because since a decision to liquidate a legal entity is rendered until the debtor's inability to satisfy creditors' claims in full is found out, the liquidation commission (liquidator) established (appointed) by the decision carries out certain activities (it confirms creditors and their claims, inventories and evaluates property, determines the amount to pay to creditors, employees, etc.).

To return the petition, a judge issues a ruling within five days from the date when the petition is presented, which is sent to persons participating in a case. At the same time the petitioner receives back all the attachments. This ruling can be appealed or protested in the general procedure provided by Paragraph 3 of Article 118 of the Code of Economic Procedure. If this ruling is cancelled as a result of the consideration of an appeal (protest), the petition is considered to be filed on the date when it is originally filed with the economic court. The basic difference of the procedural consequences between the refusal to accept the petition and the return of the petition is that the return of the petition does not prevent its second filing with the economic court in the general procedure after it is amended or corrected.

Article 46. Measures to Preserve Creditors' Claims

- 1 Upon an application of a person participating in a bankruptcy case, the economic court shall be entitled to take provisional measures to preserve creditors' claims according to the Code of Economic Procedure of the Republic of Uzbekistan.**
- 2 Besides the provisional measures to preserve creditors' claims envisaged by the Code of Economic Procedure of the Republic of Uzbekistan, the economic court shall be entitled to prohibit some transactions without the consent of a court receiver, to oblige the debtor to entrust securities, foreign currency, valuables and other property to third parties for keeping and to take other measures intended to preserve the debtor's property.**
- 3 Provisional measures to preserve creditors' claims shall be in force correspondingly until the economic court decides to introduce one of bankruptcy processes or a decision to refuse to declare the debtor's bankruptcy, or until the economic court approves an amicable agreement.**
- 4 The economic court shall be entitled to cancel provisional measures to preserve creditors' claims prior to the occurrence of the circumstances envisaged by Paragraph 3 of this Article.**
- 5 The economic court ruling to take provisional measures to preserve creditors' claims may be appealed (protested) by persons participating in a bankruptcy case.**

This Article establishes the procedure for applying provisional measures with respect to the debtor.

1. The application of provisional measures to preserve creditors' claims is an important initial stage to protect interests of the creditors. These measures ensure the integrity and safety of all property of the debtor or its part.

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This Law provides the possibility for the economic court to take provisional measures to preserve creditors' claims in a bankruptcy process. Chapter 7 of the Code of Economic Procedure is applied in connection with provisional measures to preserve creditors' claims in a bankruptcy process, while this Article establishes some specifics of such measures in bankruptcy proceedings.

This Paragraph states that the economic court may apply provisional measures to preserve creditors' claims upon an application of persons participating in a bankruptcy case in accordance with Paragraph 1 of Article 76 of the Code of Economic Procedure.

2. The list of such provisional measures is stipulated by Paragraph 1 of Article 77 of the Code of Economic Procedure. Alongside with those measures, as provided in this Paragraph, the economic court may, upon its initiative, impose restrictions on the civil capacity of the debtor, forbid the debtor from making certain transactions without the consent of a court receiver, order the debtor to entrust securities, foreign currency, valuables and other property to keep in custody of third parties, and apply other provisional measures aimed at safeguarding the debtor's property. In connection with these measures to secure creditors' claims, it is also necessary to note that the interim receiver can apply to the economic court for additional provisional measures stipulated by this Paragraph, according to Item 4 of Paragraph 1 of Article 66.
3. Provisional measure applied by the economic court to preserve creditors' claims last until a subsequent bankruptcy process is introduced (judicial rehabilitation – Art.79,Para.2, Item 1, external management - Art.92,Para.1,Item 3, liquidation proceedings - Art.125.Para.1,Item 5) or until the court renders a decision to refuse to declare the debtor bankrupt, or until the court approves an amicable agreement or until bankruptcy proceedings terminate. In these cases, it is not required to render a special ruling to remove provisional measures to preserve creditors' claims.
4. Additionally, the court is authorised, upon an application of a person participating in a case, to cancel provisional measures of preservation before circumstances specified in Paragraph 3 of Article 46 occur. An application of cancellation may be satisfied, when there are no grounds to believe that the debtor's property is used to the detriment of interests of creditors, but indeed the right to dispose of property is exercised for the rehabilitation of the debtor's solvency.

An application for the cancellation of provisional measures to preserve creditors' claims is considered in a court session upon notification to persons participating in a case. Their absence despite due notification to them does not prevent the consideration of the cancellation of provisional measures of preservation.

5. Upon the results of the consideration of provisional measures to preserve creditors' claim and to safeguard the debtor's property, a judge renders a ruling, which is subject to execution from the moment when it is rendered (announced) and may be appealed or protested by persons participating in a bankruptcy case as per the general procedure provided by the Code of Economic Procedure.

Article 47. Debtor's Response to Petition for Declaration of Debtor's Bankruptcy

- 1 The debtor shall be entitled, within five days from the date when it receives the economic court ruling to accept the petition filed by a creditor, the prosecutor, the state taxation service authority and other authorised body for the declaration of the debtor's bankruptcy, to forward a response to the petition to the economic court, the petitioner and other persons participating in a bankruptcy case and also to inform all creditors not specified in the petition of the commencement of a bankruptcy case in respect of the debtor. Evidences that copies of**

this response have been sent to the petitioner and other persons participating in the bankruptcy case must be attached to the debtor's response forwarded to the economic court.

- 2 Information envisaged by the Code of Economic Procedure of the Republic of Uzbekistan shall be specified in the response to the petition. The absence of the debtor's response shall not preclude consideration of the bankruptcy case.**

This Article grants the debtor a right to send its response to the petition for the declaration of the debtor's bankruptcy to the economic court, and to the petitioner and other persons participating in a case, and also to notify to all its creditors the commencement of a bankruptcy case against it.

1. A response of the debtor to the petition for the declaration of the debtor's bankruptcy is a procedural means to protect the debtor in a bankruptcy case from the petitioner's claims filed against the debtor. Such response has the same objective as a response to a lawsuit in general court proceedings stipulated in Article 119 of the Code of Economic Procedure.

According to Paragraph 1 of this Article, at the moment when the economic court accepts the petition filed by creditors, the public prosecutor, the state taxation service authorities or other authorised bodies, the debtor acquires the right to file its response to the petition, if it disagrees to the composition and amount of claims specified in the petition, and to send it to the economic court, the petitioner and other persons participating in a bankruptcy case. The filing of a response is considered to be the debtor's right, not its obligation. It is necessary to note that the debtor raises objections against claims specified in the petition, not in the manner stipulated by Article 70, but by way of presenting its response in the manner established by this Article.

This Paragraph provides that the debtor has the right to file with the economic court a response within five days from the date when it receives a court ruling to accept the petition. In this connection, the court may consider a response submitted after the five-day period expires, and the debtor's arguments stated in the response. The debtor can file a response with the economic court until the consideration of a bankruptcy case. Upon the results of the consideration of the debtor's response, the economic court does not render a separate judicial act, but assesses the debtor's arguments in the response in the process of the consideration of the case.

The debtor is also entitled to notify to all creditors who are not specified in the petition that a bankruptcy case has commenced against the debtor.

Such notification is the debtor's right, not its obligation, as the filing of a response is.

When presenting a response, the debtor must attach to the response an evidence that the debtor has sent a copy of the response to the petitioner and other persons participating in a case.

2. According to Article 119 of the Code of Economic Procedure, the following should be specified in a response to the petition for the declaration of the debtor's bankruptcy: the name of the economic court with which the response is filed; the name of the debtor and the case number; motives to deny claims in full or part, quoting the applicable laws and evidences of such denial; the list of documents annexed to the response; other information and applications if the defendant (the debtor) has any. Apart from such information that must be specified in the response, the following may be included in addition: the total amount of indebtedness which the debtor owes to all creditors, and debts for wages payable and mandatory payments; information on the existence of the debtor's accounts in banks and other financial organisations; proof of groundlessness of the petitioner's claims, if any. The debtor may produce other information, in particular, on property available, liquid (ready)

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accounts receivable, data on its economic activities, an application for suspending or dividing payments of monetary obligations or mandatory payments, the list of measures aimed at restoring the debtor's financial ability, etc.

The debtor's response may be accompanied by applications for the introduction of a certain bankruptcy process or for the removal of provisional measures to preserve creditors' claims.

The absence of a response does not serve to be an obstacle to the consideration of a bankruptcy case.

Article 48. Preparation of Bankruptcy Case for Court Proceedings

- 1 The preparation of a bankruptcy case for court proceedings shall be advanced by a judge in the manner envisaged by the Code of Economic Procedure of the Republic of Uzbekistan with the specifics established by this Law.**
- 2 A judge shall decide whether to introduce supervision within ten days from the date when the petition is presented.**
- 3 If the debtor raises objections against creditors' claims, a judge shall check grounds for the debtor's objections.**
- 4 A judge shall check grounds for the debtor's objections (the interim receiver's applications) not later than one month prior to the established date of the consideration of a bankruptcy case.**
- 5 Upon the results of the consideration of grounds for the debtor's objections, the economic court shall render a ruling to include or to refuse to include claims in question in the creditors' register. The ruling shall specify the amount and priority of the claims against which the debtor's objections have been recognised to be ungrounded.**
- 6 The economic court ruling upon the results of consideration of the debtor's objections against creditors' claims may be appealed (protested). An appeal (protest) against the ruling shall not suspend the effect of the ruling.**
- 7 The economic court shall be entitled to appoint an expert examination²² for the purpose of determining the debtor's financial situation, when preparing a bankruptcy case for court proceedings and also when considering a bankruptcy case.**

The Article defines the procedure for the preparation of a bankruptcy case for court proceedings.

1. The preparatory work for court proceedings is carried out by a judge of the economic court in accordance with provisions stipulated by Chapter 16 of the Code of Economic Procedure with specifics established by this Law. From the purport of Article 123 of the Code of Economic Procedure, it follows that when there is no ground for returning the petition or for refusing to accept it, a judge gives a ruling to accept the petition for the declaration of the debtor's bankruptcy and to prepare a case for court proceedings.

In practice, a judge usually renders one ruling to assign a case to court proceedings, the time and place of a hearing with specifics stipulated by this Law, which directs actions which persons should take for the purpose of preparing a case and the timeline of these actions.

²² Art.67, CEP

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In particular, in the course of the preparation of a bankruptcy case for court proceedings, a judge carries out the following actions (Para.9, the Resolution of the SEC Plenum No.142):

- take provisional measures to preserve creditors' claims upon an application of a person participating in a bankruptcy case (Art.46);
- take a decision whether to appoint an expert examination (Art.48);
- consider applications and complaints of persons participating in a bankruptcy case (Art.59);
- hold a court session in order to examine the validity of creditor's claims against the debtor if there are objections of the debtor (application of the interim receiver) against such claims (Art.70).

2. Paragraph 2 of this Article provides that a judge decides whether to introduce supervision within ten days from the date when the petition is presented.

On the other hand, taking into consideration Paragraph 1 of Article 45 and Article 62, it may be understood that supervision should be introduced within five days from the date when the petition is presented. Under the general rule as provided by Paragraph 1 of Article 45, a court ruling to accept the petition and prepare a case for court proceedings (commence court proceedings) must be rendered within five days from the date when the court receives the petition. Under Article 62, at the commencement of a bankruptcy case, supervision is introduced on the day when the court accepts the petition. From the view point of the Code of Economic Procedure, supervision is included in a process of the economic procedure aimed at preparing a case for court proceedings in essence.

All this can be understood as follows.

When a petition for the declaration of the debtor's bankruptcy is filed with the economic court, the petition specifies a candidate for an interim receiver. In this case, a judge, accepting the petition, renders a ruling to introduce supervision and appoint a interim receiver (Art.45,Para.3), and supervision begins on the date when the economic court accepts the petition (Art.62)

In case when the petition does not indicate a candidate for an interim receiver, the economic court requests the petitioner or the state body on bankruptcy proceedings to propose a candidate (Para.8,the Resolution of the SEC Plenum No.142). Thus, when a candidate for an interim receiver is not specified in the petition, the court has an opportunity to solve this issue within ten days from the date when the court accept the petition, in a way provided by this Paragraph. It is possible in this situation that a ruling to introduce supervision and to appoint an interim receiver is given separately after the court renders a ruling to accept the petition and prepare a case for court proceedings.

It is necessary to note a discrepancy between rules in this Paragraph and Article 62 which provides that supervision is introduced when the petition is accepted. Therefore, as is specified in Paragraph 8 of the Resolution of the SEC Plenum No.142, it might be accurate for a judge to decide the introduction of supervision, at the time of preparing a bankruptcy case for court proceedings all together.

3. Paragraph 3 of this Article provides that if the debtor raises objections against creditors' claims, a judge examines grounds for the debtor's objections. Here, this Paragraph mentions objections which the debtor or the interim receiver raise (according to Paras.2 and 3, Art.70) against claims lodged under Paragraph 1 of Article 70 and file in the economic court. Hence, it should be understood that a judge also checks the reasonableness of "objections of the interim receiver", though this Article refers only to "objections of the debtor". According to Paragraph 4 of Article 70, the debtor or the interim receiver have the authority to raise to the economic court their objections against creditors' claims within one week after they receive these claims.

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4. The major stage in preparing a case for proceedings is the confirmation of creditors' claims. If the debtor (or the interim receiver) files their objections against creditors' claims, a judge should examine the reasonableness of these objections, which is also considered to be a part of the preparatory action for court proceedings. Such examination is performed not later than one month before the consideration of a bankruptcy case. In this case, objections of the debtor (the interim receiver) are understood as those filed under Paragraphs 2 and 3 of Article 70.
5. Paragraph 5 of this Article provides that upon the results of the consideration of the reasonableness of the debtor's objections, the economic court hands over a ruling to include or refuse to include claims in question in the creditors' register. A ruling of the economic court rendered under this Paragraph is equivalent to a ruling stipulated by Paragraph 4 of Article 70.

A court ruling specified in Paragraph 4 of Article 70 is rendered in connection not only with the debtor's objections (Art.70, Para.2), but also with those of the interim receiver Art 70, Para.3). Hence, the provision of this Paragraph about a ruling to include or refuse to include claims in the creditors' register upon considering the reasonableness of "the debtor's objections" should be applied to "objections of the interim receiver" as well.

When a ruling to include claims in the creditors' register is rendered, the ruling specifies the amount and priority of creditors' claims against which the debtor's objections are found to be unreasonable.

Thus, mini-proceedings in order to confirm the amount of lodged claims may take place in course of the preparation of a bankruptcy case for court proceedings.

6. The ruling specified in Paragraph 5 of this Article may be appealed by creditors, the debtor or the interim receiver as per the procedure stipulated by Article 60. An appeal against the ruling does not suspend the enforcement of the ruling.
7. In addition, in order to determine the debtor's financial condition, the court may appoint an expert examination both in course of the preparation of a bankruptcy case and in course of the subsequent consideration of a case, regardless of whether persons participating in a case have applied or not. This provision does not contradict with the rules of Article 9 of the Code of Economic Procedure "Competitiveness and equality of the parties", because it is provided in Article 48 of this Law.

Article 49. Period for Consideration of Bankruptcy Case

A bankruptcy case must be considered at the session of the economic court within three months from the date when a ruling to accept the petition for the declaration of the debtor's bankruptcy is rendered. In exceptional instances, the consideration of a bankruptcy case may be extended for up to two months.

This Article establishes the time of the consideration of a bankruptcy case.

Unlike the Code of Economic Procedure (Art.125) and the previous versions of the bankruptcy law, this Law sets a longer period of time for the consideration of a bankruptcy case. In our opinion, it is because more time is necessary: the court appoints an interim receiver, a candidate for which should be presented by creditors or by the state body for bankruptcy proceedings; the court ensures the first creditors' meeting for taking a decision regarding a bankruptcy process to be applied to the debtor; the

financial situation of the debtor is analysed; the amount of creditors' claims should be confirmed; the creditors' register is made.

The date of the first court session for considering a bankruptcy case is specified in a court ruling to accept the petition (Art.71, Para.1). The interim receiver should, within ten days after the publication of a notice on the introduction of supervision, notify to all known creditors the economic court ruling to introduce supervision with respect to the debtor. This notification of the introduction of supervision should specify the date, time and place of a court session for considering a bankruptcy case, which are established by the economic court (Art.68,Para.2; Art.68,Para.7,Item 4).

The three-month term of the consideration of a case may be prolonged for no more than two months by the court in exceptional cases. This Law does not envisage the legal criteria to determine whether there are such exceptional circumstances or not. This Law does not clarify who is entitled to extend the term, either. In this case, Article 125 of the Code of Economic Procedure is applicable, where it is provided that the period of the consideration of a case is extended upon a permission of a chairman of the economic court. The question whether the period may be extended exceptionally or not is considered by a chairman of the economic court at its own discretion, taking into account all the circumstances essential to a case.

Upon considering a case, the economic court renders one of judicial acts listed in Article 50.

Article 50. Judicial Acts on Bankruptcy Cases

1 Upon the results of consideration of a bankruptcy case, the economic court shall render one of the following judicial acts:

- **decision²³ to declare the debtor's bankruptcy and initiate liquidation proceedings;**
- **decision to refuse to declare the debtor's bankruptcy;**
- **ruling²⁴ to introduce judicial rehabilitation or extend its period;**
- **ruling to introduce external management or extend its period;**
- **ruling to terminate bankruptcy proceedings;**
- **ruling to leave the petitioning for the declaration of the debtor's bankruptcy without consideration;**
- **ruling to approve an amicable agreement;**

2 Judicial acts on a bankruptcy case shall be subject to immediate execution unless otherwise established by this Law.

This Article enumerates judicial acts that are rendered by the court upon considering a bankruptcy case, except for rulings to extend the period of judicial rehabilitation and external management.

1. Bankruptcy cases with respect of legal entities and citizens are considered by the economic court in accordance with the rules set by the Code of Economic Procedure with the specifics established by this Law (Art.154, CEP). In the economic courts, cases in the first instance are considered by a single judge (Art.15, Para.1, CEP), though collegial consideration is allowed by virtue of a decision of a chairman of the court (Art.15, Para.2, CEP).

²³ Ch.18 (Arts.135~), CEP

²⁴ Ch.19 (Art.151), CEP

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Bankruptcy cases are considered in line with the procedure established by Chapter 17 of the Code of Economic Procedure if there are no contradictions with the special rules of this Law. As examples where provisions of the Code of Economic Procedure are not applied, it can be taken that the term of the consideration of a bankruptcy case is ruled by Article 49 of this Law, instead of Article 125 of the Code of Economic Procedure, and also that Article 132 of the Code of Economic Procedure "Amicable Agreement of Parties" is not applied to the consideration of a bankruptcy case.

The economic court considers bankruptcy cases based on minutes of the creditors' meeting and documents attached thereto, a report of the interim receiver, evidences and complaints produced by persons participating in a case, etc.

Upon considering a bankruptcy case, the economic court issues one of the following judicial acts:

- a decision to declare the debtor bankrupt and initiate liquidation proceedings (this Article, Para.1,Item 1), provided that the debtor manifests indications of bankruptcy and there are no grounds for applying judicial rehabilitation or external management, or approving an amicable agreement or terminating bankruptcy proceedings (see the comment on Art.51);
- a decision to refuse to declare the debtor bankrupt (this Article, Para.1, Item 2), provided that there are no indications of bankruptcy, or provided that all creditors' claims have been satisfied before the economic court renders a judicial act on a bankruptcy case, or provided that false bankruptcy has been verified (see the comment on Art.54);
- a ruling to introduce judicial rehabilitation or to extend its period (this Article, Para.1, Item 3), when an application for the introduction of judicial rehabilitation is filed with the economic court by virtue of a resolution of the creditors' meeting or by virtue of Paragraph 3 of Article 75, and grounds for the introduction of such process are established by the court as the real possibility of restoring the debtor's solvency (see the comment on Art.78). It is necessary to specify thus that although this Paragraph includes a ruling to extend the period of judicial rehabilitation, this ruling is rendered not upon the case consideration in process of supervision, but during the period of judicial rehabilitation;
- a ruling to introduce external management or to extend its period (this Article, Para.1, Item 4) when an application for the introduction of external management is presented by virtue of resolution of the creditors' meeting, etc., and a ground for the introduction of this process is established as the real possibility of restoring the debtor's solvency (see the comment on Art. 91). It is necessary to note here again that although this Paragraph mentions a ruling to extend the period of external management, this ruling is given not upon the case consideration, but during the period of external management;
- a ruling to terminate bankruptcy proceedings (this Article,Para.1,Item 5,). This ruling is rendered, when in the course of the consideration of a bankruptcy case, the state body for bankruptcy proceedings takes a decision on the reasonableness of the application of prejudicial rehabilitation to an enterprise the charter capital of which partially or wholly belongs to the state, provided that creditors agree to this process (Art.61,Para.3; Para.24,the Resolution of the SEC Plenum No.142), when in a bankruptcy case against the individual entrepreneur debtors, the debtor's liabilities are discharged in full as a result of the performance of the debt repayment plan (Art.176, Para.5), or when all creditors participating in a bankruptcy case withdraw their filed claims (Art.56, Para.1, Item 4).

Apart from the above-named instances, the economic court may also render a ruling to terminate bankruptcy proceedings when there are grounds provided by Article 86 of the Code

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of Economic Procedure, though it is not expressly indicated in this Paragraph. For example, in case there is a decision of the economic court to declare the debtor bankrupt and accordingly the debtor is excluded from the state register due to its liquidation, bankruptcy proceedings terminate under Items 2 and 4 of Article 86 of the Code of Economic Procedure (Para.24, the Resolution of the SEC Plenum No.142). An additional explanation need to be made here that not all grounds provided by Article 86 of the Code of Economic Procedure apply to bankruptcy cases, namely, some of them do not apply due to specifics of bankruptcy cases;

- a ruling to leave the petition for the declaration of the debtor's bankruptcy without consideration (this Article, Para.1, Item 6), which is rendered when there are grounds stipulated by Article 88 of the Code of Economic Procedure. Such ruling mentioned in this Item is rendered in course of the consideration of a bankruptcy case in the following situations:
 - the economic court handles another bankruptcy case against the same debtor (Art.88, Para.1,Item 1,CEP);
 - the petition is not signed or is signed by a person who is not empowered to sign it or whose official position is not specified (Art.88, Para.1, Item 3,CEP);
 - the public prosecutor who has filed the petition dismisses the petition (provided that there are no application (claim) of creditors) (Art.88, Para.1, Item 9,CEP).

Along with this, it should be noted that not all grounds stipulated by Article 88 of the Code of Economic Procedure are applicable to bankruptcy cases, namely, some of them do not apply due to specifics of bankruptcy cases. For example, Item 6 of Article 88 of the Code of Economic Procedure (the absence of a plaintiff in a court session) cannot be applied to a bankruptcy case, because once bankruptcy proceedings are commenced, the creditors' meeting acquires the authority to represent creditors' interests and the further fate of the debtor depends on the will of the creditors' meeting, namely, the private nature of the petition is converted to the public relations, which affect interests of other persons;

- a ruling to approve an amicable agreement (this Article, Para.1, Item 7). This ruling is rendered when the debtor and its creditors have reached an amicable agreement in bankruptcy proceedings.

Among the above-listed judicial acts, a decision to declare the debtor bankrupt and initiate liquidating proceedings (this Article,Para.1,Item 1) and a decision to refuse to declare the debtor bankrupt (this Article,Para.1,Item 2) are considered to be judicial acts rendered on merits in line with the provisions of Chapter 18 of the Code of Economic Procedure. The rests of judicial acts are those rendered, not on merits of a case, in line with the provisions of Chapter 19 of the Code of Economic Procedure.

2. According to Paragraph 2 of this Article, judicial acts on a bankruptcy case are subject to immediate execution unless otherwise established by this Law. This rule is an exception to the general rule, according to which judicial acts are executed after they take effect legally (Art.146, Para.4, CEP).

The rule of this Paragraph does not mean, however, that judicial acts enter into legal force right after they are rendered. They may be appealed (protested) in the manner provided by the Code of Economic Procedure (Para.22, the Resolution of the SEC Plenum No.142), although such appeal (protest) does not suspend the execution of judicial acts.

Article 51. Decision to Declare Debtor Bankrupt and Initiate Liquidation proceedings

- 1 The economic court shall render a decision to declare the legal entity debtor bankrupt and initiate liquidation proceedings in case indications of bankruptcy envisaged by Article 4 of this Law are verified, in the absence of grounds for the introduction of judicial rehabilitation or external management, for the approval of an amicable agreement or for the termination of bankruptcy proceedings.**
- 2 The economic court decision to declare the debtor bankrupt and initiate liquidation proceedings must contain the instructions for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, an appointment of a liquidation manager and payment of his/her remuneration.**
- 3 The economic court decision to declare the debtor bankrupt and initiate liquidation proceedings may be appealed (protested).**
- 4 The economic court decision to declare the individual entrepreneur debtor bankrupt shall specify that the state registration of the debtor as an individual entrepreneur is recognised to have ceased to be in force.**

This Article sets the content of a decision to declare the debtor bankrupt and initiate liquidation proceedings, and the procedure in which the economic court renders this decision.

1. A decision to declare the debtor bankrupt and initiate liquidation proceedings is rendered by the economic court in case indications of bankruptcy envisaged by Article 4 are established and there is no ground for the introduction of judicial rehabilitation or external management, for the approval of an amicable agreement, or for the termination of bankruptcy proceedings.

Paragraph 1 of this Article defines the conditions for declaring a legal entity bankrupt and initiating liquidation proceedings. Along with this, it need to be pointed out that this Paragraph is applied to the individual entrepreneur debtor as well, in declaring it bankrupt and initiating liquidation proceedings.

It should also be mentioned that there might be exceptional cases, where the rule of this Paragraph is not applied. This Paragraph is not applied in case the court accepts a petition for the declaration of the debtor's bankruptcy filed under Paragraph 1 of Article 7 or Paragraphs 1 and 2 of Article 8. In this case, the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings if the court establishes, after considering a case, that there are grounds stipulated by Paragraph 1 of Article 7 or Paragraphs 1 and 2 of Article 8 and no grounds for introducing judicial rehabilitation or external management, or for approving an amicable agreement or for terminating bankruptcy proceedings. If the petition is filed against a township-forming enterprise or an enterprise equalled thereto, indications of bankruptcy are the impossibility to discharge obligations within six months from their maturity date. If the petition is filed against a legal entity in liquidation (Art.185, Para.2), the economic court renders a decision to declare it bankrupt and initiate liquidation proceedings, provided that the value of its property is insufficient to satisfy its creditors' claims. In case of the absent debtor (Art.188; Para.35, the Resolution of the SEC Plenum No.142), the economic court issues such decision if the individual entrepreneur debtor or the manager of the legal entity debtor is absent and it is impossible to ascertain their location (residence) or if there is no property of the debtor.

The decision rendered in the given situation is not a decision only to declare the debtor bankrupt, because this decision also decides the initiation of liquidation proceedings with respect to the debtor. Accordingly, liquidation proceedings cannot start without the debtor being first declared bankrupt.

2. Paragraph 2 of this Article provides for the content of the economic court decision to declare the legal entity debtor bankrupt and initiate liquidation proceedings. It should specify that the debtor is declared bankrupt and that liquidation proceedings are initiated against the bankrupt debtor. Besides, the decision should specify who is appointed as liquidation manager (if a candidate corresponding to the statutory requirements is proposed by that time) and how much remuneration is paid to him/her.
3. Paragraph 3 of this Article provides for the possibility of appealing (protesting) against the economic court decision to declare the debtor bankrupt and initiate liquidation proceedings. This decision is rendered by the court upon the results of the consideration of a bankruptcy case and appealable (can be protested) in the manner set by the Code of Economic Procedure, according to Paragraph 21 of the Resolution of the SEC Plenum No.142. If a liquidation manager is appointed simultaneously at the rendition of this decision and persons participating in a bankruptcy case disagree to this liquidation manager, they may appeal (the public prosecutor may protest) against the decision concerning the statement of the appointment of a liquidation manager as per the procedure provided by Article 60 (Para.21, the Resolution of the SEC Plenum No.142).
4. Paragraph 3 of Article 180 provides that the state registration of the individual entrepreneur debtor is invalidated at the moment when the economic court renders a decision to declare it bankrupt.

In this connection, Paragraph 4 of this Article provides that the economic court decision to declare the individual entrepreneur debtor bankrupt should indicate that the state registration of the debtor as an individual entrepreneur is recognised to be invalid.

The economic court must send copies of the decision to the authority which registers the debtor as an individual entrepreneur and to the licensing authority (Art.180, Para.4).

Article 52. Publication of Information on Judicial Acts Rendered by Economic Court

- 1 Information that the economic court has rendered rulings to introduce supervision, judicial rehabilitation or external management, to terminate bankruptcy proceedings, to appoint, replace or dismiss court receivers, a decision to declare the debtor bankrupt and initiate liquidation proceedings, or decrees to cancel or amend the aforementioned acts shall be published in an official gazette. Circulation of the official gazette, periodicity and period of publication of the aforementioned information, the financing of such services and prices for such services shall be established by the Cabinet of Ministers of the Republic of Uzbekistan and must not preclude any interested party from having a free access to the specified information.**
- 2 Information on judicial acts subject to publication in accordance with this Law may be published in electronic mass-media in the manner determined by the Cabinet of Ministers of the Republic of Uzbekistan.**
- 3 Court receivers shall forward information subject to publication to the official gazette envisaged by Paragraph 1 of this Article within three days from the date when they receive the relevant judicial act.**
- 4 Information on judicial acts forwarded for publication shall be published within ten days from the date when the publication agency receives it.**

- 5 Expenses for publication specified in Paragraph 1 of this Article shall be reimbursed from the debtor's monetary assets unless otherwise envisaged by this Law or by a resolution of the creditors' meeting or creditors' committee. If the debtor has no monetary assets, a court receiver shall pay for publication, and be subsequently reimbursed from the debtor's property.**
- 6 If the debtor does not have property sufficient for expenses for publication, such expenses shall be paid by a creditor which has petitioned for the declaration of the debtor's bankruptcy.**
- 7 Information on judicial acts rendered by the economic court may also be published in other mass-media.**

This Article sets the procedure for publishing information on judicial acts rendered by the economic court under a bankruptcy case.

1. According to Paragraph 1 of this Article, within the framework of bankruptcy proceedings, information on judicial acts should be published, namely information on the introduction of supervision, judicial rehabilitation, external management, on the termination of bankruptcy proceedings, on the appointment, replacement or dismissal of court receivers, on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings are published. Court resolutions given in appeal, cassational and supervisory instances to cancel or change the abovementioned judicial acts are subject to publication as well.

This Law contains a compulsory rule that publication should be in an official gazette determined by the Cabinet of Ministers of the Republic of Uzbekistan. According to Paragraph 18 of the Resolution of the SEC Plenum No.142, until the Cabinet of Ministers defines an official gazette, publication of information which this Article requires is made through republic-wide and region-wide editions.

2. Information on judicial acts subject to publication according to this Law can be published in electronic mass media (in the Internet) in the manner determined by the Cabinet of Ministers. This does not mean, however, that court receivers do not have to publish under the requirements of Paragraph 1 of this Article. This Law provides for the possibility of publishing information in electronic mass media, along with their publication in an official gazette.
3. The rule of Paragraph 3 of this Article determines a subject (a person responsible for publishing) and the period of time for sending information for publication and the period of publication in an official gazette. The duty of sending information for publication is assigned to court receivers (the interim receiver, the rehabilitation manager, the external manager), who must fulfil this duty within three days after they are appointed. An exception to this rule is publishing information on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, where the liquidation manager must send this information for publication in an official gazette within ten days after he/she is appointed under Paragraph 3 of Article 127. A publishing agency must publish it within ten days in an official gazette. In case of bankruptcy of individual entrepreneurs, a court receiver is usually not appointed, so that it is understood that the individual entrepreneur debtor itself must take a responsibility for publishing information on the court decision to declare it bankrupt and initiate liquidation proceedings, though this Paragraph does not explicitly specify this.

4. Information on judicial acts rendered by the court under a bankruptcy case is published in an official gazette within ten days after they are rendered; they may also be published through other means of mass media.
5. Under the general rule, publication is conducted at the expense of the debtor. The creditors' meeting (creditors' committee) may, by its resolution, decide other sources for publishing information on judicial acts. For example, the creditor's meeting (creditor's committee) may pass a resolution publishing at the expense of one of creditors. If the debtor lacks assets for payment of publication, these expenses are borne by a court receiver, who is subsequently compensated from the debtor's property.
6. If a court receiver suffers expenses for publishing information, he/she is entitled to claim the reimbursement of these expenses from the debtor. If the debtor has no property or property inadequate to reimburse them, a court receiver may claim their compensation from a creditor who has filed the petition for the declaration of the debtor's bankruptcy. If a bankruptcy case was commenced by virtue of a petition of the state body for bankruptcy proceedings and the debtor lacks property or it has property not enough to repay expenses for publication, these expenses to a court receiver are compensated from Fund of Support of Business and Restructuring of Enterprises under the Demonopolisation Committee.

When a bankruptcy case is commenced by virtue of a petition of state tax service authorities, a court receiver is, as a rule, appointed from among officials of these authorities, who can publish information through a publishing organisation of the State Tax Committee for free.

7. Information on judicial acts rendered by the economic court may be, alongside with being published in an official gazette stipulated in Paragraph 1 of this Article, published in other mass media as well.

Article 53. Publication of Information on Progress of Bankruptcy Processes

- 1 Information on the progress of bankruptcy processes shall be subject to publication in an official gazette.**
- 2 Expenses for publication specified in Paragraph 1 of this Article shall be reimbursed from the debtor's property unless otherwise envisaged by this Law, or the creditors' meeting or creditors' committee. If the debtor has no property sufficient for expenses for publication, such expenses shall be paid in accordance with a resolution of the creditors' meeting or creditors' committee.**
- 3 If the debtor's creditors exceed fifty or their number may not be defined, information on the beginning of each bankruptcy process applied to the debtor shall also be subject to publication in an official gazette.**
- 4 On the basis of a resolution of the creditors' meeting or creditors' committee, information subject to publication may also be published in other mass-media.**
- 5 The published information on the progress of bankruptcy processes must contain:**
 - the name (surname, name, patronymic) of the debtor and its postal address;**
 - the name of the economic court which has rendered a judicial act, the date when this judicial act was rendered, and the name of the introduced bankruptcy process, and the bankruptcy case number;**
 - the surname, name, patronymic of the appointed court receiver and his/her postal address;**

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- **the date of the next court session on consideration of a bankruptcy case established by the economic court;**
- **other information in cases envisaged by this Law.**

This Article explains the procedure for publishing information on the progress of bankruptcy processes.

1. According to Paragraph 1 of this Article, information on the progress of bankruptcy processes is subject to publication. This rule means that a court receiver is obliged to publish information on legally significant actions performed by him/her within bankruptcy processes. This information includes data on sales of the debtor's property, on the substitution of the debtor's assets, on the creditors' meetings held to pass a resolution applying a bankruptcy process and the appointment of court receivers, etc. These publications should reflect a course (process) of the implementation of the plan in a bankruptcy process (the judicial rehabilitation plan, the external management plan, or the liquidation plan), etc.

This Law contains a compulsory rule that publication should be in an official gazette. According to Paragraph 18 of the Resolution of the SEC Plenum No.142, until the Cabinet of Ministers of the Republic of Uzbekistan determines an official gazette, necessary publication of information stipulated in this Article must be carried out through republic-wide and region-wide editions.

2. Expenses for publication are borne by the debtor, paid out of the debtor's property. If the debtor lacks money and other assets, they are reimbursed according to a resolution of the creditors' meeting (creditors' committee).
3. If creditors of the debtor are fifty or more, or if the exact number of creditors is impossible to know, information on the introduction of each bankruptcy process applied to the debtor is subject to compulsory publication. It is not considered that information on the introduction of each process specified in Paragraph 3 of this Article is different from information on rendered judicial acts on the introduction of bankruptcy processes subject to publication under Article 52. Hence, according to Paragraph 1 of Article 52, information on the introduction of each bankruptcy process must be subject to publication, irrespective of the number of creditors.
4. Publishing information in an official gazette does not preclude publishing it in other mass media. For example, a notice may be placed on the Internet, which is faster and less costly, however it should not be forgot that not all interested persons can have an access to the Internet. In some cases, it might be more effective to use radio or TV announcements for passing the message.
5. In order to ensure the publicity of the progress of bankruptcy processes and the awareness of interested persons, this Law establishes the compulsory content of the information.

Article 54. Decision of Economic Court to Refuse to Declare Debtor Bankrupt

- 1 **The economic court shall render a decision to refuse to declare the debtor bankrupt in cases where:**

- **indications of bankruptcy have not been verified;**
- **claims of the petitioning creditor have been satisfied before the economic court renders a decision on a bankruptcy case;**
- **false bankruptcy has been identified.**

- 2 The economic court may render a decision to refuse to declare the debtor bankrupt in other cases envisaged by this Law.**
- 3 If there is evidence testifying that the debtor has sufficient liquid property, the economic court shall be entitled, upon the debtor's application, to postpone the consideration of a bankruptcy case, having proposed that the debtor discharge creditors' claims within a period set by the economic court, which may not exceed thirty days.**

This Article sets grounds for the economic court to issue a decision to refuse to declare the debtor bankrupt.

1. The economic court decision to refuse to declare the debtor bankrupt is rendered in case:
 - indications of bankruptcy have not been verified, that is, if the period of the debtor's delinquency of its obligations is less than that stipulated in Article 4, and the aggregate amount of claims lodged against the debtor is less than that provided by this Law (Para.23, the Resolution of the SEC Plenum No.142)²⁵;
 - claims of the petitioning creditor have been satisfied before the economic court renders a decision on a bankruptcy case.

In the course of supervision, namely, in the course of the consideration of a bankruptcy case, it is allowed to satisfy creditors' claims on condition that claims of all creditors are satisfied at one time. Upon completing such satisfaction, the economic court renders a decision to refuse to declare the debtor bankrupt on the basis of this Article. In addition, the economic court issues this decision in the event the individual entrepreneur debtor has satisfied all claims within the period for which the consideration of a bankruptcy case is postponed upon the debtor's application (Art.179);
 - false bankruptcy has been identified. A decision to refuse to declare the debtor bankrupt in the presence of signs of false bankruptcy is, in the essence, a result of finding out that the debtor's petition for the declaration of its bankruptcy has been filed with the court, although the debtor was able to satisfy its creditors' claims in full, or that the debtor did not take measures to challenge unreasonable claims of the petitioner.
2. Paragraph 2 of this Article allows other cases where a decision to refuse to declare the debtor bankrupt is rendered when this Law stipulates them. For instance, Article 156 envisages a case when obligations of the debtor being township-forming enterprises are six month overdue. In this case, if the court finds out that a bankruptcy case against a township-forming enterprise has been commenced by mistake and it is revealed in the course of the case consideration that its obligations are less than six month overdue, the court refuses to declare this enterprise bankrupt.
3. If there is proof that the debtor has sufficient liquid property, the economic court may, upon the debtor's application, postpone the consideration of a bankruptcy case, having proposed to the debtor to discharge creditors' claims within the period set by the economic court, which may not exceed thirty days. In this situation, the court hands over a ruling to postpone the case consideration for the term specified in Article 49. This ruling is not appealable (protested).

²⁵ Here and in Para.23 of the Resolution of the SEC Plenum No.142, confusion may be observed in the understanding of "indications of bankruptcy" in Art.4 and "the amount of claims against the debtor" in Art.5.

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The debtor is entitled to satisfy creditors' claims while the case consideration is postponed in compliance with this Paragraph on condition that claims of all creditors are satisfied at one time. Upon the completion of satisfaction of all creditors' claims, the economic court issues a decision to refuse to declare the debtor bankrupt.

Article 55. Consequences of Rendering Decision to Refuse to Declare Debtor's Bankruptcy

The economic court decision to refuse to declare the debtor bankrupt shall be a ground for the termination of all restrictions which have come as a consequence of the acceptance of the petition for the declaration of the debtor's bankruptcy and (or) introduction of supervision.

This Article provides for consequences of the rendition of a decision to refuse to declare the debtor bankrupt by the economic court.

A decision to refuse to declare the debtor bankrupt constitutes a ground for terminating all the restrictions being consequences of the acceptance of the petition for the declaration of the debtor's bankruptcy and (or) introduction of supervision. From the text of this Article, "restrictions" mean consequences of the introduction of supervision envisaged in Articles 63 and 64 of this Law, and provisional measures to preserve creditors' claims applied by the court to the debtor under Article 77 of the Code of Economic Procedure and Paragraph 2 of Article 46 of this Law. Unlike the Code of Economic Procedure, which provides that provisional measures to preserve a plaintiff's claim retain their force until a decision on a case takes effect, provisional measures to preserve creditors' claims within a bankruptcy case applied by the court against the debtor lose the validity on the date when a decision to refuse to declare the debtor bankrupt is issued, not the date when it becomes effective.

Article 56. Grounds for Termination of Bankruptcy Proceedings

- 1 The economic court shall terminate bankruptcy proceedings in case of:**
 - **the restoration of the debtor's financial ability in the course of judicial rehabilitation;**
 - **the restoration of the debtor's financial ability in the course of external management;**
 - **the conclusion of an amicable agreement;**
 - **the withdrawal of all lodged claims by all creditors participating in a bankruptcy case;**
 - **the satisfaction of all creditors' claims included in the creditors' register in the course of any bankruptcy process.**
- 2 The economic court may also terminate bankruptcy proceedings in other cases in accordance with the legislation.**

This Article determines grounds for the termination of bankruptcy proceedings

1. This Article provides for special grounds for terminating bankruptcy proceedings. They are different from grounds for terminating proceedings as provided in Article 86 of the Code of Economic Procedure, but, this Law has the priority in applying procedural rules in bankruptcy.

The restoration of the debtor's financial ability in judicial rehabilitation and the restoration of the debtor's financial ability in external management are the identical concept. According to the

wording of Paragraph 3 of Article 106, the restoration of the financial ability is understood as the satisfaction of all claims which are three month or more overdue. In fact, in judicial rehabilitation and external management, all claims included in the creditors' register (the debt repayment schedule) are considered to remain unfulfilled at least three months from their maturity date. Therefore it can be concluded that the restoration of the financial ability in judicial rehabilitation and external management is one and the same idea, namely, the satisfaction of all the claims included in the creditors' register (the debt repayment schedule). When analysing this in detail, it can be noted that in judicial rehabilitation the debtor's financial ability is considered to be restored in the event of the early completion (Art.85, Para.3, Item 1), the completion (Art.87, Para.3, Item 1) and the performance of obligations by the sureties (Art.89, Para.2, Item 1). In external management, the debtor's financial ability is deemed to be restored in the event of the satisfaction of all claims included in the creditors' register as a result of: the sale of the enterprise (business) of the debtor (Art.110, Para.16); the performance of the debtor's obligations by founders or the property owner of the debtor, or by a third party (Art.113, Paras.1 and 2); settlements with creditors upon the economic court ruling to shift to settlements with creditors or to commence settlements with creditors of a certain priority (Art.121, Para.1). It need to be noted here that when sufficient assets has accumulated to satisfy all claims included in the creditors' register in external management, the economic court, after considering a report of the external manager, renders a ruling to shift to settlements with creditors due to the termination of external management in view of the restoration of the debtor's financial ability (Art.118, Para.6, Item 2). In this case, external management terminates at the moment when the above ruling is rendered, however, bankruptcy proceedings do not terminate.

It also be noted that when considering the termination of bankruptcy proceedings in judicial rehabilitation and external management, the economic court does not take into account whether superpriority claims, such as claims for current payments, for damage to life or health, are discharged or not, because these claims are filed in the individual way outside the framework of a bankruptcy case and are not subject to entry in the creditors' register.

This Paragraph provides that bankruptcy proceedings terminate upon reaching an *amicable agreement*, and an amicable agreement comes into legal force when it is approved by the economic court (Art.145, Para.5). Bankruptcy proceedings terminate when the economic court approves an amicable agreement at the stage of supervision, judicial rehabilitation, external management or liquidation proceedings (Art.150, Para.1). The economic court renders a ruling to approve an amicable agreement, in which the termination of bankruptcy proceedings is indicated (Art. 145,Para.5).

The withdrawal of all lodged claims by all creditors participating in a bankruptcy case as a ground for terminating bankruptcy proceedings embraces the rationale that it is a creditors' right, not their obligation to lodge their claims. Therefore, creditors are authorised to waive the enforcement of this right at any moment (in any bankruptcy process). It is understood that this provision does not rule the debt forgiveness (or another type of the termination of the debtor's obligations) in this case, but indeed the withdrawal of filed claims by creditors. It should be noted, however, that such withdrawal by only certain creditors (including the petitioning creditor) does not affect bankruptcy proceedings.

The satisfaction of all creditors' claims included in the creditors' register in the course of any bankruptcy process is provided by this Law as another ground for terminating bankruptcy proceedings. It should be pointed out that although this Item mentions "any bankruptcy process", this provision is applicable only in liquidation proceedings, because if all creditors' claims included in

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the creditors' register as a result of judicial rehabilitation, proceedings terminates by virtue of Item 1 of Paragraph 1 of this Article while in external management bankruptcy proceedings terminates under Item 2 of Paragraph 1 of this Article. In the course of supervision, the debtor is allowed to make satisfaction of creditors' claims, provided that all claims are satisfied at one time, and after all creditors' claims are discharged, the economic court renders not a ruling to terminate bankruptcy proceedings under this Article, but a decision to refuse to declare the debtor bankrupt under Paragraph 1 of Article 54.

When all claims included in the creditors' register are discharged in the course of liquidation proceedings, the economic court renders a ruling to terminate bankruptcy proceedings in some cases, or a ruling to completion liquidation proceedings in the other cases. A ground for terminating bankruptcy proceedings in liquidation proceedings is cited by Paragraph 25 of the Resolution of the SEC Plenum No.142, according to which in case claims of all creditors included in the creditors' register are satisfied in the course of liquidation proceedings and it is possible for the debtor to proceed its economic activity, the economic court, upon considering a report presented by the liquidation manager, shall render a ruling to terminate bankruptcy proceedings. Along with this, it should be noted that if all creditors' claims in the creditors' register are satisfied in the course of liquidation proceedings, but the debtor is not able to carry on its business, the court issues a ruling to complete liquidation proceedings, instead of a ruling to terminate bankruptcy proceedings. In the same way, when the legal entity debtor fails to satisfy all creditors' claims in the creditors' register, the court renders a ruling to complete liquidation proceedings, instead of a ruling to terminate proceedings (Art.144, Para.1). Besides, when the economic court renders a decision to declare the individual entrepreneur debtor bankrupt and initiate liquidation proceedings, the court does not give a ruling to terminate proceedings, but a ruling to complete liquidation proceedings, regardless of whether the debtor has discharged all debts or not (Para.37, the Resolution of the SEC Plenum No.142).

2. Bankruptcy proceedings may be terminated by the economic court in other cases stipulated by this Law.

They may terminate when creditors agree to prejudicial rehabilitation (Art.61, Para.3).

It need to be noted that proceedings terminate in case all creditors' claims are satisfied as a result of the implementation of the debt repayment plan by the individual entrepreneur debtor (Art.176, Para.5), while the economic court gives a ruling to refuse to declare the debtor bankrupt by virtue of Paragraph 1 of Article 54 if all creditors' claims are satisfied during the period when the case consideration is postponed upon the debtor's application (Art.179).

Article 57. Suspension of Bankruptcy Proceedings

- 1 Bankruptcy proceedings may be suspended on the grounds envisaged by the Code of Economic Procedure of the Republic of Uzbekistan²⁶.**
- 2 The suspension of bankruptcy proceedings shall not preclude the economic court from considering applications, complaints against conduct (omission) of court receivers and controversies in respect of the amount, composition and priority of creditors' claims.**

²⁶ Ch.VIII, CEP

- 3 While bankruptcy proceedings are suspended, the economic court shall not be entitled to render judicial acts envisaged by Article 50 of this Law.**
- 4 The suspension of bankruptcy proceedings shall not impede the economic court from rendering rulings envisaged by this Law or court receivers and other persons participating in a bankruptcy case from taking actions envisaged by this Law.**

This Article sets the procedure for suspending bankruptcy proceedings.

1. Unlike the grounds for the termination of bankruptcy proceedings, this Law does not provide for unique, specific grounds for the suspension of bankruptcy proceedings. When rendering a ruling to suspend bankruptcy proceedings, the court follows the provisions of Articles 82 and 83 of the Code of Economic Procedure.

According to Article 82 of the Code of Economic Procedure, the economic court is obliged to suspend bankruptcy proceedings in case:

- it is impossible to consider the current case until another case or matters considered in constitutional, civil, criminal or administrative proceedings are settled and given a decision;
- a defendant citizen is in Army Forces of the Republic of Uzbekistan or a plaintiff in the military service of Army Forces of the Republic of Uzbekistan files a petition;
- a citizen is dead if matters under a dispute are inheritable;
- a citizen loses its capacity.

Also the court may suspend bankruptcy proceedings upon its initiative or a petition of persons participating in a case in situations specified in Article 83 of the Code of Economic Procedure, namely, in case:

- the economic court appoints an expert examination;
 - a legal entity participating in the case is reorganised;
 - a physical person participating in a case is summoned for some state responsibility.
2. The suspension of bankruptcy proceedings does not preclude the economic court from considering applications or complaints against conduct (omission) of court receivers, or controversies in respect of the amount, composition and priority of creditors' claims stipulated by Article 59.
 3. The legislator specifies that the court cannot issue judicial acts listed in Article 50 during the suspension of proceedings.
 4. Paragraph 4 of this Article provides that the suspension of bankruptcy proceedings does not impede the economic court from rendering rulings envisaged by this Law, with the exceptions of rulings provided in Article 50. The suspension of proceedings does not either terminate court receivers' duties, because in accordance with this provision, the suspension of proceedings does not hinder court receivers and other persons participating in a bankruptcy case from taking actions envisaged by this Law.

Article 58. Allocation of Judicial Expenses and Expenses for Remuneration of Court Receivers

- 1 Judicial expenses, including expenses for state duty the payment of which has been postponed or divided, expenses for publication in an official gazette in the manner envisaged by Articles 52 and 53 of this Law and also remuneration of court receivers shall be borne by**

the debtor and recovered from the debtor's property preferentially, regardless of the order of priority of other claims against the debtor.

- 2 An amicable agreement may also provide for the allocation of expenses different from that specified in Paragraph 1 of this Article.**
- 3 If the economic court renders a decision to refuse to declare the debtor bankrupt in connection with the absence of indications of the debtor's bankruptcy, expenses envisaged in Paragraph 1 of this Article shall be borne by creditors which have petitioned the economic court for the declaration of the debtor's bankruptcy and shall be allocated among them proportionally to their claim amount.**
- 4 The allocation of judicial expenses and expenses for remuneration of court receivers shall be established in a decision or ruling of the economic court rendered upon the results of the consideration of a bankruptcy case.**

This Article determines the procedure for allocating judicial expenses and charges for remuneration of court receivers.

1. Paragraph 1 of this Article provides that expenses for state duty the payment of which has been postponed or divided (Art.91,Para.4,CEP), expenses for publication of information on the declaration of the debtor bankrupt and other information that must be published, expenses for remuneration of court receivers are preferentially paid out of the debtor's property, regardless of the order of priority of other claims against the debtor, that is as superpriority claims (current payments etc.). They can be preferentially satisfied, because claims for these expenses arise after the court accepts the petition and mature after the introduction of a bankruptcy process. As to the state duty which is paid in at the time when the petition is filed with the economic court, an obligation to pay it usually arises and becomes due before the economic court accepts the petition. Nevertheless, in certain cases the economic court may defer or divide payment of such state duty (Art.91, Para.4, CEP) at the filing of the petition, taking into account the financial situation of the debtor. In this case, the state duty can be categorised as current payments and creditors of current payments can receive satisfaction, ahead of other creditors which are paid in order of priority. Besides, it is possible to admit from the meaning of this Article that expenses for services of persons whom court receivers engage to assist them can be recognised as judicial expenses stipulated by this Paragraph, and accordingly are reimbursed preferentially, though this is not expressly specified in this Paragraph.
2. An amicable agreement may rule another sharing of obligations to discharge judicial expenses, which is different from the allocation of judicial expenses stipulated by Paragraph 1 of this Article.
3. If the economic court renders a decision to refuse to declare the debtor bankrupt, judicial expenses are defrayed by creditors which have petitioned the economic court for the declaration of the debtor's bankruptcy. An exception is made in cases where the petition is filed by the public prosecutor, state taxation service authorities, other authorised bodies, the state body for bankruptcy proceedings. These authorities are exempted from payment of state duties when petitioning the court under Article 4 of the Law "On State Duty" and Paragraph 2 of the Resolution of the SEC Plenum No.142, so that judicial expenses in a bankruptcy case are not borne by them.
4. When rendering judicial acts listed in Article 50, the court clarifies the allocation of judicial expenses and expenses for remuneration of court receivers, namely, a judicial act directs who and in

what amount should reimburse expenses related to proceedings (expenses for the state duty or the publication of information in an official gazette) and expenses for remuneration of court receivers.

Article 59. Consideration of Applications and Complaints

- 1 Applications of court receivers, including applications on controversies arising between them and creditors, between them and the debtor, and also creditors' complaints about violations of their rights and legitimate interests filed according to this Law in the course of supervision, judicial rehabilitation, external management or liquidation proceedings, shall be considered at the session of the economic court within one month from the date when the aforementioned applications and complaints are presented. Evidences that copies of an application of court receivers or complaint of creditors have been forwarded to other persons participating in the consideration of such application or complaint must be attached to the application of court receivers or creditor's complaint. Upon the results of the consideration of such application and complaint, the economic court shall render a ruling. This ruling may be appealed (protested) in the manner and within the terms established by the law.**
- 2 The following shall be considered in the manner established by the Paragraph 1 of this Article:**
 - **controversies between court receivers and the representative of the debtor's employees on the amount and composition of claims for wages and severance payments to individuals working under a labour contract;**
 - **complaints of creditors and the representatives of founders (participants) or the property owner of the debtor against conduct (omission) of court receivers violating their rights and legitimate interests.**
- 3 Applications and complaints filed by persons ineligible to appeal (protest) against the economic court rulings and also those applications and complaints which do not follow the procedure envisaged by the Paragraph 1 and Paragraph 2 of this Article or without evidences confirming the relevant application or complaint shall be subject to return.**

This Article provides for the procedure for considering applications and complaints arising during bankruptcy processes between court receivers, and creditors or the debtor, and also between court receivers and the representative of the debtor's employees or the representative of founders (owner) of the debtor.

1. Paragraph 1 of this Article sets the procedure for considering applications of court receivers and complaints of creditors filed with the economic court in the course of supervision, judicial rehabilitation, external management or liquidation proceedings.

In particular, according to Paragraph 1 of this Article, the following applications and complaints may be presented to the economic court:

- objections of court receivers against claims lodged by creditors, and objections of creditors against the amount, composition and priority of their claims determined by court receivers. The detailed procedure for confirming creditors' claims within the framework of bankruptcy proceedings and also the procedure for raising objections against such confirmation are provided by Articles 70, 99 and 100. For details of the confirmation of creditors' claims and

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objections related thereto in each bankruptcy process, see the comments on Article 70 (supervision); Article 84 (judicial rehabilitation); Articles 99 and 100 (external management); Article 128 (liquidation proceedings);

- objections of court receivers against claims included in the creditors' register. Such objections, however, may be filed only when court receivers are particularly granted such right;
- other controversies which arise between court receivers and creditors or the debtor, for example, a controversy arguing the dismissal of court receivers or the debtor's manager, etc.

Applications and complaints filed under this Paragraph are examined in a session of the economic court within one month from the date when they are presented. Upon the results of their examination, the court issues a ruling, which may be appealed (protested) in the manner and period established by Article 60.

Evidences that copies of an application of court receivers or a complaint of creditors have been sent to other persons participating in the consideration should be attached to the application or the complaint. If these evidences are not attached, the economic court returns the application (complaint) by virtue of Paragraph 3 of this Article.

2. It is necessary to remember that controversies arising between the representative of the debtor's employees and court receivers in connection with the priority, composition and amount of claims for severance payments and wages of persons employed by the debtor under a labour contract are considered in line with this Article, except for cases of the termination of labour contracts, as is specified in Paragraph 27 of the Resolution of the SEC Plenum No.142.

This Paragraph authorises the representative of the debtor's employees to raise complaints to the economic court as regards controversies between court receivers and the debtor's employees on claims for wages and severance payments. In this case, the representative of the debtor's employees is entitled to act as a person participating in a bankruptcy case (Art.36, Para.2), but employees themselves are not granted a right to file complaints.

In case creditors, or the representatives of founders (participants) or the property owner of the debtor present complaints about misconduct (omission) of court receivers which violates their rights and legitimate interests, these complaints are considered as per the provisions of this Article.

This Paragraph empowers the representative of founders (participants) or the property owner of the debtor to file complaints about conduct (omission) of court receivers infringing the rights and legitimate interests of founders (participants) or the property owner of the debtor. In this case, their representative is entitled to act as a person participating in a bankruptcy case (Art.36, Para.2), while founders (participants) or the property owner of the debtor may not file such complaints.

3. According to Paragraph 3 of this Article, applications and complaints should be returned if they are filed:

- by persons ineligible to appeal (protest). Persons eligible to appeal (protest) a ruling of the economic court are persons participating in a bankruptcy case under Paragraph 1 of Article 36; and the representatives of the debtor's employees, of founders (participants) and of the property owner of the debtor as regards rulings rendered upon the consideration of controversies mentioned in Paragraph 2 of this Article ;
- in violation of the procedure envisaged by Paragraphs 1 and 2 of this Article;
- without evidences supporting the relevant application or complaint.

The economic court renders a ruling to return applications or complaints with reference to this Article and Paragraph 2 of Article 118 of the Code of Economic Procedure.

Article 60. Proceedings in Revision of Economic Court
Rulings Rendered upon Results of Consideration of Controversies in Bankruptcy Case

- 1 The economic court rulings rendered upon the results of the consideration of applications, complaints (petitions) and controversies in a bankruptcy case shall be subject to reconsideration in the manner established by the Code of Economic Procedure of the Republic of Uzbekistan with the specifics envisaged by this Article.**
- 2 The economic court rulings rendered upon the results of the consideration of controversies in a bankruptcy case shall come into legal force after the expiry of ten days from the date of their rendering.**
- 3 Persons participating in the consideration of controversies in a bankruptcy case shall have the right of appeal²⁷.**
- 4 An appeal against a ruling rendered by the economic court upon the results of the consideration of controversies specified in Paragraph 1 of this Article shall be filed within ten days after the court of first instance renders the ruling and shall be subject to consideration within ten days from the date when the appeal court receives the appeal.**
- 5 Rulings rendered by the economic court of appeal instance upon the results of consideration of controversies in a bankruptcy case shall not be revised in cassational²⁸ or supervisory²⁹ procedure.**

This Article provides for the special rules of reviewing rulings rendered by the economic court upon the consideration of controversies, applications and complaints.

1. According to this Article, the economic court rulings rendered upon the results of the consideration of applications, complaints (petitions) and controversies in a bankruptcy case are subject to review in the manner established by the Code of Economic Procedure with the specifics envisaged by this Article. Rulings which the economic court renders within a bankruptcy case and are not envisaged in the Code of Economic Procedure may be appealed (protested) only in case and in the manner stipulated by this Law, except for the rulings stipulated by Article 50, Paragraph 2 of Article 91 and Paragraph 4 of Article 124 of this Law, which are appealable (subject to protest) in the manner stipulated by the Code of Economic Procedure (Para.21,Subparas.1 and 2, the Resolution of the SEC Plenum No. 142).

In particular, rulings to appoint (dismiss, replace) court receivers (other than an interim receiver) are appealed (protested) in the manner stipulated by this Law. If a rehabilitation manager or external manager is appointed at the introduction of judicial rehabilitation or external management, or a liquidation manager – at the declaration of the debtor’s bankruptcy and initiation of liquidation proceedings, and such appointment is specified in a ruling to introduce judicial rehabilitation or external management or a decision to declare the debtor bankrupt respectively, in case persons participating in a bankruptcy case disagree to a nominee for a court receiver, they may appeal and

²⁷ Ch.21 (Art.172), CEP

²⁸ Ch.22 (Arts.173~), CEP

²⁹ Ch.23 (Arts.192~), CEP

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the public prosecutor may protest a judicial act regarding the appointment of a court receiver in the manner stipulated by this Law (Para.21,Subpara.5, the Resolution of the SEC Plenum No.142)

Rulings to appoint, dismiss or replace the interim receiver are not subject to appeal (protest), because an appeal against a ruling to introduce supervision (Art.62) and to appoint the interim receiver (Art.65) is not envisaged by this Law.

A ruling of the economic court to recognise a resolution of the creditors' meeting to be invalid (Art.13,Para.5) is appealed in the manner established by this Law (Para21,Subpara.4,the Resolution of the SEC Plenum No.142).

The full list of rulings and the procedure of their appeal are provided at the end of this Article.

2. It is necessary to note that rulings rendered upon the results of the consideration of controversies in a bankruptcy case take effect after a lapse of ten days after they are issued, while judicial acts in the Code of Economic Procedure come into legal force after a lapse of one month after they are given (Art.146, Para.1, CEP). Thus, this Law sets a shorter term when judicial acts rendered upon the consideration controversies in the course of bankruptcy proceedings come into effect, as compared the term set by the Code of Economic Procedure, with a view to shortening the duration of bankruptcy proceedings and giving the possibility for creditors to be paid off in due time .
3. Paragraph 3 of this Article provides that the authority to appeal against a court ruling rendered upon the results of the consideration of a controversy in a bankruptcy case is granted only to those persons who participate in the consideration. For example, in case a ruling is rendered when an objection of a court receiver against claims filed by a creditor is considered, the court receiver and the creditor are such persons eligible to appeal the ruling. In case a ruling is given when controversies between a court receiver and the representative of founders, the court receiver and the representative of founders are authorised to appeal the ruling. Unlike the Code of Economic Procedure where the right to appeal against judicial acts are granted to persons participating in a case (Art.156, CEP), this Law authorises only persons participating in the consideration of controversies. Firstly it is because matters as to controversies in a bankruptcy case do not always infringe interests of all persons participating in a bankruptcy case, and accordingly it is enough to grant the right of appeal to participants in the consideration of controversies in a bankruptcy case, instead of all persons participating in a bankruptcy case. Secondly, it is related to the fact that if the right of appeal is granted only to those persons participating in a bankruptcy case, participants who do not participate in a case, but in the consideration of controversies are not able to appeal against judicial acts rendered upon the results of its consideration even though these acts might infringe their rights.

It is necessary to note that persons participating in the consideration of controversies in a bankruptcy case have no right to make a challenge directly in a court of the cassational instance, though they enjoy the right to appeal to the appeal instance.

It should also be remembered that an appeal does not interfere with bankruptcy proceedings and can not constitute a ground for suspending proceedings. An appeal against a ruling does not disturb either the convene of the creditors' meeting or the implementation of measures for the restoration of the debtor's solvency.

4. Proceedings in the appeal instance are conducted in line with Chapter 21 of the Code of Economic Procedure. However, as provided by this Article, rulings specified in Article 60 can be challenged only within ten days after they are rendered and are reconsidered in the appeal instance within ten days after the economic court receives an appeal against them. A decision rendered under the Code of Economic Procedure becomes effective one month after it is rendered (Art.146, Para.1, CEP). An

appeal to the appeal instance is filed within one month after a decision is rendered (Art.158, CEP) and considered within one month after the economic court receives it (Art.167, CEP). This Law provides for a shortened term for filing an appeal against a ruling rendered upon the results of the consideration of controversies in a bankruptcy case, and also a shorter term of the consideration of such appeal in the appeal instance, in comparison with the Code of Economic Procedure. This is designed to minimise the term of bankruptcy proceedings and to ensure the timely satisfaction of creditors' claim.

5. Paragraph 5 provides that rulings rendered by the economic court of appeal instance upon the results of the consideration of controversies in a bankruptcy case are not reconsidered in cassational or supervisory procedure. This provision has also been envisaged with a view to minimising the terms of bankruptcy proceedings and to ensuring timely satisfaction of creditors' claim.

The list of rulings rendered by the economic court and the procedure for appealing against them.

I. Rulings which are not subject to appeal:

- to approve the payment of remuneration of court receivers (Art.22,Para.1);
- to accept a petition for the declaration of the debtor's bankruptcy and commence bankruptcy proceedings (Art.45,Para.4,this Law; Art.116, CEP);
- to introduce supervision and appoint an interim receiver (Art.45,Para.3);
- to appoint an expert examination (Art.48,Para.7);
- to appoint an interim receiver, decide the amount and procedure of remuneration (Art.65);
- to change the amount of remuneration of the interim receiver (Art.65);
- to dismiss the interim receiver (Art.65);
- to dismiss the debtor's manager from his/her duties during supervision (Art.66,Para.1,Item 5);
- to enter or refuse to enter creditor's claims in the debt repayment schedule (Art.84,Para.2);
- to terminate or complete judicial rehabilitation (Art.88,Para.1);
- to reduce the period of external management (Art.91,Para.4);
- to conserve inactive objects of enterprises the charter capital of which partially or wholly belongs to the state upon a petition of the state body for bankruptcy proceedings (Art.109,Para.3);
- to shift to settlements with creditors (Art.118,Para.6,Item 2);
- to commence settlements with creditors of a certain priority (Art.118,Para.6,Item 3);
- to refuse to approve a report of the external manager (Art.118,Para.1,Item 5);
- to change the order of satisfaction of creditors' claims (Art.120,Para.3);
- to approve the procedure and period (schedule) of sale of the debtor's property in liquidation proceedings (Art.135,Para.3);
- to complete liquidation proceedings (Art.143,Para.2; Art.144,Para.1);
- to approve the debt repayment plan of the individual entrepreneur debtor (Art.176,Para.2);
- to change the debt repayment plan of the individual entrepreneur debtor (Art.176,Para.4);
- to determine the procedure and amount of satisfaction of creditors' claims (Art.182);
- to terminate a streamlined bankruptcy process and shift to general bankruptcy processes (Art.189, Para.5).

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II. Rulings against which an appeal is provided by the Code of Economic Procedure and judicial acts stipulated in Articles 50, Paragraph 2 of Article 91 and Paragraph 4 of Article 124 of this Law, which may be subject to reconsideration under the general procedure provide by the Code of Economic Procedure:

- to refuse to accept the petition (Art.45,Para.5; Art.117, CEP);
- to return the petition (Art.45,Para.6; Art.118, CEP);
- to take provisional measures to preserve creditors' claims or to refuse to take such measures (Art.46,Paras.1 and 2; Art.66,Para.1,Item 4; Art.81,Para.1,Item 8; Art.179,Para.1; Art. 76, CEP);
- to cancel provisional measures to preserve creditors' claims (Art.46,Para.4; Art.80, CEP);
- to introduce judicial rehabilitation (Art.50, Para.1, Item 3; Art.75, Paras.1 and 3; Art.78, Para.1; Art.157, Para.3);
- to extend the period of judicial rehabilitation (Art.50,Para.1,Item 3; Art.78,Para.4);
- to introduce external management (Art.50, Para.1, Item 4; Art.75, Para.1; Art.91, Para.1; Art.141, Para.1; Art.157,Para.1);
- to extend the period of external management (Art.50, Para.1, Item 4; Art.91, Para.4; Art.108; Art.118, Para.6, Item 4; Art.158);
- to terminate bankruptcy proceedings (Art.50,Para.1,Item5;Art.56;Art.75,Para.1;Art.85, Para.3,Item1;Art.87,Para.3,Item1,Art.89,Para.2,Item1;Art.118,Para.6,Item 1; Art.176,Para.5);
- to leave the petition without consideration (Art.50,Para.1,Item 6;Art.89, CEP);
- to approve an amicable agreement and terminate bankruptcy proceedings (Art.50, Para.1, Item 7; Art.75, Para.1, Art.145, Para5);
- to suspend bankruptcy proceedings (Art.57,Para.1;Art.176,Para.2;Art.179,Para.3;Art.85, CEP);
- to extend the period of liquidation proceedings (Art.124,Para.3; Para.21,the Resolution of the SEC Plenum No. 142).

III. Rulings against which an appeal is stipulated only in this Law and which can be reconsidered under the procedure provided by Article 60 of this Law:

- to recognise resolutions of the creditors' meeting to be invalid (Para.21,the Resolution of the SEC Plenum No.142);
- to include or refuse to include claims in the creditors' register (Art.48,Para.5; Art.70,Para.4);
- rendered upon the results of the consideration of court receivers' application, including those on controversies between them and creditors, between them and the debtor;
- rendered upon the results of the consideration of creditors' complaints about the infringement of their rights and legitimate interests, filed according to this Law during supervision, judicial rehabilitation, external management or liquidation proceedings;
- rendered upon the results of the consideration of controversies between court receivers and the representative of the debtor's employees in connection with the amount and composition of claims for wages and severance payments to persons working under a labour contract;
- rendered upon the results of the consideration of complaints of creditors, the representatives of founders (participants) or the property owner of the debtor, about conduct (omissions) of court receivers violating their rights and legitimate interests (Art.59; Art.100);
- to dismiss the debtor's manager during judicial rehabilitation (Art.79,Para.4);

- to appoint or dismiss the rehabilitation manager (Art.80,Para.3);
- to refuse to approve a report of the debtor's manager (Art.85,Para.4);
- to appoint an external manager (Art.95, Para.3);
- to dismiss the external manager (Art.96, Para.1);
- rendered upon the results of the consideration of objections raised by creditors (Art.100, Para.2);
- to appoint a liquidation manager (a court decision to appoint a liquidation manager in case a liquidation manager is appointed when the court renders a decision to declare the debtor bankrupt) (Art.126 , Para. 21,the Resolution of the SEC Plenum No.142);
- to dismiss the liquidation manager (Art.135, Para.3;Art.140, Para.1);
- to refuse to approve an amicable agreement (Art.151, Para.3);
- to reopen bankruptcy proceedings (Art.154, Para.1);
- to approve the list of the debtor's property to be excluded from the liquidation estate (Art.177,Para.3).

**Article 61. Specifics of Bankruptcy Proceedings of Enterprise
Charter Capital of Which Partially or Wholly Belongs to State**

- 1 If the charter capital of enterprises partially or wholly belongs to the state, the economic court shall notify the commencement of a bankruptcy case to the state body for bankruptcy proceedings.**
- 2 The state body for bankruptcy proceedings within two weeks from the date when it receives the notice of the commencement of a bankruptcy case shall inform the economic court of its decision on the reasonableness of prejudicial rehabilitation.**
- 3 If creditors agree to carry out prejudicial rehabilitation, a bankruptcy case shall terminate.**
- 4 If creditors disagree to carry out prejudicial rehabilitation, a bankruptcy case shall be considered in the manner established by this Law.**

This Article sets the specifics of bankruptcy proceedings of an enterprise the charter capital of which partially or wholly belongs to the state.

1. The economic court notifies to the state body for bankruptcy proceedings the commencement of a bankruptcy case, if the charter capital of the debtor partially or wholly belongs to the state. The court ruling to commence a case is forwarded to parties and the state body within five days as provided in Article 153 of the Code of Economic Procedure.
2. The state body for bankruptcy proceedings within two weeks after it receives a notice of the commencement of a bankruptcy case informs the economic court of its decision on the reasonableness of prejudicial rehabilitation. This decision does not automatically end bankruptcy proceedings.
3. According to the purport of Paragraph 3 of this Article, a decision of the state body for bankruptcy proceedings on the reasonableness of prejudicial rehabilitation is discussed at the creditors' meeting, which is convoked by the interim receiver. Practically, it means that when the state body for bankruptcy proceedings has decided on the reasonableness of prejudicial rehabilitation, it has to make a proposal thereof to the first creditors' meeting in the stage of supervision. If the first

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creditors' meeting agrees to prejudicial rehabilitation, bankruptcy proceedings is terminated by the economic court in line with this Paragraph.

4. If the first creditors' meeting does not agree to prejudicial rehabilitation, bankruptcy proceedings go on as per the general rules set by this Law.

CHAPTER IV. SUPERVISION

This Chapter defines the process of supervision.

The purpose of supervision is to secure the safety of the debtor's property and to analyse its financial situation. The essence of supervision is to forbid the debtor to dispose of its property from the moment of the acceptance of the petition for the declaration of its bankruptcy and up to the introduction of a subsequent bankruptcy process, and to restrict individual presentation of claims by creditors, making it possible only within the framework of bankruptcy proceedings. This new institute was introduced by this Law 2003. An interim receiver is appointed when a ruling to introduce supervision is rendered. Upon rendering a ruling to introduce supervision, the execution of execution documents over the debtor's property is suspended, except for execution documents for certain claims such as claims for wages and others, while the debtor may make major transactions, transactions involving real property, etc., only upon the consent of the interim receiver. Usually creditors may receive the satisfaction of their claims only within the framework of bankruptcy processes following supervision, by lodging such claims in the prescribed manner. To safeguard property, the interim receiver is granted a right to apply to the economic court for additional measures to preserve the debtor's property in order to prevent actions that would hamper the goals of supervision. The interim receiver reveals creditors, draws up the creditors' register, notifies the first creditors' meeting to creditors and others, and convokes the first creditors' meeting, at which he/she reports to creditors him/her opinions about the inventory, the financial analysis of the debtor and the perspective of restoring the debtor's solvency.

As a general rule, supervision is introduced for the period of up to three months and terminated, on ground of a resolution of the first creditors' meeting, by a judicial act of the economic court, namely: a decision to declare the debtor bankrupt and initiate liquidation proceedings or a decision to refuse to declare the debtor bankrupt; a ruling to introduce judicial rehabilitation or external management; a ruling to approve an amicable agreement and the like.

Article 62. Introduction of Supervision

When a bankruptcy case is commenced, supervision shall be introduced from the date when the economic court accepts a petition for the declaration of the debtor's bankruptcy, except when other bankruptcy processes must be applied to the debtor according to this Law. In case of the commencement of a bankruptcy case, the economic court ruling to accept the petition shall specify the introduction of supervision.

This Article defines the concept of the imperative introduction of supervision as a bankruptcy process when the court accepts a petition for the declaration of the debtor's bankruptcy.

This Article provides that supervision is introduced from the moment when the economic court accepts a petition regarding the initiation of a bankruptcy process.

The introduction of supervision may be decided by rendering a separate procedural act - a ruling apart from a ruling to accept a petition for the declaration of the debtor's bankruptcy and prepare a case for court proceedings, or the introduction of supervision may be stated in a ruling to accept the petition and commence a bankruptcy case.

If it is not possible to render a ruling to appoint an interim receiver simultaneously with a ruling to accept the petition for some reasons, for example, due to no candidate for an interim receiver at the moment when a ruling to accept the petition is rendered, a judge may render an independent ruling to appoint an interim receiver within ten days from the date when the petition is presented (Art.48,Para.2). It should be noted, however, that the term of supervision is calculated not from the date when a ruling to accept the petition is rendered, but from the date when a ruling to introduce supervision and appoint an interim receiver is rendered.

Supervision is not applied to the individual entrepreneur debtor by virtue of Article 28 and to the legal entity debtor when streamlined bankruptcy processes are applied (Art.186,Para.2; Art.189,Para.2).

The term of supervision complies with the term of the consideration of a bankruptcy case as stipulated by Article 49, i.e. the term of this process is not more than three months. In case the term of the case consideration is extended by virtue of Article 49, the term of supervision is extended accordingly.

Article 63. Consequences of Introduction of Supervision

1 From the date of the introduction of supervision:

- **it shall be suspended to execute execution documents upon property, except writs of execution to enforce judicial acts which have been granted, before the court accepts a petition for the declaration of the debtor's bankruptcy, for wages payable, remuneration under copyright agreements, alimony, and compensation for damage to life or health and moral damage. A ground for the suspension shall be the economic court ruling to accept the petition and commence a bankruptcy case;**
- **it shall be prohibited to satisfy claims of founders (participants) of the legal entity debtor for the return of apportionment of their share (stock) in the debtor's property in connection with their withdrawal from the legal entity debtor;**
- **it shall be prohibited to pay dividends and make other payments regarding issued securities;**
- **it shall not be allowed to terminate monetary obligations of the debtor by set-off of mutual claims of the same sort, unless it complies with the order of priority of creditors' claims envisaged by Article 134 and Article 169.**

2 Claims against the debtor for money may be lodged only in the procedure for lodging claims against the debtor established by this Law.

1. This Article determines legal consequences of the introduction of supervision with respect to the debtor. These consequences take place at the moment when the economic court renders a ruling to introduce supervision.

According to requirements of this Article, the following consequences inure:

- I. The execution of execution documents over the debtor's property is suspended. In this case, the suspension of execution means the suspension of already commenced execution proceedings, and also a ban on initiating other (new) execution proceedings. This rule corresponds to provisions of Item 2 of Article 34 of the Law "On Execution of Judicial Acts and Acts of Other Authorities". Such suspension is grounded on the economic court ruling to accept a petition for the declaration of the debtor's bankruptcy, commence a bankruptcy case and introduce supervision.

In case the court renders a decision to refuse to declare the debtor bankrupt as a result of consideration, the execution of execution documents which has been suspended under this Paragraph resumes.

It is necessary to note that certain categories of claims do not fall under the general rule regarding the suspension of the execution of execution documents. If court decisions (judgments) for the following claims enter into force before the economic court accepts the petition, execution documents to enforce these judgements may be subject to execution:

- claims for wages payable;
- claims for remuneration under copyright agreements;
- claims for alimony;
- claims for damage to life and health;
- claims for moral damage.

It would be logical and reasonable to supplement this list with non-property claims granted execution documents, since creditors with non-property claims are not "creditors" for the purpose of this Law and they may demand the debtor to perform obligations under such non-property claims outside bankruptcy processes.

It should be mentioned that even those claims which do not fall under this Paragraph and may be satisfied by executing their execution documents, the satisfaction by these documents is suspended in liquidation proceedings by virtue of Item 6 of Paragraph 1 of Article 125 in any case, except for claims for damage to life and health, for moral damage, and claims for the repossession of property held unlawfully by other parties.

- II. It is prohibited to satisfy claims of founders (participants) of the legal entity debtor for the return of apportionment of their share (stock) in the debtor's property when they withdraw from the legal entity debtor as a founder (participant). Such claims of founders (participants) of the legal entity debtor are satisfied only in a case stipulated by Paragraph 11 of Article 134. It is necessary to note as well that Item 6 of Paragraph 3 of Article 64 prevent a management body of the debtor from deciding to purchase issued shares from shareholders of the debtor. In this case, founders (participants) of the legal entity debtor may transfer their status to third parties by selling their shares and thereby leave this status.
- III. It is prohibited to pay dividends and make other payments regarding securities. This provision does not require a comment since it imperatively forbids the reduction of the debtor's assets by paying dividends and making other payments regarding issued shares and other securities. In connection with this provision, it should be noted that if claims for dividends of issued securities have arisen before the court accepts a petition for the declaration of the debtor's bankruptcy, then they are discharged in the fifth priority when they are lodged in the manner established by this Law (Art.134,Para.6) and that the debtor's management body cannot take a decision to pay out dividends or make other payments regarding issued securities after the introduction of supervision by virtue of Paragraph 3 of Article 64.
- IV. Set-off of mutual claims of the same sort as a means to terminate the debtor's obligations is banned, if this breaches the order of priority of creditors' claims envisaged by Article 134 and Article 169. This Paragraph forbids set-off which leads to breach of the order of priority of claims as set by Articles 134 and 169 with the purpose of maintaining the equality of rights of creditors. From the viewpoint of the equality of rights of creditors, the provision of Paragraph 4 of Article 138, which allows set-off only on condition that such set-off observes the principle of

priority and proportionality in satisfying lodged claims, should be applied not only in liquidation proceedings, but also in other bankruptcy processes. It may be concluded that in bankruptcy processes set-off is forbidden not only in cases where Articles 134 and 169 ban it in order not to violate the order of priority of satisfaction, but also in cases where other creditors have claims of the same priority of satisfaction. If claims are set off against its prohibition, a counterpart should return to the debtor all it has received and becomes either a creditor included in the creditors' register, or a creditor of current payments (depending on the maturity date of their claim against the debtor). This provision strengthens a pro-debtor element of this Law, i.e. the prohibition of a set-off meets the interests of the debtor and does not correspond to the interests of creditors.

In case of breaches of Items 1 through 3 of this Paragraph, the debtor has the right to resort to the court, claiming for the return of assets that the debtor has paid. In case of breaches of Item 4 of this Paragraph, there comes a necessity of recognising transactions invalid since it is avoidable. The debtor itself or the interim receiver may independently bring an action to the court outside the framework of bankruptcy for the recognition of transaction to be invalid. The same is mentioned in Paragraph 26 of the Resolution of the SEC Plenum No.142.

It is understood that consequences stipulated by this Paragraph remain in force even after supervision is completed and judicial rehabilitation or external management is introduced.

2. This Article provides that claims against the debtor for money may be lodged only in the procedure for lodging claims against the debtor established by this Law. This provision concerns both claims for monetary obligations of the debtor and for mandatory payments. If claims become payable before supervision is introduced, these claims may be lodged only upon the observance of the procedure set by Article 70. It is necessary to note that this provision concerns only monetary claims and mandatory payments as it is stipulated in Article 3.

Along with this, it is necessary to remember that both secured creditors and all other creditors who have execution documents (except persons specified in Paragraph 1 of this Article) must lodge their claims subject to the procedure stipulated by Article 70.

Upon the introduction of supervision, creditors are no longer allowed to individually file a lawsuit to receive the satisfaction of their claims. If such lawsuit is brought by creditors, the court must refuse to accept the lawsuit pursuant to Item 1 of Paragraph 1 of Article 117 of the Code of Economic Procedure. If a bankruptcy case has already been commenced, other court proceedings against the debtor are subject to termination pursuant to Item 1 of Article 86 of the Code of Economic Procedure. This mentioned in Paragraph 6 of the Resolution of the SEC Plenum No.142.

Thus, creditors are compelled to be on the same position, on which they would be in case of subsequent bankruptcy, i.e. their individual rights are replaced with collective ones. As supervision aims at preserving the debtor's property before the introduction of a subsequent bankruptcy process, it is not allowed to satisfy part of claims during supervision even if the priority stipulated by Article 134 is observed, or even if the debtor consents to the partial satisfaction. The debtor may voluntarily satisfy creditors' claims during supervision provided that it discharges debts to all creditors at one time.

Article 64. Limitation of Debtor's Powers in Course of Supervision

- 1 The introduction of supervision shall not be a ground for dismissing a manager and other management bodies of the debtor, which continue exercising their powers within the limitations established by Paragraph 2 and Paragraph 3 of this Article.**
- 2 Management bodies of the debtor may perform, solely with the written consent of the interim receiver, transactions related to:**
 - **the offering of immovable property by lease or as security, or the disposing of immovable property in any other way;**
 - **the disposing of the debtor's property the balance value of which is more than 10 per cent of the balance value of the debtor's total assets;**
 - **the receiving and offering of loans³⁰ (credits³¹), the issuing of warranties³² and guarantees³³, the assigning of rights of claims³⁴, the transferring of debts³⁵, and the entering into of an agreement for trust management of the debtor's property³⁶.**
- 3 Management bodies of the debtor shall not be entitled to pass resolutions:**
 - **carrying out reorganisation³⁷ (merger, affiliation, division, spin-off, transformation) and liquidation of the debtor;**
 - **creating legal entities or participating in other legal entities;**
 - **opening representative offices and establishing branch offices³⁸;**
 - **paying dividends or distributing income (profit) of the debtor among its founders (participants);**
 - **issuing bonds and any other securities, except shares;**
 - **acquiring earlier issued shares of the debtor from its shareholders.**

This Article provides for restrictions imposed on the debtor within the framework of supervision, and its duties related thereto. Restrictions are placed on the debtor's management bodies and manager.

1. In supervision, the debtor's management bodies and manager are usually not dismissed but continue to carry out their functions.

On the other hand, Paragraphs 2 and 3 of this Article impose certain restrictions on the debtor's management body when it makes transactions. In order to accomplish the purpose of supervision, which is to safeguard the debtor's property, Paragraphs 2 and 3 of this Article limit free disposal of the debtor's property.

This Article allocates two categories of restrictions:

- Actions which can be accomplished by a management body or manager of the debtor only upon the consent of the interim receiver (Para.2);

³⁰ Art.732,CC

³¹ Art.744,CC

³² Art.292,CC

³³ Art.299,CC

³⁴ Art.313,CC

³⁵ Art.322,CC

³⁶ Art.849,CC

³⁷ Art.49,CC

³⁸ Art.47,CC

- Actions which cannot be performed by a management body and manager of the debtor by virtue of prohibitions imposed by this Law (Para.3).

It is necessary to note that in case the debtor's manager is dismissed and the court assigns its duties on the interim receiver, the restrictions specified in Paragraph 3 of this Article apply to the interim receiver as well.

2. Paragraph 2 of this Article lists transactions for which the consent of the interim receiver is required. Thus, this Article sets a mandatory requirement that this consent should be given only in writing. The interim receiver, within three days after the debtor asks him/her about a transaction, gives a written consent or refuses to consent to these transactions (Para.6, the Regulation on court receivers). If such consent is not given, the transaction may be recognised invalid by the court due to a breach of the restriction on powers to make transactions (Art.126,CC). It may be concluded that a legal entity is subject to restrictions on their capacity, which is filled up by the interim receiver. Both the interim receiver and the debtor have a right to contest such transactions (Art.66,Para.1,Item 1).

These are transactions related to:

- the offering of immovable property by lease or as security, or the disposing of immovable property in any other way. The consent of the interim receiver is required for transactions involving immovable property, disregarding its value, because such property is considered to be important property;
 - the disposing of the debtor's property the balance value of which is more than 10 per cent of the balance value of the debtor's total assets. The rule set by Item 2 of this Paragraph is aimed at preserving the debtor's property and establishes an obligation to secure the consent of the interim receiver to a disposal of the debtor's property if its balance value is more than 10 per cent of that of all the debtor's assets. Requiring the consent of the interim receiver to any disposal of any of the debtor's property, including property of insignificant value, may interfere with the debtor's smooth economic activities during supervision. As to the criteria of "more than 10 per cent of the debtor's assets," there is a question at which time property value is estimated, which in practice causes certain problems. It is considered that property must be estimated at the time of concluding a transaction. This requirement does not apply to transactions involving immovable property mentioned in Item 1 of this Paragraph, because Item 1 of this Paragraph bans any transaction with immovable property without the consent of the interim receiver, regardless of the value of property;
 - the receiving and offering of loans (credits), the issuing of warranties and guarantees, the assigning of rights of claims, the transferring of debts, and the entering into of an agreement for trust management of the debtor's property. They must be performed upon the consent of the interim receiver. This Paragraph requires the consent of the interim receiver to these transactions, though these transactions involve no disposal of the debtor's property, because such transactions may later reduce the debtor's property.
3. Paragraph 3 of Article 64 lists those resolutions which the management bodies are not entitled to pass during the supervision process:
 - carrying out reorganisation (merger, affiliation, division, spin-off, transformation) and liquidation of the debtor;
 - incorporating legal entities or participating in other legal entities;
 - opening representative offices and establishing branches;

- paying dividends or distributing income (profit) of the debtor among its founders (participants).
This norm corresponds to Item 3 of Paragraph 1 of Article 63, which prohibits payments of other securities, which leads that it is not allow to pass a resolution paying dividends accruing during supervision and also before supervision;
- issuing bonds and any other securities, except shares. The rule allows the debtor to additionally issue shares with a purpose of the financial recovery of the debtor. Article 63 prohibits set-off of mutual claims of the same sort which violates the order of priority established by Article 134. However, in case of the additional issuance of shares, it is allowed to swap accounts payable for additional shares. Shares should be issued in such a way as to enter in the state registration the issuance of additional shares and the changes of founding documents of the joint-stock company debtor before the end of the period of supervision. A series of these operations may serve to be a ground for extending the period of supervision up to five months;
- acquiring earlier issued shares of the debtor from its shareholders. As a matter of fact, this provision follows the requirement set by Item 2 of Paragraph 1 of Article 63, which prohibits satisfying claims of founders (participants) of the legal entity debtor for the return of apportionment of their shares (stocks) in the debtor's property in connection with their withdrawal from the legal entity debtor as a founder (participant). However, founders (participants) of the legal entity debtor may transfer their status to third persons who are not founders (participants) of this legal entity, by selling their shares, and in this way they can leave their status.

Article 65. Appointment of Interim Receiver

- 1 An interim receiver shall be appointed by the economic court from candidates proposed by creditors or the state body for bankruptcy proceedings.**
- 2 The economic court ruling to appoint an interim receiver must specify the amount of his /her remuneration and the procedure for its payment.**
- 3 The amount of remuneration of the interim receiver may be changed by the economic court on the ground of the creditors' meeting resolution.**
- 4 The interim receiver shall be entitled to apply to the economic court for his/her dismissal.**
- 5 In case when the interim receiver's application for his/her dismissal is satisfied, the economic court shall appoint a new interim receiver from candidates proposed by creditors. In case no candidate for an interim receiver is proposed, the economic court shall appoint an interim receiver from candidates proposed by the state body for bankruptcy proceedings. Prior to the appointment of a new interim receiver, the interim receiver continues performing his/her duties.**

The purpose of this Article is to define the procedure for appointing and dismissing an interim receiver, a person who oversees the manager and management bodies of the debtor and carries out other functions according to statutory requirements during the process of supervision. This Article also provides the amount of remuneration of the interim receiver.

1. This Paragraph provides that an interim receiver is appointed by the economic court from candidates proposed by creditors or the state body for bankruptcy proceedings. It is understood,

however, that in case a petition for the declaration of the debtor's bankruptcy is filed not by creditors, but, for example, by the debtor or by the liquidation commission under Paragraph 1 or Paragraph 2 of Article 8, these petitioners are also entitled to propose a nominee for an interim receiver.

If the petition is filed in respect of the legal entity debtor which has property, the petitioner must specify in the petition a candidate for an interim receiver. If a candidate for an interim receiver is not specified in the petition, the economic court requests the petitioner or the state body for bankruptcy proceedings to present such candidate (Para.8, the Resolution of the SEC Plenum No.142). In spite of the fact that this Law grants the right to propose such candidate equally to the petitioner and the state body for bankruptcy proceedings, it is in practice considered meaningful to defer proposals made by the petitioner, by analogy with Paragraph 5 of this Article.

2. To appoint an interim receiver, the economic court renders a ruling, which specifies the procedure for paying his/her remuneration and its amount. This rule is a unique exception to Paragraph 1 of Article 22, according to which the amount of court receivers' remuneration and the procedure for paying it are determined by a resolution of the creditors' meeting and approved by the economic court. This is because at the beginning of the process of supervision, there is still no collective body of creditors authorised by this Law to pass such resolution.

Thus, it is necessary to note that the initial amount of remuneration of the interim receiver determined by economic court under this Paragraph may be changed by the economic court by virtue of Paragraph 3 of this Article on the ground of a resolution of the creditors' meeting.

3. Paragraph 3 of this Article provides that on the ground of the creditors' meeting resolution, the initial amount of remuneration of the interim receiver can be changed by the economic court. According to Paragraph 2 of this Article, the court, at the introduction of supervision, determines the amount of the interim receiver's remuneration, which is considered temporal. This Paragraph allows the amount of the interim receiver's remuneration to be revised when the creditors' meeting considers that the initial amount determined by the court is not reasonable in view of the financial situation of the debtor and the workload of the interim receiver. This is stipulated in Paragraph 59 of the Regulation on court receivers.
4. Paragraph 4 of this Article provides for the interim receiver's right to apply to the economic court for his/her dismissal (resignation). In addition, in case the interim receiver fails to perform or improperly performs his/her duties, which has resulted in loss to the debtor or its creditors, persons participating in a bankruptcy case are entitled to apply to the economic court for the dismissal of the interim receiver according to Paragraph 1 of Article 21.

Besides the above, in case the circumstances envisaged by Paragraph 2 of Article 18 are revealed after the appointment of the interim receiver, persons participating in a bankruptcy case may apply to the court for the dismissal of the interim receiver according to Paragraph 3 of Article 18.

There are still other circumstances which allow the application to the economic court for the dismissal of the interim receiver (see the comment on Art.21,Para.1).

5. Paragraph 5 of this Article provides for the procedure for appointing a new interim receiver after the dismissal of the previous one, according to which a candidate for a new interim receiver is proposed by creditors and, if no candidate is proposed by creditors, the economic court appoints an interim receiver from candidates proposed by the state body for bankruptcy proceedings. This Paragraph sets such procedure for appointing a new court receiver in case the court satisfies the application of the interim receiver for his/her resignation. It should be admitted that the rule of this Paragraph applies to other cases as well, when the economic court dismisses the interim receiver on

other grounds, such as an application of persons participating in a bankruptcy case, or on the ground of Paragraph 1 of Article 21 and Paragraph 3 of Article 18. As it is seen from the provision of this Paragraph, the primary initiative to propose a candidate for an interim receiver is held by creditors. If the creditors' meeting is not yet organised, then the petitioner or the state body for bankruptcy proceedings may nominate a candidate.

Rulings to appoint, dismiss and replace an interim receiver are not subject to appeal (protest), because neither this Law nor the Code of Economic Procedure envisages the possibility of appealing against these rulings. It should be paid attention to that Subparagraph 5 of Paragraph 21 of the Resolution of the SEC Plenum No.142 stipulates that a ruling to appoint (dismiss, replace) a rehabilitation manager, external manager or liquidation manager is appealable, but there is no provision to allow appeal against a ruling to appoint (dismiss, replace) an interim receiver. The interim receiver dismissed by the economic court continues to work until a new interim receiver is appointed.

Article 66. Rights of Interim Receiver

1 The interim receiver shall be entitled to:

- **apply to the economic court in his/her own name for the invalidation of transactions and also for the application of consequences of the invalidity of void transactions concluded or performed by the debtor in violation of the requirements established by the legislation;**
- **raise objections against creditors' execution of their claims during the period of supervision in cases envisaged by Article 63 of this Law;**
- **participate in a review by a judge of the validity of objections raised by the debtor against creditors' claims;**
- **apply to the economic court for additional measures to preserve the debtor's property, including measures to prohibit transactions not listed in Article 64 of this Law without the consent of the interim receiver and to entrust property to third parties for keeping³⁹, and also for the cancellation of such measures;**
- **apply to the economic court for the dismissal of the debtor's manager from his/her duties;**
- **obtain any information and documents relating to the debtor's business.**

2 The interim receiver may also have other rights in accordance with the legislation.

3 Management bodies of the debtor shall be obliged to provide the interim receiver upon his/her request with any information relating to the debtor's business.

This Article determines the rights of the interim receiver. The rules provided by this Article correspond to the provisions of Paragraph 1 of Article 19.

1. The interim receiver is entitled to:

- apply to the economic court in his/her own name for the invalidation of transactions and also for the application of consequences of the invalidity of void transactions concluded or performed by the debtor in violation of the requirements established by Articles 63 and 64, and of the rules of civil and other laws. This Article does not clarify whether an application for the invalidation of

³⁹ Art.875,CC

transactions is filed within the framework of bankruptcy proceedings or in general court proceedings, while the Resolution of the SEC Plenum No.142 addresses this issue. Paragraph 26 of such Resolution provides that claims of the court receiver for the invalidation of a transaction concluded by the debtor and for the application of consequences of its invalidity are considered in the general manner established by the Code of Economic Procedure outside the framework of a bankruptcy case;

- raise objections against creditors' execution of their claims during the period of supervision in cases envisaged by Article 63. This provision considers creditors' performance in violation of restrictions imposed by Paragraph 1 of Article 63 (ban on such execution);
- participate in a review by a judge of the validity of objections raised by the debtor against creditors' claims. This authority is granted with a view to establishing (identifying) creditors' claims, and protecting the debtor's interests from unreasonable claims lodged by creditors;
- apply to the economic court for additional measures to preserve the debtor's property, including measures to prohibit transactions not envisaged by Article 64 without the consent of the interim receiver, and to entrust property to third parties for keeping, and also apply for the cancellation of such measures. This rule complies with Paragraph 2 of Article 46. This Paragraph provides for various restrictions on the debtor's conduct which the economic court may impose upon the initiative of the interim receiver for the purpose of safeguarding the debtor's property. In the event the debtor makes a transaction, breaching these restrictions imposed by the court, this transaction is considered voidable and may be recognised invalid by the court upon an application of the interim receiver;
- apply to the economic court for the dismissal of the debtor's manager from his/her duties. The debtor's manager may be dismissed by the court only by virtue of an application of the interim receiver (the court cannot upon its own initiative) and only in case the manager breaches provisions of this Law, which must be substantiated in the application of the court receiver. As a breach of this Law, it should be recognised that the debtor's manager does not fulfil the requirements of Items 2 through 4 of Paragraph 1 of Article 63, and Paragraphs 2 and 3 of Article 64, or that the manager hinders the interim receiver's activities, by not presenting accounting documents for the analysis of the debtor's financial situation (this Article, Para.3), etc. This Article does not clarify a person to whom the duties of the debtor's manager are assigned, when the interim receiver's application for the dismissal of the debtor's manager is admitted. It is considered in this case that the court may charge the debtor's management body to appoint a new manager or assign the duties of the manager to the interim receiver (though this Law does not explicitly provide this; however this follows from Paragraph 32 of the Resolution of the SEC Plenum No.142, which states that if in the course of supervision, the powers of the management body of the legal entity debtor are terminated by the economic court and entrusted to the interim receiver, an amicable agreement is signed, on behalf of the debtor, by the interim receiver, being the actual manager of the debtor);
- obtain any information and documents relating to the debtor's business. This is a very important provision related to obtaining information on the debtor's activities, which might be necessary for the financial analysis by the interim receiver. This provision is belted with the Paragraph 3 of this Article, which provides that management bodies of the debtor are obliged to provide the interim receiver, upon his/her request, with any information related to the debtor's business. It also includes confidential information related to the debtor's business; in this case the interim receiver

is responsible for the confidentiality of such information in order not to infringe the debtor's interests. Otherwise the debtor may, in line with the right pursuant to Article 21, apply for the dismissal of the interim receiver and claim damage which is caused by the interim receiver's disclosure of confidential information.

2. The interim receiver may also enjoy other rights in accordance with the legislation. A wider range of rights and obligations of the interim receiver is stipulated in the Regulation on court receivers.
3. The management bodies of the debtor are obliged to provide the interim receiver upon his/her request with any information related to the debtor's business. This obligation of the debtor's management bodies directly corresponds with the interim receiver's right to obtain such information and to use it in his/her activity. If the debtor's manager refuses to satisfy a request of the interim receiver, the interim receiver is entitled to apply to the court. For example, if the debtor's manager has concluded a wrongful transaction forbidden by Article 63 and refused to provide information requested thereof, the interim receiver may, by virtue of Item 5 of Paragraph 1 of this Article, apply to the court for the dismissal of this manager. When the interim receiver needs other information from other state authorities, he/she is entitled to inquire the information from such authorities (Para.9, the Regulation on court receivers).

Article 67. Obligations of Interim Receiver

- 1 The interim receiver shall be obliged to:**
 - take measures to preserve the debtor's property;
 - analyse the debtor's financial situation;
 - reveal the debtor's creditors, maintain the creditors' register, notify the introduction of supervision against the debtor to creditors;
 - convene and hold the first creditors' meeting.
- 2 The interim receiver may also bear other obligations in accordance with the legislation.**
- 3 The interim receiver shall be obliged, upon the termination of supervision, but not later than five days prior to the established date of the economic court session, to submit to the economic court a report on his/her activities, information on the debtor's financial situation, his/her opinion on the possibility of the restoration of the debtor's financial ability, and minutes of the first creditors' meeting with documents envisaged by Article 10 of this Law.**

This Article determines obligations of the interim receiver. The provisions of this Article comply with the provisions of Paragraph 3 of Article 19.

1. In particular, according to Paragraph 1 of this Article, the interim receiver is obliged to:
 - take measures to preserve the debtor's property. The interim receiver has powers to reclaim the debtor's property from third parties' adverse possession (including property which has been alienated without the necessary consent required by Paragraph 2 of Article 64), to control the debtor's transactions to prevent the debtor's property from being reduced (misappropriated), and to oversee the debtor's management bodies to prevent them from passing resolutions prohibited by Paragraph 3 of Article 64. The interim receiver may also apply for the invalidation of transactions made by the debtor and for the application of consequences of their invalidity, etc.;

- analyse the debtor's financial situation. Such analysis is carried out by the interim receiver himself/herself or by auditors (an audit company), hired by the interim receiver at the debtor's expense (Art.19,Para.1,Item 5; Para.7, the Regulation on court receivers), in order to answer the significant question which is the purpose of the supervision – the perspective of the debtor, i.e. whether to apply a rehabilitation procedure or liquidation procedure of bankruptcy. Apart from hiring experts for the financial analysis, the interim receiver is entitled to request any information on the debtor's business (Art.66,Para.1,Item 6). The procedure for the financial analysis and its objectives are regulated by Article 69 and the Regulation on court receivers;
 - reveal the debtor's creditors. This duty of the interim receiver is connected both with the duty of the financial analysis of the debtor's financial situation, and with the duty of convening the first creditors' meeting. The interim receiver is also obliged to confirm creditors' claims, examining them from the point of their validity and raise objections to the court in the presence of grounds stipulated by Paragraph 3 of Article 70;
 - maintain the creditors' register. This provision is related to Paragraph 1 of Article 14 and Item 2 of Paragraph 3 of Article 19. The creditors' register compiled during supervision serves to be a basis for drawing the list of creditors which are to attend the first creditors' meeting;
 - notify the introduction of supervision against the debtor to creditors. According to the requirements of Paragraph 2 of Article 68, all creditors known to the interim receiver (except creditors with claims for wages) are notified of the introduction of supervision;
 - convene and hold the first creditors' meeting. This provision corresponds with Paragraph 1 of Article 71. The first creditors' meeting, taking into account the results of the financial analysis of the debtor's activity and the interim receiver's opinion, passes a resolution as to what would be the best choice for the debtor and which bankruptcy process should be applied to the debtor.
2. The interim receiver may also bear other obligations in accordance with the legislation. A wider range of obligations of the interim receiver is envisaged in Paragraph 3 of Article 19 and the Regulation on court receivers.
3. The interim receiver is obliged, at the termination of supervision, to submit a report on his/her activities to the economic court. This report should be presented not later than five days prior to the established date of the economic court session. Apart from this, the interim receiver is obliged to provide the economic court with information on the debtor's financial situation and his/her opinion on the possibility of the restoration of the debtor's financial ability, and minutes of the first creditors' meeting with documents envisaged by Article 10 attached.

The interim receiver's opinion on the possibility of the debtor's financial recovery is deemed very important. Taking into account that the creditors' meeting in its resolution may purpose only their self interests, for instance it may seek the quick satisfaction of their claims, and thereby run counter to the interim receiver's opinion, the court is provided with an opportunity to examine the situation independently and to apply the most optimal bankruptcy process to the debtor.

Article 68. Notification of Introduction of Supervision

- 1 The interim receiver shall be obliged, within three days from the date of his/her appointment, to forward a notice of the introduction of supervision in respect of the debtor for publication in an official gazette in the manner envisaged by Article 52 of this Law.**

- 2 The interim receiver shall be obliged, within ten days from the date of publication of the introduction of supervision, to notify all revealed creditors of the debtor, except those with claims for wages payable, that the economic court has rendered a ruling to introduce supervision in respect of the debtor.
- 3 The debtor's manager shall be obliged to notify the debtor's employees, and founders (participants) or the property owner of the debtor that the economic court has rendered a ruling to introduce supervision in respect of the debtor.
- 4 The introduction of supervision shall be notified to creditors, except those with claims for wages payable, by forwarding a notice to creditors in such way as the date when creditors receive such notice may be recorded.
- 5 The introduction of supervision shall be notified to creditors with claims for wages payable by convening and holding the general meeting of the debtor's employees.
- 6 The introduction of supervision shall be notified to founders (participants) of the debtor by convening the general meeting of founders (participants) or by forwarding a notice of the introduction of supervision to a body of the legal entity debtor which is authorised by the legislation or founding documents to convene the general meeting of founders (participants).
- 7 The notice of the introduction of supervision in respect of the debtor must contain:
 - the name (surname, name, patronymic) of the debtor and its postal address;
 - the name of the economic court which has rendered a ruling to introduce supervision in respect of the debtor, the date of such ruling and the bankruptcy case number;
 - the surname, name, patronymic of the appointed interim receiver and his/her postal address;
 - the date, time and place of a court session set by the court for the consideration of a bankruptcy case;
 - other information at the discretion of a sender of the notice (the interim receiver or the debtor's manager).

The purpose of this Article is to protect creditors' interests, which calls forth the need of individual notification to each creditor by forwarding a notice of the commencement of bankruptcy proceedings in respect of the debtor and on the introduction of supervision. This Article defines the procedure in which the interim receiver achieves his/her duties to notify the introduction of supervision to creditors and other subjects.

1. Paragraph 1 of this Article provides that the interim receiver should undergo the required procedure for publishing in an official gazette a notice of the introduction of supervision in the manner stipulated by Article 52. According to Paragraph 18 of the Resolution of the SEC Plenum No.142, information listed in Article 52 is published in republic-wide or region-wide issues until the Cabinet of Ministers of the Republic of Uzbekistan determines an official gazette. It should be pointed out that the periodicity of such republic-wide or region-wide issues should comply with the term of publication provided by this Law. The interim receiver must, within three days after his/her appointment, forward to an official gazette information on the introduction of supervision in respect of the debtor. According to Paragraph 4 of Article 52, a gazette which receives such information is obliged to publish it within ten days after it receives such information.
2. According to Paragraph 2 of this Article, the interim receiver is obliged, within ten days after the publication, to notify the economic court ruling to introduce supervision in respect of the debtor to

all revealed creditors of the debtor, except creditors with claims for wages payable. After the court accepts a petition for the declaration of the debtor's bankruptcy and introduces supervision, creditors may, principally, receive the satisfaction of their claims only by way of lodging their claims in the manner stipulated by this Law (Art.10,Para.1; Art.63,Para.2). Only those creditors which have lodged their claims and been included in the creditors' register may attend the first creditors' meeting with the right to vote (Art.71,Para.2). Hence, the introduction of supervision has a great effect on creditors' rights, so that this Law requires the interim receiver to notify all creditors specially and individually that they need to lodge their claims in line with the procedure established by this Law.

According to Paragraph 4 of this Article, this notification is made by forwarding to creditors a notice in such way as the date when creditors receive the notice is clarified (delivering the notice by registered mail (with notification of receipt), telegram (with notification of receipt) or fax, handing over from courier services, etc.)

Any expenses for the publication of information and notification to creditors are reimbursed out of the debtor's account (Para.6, the Regulation on court receivers).

3. The debtor's manager is obliged to notify the economic court ruling to introduce supervision in respect of the debtor to the debtor's employees, founders (participants) or the property owner.

This Paragraph imposes on the debtor's manager an obligation to notify the court ruling to introduce supervision to the debtor's employees, so that the employees can know that the economic court has started bankruptcy proceedings, which might have any kind of the end. As to the way of notification, Paragraph 5 of this Article provides the way that the manager convenes a meeting of the debtor's employees.

Founders (participants) or the property owner of the debtor do not fall under the definition of creditors in this Law, however they are exposed to certain consequences from the moment when supervision is introduced, such consequence as prohibits them from presenting their claims against the debtor for the return of apportionment of their share (Art.63,Para.1,Item 2), prohibits them from receiving dividends (Art.63,Para.2,Item 3), etc. In view of this, this Paragraph obligates the debtor's manager to notify the court ruling to introduce supervision to founders (participants) or the property owner of the debtor. As to how to notify, Paragraph 6 of this Article provides that notification is made by convening the general meeting of founders (participants) or by forwarding a notice of the introduction of supervision to a body of a legal entity which is authorised by the legislation or founding documents to convene such meeting.

The interim receiver must make sure that the debtor's manager fulfils the requirement of this Law about notification of the court ruling to introduce supervision to the debtor's employees, founders (participants) or the property owner of the debtor (Para.6, the Regulation on court receivers).

4. Creditors other than those with claims for wages payable are notified in such way as the receipt date can be confirmed. Practically, this notice may be forwarded by registered post with notification of receipt, which enables the receipt date to be identified. In case creditors are located in the same area as the debtor, notification might be made by a courier
5. The debtor's manager bears an obligation to notify the introduction of supervision to creditors which are the debtor's employees with claims for wages payable and notifies them by convening and holding the general meeting of the debtor's employees; i.e. the debtor's manager makes an announcement of the general meeting, where the manager informs the introduction of supervision.

6. Notification to founders (participants) of the debtor is made by the debtor's manager by convening the general meeting of founders (participants) or by forwarding a notice of the introduction of supervision to a body of the legal entity debtor which is authorised by the legislation or founding documents to convene the general meeting of founders (participants). Usually, the debtor's founders (participants) elect their representative to represent their interests in bankruptcy proceedings at such meeting.
7. Paragraph 7 of this Article lists information which must be specified in the notice of the introduction of supervision in respect of the debtor. Along with the mandatory information listed in Items 1 through 4 of this Paragraph, Item 5 of this Paragraph envisages the possibility of specifying other information in the notice. In particular, this may be the following information:
 - the period for creditors to lodge their claims, which should not exceed thirty days after information on the introduction of supervision is published in an official gazette (Art.70,Para.1);
 - the date, time and place of the first creditors' meeting (Art.71,Para.1).

Article 69. Analysis of Debtor's Financial Condition

- 1 The debtor's financial situation shall be analysed with a view to determining the sufficiency of property owned by the debtor to cover judicial expenses and expenses for remuneration of court receivers, and also to determining the possibility of the restoration of the debtor's financial ability.**
- 2 The interim receiver shall form his/her opinion on the possibility of the restoration of the debtor's financial ability and the reasonableness of subsequently introduced bankruptcy processes, based on the analysis of the debtor's financial situation, including the results of the inventory of the debtor's property (if they are available) and the analyse of documents certifying the state registration of ownership.**
- 3 If it is determined as a result of the analysis of the debtor's financial situation that property owned by the debtor is insufficient to cover judicial expenses, creditors shall be entitled to pass a resolution applying to the economic court for the introduction of external management only when a resource for judicial expenses is determined.**

This Article regulates the issues related to the analysis of the debtor's financial situation.

1. The debtor's financial situation is analysed by the interim receiver during supervision with a view to determining:
 - the sufficiency of property owned by the debtor to cover judicial expenses and expenses for remuneration of court receivers;
 - the possibility or impossibility of restoring the debtor's financial ability.

In addition, according to Paragraph 3 of Article 54, one of the purposes of the analysis of the debtor's financial situation is to find out evidences that explicitly prove the sufficiency or insufficiency of the debtor's liquid property to discharge creditors' claims within the period not exceeding thirty days, which may be established by the economic court.

Creating a data base. Initially the interim receiver must determine and create a base of requisite and sufficient data in order to analyse the debtor's financial situation. The following documents and materials are usually necessary for the comprehensive analysis:

- the debtor's founding documents;
- the debtor's balance sheets and attachments thereto for the previous period of time (the recommended period is one half through two years);
- information about the debtor's policy of accounting;
- details of accounts payable and accounts receivable, and also details of individual lines of the balance sheet and its attachments (if necessary);
- results of the latest inventory;
- information on funds in debtor's bank accounts;
- the list of liquid property owned by the debtor along with specification of property title, its balance value and the most probable sale price (to be determined by a specialist);
- information on whether the debtor's property (assets) are charged by any liabilities (offered by lease or as security);
- documents evidencing claims of third parties with respect to the debtor's property (assets) (judicial contest, court decisions, actions of execution officers, etc.);
- acts and conclusions of the state tax inspection upon the results of the check-up of the debtor's activities conducted in the past or the results of auditing investigation, and reports on the evaluation of the debtor's property;
- information on organisations in the charter capital of which the debtor has share (equity) ;
- documents outlining relations with subsidiary companies (contracts, the existence of consolidated balances or consolidated budget of the debtor);
- prospects for the issuance of shares and other securities;
- information on the debtor's organisational structure;
- information on the debtor's main activities (primary types of goods, works, services);
- information on the debtor's internal productive and technological ties;
- information on the debtor's share in the relevant goods market (country-wide and (or) local);
- information on primary suppliers of goods (works, services) for the debtor (estimated share in supplies), and on the portion of cash settlements with suppliers;
- information on primary consumers of the debtor's goods (works, services) (estimated share in the total sale);
- the debtor's plans and programs of production and sale;
- information on the number of the debtor's employees;
- collective employment contract (agreement);
- information on the debtor's main (and expected) investors and on the potential buyers of property (assets) of the debtor;
- other materials and information.

Data from the creditors' register compiled by the interim receiver are also used for the analysis. However, the interim receiver is not always able to thoroughly collect and analyse information on the debtor's financial situation. In practice, it is often the case that the debtor enterprise does not analyse the relevant goods markets or make a production plan or sales plan of goods (works, services). In some cases, there are no information on the inventories or accounting documentation and reports.

The interim receiver must determine and formulate the base of information necessary and sufficient for the analysis of the debtor's financial situation. The interim receiver is empowered to request the debtor's manager to provide information (Art.66, Para.1, Item 6). If the debtor's manager

refuses to provide it, the interim receiver is entitled to apply to the court for the dismissal of this manager (Art.66,Para.2,Item 5).

If there is no information necessary for the analysis of the debtor's financial situation or if such information is not provided by the debtor, the interim receiver must resort to local tax authorities or other authorised bodies, which might have such information on the debtor and its property (Para.9, the Regulation on court receivers. After the interim receiver obtains requisite information from tax authorities etc., he/she must send inquiries to commercial banks in which the debtor has its accounts.

Thus, the interim receiver must take all means available to acquire information about the debtor. On the basis of this created data base, the interim receiver analyses the debtor's financial situation in the following order. It is advised to sum up the results of the analysis in the form of a report on the debtor's financial situation in order to enable creditors to acquaint themselves with the results of such analysis and also to apply to the economic court. The structure of the report may correspond to the basic order of the analysis.

Determining the sufficiency (insufficiency) of property owned by the debtor to cover judicial expenses and expenses for remuneration of court receivers. In line with the purposes of the debtor's financial analysis, firstly it is necessary to assess the sufficiency or insufficiency of the debtors' property to reimburse judicial expenses and remuneration of court receivers. The results of the assessment have a great importance in deciding a subsequent bankruptcy process to be applied.

In order to determine the aforementioned sufficiency (insufficiency) of the debtor's property, the interim receiver assesses the debtor's property from the viewpoint of its liquidity. First of all, money funds (the most liquid assets of the debtor) must be revealed, and then a list of other property of the debtor is compiled with specification of its balance value and the most probable amount of funds that may be recovered from its sale and that can be used to pay judicial expenses and remuneration of court receivers.

According to Article 90 of the Code of Economic Procedure, judicial expenses include a state duty and costs in court proceedings: postage costs to send judicial acts, costs of expert examinations appointed by the court, expenses to summon experts, costs of proof survey at the site and other expenses incurred in court proceedings. At the financial analysis during supervision, the interim receiver can hardly assess the exact amount of all expenses in court proceedings. Therefore, it is advisable to estimate the minimum amount of judicial expenses, which is the amount of a state duty.

In order to estimate expenses for remuneration of court receivers, it is advised that the interim receiver takes into account the period of supervision prescribed by the economic court, and the period of a subsequent bankruptcy process, which is most probably applied in the opinion of the interim receiver. In this case, the interim receiver may ground its calculation both upon the amount of his/her monthly remuneration and upon the average monthly remuneration in similar cases in this particular region and (or) the country. Moreover, when the interim receiver makes estimation, the value of the debtor's property and the scope of works carried out by a court receiver are taken into consideration. It is also taken into account that remuneration of court receivers should not be below the minimum monthly wage of the previous manager of the debtor (Para.15, the Resolution of the SEC Plenum No.142).

Determining the sufficiency (insufficiency) of liquid property of the debtor to discharge creditors' claims. The next stage of the analysis of the debtor's financial situation is to determine the sufficiency (insufficiency) of the debtor's liquid property to satisfy creditors' claims.

Establishing reasons of the debtor's insolvency, of internal and external sources for recovering its solvency. On the ground of the analysis of documents included in the data base, the interim receiver analyses:

- resources for financing the debtor's business activities (internal finance and debt finance);
- debts owned to creditors from the viewpoint of their structure, the date of their arising and changes during the period of the analysis;
- the results of the debtor's business activities within the period of the analysis, namely: the profits (incomes), costs (expenses) as concerns the primary and other activities;
- the debtor's cash flows, i.e. the analysis of incoming and outgoing money during the period of the analysis. For the reliability and the validity of conclusions about the debtor's financial situation, it is advisable to analyse the debtor's business and financial activities in the last one or two years.

According to Paragraph 6 of Article 93, the moratorium is not applied to claims of citizens arising from labour law relations, for alimony and remuneration under copyright agreements, or to claims of citizens to whom the debtor is liable in damage to life or health and in moral damage. Therefore, the interim receiver must identify and take into account the amount of such claims when conducting the analysis in order to justify the introduction of external management and the possibility of restoring the debtor's financial ability within the period set by this Law. It is considered that for this very reason, Paragraph 10 of the Regulation on court receivers provides that "in the course of analysing the debtor's financial activity, the interim receiver shall identify the sum paid to citizens to whom the debtor is liable in damage to life or health, and also the debtor's liabilities arising from labour law relations". If it is the case, however, the interim receiver must be required to find out the amount of claims for alimony, for remuneration under copyright agreements and for moral damage as well, apart from claims for damage to life or health, and for wages.

In addition, reasons of the debtor's insolvency have to be analysed. In course of the analysis of business activities, the interim receiver should find out the tendency of the debtor's fluctuating financial situation and solvency during the period of the analysis. If the debtor's business activities or its certain types of activities are found to be loss-making, reasons of loss-makings should be revealed from the viewpoint of their ineffectiveness and external factors as well. A special attention should be paid to the fact that one of the reasons of the debtor's inability to timely satisfy creditors' claims for monetary obligations and (or) mandatory payments may be the reducing of cash settlements as compared to non-cash settlements (set-off, etc.).

Determining the amount of money funds necessary for settlements with creditors, it depends on the type of a bankruptcy process which is applied to the debtor after supervision. If there are grounds for introducing judicial rehabilitation or external management, the sum paid to creditors in the course of judicial rehabilitation or external management is estimated on the basis of data from the creditors' register and interest accrued on creditors' claims for monetary obligations and mandatory payments at the refinancing rate of the Central Bank of the Republic of Uzbekistan as of the date of actual settlements (Art.327,Para.2,CC).

The sum paid to creditors within the framework of an amicable agreement is estimated on the basis of data from the creditors' register, taking into account the conditions of the agreement.

2. From the analysis of the debtor's financial situation and the reasons of its insolvency, the interim receiver makes a conclusion as regards the availability of the debtor's internal resources for its financial recovery during judicial rehabilitation or external management or for the secure fulfilment

of an amicable agreement. If there are no internal resource for the implementation of judicial rehabilitation of external management, or for the fulfilment of an amicable agreement, the interim receiver considers and analyses external resources for them, for example, the possibility of involving third parties for the performance of the debtor's obligations (Para.12,the Regulation on court receivers).

Justifying the possibility (impossibility) of restoring the debtor's financial ability. The possibility of restoring the debtor's financial ability within the framework of judicial rehabilitation or external management should be justified by way of foreseeing cash flows (cash inflows and outflows) of the debtor in various cases, which is estimated by the interim receiver upon the results of forecasting the debtor's business activities in the upcoming period.

The main purpose of foreseeing the debtor's cash flows in case of judicial rehabilitation or external management is to estimate the probability for the debtor to accumulate funds, which would be sufficient to satisfy creditors' claims in the manner provided by this Law.

In case the justification is considered while an amicable agreement is prepared, the main attention should be drawn to conditions of an agreement and to its period, based on which a schedule of settlements with creditors is drafted.

Making a proposal as regards a subsequent bankruptcy process to be applied after supervision. The interim receiver, based on the results of the analysis of the debtor's financial situation makes a proposal on the possibility or impossibility of the debtor's financial recovery and justifies the rationality of the introduction of a subsequent bankruptcy process (Para.14, the Regulation on court receivers. Thus, the interim receiver, on the basis of the results of the analysis, chooses a bankruptcy process (judicial rehabilitation, external management, liquidation proceedings or amicable agreement) which he/she thinks reasonable to apply after supervision, and provides his/her opinion as an interim receiver with the justifications of the opinion to the creditors' first meeting. The first creditors' meeting decides on the following issues (Arts.73 and 74):

- if it passes a resolution introducing judicial rehabilitation, the resolution must specify a proposed period of judicial rehabilitation and the debt repayment schedule;
- if it passes a resolution introducing external management, the resolution must specify a proposed period of external management;
- if it passes a resolution initiating liquidation proceedings, the resolution must specify a proposed period of liquidation proceedings.

The interim receiver presents to the creditors' meeting his/her proposal as regards the above mentioned issues with the justification thereof.

Proposing methods of the debtor's financial recovery. The interim receiver may, on the ground of the analysed reasons of the debtor's insolvency, propose a series of measures for the restoration of the debtor's financial ability (Para.13, the Regulation on court receivers). In case the interim receiver proposes to the first creditors' meeting the introduction of judicial rehabilitation or external management after supervision, he/she may plan a series of measures aimed at restoring the debtor's solvency and include them in his/her proposal.

If the debtor has internal resources for its financial recovery, the following may be included in measures to restore the debtor's financial ability:

- converting business;
- closing unprofitable business;

- carrying out the strict control over production and non-production costs in order to exclude unjustified expenses and to reduce the prime cost of products up to that of competitors' products;
- employing a rational scheme of management and sale;
- carrying out such a marketing policy as would ensure the increase of production and sale;
- increasing cash settlements;
- ensuring the profitability of the main activities;
- raising the effectiveness of other types of the debtor's activities;
- selling parts of assets;
- recovering accounts receivable;
- assigning the debtor's claims;
- other measures, including a sale of the debtor's enterprise (business).

During the analysis of the debtor's financial situation, the possibility of restructuring the debtor's obligations by way of an amicable agreement is considered. Such restructuring is possible by extension on payment or payment by instalments of its obligations, their performance by third parties, debt reduction, conversion of claims for stocks, satisfaction of creditors' claims in any other means that are not against the legislation (Para.13, the Regulation on court receivers).

In order to ensure the possibility for creditors to become acquainted with the results of the analysis conducted by the interim receiver and to apply to the economic court, the results of the analysis should be summarised as a report on the debtor's financial situation (Para.15, the Regulation on court receivers).

3. If it is determined as a result of the analysis of the debtor's financial situation carried out by the interim receiver that the debtor's property is inadequate to cover judicial expenses, external management may be introduced, provided that a resource for judicial expenses is fixed, which must be determined by creditors' meeting.

In addition, if it is established as a result of the analysis that the legal entity debtor is not in a position to cover expenses in bankruptcy proceedings, the interim receiver reports thereof to the economic court.

Article 70. Confirmation of Creditors' Claims

- 1 In order to participate in the first creditors' meeting, creditors shall be entitled to lodge their claims against the debtor within thirty days from the date when the introduction of supervision in respect of the debtor is published in an official gazette. Such claims shall be forwarded by creditors to the economic court, the debtor and the interim receiver with judicial acts or other documents confirming the validity of these claims.**
- 2 The debtor shall be entitled to raise to the economic court objections against creditors' claims which have grounds for being confirmed, if:**
 - **there is a judicial act legally in force which cancels or amends judicial acts submitted by creditors as grounds for confirming their claims, or which suspends the effect of such judicial acts, or amends the way and procedure for the execution of such judicial acts;**
 - **there is a document which cancels or amends documents (acknowledgment of debt, notarised document of execution and others) submitted by creditors as grounds for confirming their claims, or which suspends the effect of such documents;**

- the debtor and a creditor enter into an agreement to amend the date, procedure and conditions of debt repayment provided in a document submitted by creditors as an evidence that their claim are confirmed;
 - the debtor has made a full or partial repayment of its debts;
 - there are evidences of the substitution of an obligator against which claims are lodged;
- 3 The interim receiver shall be entitled to raise to the economic court objections against creditors' claims which are to be confirmed according to this Law, if a document testifying the debtor's acknowledgment of its debts is presented as an evidence that creditor's claims are confirmed, and the interim receiver has sufficient grounds to believe that such acknowledgment violates the rights and legitimate interests of other creditors and (or) is groundless.**
- 4 The debtor and the interim receiver may raise objections against creditors' claims to the economic court within one week from the date when they receive the relevant claims. Creditors' claims against which objections are raised shall be considered in a court session. Upon the results of consideration, the economic court shall render a ruling to include or refuse to include these claims in the creditors' register. Creditors' claims against which the debtor or the interim receiver raises no objection within such period shall be included in the creditors' register in the amount stated by the creditors.**
- 5 If creditors' claims are recognised invalid or not proved by the proper evidences, these claims must be returned. These claims may be lodged in the course of subsequent bankruptcy processes.**

The purpose of this Article is to determine the procedure for ascertaining creditors' claims at the stage of supervision.

1. The confirmation of claims is a series of measures to be carried out for creditors to participate in bankruptcy processes, in particular in the collective body of creditors – the creditors' meeting, and also for identifying creditors which have their claims satisfied in the manner provided by this Law.

This Law defined creditors which have lodged their claims in the manner established by this Law, as persons participating in a bankruptcy case (Art.36,Para.1). In case creditor's claims have been ascertained and included in the creditors' register, the creditor can participate in the creditors' meeting with the right to vote (Art.10,Para.8), and receive the satisfaction of their claims in the manner established by this Law (Art.83,Para.3;Art.121,Para.1;Art.138,Para.1;Para.31, the Resolution of the SEC Plenum No.142).

The important function of ascertaining claims in course of supervision is to reveal creditors which are authorised to participate in the creditors' meeting with the right to vote, which is emphasised in Paragraph 1 of this Article. These claims included in the creditors' register retain the rights granted by this Law until they are excluded from the creditors' register by virtue of reasonable objections against them or by virtue of their satisfaction.

It is a creditor itself that determines the moment when it joins bankruptcy proceedings, namely a creditor has a right to apply for the ascertainment of its claim or not.

It should be pointed out that there are certain claims of creditors which are paid outside bankruptcy proceedings without being lodged in the manner provided by this Article.

Claims for current payments, for damage to life or health, for wages, for alimony, for remuneration under copyright agreements and for moral damage are satisfied without being lodged in the procedure provided by this Article (although they must be lodged in liquidation proceedings), but creditors with such claims do not have a right to vote at the creditors' meeting.

Claims of the debtor's employees for wages, as outlined above, do not need to be lodged in the procedure provided by this Article, although in practice the representative of the debtor's employees files these claims with a court receiver in the aggregate amount.

Founders (participants) of the debtor are not considered as a creditor in terms of claims for the return of apportionment of their shares (stocks) and these claims are not lodged under the procedure provided by this Article. Non-monetary (non-property) claims are not considered as creditors' claims, either. They can be fulfilled outside bankruptcy proceedings, and therefore they are not lodged in the manner provided by this Article.

Those claims specified in a petition for the declaration of the debtor's bankruptcy do not need to be lodged separately in order to be included in the creditors' register, because the interim receiver records them in the register before holding the first creditors' meeting (see the comment on Art.47,Para.1).

This Law provides for a strictly determined deadline by which creditors lodge their claims, which is thirty days after the introduction of supervision is published in an official gazette, and a court receiver is not entitled to set the period shorter than that provided in this Article. The interim receiver in line with Article 68 must forward to all known creditors a notice of the introduction of supervision within ten days after information of the introduction of supervision is published in an official gazette. Along with this, it does not matter when creditors receive the notice, in order to calculate the period within which creditors may present their claims.

Creditors forward their claims to the economic court, the debtor and the interim receiver, when a problem arises; what if claims are not forwarded to all three subjects. From the direct interpretation of the provisions of this Article, it can be concluded in such situation that claims are considered to be not forwarded and they may not be taken into account. However, in practice it is often the case that claims are forwarded to not all or forwarded late to one of them, but they are still accepted.

When creditors lodge their claims, they should attach a judicial act or other documents confirming the validity of their claims.

2. Paragraph 2 of this Article sets grounds for the debtor to raise to the economic court objections against claims lodged under Paragraph 1 of this Article.

The debtor are authorised to forward objections against creditors' claims, if:

- there is a judicial act legally in force which cancels or amends judicial acts submitted by creditors as grounds for confirming their claims, or which suspends the effect of such judicial acts, or amends the way and procedure for the execution of such judicial acts;
- there is a document which cancels or amends documents (acknowledgment of debt, notarised document of execution and others) submitted by creditors as grounds for confirming their claims, or which suspends the effect of such documents;
- the debtor and a creditor enter into an agreement to amend the date, procedure and conditions of debt repayment provided in a document submitted by creditors as an evidence that their claim are confirmed;
- the debtor has made a full or partial repayment of its debts. In this connection, it should be noted that "a full or partial repayment of debt" mean that the debtor fully or partially repays its debts

before the court accepts a petition for the declaration of the debtor's bankruptcy. After the court accepts the petition, creditors are not entitled to individually request the debtor to satisfy their claims (Art10.Para.1);

- there are evidences of the substitution of an obligator against which claims are filed.

The debtor has a right to file an objection against claims with the economic court within one week after it receives these claims (this Article, Para.4), when there are grounds provided by this Article. This means cases where there are circumstances mentioned by this Paragraph as regards a judicial act or other documents submitted as proof of the validity of claims, i.e. cases where circumstances mentioned in this Paragraph have taken place before creditors lodge their claims.

However, the debtor may lodge objections also when circumstances mentioned in this Paragraph arise after creditors lodge their claims. For example, it is quite possible that a judicial act presented as proof of the validity of claims is annulled in the cassational or supervisory instance after creditors lodge their claims.

It is considered that when circumstances mentioned by this Paragraph occur after creditors lodge their claims, the debtor is entitled to files objections against lodged claims to the economic court. This Law does not envisage the deadline for filing such objections.

3. The interim receiver is entitled to file objections against creditors' claims that have been lodge under Paragraph 1 of this Article, if a document testifying the debtor's acknowledgment of its debts is presented as an evidence that creditor's claims are confirmed, and there are sufficient grounds to believe that such acknowledgment violates the rights and legitimate interests of other creditors and (or) is groundless.

Hence, the primary right to raise objections against claims is granted to the debtor, while the interim receiver may, according to this Paragraph, forward his/her objections to the economic court only in one concrete case – when the debtor's conduct to acknowledge creditor's claims violates the rights and legitimate interests of other creditors or is not legally founded.

If there are grounds for the debtor to file an objection but the debtor's manager does not raise an objection to the court, the interim receiver has a right to appeal this conduct of the debtor by virtue of Paragraph 1 of Article 59, because this infringes the rights and legitimate interests of both creditors and the debtor itself. This conduct may also serve a ground for the interim receiver to apply to the court for the dismissal of the debtor's manager (Art.66,Para.1,Item 5).

4. Paragraph 4 of this Article provides that the debtor or the interim receiver is entitled to produce in the court objections against creditors' claims under Paragraphs 2 or 3 of this Article within one week after they receive the claims.

Objections against creditors' claims are considered at the economic court in the period and manner established by Article 59.

Upon the results of consideration, the economic court gives a ruling to include or refuse to include the specified claims in the creditors' register. This ruling is forwarded to the debtor, the interim receiver and to the creditor. If a ruling rendered by the court is in favour of the creditor, the court ruling specifies the amount and priority of its claims.

The abovementioned ruling is appealable in line with Article 60. Even if the ruling is appealed, the creditor's claims are included in the creditors' register (in case the court have issued a ruling to include these claims in the register), because according to Paragraph 6 of Article 48 an appeal against a ruling does not suspend the effect of the ruling.

If the debtor or the interim receiver does not raise any objections against creditors' claims within one week (as established by this Article), these claims are entered in the creditors' register in the amount stated by creditors. In case the debtor or the interim receiver files objections against claims lodged by creditors in the course of supervision and the economic court renders a ruling upon the results of the consideration of such objections, no more objections may be filed with the economic court in respect of the same claims by analogy with Paragraph 3 of Article 100.

When proceedings with respect of objections take more time than the period of supervision, the court may extend the period of supervision. In case the period of supervision is not extended and it is already time to hold the first creditors' meeting, the interim receiver does not include these claims in question in the creditors' register, and creditors with such claims (claims in consideration of court proceedings) may participate in the first creditors' meeting without the right to vote. If these claims are recognised valid, they are included in the creditors' register in subsequent bankruptcy processes. In practice, if a creditor lodges its claim on the last thirtieth day of the period for lodging claims, an objection against the claim is considered in the first court session, where the objection is examined along with the debtor's opinion/objection against a petition for the declaration of the debtor's bankruptcy.

5. If the court recognises creditors' claims to be unjustified or not confirmed by proper evidences, such claims are returned. In this case, this Law authorises creditors to lodge these claims again in the course of subsequent bankruptcy processes.

It should be noted also that the interim receiver and the debtor do not accept claims which creditors file after the period provided by Paragraph 1 of this Article expires. Such creditors lose a right to attend the first creditors' meeting. Their claims are considered by a court receiver in a subsequent bankruptcy process.

The first creditors' meeting may be held, even if the confirmation of creditors' claims is not finished, because creditors may lodge their claims in subsequent bankruptcy processes.

Article 71. Convocation of First Creditors' Meeting

- 1 The interim receiver shall determine the date of the first creditors' meeting and notify this to all revealed creditors, the representative of the debtor's employees and other persons (bodies) eligible to participate in the first creditors' meeting. Notification of the first creditors' meeting shall be made by the interim receiver in the manner envisaged by Article 11 of this Law. The first creditors' meeting must take place not later than ten days prior to the date of the economic court session indicated in the economic court ruling to accept a petition for declaration of the debtor's bankruptcy.**
- 2 Participants in the first creditors' meeting with the right to vote shall be creditors which have lodged their claims in the manner envisaged by Paragraph 1 of Article 70 of this Law, and been included in the creditors' register.**
- 3 The representative of founders (participants) or the property owner of the debtor and the representative of the debtor's employees shall have the right to participate in the first creditors' meeting with the right to counsel. Their absence shall not be a ground for the invalidation of the creditors' meeting.**

The objective of this Article is to clarify the procedure for convoking the first creditors' meeting; upon whose initiative or request it may be held; what is the content of the request, limited powers of the court receiver, specification of the period of the meeting and its place.

1. Paragraph 1 of this Article sets the procedure for summoning and holding the first creditors' meeting. The first creditors' meeting is held at the latest period of supervision and considered to be an important event in the bankruptcy process of the debtor, because the subsequent direction of bankruptcy processes are determined thereon.

Unlike the subsequent meetings, the date of the first creditors' meeting is determined by the interim receiver independently. Along this, this Law provides for a time framework, that is, the first meeting takes place not later than ten days before the court session (i.e. before the date of the completion of supervision), but after the expiry of the period established for creditors to lodge their claims, i.e. after thirty days have passed since the publication of the introduction of supervision.

The interim receiver has an obligation to forward notification to the following subject participating in bankruptcy proceedings (it should be noted that this notification must be forwarded not only to those who attend the first creditors' meeting with the right to vote, but also to those who attend it without the right to vote):

- to each revealed creditor (including authorised state bodies), regardless of whether their claims are ascertained or not. Notification does not have to be sent to creditors whose claims must be preferentially satisfied without being lodged in the manner provided by this Law (such as claims for damage to life or health, for moral damage, or current payments, etc.);
- to authorised bodies;
- to the representative of the debtor's employees;
- to other persons eligible to participate in the first creditors' meeting (founders (participants) or the property owner of the debtor, etc.).

The abovementioned subjects must be notified of the first creditors' meeting in the manner and term set by Article 11. According to these requirements, the notification of the first creditors' meeting is made by forwarding a notice of the first creditors' meeting by postal service not later than two weeks prior to the creditors' meeting or in such other way as ensures the receipt of such notice not later than five days prior to the creditors' meeting.

If it is impossible to reveal information necessary for personal notification to creditors or other persons eligible to participate in the creditors' meeting, or, if there are other circumstances which make personal notification to these persons impossible, the publication of information in an official gazette in the manner provided by Article 53 is recognised as the proper notification to them.

2. Paragraph 2 of this Article defines who may attend the first creditors' meeting with the right to vote. It is creditors (including authorised state bodies) with claims ascertained and included in the creditors' register that are granted the right to vote or a power to influence resolutions passed at the meeting. As regards mandatory payments, it is the state taxation service authorities and other authorised bodies that may attend the meeting with the right to vote (Art.10,Para.3). If claims have not been ascertained but argued in court proceedings, their creditors do not have a right to vote at the meeting, but they still may take part in the first meeting. The quorum of the creditors' meeting and the procedure for passing resolutions are defined in Articles 10 through 13.
3. The representative of founders (participants) or the property owner of the debtor and the representative of the debtor's employees are authorised to participate in the first creditors' meeting

with the right to counsel. These persons may participate in the regular creditors' meeting without the right to vote, besides the first meeting. The provision of this Paragraph acknowledges that these persons may attend the first creditors' meeting as well. Along with this, this Paragraph provides that the absence of these persons does not constitute a ground for the invalidation of the creditors' meeting.

In addition, the representatives of the state body for bankruptcy proceedings are entitled to participate in the first creditors' meeting, regardless of who initiated the commencement of a bankruptcy case. The public prosecutor may also participate in the first creditors' meeting without the right to vote, if a case has been commenced upon its petition.

Article 72. Matters Considered by First Creditors' Meeting

The first creditors' meeting shall have the exclusive competency to pass resolutions:

- **applying to the economic court for the introduction of judicial rehabilitation or external management;**
- **applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings;**
- **deciding the numerical composition of the creditors' committee, electing its members;**
- **approving a candidate for a rehabilitation manager, external manager or liquidation manager;**
- **in respect to other matters envisaged by this Law.**

This Article defines the exclusive competency of the first creditors' meeting.

A resolution of the first creditors' meeting is one of determinatives in the future fate of the debtor. This Article defines the authority of the first creditors' meeting related to the debtor's future fate. Along with this, it is also necessary to take into account the provisions of Paragraph 5 of Article 10, where the exclusive competency of the creditors' meeting is explained.

This Article lists matters which may be considered at the first creditors' meeting. These are the following:

- on the application to the economic court for the introduction of judicial rehabilitation (Item 1). This resolution may be passed if there is a possibility thereto;
- on the application to the economic court for the introduction of external management (Item 1);
- on the application to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings (Item 2);
- on the election of members of the creditors' committee and its numerical composition (Item 3);
- on the approval of a nominee for a court receiver in a bankruptcy process to be introduced after supervision (a rehabilitation manager, external manager and liquidation manager) (Item 4). At the same time, the first creditors' meeting passes a resolution regarding the amount of remuneration and procedure of its payment (Art.22,Para.1). A candidate for an external manager may be proposed to the creditors' meeting by creditors or by the state body for bankruptcy proceedings (Art.94,Para.2).
- on other matters envisaged by this Law (Item 5). When the first creditors' meeting passes a resolution applying to the economic court for the introduction of judicial rehabilitation, it must

also take a resolution on the matters stipulated in Paragraph 1 of Article 73. In case of applying for the introduction of external management, the meeting must pass a resolution on the matters stipulated in Paragraph 1 of Article 74, while in case of applying for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, it must together pass a resolution on the matters stipulated in Paragraph 2 of Article 74. The first creditors' meeting may also discuss the possibility of entering into an amicable agreement and applying the economic court for this.

It need to be noted that stricter requirements are envisaged to passing resolutions under Items 1,2 and 4 of this Article, i.e. a majority in value of all creditors is required to pass such resolutions (Art.13,Para.3).

The matters listed in this Article are considered to be under the exclusive competency of the first creditors' meeting. However, the following exemptions need to be noted as well:

- even in case the first creditors' meeting passes a resolution applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, founders (participants) or the property owner of the debtor, the state body for bankruptcy proceedings and a third party may apply to the court for the introduction of judicial rehabilitation on condition that they provide security for the performance of the debtor's obligations (Art.75,Para.3);
- the state body for bankruptcy proceedings may apply to the economic court for the introduction of external management in respect of an enterprise the charter capital of which partially or wholly belongs to the state, regardless of whether the first creditors' meeting has passed a resolution introducing any other bankruptcy process or no resolution (Art.91,Para.1).

Article 73. Resolution of First Creditors' Meeting Applying to Economic Court for Introduction of Judicial Rehabilitation

- 1 A resolution of the first creditors' meeting applying to the economic court for the introduction of judicial rehabilitation must contain a proposed period of judicial rehabilitation and the approved debt repayment schedule.**
- 2 The first creditors' meeting which has passed a resolution applying to the economic court for the introduction of judicial rehabilitation shall be entitled to apply to the economic court for the dismissal of the interim receiver. In such application of the creditors' meeting, a candidate for a rehabilitation manager may be proposed to the economic court for appointment.**

This Article provides for the specifics of the creditors' resolution in applying a procedure for the financial recovery of the debtor – judicial rehabilitation.

1. A resolution of the first creditors' meeting applying to the economic court for the introduction of judicial rehabilitation **must** contain a proposed period of judicial rehabilitation and its resolution to approve the debt repayment schedule. As concerns these matters, usually the interim receiver provides the first creditors' meeting with his/her proposal based on the results of the analysis of the debtor's financial situation (Art.69). However, the proposal of the interim receiver is not binding on the first creditors' meeting when the meeting passes a resolution.

When the debtor, founders (participants) or the property owner of the debtor apply to the first creditors' meeting for the introduction of judicial rehabilitation, they draft the judicial rehabilitation plan with specification of the proposed period of judicial rehabilitation and the debt repayment

schedule. When a third party so applies to the first creditors' meeting, the third party prepares the debt repayment schedule (Art.76,Paras.2, 4,and 5).

2. A resolution of the first creditors' meeting applying to the economic court for the introduction of judicial rehabilitation may contain an application for the dismissal of the interim receiver from his/her duties. In the application of creditors' meeting, a candidate for a rehabilitation manager **may be** proposed to the economic court for appointment. Along with this, creditors may propose as a nominee a person who used to act as interim receiver (Para.3, the Regulation on court receivers). Since this Law does not envisage the procedure in which a candidate for a rehabilitation manager is proposed to the creditors' meeting, it is considered that, by analogy with Article 94, any creditor or the state body for bankruptcy proceedings may propose a candidate for a rehabilitation manager to the creditors' meeting. If judicial rehabilitation has been introduced not by a resolution of the creditors' meeting applying to the economic court for the introduction of judicial rehabilitation, but by a ruling of the economic court to introduce judicial rehabilitation, the court may specify in the ruling the deadline by which the creditors' meeting or persons who grant security for the performance of the debtor's obligations should propose a candidate for a rehabilitation manager. If the creditors' meeting or such persons fail to propose a candidate, the court is entitled to appoint a rehabilitation manager among candidates proposed by the state body for bankruptcy proceedings.

**Article 74. Resolution of First Creditors' Meeting Applying
to Economic Court for Introduction of External Management,
Declaration of Debtor's Bankruptcy and Initiation of Liquidation Proceedings**

- 1 **A resolution of the first creditors' meeting applying to the economic court for the introduction of external management must contain a proposed period of external management, a candidate for an external manager and information on him/her.**
- 2 **A resolution of the first creditors' meeting applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings must contain a proposed period of liquidation proceedings, a candidate for a liquidation manager and information on him/her.**

This Article provides for specifics of creditors' resolution in applying external management and liquidation proceedings.

1. Paragraph 1 of this Article provides that a resolution of the first creditors' meeting applying to the economic court for the introduction of external management must contain a proposed period of external management, and a candidate for an external manager and his/her information.

A period of external management, as a rule, is proposed to the first creditors' meeting by the interim receiver, taking into account the results of the analysis of the debtor's financial situation (Art. 69), although the resolution of the first creditors' meeting does not necessarily follow such proposal.

The procedure for proposing a candidate for an external manager is stipulated in Article 94. Usually, the proposal of such candidate contains information about his/her work experience that outlines his/her professional capacities, including previous professional experience as a court receiver.

2. Paragraph 2 of this Article provides that a resolution of the first creditors' meeting applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings must contain a proposed period of liquidation proceedings, and a candidate for a liquidation manager and his/her information.

A proposed period of liquidation proceedings, as a rule, is offered to the first creditors' meeting by the interim receiver, taking into account the results of the analysis of the debtor's financial situation (Art.69), although this proposal is not binding over the first creditors' meeting in taking a resolution.

The provisions of Article 94 are applied for the purpose of proposing a candidate for a liquidation manager, because Article 126 provides that a liquidation manager is appointed in line with the procedure provided for an appointment of an external manager. According to Paragraph 2 of Article 94, a candidate for a liquidation manager may be proposed to the creditors' meeting by creditors or by the state body for bankruptcy proceedings. Usually a proposal of such candidate contains information about his/her work experience that outlines his/her professional capacities, including previous professional experience as a court receiver.

Article 75. Termination of Supervision

- 1 The economic court shall render a decision to declare the debtor bankrupt and initiate liquidation proceedings or a ruling to introduce judicial rehabilitation or external management, or a ruling to approve an amicable agreement and terminate bankruptcy proceedings, by virtue of a resolution of the first creditors' meeting, unless otherwise established by this Article.**
- 2 If the first creditors' meeting fails to pass a resolution applying for any bankruptcy process or no resolutions is presented to the economic court within the period set by Article 10 of this Law, the economic court shall render a decision to declare the debtor bankrupt and initiate liquidation proceedings when there are indications of bankruptcy, unless otherwise envisaged by this Article.**
- 3 If the first creditors' meeting passes a resolution applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, or no resolutions is presented to the economic court, the economic court shall be entitled to render a ruling to introduce judicial rehabilitation upon an application of founders (participants) or the property owner of the debtor, the state body for bankruptcy proceedings and a third party (parties), provided that the applicant grants security for the debtor's performance of obligations according to the debt repayment schedule.**
- 4 Before a rehabilitation manager or external manager, or liquidation manager is appointed, duties of such managers shall be performed in full by the one who has been acting as interim receiver.**
- 5 Supervision shall terminate on the date when the economic court declares the debtor bankrupt and liquidation proceedings is initiated, or when judicial rehabilitation or external management is introduced, or when an amicable agreement is approved.**

This Article regulates the procedure for terminating supervision and shifting to a subsequent bankruptcy process in respect of the debtor, i.e. it defines the procedure in which the economic court takes relevant judicial acts.

1. From the meaning of Paragraph 1 of this Article, it follows that the will of creditors plays an important role when the economic court make judgement. The court makes a decision by virtue of a resolution of the first creditors' meeting (to declare the debtor bankrupt and initiate liquidation proceedings) or renders a ruling to introduce judicial rehabilitation or external management, or approve an amicable agreement and terminate bankruptcy proceedings, unless otherwise is provided by Paragraph 3 of this Article. Nevertheless, the economic court is entitled at its own discretion to render one of the judicial acts listed in Paragraph 1 of Article 50, regardless of a resolution of the first creditors' meeting, if the court, as a result of the case consideration in its session, comes to a conclusion that there are no grounds for introducing a bankruptcy process which the first creditors' meeting applies for, or conditions for approving an amicable agreement are not met. For example, if the economic court, as a result of the case consideration, could not find out the real possibility of the financial recovery of the debtor, the court does not render a ruling to introduce external management, despite an application of the creditors' meeting for the introduction of this bankruptcy process. Additionally, if the mandatory conditions provided by Articles 149 and 151 are not satisfied, the court refuses to approve an amicable agreement. In this case, a resolution of the creditors' meeting is not binding on the court.

2. If the first creditors' meeting passes no resolution, or none of its resolutions is produced in the economic court within five days of the creditors' meeting as established by Article 10, the economic court issues a decision to declare the debtor bankrupt and initiate liquidation proceedings (when there are indications of bankruptcy), unless otherwise envisaged by Paragraph 3 of this Article.

If the debtor is declared bankrupt and liquidation proceedings are initiated as provided by this Paragraph, and the first creditors' meeting does not propose a candidate for a liquidation manager, then, by virtue of Article 126, the provisions of Paragraph 4 of Article 94 are applied to an appointment of a liquidation manager. Therefore, the meeting retains its right to consider, approve and present to the economic court a candidate for a liquidation manager within three weeks from the date when the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings. If the creditors' meeting fails to present a candidate for a liquidation manager, the economic court, in line with Paragraph 5 of Article 94, appoints a liquidation manager from candidates proposed by the state body for bankruptcy proceedings.

3. If the first creditors' meeting has passed a resolution applying to the court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, or none of its resolutions has been produced in the economic court, the court may issue a ruling to introduce judicial rehabilitation upon an application of founders (participants) or the property owner of the debtor, the state body for bankruptcy proceedings or a third party (parties), provided that the applicant grants security for the performance of the debtor's obligations according to the debt repayment schedule.

As regards the procedure in which the aforementioned persons apply directly to the economic court for the introduction of judicial rehabilitation, see the comment on Article 76.

4. In order to ensure the continuity of exercising bankruptcy processes, Paragraph 4 of this Article provides that before the next court receiver (rehabilitation manager, external manager or liquidation manager) is appointed, duties of the next court receiver are fully imposed on a person who has been

earlier acting as interim receiver. In this situation, the interim receiver performs all duties and enforces all rights of the external manager, except for a duty to make an external management plan.

5. The supervision process terminates when the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings or a ruling to introduce judicial rehabilitation (external management), or to approve an amicable agreement.

Along with this, it is deemed that consequences of the introduction of supervision as stipulated in Article 63 remain in force even after the shift to judicial rehabilitation or external management.

CHAPTER V. JUDICIAL REHABILITATION

This Chapter is devoted to judicial rehabilitation.

The process of judicial rehabilitation is introduced by the economic court with a view to restoring the debtor's solvency (financial ability) and repaying its debts owed to creditors. By carrying out judicial rehabilitation, it is possible to avoid the debtor's bankruptcy that accordingly entails the liquidation of the debtor as a business entity. The managing bodies of the debtor, including its manager, are not deprived of their powers to manage the debtor's undertaking and dispose of its property; they are held accountable for carrying out their functions under the administration of the rehabilitation manager. Judicial rehabilitation is an innovative regime employed in this Law 2003.

Judicial rehabilitation is introduced by the economic court by virtue of an application of the debtor, founders (participants) or the property owner of the debtor, or a third party, or upon an application of the creditors' meeting, filed upon its resolution. Judicial rehabilitation is introduced, as a rule, on the basis of a resolution of the creditors' meeting passed by the majority vote in value of all creditors. The economic court appoints a rehabilitation manager and specifies the period of judicial rehabilitation in its ruling to introduce judicial rehabilitation. The period of judicial rehabilitation is determined in view of the judicial rehabilitation plan and the debt repayment schedule, and must not exceed twenty-four months as a general rule. The application to introduce judicial rehabilitation is presented with the judicial rehabilitation plan and the debt repayment schedule. When founders (participants) or the property owner of the debtor, or a third party applies for judicial rehabilitation, evidences that they grant security to ensure the performance of the debts repayment schedule by the debtor should be attached to their application. In this case, the amount of granted security must exceed the amount of the debtor's obligations by not less than 20 per cent.

At judicial rehabilitation, the consent of the creditors' meeting or the rehabilitation manager is necessary when *creditors* or the debtor make transactions that might violate the equality of creditors. The rehabilitation manager maintains the creditors' register (takes on the creditors' register compiled by the interim receiver), reviews the debtor's reports on the progress of the implementation of the judicial rehabilitation plan and the debt repayment schedule, and provides the creditors' meeting with his/her opinion on the debtor's reports. The managing bodies of the debtor implement the judicial rehabilitation plan approved by the creditors' meeting, and make settlements with all creditors as per the debt repayment schedule as approved by the creditors' meeting and by the economic court. When the economic court approves the report of the debtor's manager on the results of the implementation of judicial rehabilitation, the court renders a ruling to terminate bankruptcy proceedings. When it refuses to approve the report, the court issues a ruling to terminate judicial rehabilitation, or a ruling to introduce external management, or a decision to declare the debtor bankrupt and initiate liquidation proceedings. In case the debtor fails to fulfil the debt repayment schedule during judicial rehabilitation, the rehabilitation manager convokes the creditors' meeting, to which the report of the debtor on the results of the implementation of the debt repayment schedule and of the judicial rehabilitation plan, and the opinion of the rehabilitation manager are presented. The economic court by virtue of a resolution of the creditors' meeting renders a ruling to terminate judicial rehabilitation, or a ruling to introduce external management, or a decision to declare the debtor bankrupt and initiate liquidation proceedings.

Article 76. Application for Introduction of Judicial Rehabilitation

- 1 In the course of supervision, the debtor, its founders (participants) or its property owner and third party (parties) shall be entitled to apply to the first creditors' meeting for the application to the economic court for the introduction of judicial rehabilitation, or apply directly to the economic court for the introduction of judicial rehabilitation.**
- 2 The judicial rehabilitation plan of the debtor specifying a proposed period of judicial rehabilitation and the debt repayment schedule must be attached to the debtor's application for the introduction of judicial rehabilitation.**
- 3 Persons who apply to the creditors' meeting for the application to the economic court for the introduction of judicial rehabilitation shall be obliged to submit such application and documents attached thereto to the interim receiver not later than two weeks prior to the date of the creditors' meeting with a view to enabling creditors to review these documents.**
- 4 The following documents must be attached to the application of founders (participants) or the property owner of the debtor for the introduction of judicial rehabilitation: the judicial rehabilitation plan; the debt repayment schedule; minutes of the general meeting of founders (participants) of the debtor specifying the list of founders (participants) who have voted for the application to the creditors' meeting for the introduction of judicial rehabilitation; and documents which provide that the applicants ensure the debtor's implementation of the debt repayment schedule.**
- 5 The following documents must be attached to the application of a third party (parties) for the introduction of judicial rehabilitation: the debt repayment schedule and evidences that the third party (parties) ensure the debtor's implementation of the debt repayment schedule.**
- 6 When several entities apply to the creditors' meeting for the application to the economic court for the introduction of judicial rehabilitation, they enter into an agreement which determines the liability of each of them to ensure the debtor's implementation of the debt repayment schedule.**

This Article provides for the procedure for introducing judicial rehabilitation, the range of persons entitled to apply for the introduction of judicial rehabilitation, and the list of documents required for the introduction of judicial rehabilitation.

1. Paragraph 1 of this Article provides persons eligible to apply for the introduction of judicial rehabilitation, and also their right to apply in the course of supervision for the introduction of judicial rehabilitation. These persons may encompass the debtor, its founders (participants), the body representing the property owner of the debtor being a unitary enterprise, and third parties.

In addition, this Paragraph sets two ways by which these persons can file an application for the introduction of judicial rehabilitation.

In the first place, this Paragraph provides that these eligible persons may apply to the first creditors' meeting for the application to the economic court for the introduction of judicial rehabilitation. In this connection, Paragraph 1 of Article 78 provides that judicial rehabilitation is introduced by the economic court on the ground of a resolution of the creditors' meeting, except for the cases stipulated by Paragraph 3 of Article 75. The specific manner in which the eligible persons apply to the first creditors' meeting is stipulated in Paragraph 3 of this Article.

Secondly, according to this Paragraph, the aforementioned persons may also apply directly to the economic court for the introduction of judicial rehabilitation, although Article 72 stipulates that it is the first creditors' meeting that has such right.

Paragraph 3 of Article 75 provides that if the first creditors' meeting passes a resolution applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, or if no resolution is presented in the economic court, the economic court has the right to render a ruling to introduce judicial rehabilitation upon a petition of founders (participants) or the property owner of the debtor, or of the state body for bankruptcy proceedings, or upon an application of a third party (parties), under the condition that such applicant grants security for the debtor's performance of obligations in line with the debt repayment schedule. The provisions of this Paragraph reveal that the mentioned persons may apply to the economic court for the introduction of judicial rehabilitation without the relevant resolution of the creditors' meeting under Paragraph 3 of Article 75.

Under Paragraph 3 of Article 75, the state body for bankruptcy proceedings possesses the right to apply for the introduction of judicial rehabilitation as well, though this body is not explicitly mentioned in this Paragraph as an eligible person. In this connection, it should be paid attention to that the state body for bankruptcy proceedings is only supposed to apply directly to the economic court, and that this state body need to provide security for the performance of the debtor's obligations according to the debt repayment schedule. It should also be noted that Item 4 of Paragraph 1 of Article 25 stipulates that this authority may apply for the introduction of judicial rehabilitation only in respect of enterprise the charter capital of which partially or wholly belongs to the state, and in this case it is necessary to draft a judicial rehabilitation plan. This Law does not specify whether the state body is required in this case to prepare a debt repayment schedule or not. From the provision of Paragraph 2 of Article 78 that the economic court's ruling to introduce judicial rehabilitation outlines the debt repayment schedule approved by the economic court, it is considered that the debt repayment schedule is required to be drafted in the above situation as well.

It should be noted that the state body for bankruptcy proceedings may apply to the economic court for the introduction of judicial rehabilitation, regardless of whether the bankruptcy case has been commenced upon its application or not.

2. Paragraph 2 of this Article provides that when the debtor applies for the introduction of judicial rehabilitation, the judicial rehabilitation plan of the debtor specifying a proposed period of judicial rehabilitation and the debt repayment schedule must be attached to the debtor's application. Paragraph 1 of Article 73 provides that a resolution of the first creditors' meeting applying to the economic court for the introduction of judicial rehabilitation must contain a proposed period of judicial rehabilitation and the approved debt repayment schedule. As a preliminary condition for the first creditors' meeting to pass a resolution introducing judicial rehabilitation, this Paragraph 2 states that the judicial rehabilitation plan of the debtor specifying a preliminary period of judicial rehabilitation and the debt repayment schedule should be attached to the application.

The debt repayment schedule prepared by the debtor must be signed by the debtor's manager.

3. Paragraph 3 of this Article sets to whom an application is forwarded, what documents must be attached thereto and by which time they should be presented, in case of applying to the creditors' meeting for the introduction of judicial rehabilitation.

An application for the application to the economic court for the introduction of judicial rehabilitation and documents attached thereto should be presented to the interim receiver at least two

weeks before the creditors' meeting, in order to enable creditors to be acquainted with the content of the application and the attached documents. However, the delay to present the application and the attached documents does not prevent creditors from discussing this application at the creditors' meeting. If more time is necessary to study the application and the attached documents, the creditors' meeting may be postponed.

This Paragraph provides that the mentioned documents should be forwarded to the interim receiver, who is obliged to convoke and hold the first creditors' meeting (Art.67, Para.1, Item 4). The interim receiver must determine the date of the first creditors' meeting and forward to persons eligible to attend the meeting a notice of the date, time and place of the meeting, the agenda, and the way to know about materials subject to consideration at the meeting, by postal service not later than two weeks prior to the meeting or in other way which ensures the receipt of such notice not later than five days prior to the meeting (Art.71, Para.1; Art.11, Paras.1 and 3). In this connection, it is provided that the application for the introduction of judicial rehabilitation and the attached documents must be submitted to the interim receiver not later than two weeks before the creditors' meeting so that the interim receiver could specify in the notice of the meeting that the introduction of judicial rehabilitation is put on the agenda of the meeting, and specify the way to be acquainted with the application and the attached documents.

4. Paragraph 4 of this Article stipulates that the following documents must be attached to an application of founders (participants) or the property owner of the debtor for the introduction of judicial rehabilitation.

The judicial rehabilitation plan: this provision of this Paragraph only mentions "the judicial rehabilitation plan", but from the requirement of Paragraph 1 of Article 73 providing that the resolution of the first creditors' meeting must propose a period of judicial rehabilitation, it may be concluded that the judicial rehabilitation plan should include the specification of a proposed period as stipulated by Paragraph 2 of this Article.

The debt repayment schedule: the debt repayment schedule must be signed by a person authorised by founders (participants) of the debtor or the property owner of the debtor.

Minutes of the general meeting of founders (participants) of the debtor specifying the list of founders (participants) who have voted for the application to the creditors' meeting for the introduction of judicial rehabilitation: the necessary votes for the general meeting of founders (participants) of the debtor to pass a resolution introducing judicial rehabilitation depends on the organisational-legal form (corporate form) of the legal entity debtor.

Documents which provide that the applicants ensure the debtor's implementation of the debt repayment schedule: from the purport of Paragraph 3 Article 77, as such documents, agreements signed by a person who offers such security and the representative of the creditors' meeting, or the bank guarantee may be acknowledged.

5. Paragraph 5 of this Article provides that the following documents should be enclosed to an application of a third party for the introduction of judicial rehabilitation.

The debt repayment schedule: the debt repayment schedule must be signed by a person authorised by the third party.

Evidences that the third party ensure the debtor's implementation of the debt repayment schedule: it means an agreement mentioned in Paragraph 3 of Article 77.

When a third party applies for the introduction of judicial rehabilitation, the judicial rehabilitation plan is not required, because the third party present evidences that it ensures the debtor's

implementation of the debt repayment schedule. In case the debtor fails to implement the schedule, creditors' claims against the debtor can be recovered from the security granted by the third party.

6. Paragraph 6 of this Article provides that when several entities apply to the creditors' meeting regarding the introduction of judicial rehabilitation, they enter into an agreement which determines the liability of each of them to ensure the debtor's implementation of the debt repayment schedule.

Paragraph 3 of Article 293 of the Civil Code provides that "persons who jointly grant security shall be jointly accountable to the creditors, unless otherwise stipulated by the security contract". Hence, persons who jointly grant security basically bear the joint liability to creditors for the debtor's default. However, an agreement among persons who grant security for the debtor's implementation of the debt repayment schedule may specify the concrete amount (volume) of the liability of each of them.

Article 77. Ensuring of Debtor's Performance of Obligations According to Debt Repayment Schedule

- 1 Methods of security provided by the legislation may apply to ensure the debtor's performance of obligations according to the debt repayment schedule.**
- 2 The debtors' obligations to implement the debt repayment schedule shall be deemed secured from the date when the economic court renders a ruling to introduce judicial rehabilitation.**
- 3 An agreement on ensuring the performance of obligations shall be concluded in writing, unless otherwise established by this Law. Such agreement shall be signed on the side of creditors by the representative of the creditors' meeting (creditors' committee) or by the interim receiver if judicial rehabilitation has been introduced on the initiative of the economic court, on the other side – by persons who ensure the debtor's performance of obligations according to the debt repayment schedule (hereinafter referred to as 'the sureties').**
- 4 The amount of the sureties' obligations must exceed the amount of the debtor's obligations recorded in the balance sheet as of the latest reporting date prior to the creditor's meeting on the introduction of judicial rehabilitation by not less than 20 per cent.**
- 5 Property, including property rights, owned by the debtor in form of ownership or other real right, may not be offered as security for the debtor's implementation of the debt repayment schedule.**
- 6 The amendment of the debt repayment schedule or the introduction of a new bankruptcy process in respect of the debtor shall not be the ground for the termination of security granted for the performance of obligations.**

This Article is devoted to ensuring the debtor's performance of obligations according to the debt repayment schedule.

1. Paragraph 1 of this Article provides that the debtor's performance of obligations according to the debt repayment schedule can be ensured by methods stipulated by the legislation. This Law does not specify these methods in detail, since they are outlined in detail in Articles 259 through 312 of the Civil Code.

Paragraph 1 of Article 259 of the Civil Code provides that "the performance of an obligation may be ensured by penalties, security, lien of the debtor's property, guarantee, any other guarantee by a surety, deposit and other methods stipulated by the legislation or a contract".

Nevertheless, penalties and deposit, and lien are not allowed, because these methods violate the provisions of Paragraph 5 of this Article as penalties and deposit entail the performance of the obligation at the expenses of the debtor and lien is to retain property of the debtor.

Consequently, methods to ensure the performance of the debtor's obligations under the debt repayment schedule are supposed to be security, guarantee, any other guarantee by a surety and other methods stipulated by the legislation or a contract. However, these methods must not contradict with the requirements of this Law and the nature of relationships covered by this Law.

When it issues a ruling to introduce judicial rehabilitation, the economic court considers the legality of transactions proposed to ensure the performance of obligations. If the proposed method to ensure the performance violates the rights and interests of third parties protected by this Law or does not meet the statutory requirements, the court cannot render a ruling to introduce judicial rehabilitation.

2. According to Paragraph 2 of this Article, the rights and duties of persons who grant security (hereinafter referred to as 'the sureties') take effect not at the moment of the conclusion of the security agreement, but on the date when the economic court hands over a ruling to introduce judicial rehabilitation. This provision is justified as security is granted for the purpose of introducing judicial rehabilitation.
3. Paragraph 3 provides that an agreement between the debtor and the sureties is concluded in writing, unless otherwise stipulated by this Law.

Paragraph 3 of Article 79 of the Law of the Russian Federation "On Insolvency (Bankruptcy)", having the similar provision as this Paragraph, allows a security agreement to be concluded after the process of financial recovery is introduced, and Paragraph 1 of Article 87 of the above Law of the Russian Federation provides that the failure to present such written agreement within the time limit set by Paragraph 3 of Article 79 shall constitute a ground for the early termination of financial recovery. As to this Law, which does not include such provision, it is considered that such a security agreement is not allowed to be conclude after a ruling to introduce judicial rehabilitation is issued.

Since under Paragraph 3 of Article 75 and Paragraphs 4 and 5 of Article 76, one of the grounds for rendering a ruling to introduce judicial rehabilitation is an application of a third party (parties) under condition that such party (parties) grant security for the discharge of the debtor's obligations according to the debt repayment schedule, which is evidenced by a signed agreement, it may be concluded that the agreement must be signed only by the time when the economic court renders a ruling to introduce judicial rehabilitation.

This agreement is signed by the representative of the creditors' meeting (committee) on behalf of creditors. In case judicial rehabilitation has been introduced on the initiative of the economic court in line with Paragraph 3 of Article 75, the agreement is signed by the interim receiver.

The agreement is signed, on the side of the counterparty, by the sureties. The debtor does not need to sign the agreement.

Therefore, when considering an application of a third party (parties) for the introduction of judicial rehabilitation against the debtor, the economic court must check whether there is an agreement on ensuring the performance of the debtor's obligations, and must refuse to satisfy the application in case there is no such agreement.

4. Paragraph 4 of this Article provides that the amount of the sureties' obligations must exceed the amount of the debtor's obligations recorded in the balance sheet as of the latest reporting date prior to the creditor's meeting on the introduction of judicial rehabilitation by not less than 20 per cent, i.e. the amount of security should be not less than 120 per cent of the amount of the debtor's obligations.

When setting the amount of security, the legislator proceeded from the practice of securing bank loans. The Regulations "On maximum scope of risk for one borrower or group of interconnected borrowers" (approved by the Central Bank dated on 2 Nov.1998, registered by the Ministry of Justice on 2 Dec.1998 No.557), provide that the amount of security for loans, in particular, the amount of a guarantee or the value of secured property, should not be less than 125 per cent of the amount of the loans (when this Regulation was originally adopted, it stipulated that the amount of security should not be less than 115 per cent of the amount of the loans; it was later changed by the Resolution of the Central Bank (registered by the Ministry of Justice dated on 10 Dec.2003 No.557-3), as a result of which not less than 125 per cent of the amount of the loans is currently required.).

As the sureties warrant not their own conduct, but the performance of the obligation by another person (the debtor), they are liable not by all their property, but only within the limit of their obligations, i.e. within the limit of the value of property or property rights granted as security.

The sureties become a guarantor to ensure that as a result of judicial rehabilitation, the financial situation of the debtor is recovered, and all creditors' claims are satisfied according to the debt repayment schedule. In case of failure to reach these ends, the sureties are liable as provided by the agreement, by virtue of Article 90.

5. Property, including property rights, owned by the debtor in the form of ownership or other property rights, is already burdened with obligations under claims lodged by creditors and obviously, they are not sufficient to satisfy claims in full. Hence, Paragraph 5 of this Article prohibits such property to be offered as security for the performance of the debt repayment schedule.
6. Paragraph 6 of this Article provides that the amendment of the debt repayment schedule or the introduction of a new bankruptcy process in respect of the debtor does not constitute a ground for the termination of security granted for the performance of obligations. Paragraph 1 of Article 298 of the Civil Code provides that security ceases upon the termination of a secured obligation, and also in case changes of this obligation entails the increase of the liability or other adverse consequences for guarantors without their consent. This Paragraph is an exception to the above rule of the Civil Code. Security does not cease even in case the debt repayment schedule is changed without the consent of the sureties.

In the course of judicial rehabilitation, creditors may lodge their claims at any time (see the comment on Art.84). In view of this, the amount of creditors claims included in the creditors' register might be increasing after the introduction of judicial rehabilitation. In this case, however, the sureties do not have to increase the amount of security, and it is assumed that they do not have to bear an obligation to ensure the discharge of those claims lodged additionally after the introduction of judicial rehabilitation.

In case of the introduction of another bankruptcy process against the debtor, i.e. in case of the introduction of external management or liquidation proceedings, obligations of the sureties do not cease. In case an amicable agreement is concluded in the course of judicial rehabilitation with participation of the sureties (third parties), obligations of these persons with respect to security shall not cease. If an amicable agreement is entered into between the debtor and its creditors, then after its

approval by the economic court, obligations of the above persons with respect to security cease, because according to conditions of the amicable agreement, an obligation to repay debts is assigned to the debtor.

Article 78. Procedure for Introducing Judicial Rehabilitation

- 1 Judicial rehabilitation shall be introduced by the economic court on the ground of a resolution of the creditors' meeting, except as envisaged by Paragraph 3 of Article 75 of this Law.**
- 2 The economic court ruling to introduce judicial rehabilitation must specify the period of judicial rehabilitation, contain the debt repayment schedule approved by the economic court, information on the sureties, the amount and form of such security, the appointment of a rehabilitation manager and the amount of his/her remuneration.**
- 3 The economic court ruling to introduce judicial rehabilitation may be appealed (protested). An appeal (protest) against the specified ruling shall not suspend the execution of the ruling.**
- 4 Judicial rehabilitation shall be introduced for the period of not more than twenty-four months, which may be extended by the economic court for not more than six months for the sureties to satisfy creditors' claims.**

This Article outlines the procedure for introducing judicial rehabilitation, the requirements set with regard to a court ruling to introduce judicial rehabilitation, the procedure for appealing against the court ruling and the period for which this bankruptcy process operates.

1. Paragraph 1 of this Article provides that judicial rehabilitation is introduced by the economic court on the ground of a resolution of the creditors meeting, except for the cases stipulated by Paragraph 3 of Article 75. The resolution of the creditors' meeting introducing judicial rehabilitation is not binding over the economic court. The economic court examines the conditions for the introduction of this process, such as the prospective of restoring the debtor's financial ability, the conformity of the amount of security granted to the amount established by Paragraph 4 of Article 77, etc., and introduces judicial rehabilitation by rendering a ruling thereon.

Applying to the economic court for the introduction of judicial rehabilitation is within the exclusive competency of the creditors' meeting (Art.10, Para.5, Item 3). The stricter condition is applied to passing a resolution thereon and it must be passed by the majority vote in value of all creditors (Art.13, Para.3, Item 2).

On the other hand, this Article stipulates that the economic court is entitled to decide the introduction of judicial rehabilitation without a resolution of the creditors' meeting in cases mentioned in Paragraph 3 of Article 75. In this case, it is necessary that founders (participants) or the property owner of the debtor, the state body for bankruptcy proceedings or a third party applies to the court for the introduction of judicial rehabilitation. The economic court, having received such application, examines the conditions for the introduction of the process. First of all, the court should establish whether the debtor's financial ability can be restored, for which purpose the court sees information about: the debtor's property kept by third parties; accounts receivable which can be easily collected or can be assigned to creditors in compliance with the order of priority; the

conformity of the amount of security with the conditions set in Paragraph 4 of Article 77, etc. Having checked such information, the court renders a ruling to introduce judicial rehabilitation.

2. The resolution of the first creditors' meeting applying to the economic court for the introduction of judicial rehabilitation should contain the prospective period of judicial rehabilitation and the approved debt repayment schedule (Art.73, Para.1). This application of the first creditors' meeting may propose a nominee for a rehabilitation manager (Art.73, Para.2). Along with this, the first creditors' meeting passes a resolution on the amount of remuneration of the rehabilitation manager and the procedure of its payment. If there is an application of founders (participants) or the property owner of the debtor for the introduction of judicial rehabilitation, these applicants should present a document or evidence that they ensure the performance of the debtor's obligations according to the debt repayment schedule (Art.76, Paras.4 and 5).

In view of the above provisions, Paragraph 2 of this Article provides that the economic court ruling to introduce judicial rehabilitation must specify the period of judicial rehabilitation, contain the debt repayment schedule approved by the economic court, information on the sureties, the amount and form of such security, the appointment of a rehabilitation manager and the amount of his/her remuneration.

When determining the period of judicial rehabilitation, the economic court should take into account the period stipulated by the judicial rehabilitation plan and the debt repayment schedule. However, the period specified in the plan is not binding, so that the economic court can specify in its ruling the period which it thinks fit. It is also the case in respect of remuneration of the rehabilitation manager. The amount of remuneration proposed by the resolution of the creditors' meeting has no binding force on the economic court, and the economic court can specify in its ruling the amount which it thinks fit.

When determining the period of judicial rehabilitation, the economic court should take into account the amount of the debtor's indebtedness to its creditors, the peculiarities of the debtor's business and opinions of the court receiver as regards the period of prospective judicial rehabilitation. When determining the remuneration of the court receiver, the economic court proceeds from the scope of forthcoming work of the court receiver, his/her level of qualification and other qualities having an influence on results of the work.

When the economic court hands over a ruling to introduce judicial rehabilitation under Paragraph 3 of Article 75, a candidate for a rehabilitation manager might not have been proposed. In this case, the economic court may leave the matter on the appointment of a rehabilitation manager and its remuneration unspecified in a ruling to introduce judicial rehabilitation. In this case until the economic court appoints a rehabilitation manager, the duties of the rehabilitation manager are imposed on the person who has been acting as interim receiver (Art.75,Para.4).

3. Paragraph 3 of this Article provides that the economic court ruling to introduce judicial rehabilitation may be appealed. This ruling is considered to be one of the judicial acts in Paragraph 1 of Article 50, therefore an appeal against this ruling follows the procedure stipulated by the Code of Economic Procedure (Paras.21 and 22, the Resolution of the SEC Plenum No.142). An appeal against this ruling does not suspend the execution of the ruling.

If a court receiver is appointed at the introduction of judicial rehabilitation or external management, his/her appointment is indicated in a ruling to introduce a bankruptcy process. If persons participating in a bankruptcy case contest an appointed court receiver, they and the public

prosecutor may appeal (protest) against the judicial act regarding the appointment of the court receiver in the manner stipulated by this Law (Para.21, the Resolution of the SEC Plenum No.142).

It is necessary to note that a court ruling regarding the period of judicial rehabilitation may be appealed in the manner stipulated by the Code of Economic Procedure, while a ruling on the amount of remuneration is not subject to appeal (see the comment on Art.60).

4. The ruling to introduce judicial rehabilitation specifies the period of judicial rehabilitation (this Article,Para.2), which, according to Paragraph 4 of this Article, may not exceed two years (twenty-four months). When determining this period, the economic court should take into account the period indicated in the judicial rehabilitation plan and the debt repayment schedule.

In this connection, the economic court may extend the period of judicial rehabilitation for not more than six months in order for the sureties to satisfy creditors' claims.

Taking a resolution to apply to the economic court for the extension of the period of judicial rehabilitation belongs to the exclusive competency of the creditors' meeting (Art.10,Para.5,Item 3). Such resolution is taken in the stricter manner, i.e. such resolution should be passed by the majority vote in value of all creditors (Art.13, Para.3, Item, 2).

The creditors' meeting which has passed the above resolution applies to the economic court for the extension of the period of judicial rehabilitation. The economic court render a ruling to extend it, which may be appealed in the manner stipulated by the Code of Economic Procedure, as this ruling is one of judicial acts listed in Paragraph 1 of Article 50 (Paras.21 and 22, the Resolution of the SEC Plenum No.142). An appeal against the ruling does not interfere with the execution of the ruling.

Article 79. Consequences of Introduction of Judicial Rehabilitation

- 1 During judicial rehabilitation, management bodies of the debtor shall exercise their powers within the limitations established by this Chapter.**
- 2 On the date of the introduction of judicial rehabilitation:**
 - **provisional measures to preserve creditors' claims which were taken earlier shall be cancelled;**
 - **attachment of the debtor's property and any other restrictions on the debtors' powers to dispose of property owned by the debtor may be imposed solely within the framework of the bankruptcy process;**
 - **penalties (fines, late payment interest) and other economic (financial) sanctions for not performing or improperly performing monetary obligations and duties on mandatory payments which have arisen before judicial rehabilitation, and interest payable shall not accrue.**
- 3 Creditor's claims for monetary obligations and (or) mandatory payments subject to be satisfied according to the debt repayment schedule shall accrue interest in the manner and amount envisaged by Article 327 of the Civil Code of the Republic of Uzbekistan. Such interest shall accrue on creditor's claims from the date when the economic court renders a ruling to introduce judicial rehabilitation and up to the date when these creditor's claims are discharged, and if the claims are not discharged, - up to the date when the court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings.**
- 4 The economic court shall be entitled to dismiss the debtor's manager from his/her duties upon an application of the creditors' meeting, the sureties or the rehabilitation manager which**

contains information that the debtor's manager has failed to implement or has implemented improperly the judicial rehabilitation plan or that his/her conduct (omission) has violated the rights and legitimate interests of the debtor, creditors or the sureties. In this case, the economic court shall be entitled to impose the duties of the debtor's manager on the rehabilitation manager. The economic court shall render a ruling to dismiss the debtor's manager from his/her duties, which may be appealed (protested).

5 Without the consent of the creditors' meeting or creditors' committee, founders (participants) or the property owner of the debtor shall not be entitled to pass resolutions carrying out reorganisation (merger, affiliation, division, spin-off, transformation) and liquidation of the debtor, and the debtor shall not be entitled to make transactions:

- related to the offering of immovable property by lease or as security, the offering of such property as an in-kind contribution to the charter fund (charter capital) of business partnerships and limited liability and additional liability companies, or the disposing of such property in any other way;**
- related to the disposing of the debtor's property the balance value of which is more than 10 per cent of the balance value of the debtor's total assets;**
- related to the receiving and offering of loans (credits), the issuing of guarantees or any other guarantees as a surety, the assigning of rights of claims, the transferring of debts, and the entering into of a contract for trust management of the debtor's property;**
- involving the interest of the rehabilitation manager or creditors in the manner established by the legislation.**

6 The rehabilitation manager and creditors shall have the right to apply for the invalidation of transactions of the debtor in the manner established by the legislation.

This Article enumerates the consequences of the introduction of judicial rehabilitation, and the restriction on certain powers of management bodies and founders (property owner) of the debtor.

1. Paragraph 1 of this Article provides that during judicial rehabilitation, management bodies of the debtor shall exercise their powers within the limitations established by this Chapter.

Judicial rehabilitation is introduced with the purpose of restoring the debtor's financial ability and repaying debts owed to creditors without transferring powers of management bodies of the debtor to the rehabilitation manager. The provision of this Paragraph exactly embodies the concept of judicial rehabilitation outlined in Article 3.

Nevertheless, since the process sets as its purpose the satisfaction of creditors' claims under the principle of the equality among creditors, certain restrictions are imposed on transactions of creditors or the debtor which may impair the equality among creditors.

"The limitations established by this Chapter" mean the fact that in certain cases, for example, in cases stipulated by Paragraph 5 of Article 79 and Item 5 of Paragraph 1 of Article 81, the consent of the creditors' meeting (creditors' committee) or the rehabilitation manager is required to perform transactions.

It is also possible to consider that there are some other limitations, besides "the limitations established by this Chapter", for example, transactions prohibited by Article 63 as a consequence of the introduction of supervision are forbidden as well in judicial rehabilitation.

It needs to be noted that the debtor's manager may be dismissed from his/her duties under circumstances stipulated by Paragraph 4 of this Article. In this case, the economic court can assign duties of the debtor's manager on the rehabilitation manager.

2. Paragraph 2 of this Article outlines the consequences of the introduction of judicial rehabilitation, namely:

- provisional measures to preserve creditors' claims which were taken earlier are cancelled. Here those measures are understood as measures listed in Paragraph 1 of Article 46. The provision of this Paragraph is linked with Paragraph 3 of Article 46. Provisional measures to preserve creditors' claims taken during supervision (Art.46, Para.1) remain in force until the economic court renders a ruling to introduce one of bankruptcy processes according to Paragraph 3 of Article 46. Therefore, when a ruling to introduce judicial rehabilitation is issued, provisional measures to preserve creditors' claims stipulated in Paragraph 1 of Article 46 are cancelled. The rationale behind this is that following the introduction of judicial rehabilitation, the bankruptcy case passes over to another stage with certain restrictions on the debtor's manager, its founders (participants) or the property owner, and that there are scheduled settlements with creditors according to the debt repayment schedule, and the earlier taken provisional measures to preserve creditors' claims should not serve as an obstacle to this purpose.

The rehabilitation manager is empowered to apply to the economic court for additional provisional measures to preserve creditors' claims, including that to assign property to a third party for keeping (Art.81,Para.1,Item 8);

- attachment of the debtor's property and any other restrictions on the debtors' powers to dispose of property owned by the debtor may be imposed solely within the framework of the bankruptcy process. It should be noted that those aforementioned restrictions are allowed only within bankruptcy proceedings, under a judicial act. As creditors' claims must be repaid according to the debt repayment schedule, execution proceedings to attach the debtor's property are subject to mandatory suspension and may not be carried out in the course of judicial rehabilitation, according to Item 2 of Article 34 of the Law "On Execution of Judicial Acts and Acts of Other Authorities";
- penalties (fines, late payment interest) and other economic (financial) sanctions for not performing or improperly performing monetary obligations and duties on mandatory payments which have arisen before judicial rehabilitation, and interest payable does not accrue.

As judicial rehabilitation represents a process aimed at satisfying creditors' claims fairly and proportionally, it is required to impose certain restrictions on transactions which can be against the above aim. In this connection, it is considered that restrictions which Article 63 lists as consequences of supervision, remain in force even after the introduction of judicial rehabilitation.

That is:

- it is suspended to execute execution documents upon property (see the comment on Art.63, Para.1);
- it is prohibited to satisfy claims of founders (participants) of the legal entity debtor for the return of apportionment of their share (stock) in the debtor's property in connection with their withdrawal from the legal entity debtor; this action may be recognised invalid, by analogy with Paragraph 4 of Article 103, by the economic court on the ground of an application of the rehabilitation manager or creditors;

- it is prohibited to pay dividends and other equity securities;
- it is not allowed to terminate monetary obligations of the debtor by set-off of mutual claims of the same sort, unless it complies with the order of priority of creditors' claims envisaged by Articles 134 and 169;
- claims against the debtor for money may be lodged only subject to the procedure for lodging claims established by this Law. For the procedure for lodging claims in the course of judicial rehabilitation, see the comment on Article 84.

3. Paragraph 3 of this Article provides that creditor's claims for monetary obligations and (or) mandatory payments subject to be satisfied according to the debt repayment schedule accrue interest in the manner and amount envisaged by Article 327 of the Civil Code. The economic losses caused by the delay of the satisfaction of claims according to the debt repayment schedule should be compensated.

Interest rate is determined by the bank rate at the place of creditors' residence or location if creditors are a legal entity, as of the date when the obligation or its part is performed (Art.327, Para.2, CC).

The interest accrues from the date of the introduction of judicial rehabilitation up to the date of the discharge of creditors' claims in the course of this process, or until a decision to declare the debtor bankrupt and initiate liquidation proceedings is rendered in case claims are not discharged. Interest accrued is included in the creditors' register and taken into account as voting claims at the creditors' meeting.

4. Paragraph 4 of Article 79 provides that the economic court may dismiss the debtor's manager upon an application of the creditors' meeting, the sureties or the rehabilitation manager which contains the belowmentioned information. Item 7 of Paragraph 1 of Article 81 stipulates one of the duties of the rehabilitation manager to apply to the economic court for the dismissal of the debtor's manager in case stipulated by this Article.

The application should include:

- information that the debtor's manager has failed to implement or has implemented improperly the judicial rehabilitation plan or the debt repayment schedule, when he/she had a chance to implement them.

It is necessary to note that the debtor's manager must not implement the judicial rehabilitation plan, in case the plan provides for a measure whose fulfilment may violate the legislation. In this case, the debtor's manager is not dismissed on this ground;

- information that the debtor's manager's actions (omission) have violated the rights and legitimate interests of the debtor, creditors or the sureties.

In this case, the economic court can assign the duties of the debtor's manager on the rehabilitation manager.

The economic court ruling to dismiss the debtor's manager may be appealed under Article 60 (Para.21, the Resolution of the SEC Plenum No.142).

5. Paragraph 5 of this Article sets restrictions on transactions made by founders (participants) or the property owner of the debtor, and the debtor in the course of judicial rehabilitation.

A particular aspect of judicial rehabilitation is that the powers to manage the debtor's affairs are not transferred to the rehabilitation manager. This process is designed to restore the debtor's financial ability and repay debts to creditors. From this point of view, this Law requires the consent of the creditors' meeting (creditors' committee) to certain transactions.

In addition, Item 5 of Paragraph 1 of Article 81 provides that the rehabilitation manager gives the consent to transactions and provides creditors with information on the relevant transactions and resolutions. It is necessary to pay attention to that the consent is required not only from the creditors' meeting (creditors' committee) but also from the rehabilitation manager.

Founders (participants) or the property owner of the debtor have no right without the consent of the creditors' meeting or creditors' committee to pass a resolution conducting reorganisation (merger, affiliation, division, spin-off, transformation) and liquidation of the debtor.

The debtor, without the consent of the creditors' meeting (creditors' committee) and the rehabilitation manager has no right to make the following transactions:

- related to the offering of immovable property by lease or as security, the offering of such property as an in-kind contribution to the charter fund (charter capital) of business partnerships and limited liability and additional liability companies, or the disposing of such property in any other way;
 - related to the disposing of the debtor's property the balance value of which is more than 10 per cent of the balance value of the debtor's total assets;
 - related to the receiving and offering of loans (credits), the issuing of guarantees or any other security as a surety, the assigning of rights of claims, the transferring of debts, and the entering into of a contract for trust management of the debtor's property;
 - involving the interest of the rehabilitation manager or creditors in the statutory manner, in other words, transactions counterparties to which are interested persons in respect of the rehabilitation manager or creditors of the debtor⁴⁰. The limitations imposed on interested persons in respect of the legal entity debtor are outlined on Paragraph 1 of Article 17. The rule of this Paragraph is linked with Item 3 of Paragraph 5 of Article 15, which defines the powers of the creditors' meeting.
6. Paragraph 6 provides that the rehabilitation manager and creditors have the right to apply for the invalidation of transactions of the debtor in the statutory manner.

Transactions made against Paragraph 5 of this Article are considered voidable, so that they may be invalidated by the economic court (Art.113, Para.1, CC). The rehabilitation manager and creditors are qualified to apply for the invalidation of such transaction of the debtor on the ground of this Paragraph. Though this Paragraph provides only the right for the invalidation of transactions, the rehabilitation manager is also entitled to bring to the court an action for the application of consequences of the invalidity, if transactions are void, not voidable. Such actions are considered by the economic court in general proceedings stipulated by the Code of Economic Procedure, beyond the framework of bankruptcy proceedings (Para.26, the Resolution of the SEC Plenum No.142).

Article 80. Rehabilitation Manager

1 Candidates for a rehabilitation manager shall be proposed to the economic court by the creditors' meeting or by the sureties.

⁴⁰ The original text states "transactions under which the rehabilitation manager or creditors become an interested persons in respect to the debtor". However, if the rehabilitation manager becomes such person to the debtor, then this is a ground for dismissing the rehabilitation manager (Art.18, Paras.2 and 3), so that such transactions are not allowed even with the consent of the creditors' meeting.

- 2 The rehabilitation manager shall act from the date of the introduction of judicial rehabilitation and up to the completion or the early termination of judicial rehabilitation.**
- 3 The rehabilitation manager may be dismissed by the economic court from his/her duties upon his/her own application or upon an application of the creditors' meeting or the sureties, and also in other cases envisaged by this Law. The economic court ruling to dismiss the rehabilitation manager from his/her duties, which simultaneously appoints a new rehabilitation manager, may be appealed (protested). Such appeal (protest) shall not suspend the execution of the ruling.**
- 4 The termination of bankruptcy proceedings in connection with the restoration of the debtor's financial ability during judicial rehabilitation shall result in the termination of powers of the rehabilitation manager.**
- 5 If the economic court renders a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings, and appoints as external manager or liquidation manager a person other than the one who has been acting as rehabilitation manager, the rehabilitation manager shall continue to perform his/her duties up to the date when the affairs are transferred to the external manager or liquidation manager.**

This Article defines the range of persons eligible to propose a candidate for a rehabilitation manager, the procedure for dismissing the rehabilitation manager and the time when his/her duties terminate.

1. Paragraph 1 of this Article provides that candidates for a rehabilitation manager shall be proposed to the economic court by the creditors' meeting or by the sureties

This Paragraph is closely connected with the provisions of Item 4 of Paragraph 1 of Article 72 and Paragraph 2 of Article 73. Item 4 of Paragraph 1 of Article 72 refers the approval of a candidate for a rehabilitation manager to the exclusive competency of the first creditors' meeting. Paragraph 2 of Article 73 provides that "the first creditors' meeting which has passed a resolution applying to the economic court for the introduction of judicial rehabilitation shall be entitled to apply to the economic court for the dismissal of the interim receiver. In such application of the creditors' meeting, a candidate for a rehabilitation manager may be proposed to the economic court for appointment."

A candidate for a rehabilitation manager is proposed by the sureties, i.e. founders (participants) or the property owner of the debtor, the state body for bankruptcy proceedings or a third party when an application for the introduction of judicial rehabilitation is filed directly in the court without the relevant resolution of the creditors' meeting under Paragraph 3 of Article 75.

2. Paragraph 2 of this Article provides that the rehabilitation manager acts from the date of the introduction of judicial rehabilitation and up to the completion or the early termination of judicial rehabilitation.

The completion of judicial rehabilitation or its early termination means those cases where the court issues a ruling to complete judicial rehabilitation, a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings according to Articles 85 through 87 and 89.

If upon rendering a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings, the economic court appoints as external manager or liquidation manager a person other than the rehabilitation manager, the rehabilitation manager

continues to perform his/her duties until the duties pass over to the external manager or liquidation manager (this Article,Para.5).

3. Paragraph 3 of this Article lays down grounds for relieving and dismissing the rehabilitation manager from his/her duties. A difference between these grounds is that the rehabilitation manager is relieved for positive reasons by virtue of his/her own application (for example, at own will), while he/she is dismissed, as a rule, upon an application of the creditors' meeting, for his/her culpable behaviours which result in his/her failure to perform or improper performance of his/her duties.

This Paragraph does not clearly specify grounds for the creditors' meeting to apply for the dismissal of the rehabilitation manager. Nevertheless, by analogy with Item 1 of Paragraph 1 of Article 96 and Item 1 of Paragraph 1 of Article 140, it might be considered that the creditors' meeting may apply in case the rehabilitation manager fails to perform or improperly performs his/her assigned duties. In this case, it is not required to prove losses caused to creditors or the debtor as a result of his/her default or improper performance of his/her duties. Also by analogy with Item 1 of Paragraph 1 of Article 96, it can be understood that the creditors' meeting resolution dismissing the rehabilitation manager should specify information on a candidate for a new rehabilitation manager.

Though this Paragraph provides that the creditors' meeting may make an application to the economic court for the dismissal of the rehabilitation manager, it is regarded that the creditors' committee is also entitled to make such application.

This Paragraph does not establish grounds for the sureties to make a similar application to the economic court. Nevertheless, again, by analogy with Paragraph 1 of Article 21, it might be considered that they are eligible to petition for the dismissal of the rehabilitation manager when the rehabilitation manager does not perform, or performs inadequately his/her imposed duties and cause the sureties damage or loss.

In other cases stipulated by this Law, the economic court can relieve or dismiss the rehabilitation manager in cases stipulated by Paragraph 3 of Article 18, Paragraph 1 of Article 21 and Item 6 of Paragraph 1 of Article 25. For the detailed grounds for the dismissal in these cases, see the comments on Paragraph 3 of Article 18, Paragraph 1 of Article 21 and Paragraph 1 of Article 25.

A ruling of the economic court to dismiss the rehabilitation manager and a ruling to appoint a new one may be appealed under Article 60 (Para.21, the Resolution of the SEC Plenum No.142). An appeal against these rulings does not suspend the effect of the rulings.

By analogy with the rules provided by Item 2 of Paragraph 1 of Article 92 and Paragraph 6 of Article 128, the rehabilitation manager who has been dismissed must ensure the handing over of accounting and other documentation of the debtor, seals and stamps, stocks of material and other assets to the newly appointed rehabilitation manager within three working days from the date of his/her appointment so that he/she can carry on the duties.

4. Paragraph 4 provides that the termination of bankruptcy proceedings in connection with the restoration of the debtor's financial ability during judicial rehabilitation ends powers of the rehabilitation manager.

Upon the restoration of the debtor's financial ability during judicial rehabilitation, bankruptcy proceedings terminate (Art.56,Para.1,Item 1), which accordingly terminates powers of the rehabilitation manager. Such powers terminate, apart from the case stipulated by this Paragraph, in the following cases as well: where the court issues a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings; where the rehabilitation manager is dismissed under Paragraph 3 of this Article; where bankruptcy proceedings terminate on

other grounds stipulated by Article 56 (in addition to the grounds envisaged in Item 1 of Paragraph 1 of Article 56, for example, in case an amicable agreement is concluded).

5. If the economic court renders a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings, and appoints as external manager or liquidation manager a person other than the rehabilitation manager, the rehabilitation manager continues to perform his/her duties up to the date when the external manager or liquidation manager takes office.

This allocation of the duties must be indicated in the ruling to introduce external management or the decision to declare the debtor bankrupt and initiate liquidation proceedings, so that there is no misunderstanding as to who should manage the debtor enterprise when the powers of the rehabilitation manager have ended but an external manager or liquidation manager has not yet been appointed.

By analogy with rules stipulate in Paragraph 4 of Article 123, the rehabilitation manager must hand over the affairs to the external manager or liquidation manager within three working days from the date of the appointment of a new court receiver.

Article 81. Rights of Rehabilitation Manager

1 The rehabilitation manager shall be entitled to:

- **request the debtor's manager to provide information on current activities of the debtor and on the progress of the implementation of measures envisaged by the judicial rehabilitation plan and the performance of the debt repayment schedule;**
- **request the debtor's manager to transfer monetary assets to repay creditors' claims punctually and in full;**
- **participate in inventory when the debtor inventories its property;**
- **oversee the debtor's punctual payment of current creditors' claims;**
- **agree to transactions and resolutions of the debtor in cases envisaged by Paragraph 5 of Article 79 of this Law, and to furnish information on such transactions and resolutions to creditors;**
- **appeal to the economic court against the debtor's confirmation of claims or admission of grounds for confirming claims, or its omission in respect of the consideration of creditors' claims in cases and in the manner established by Articles 59 and 70 of this Law;**
- **apply to the economic court for the dismissal of the debtor's manager from his/her duties in cases established by Paragraph 4 of Article 79 of this Law.**
- **apply to the economic court for additional measures to preserve the debtor's property, including a measure to entrust property to third parties for keeping, and also for the cancellation of such measures.**

2 The rehabilitation manager may also have other rights according to the legislation.

The general rights and duties of the rehabilitation manager as court receiver are listed in Article 19. In addition, this Article determines the rights of the rehabilitation manager in the course of judicial rehabilitation.

1. Paragraph 1 of the Article provides that the rehabilitation manager has the following rights to:

- request the debtor's manager to provide information on current activities of the debtor, namely the financial and economical situation, produced goods, provided service, performed work, and information on the progress of the implementation of measures envisaged by the judicial rehabilitation plan, in order to oversee the debtor's manager and management body's implementation of such measures, and information on the progress of the performance of the debt repayment schedule. It means that the rehabilitation manager bears a responsibility for controlling the implementation of the judicial rehabilitation plan and the debt repayment schedule by the debtor's manager;
- request the debtor's manager to transfer monetary assets to repay creditors' claims punctually and in full in compliance with the debt repayment schedule approved by the creditors' meeting and the economic court;
- participate in inventory when the debtor inventories its property. From the meaning of this provision, it follows that the rehabilitation manager personally participates when an inventory of the debtor's property is conducted in order to have a clear picture about the situation of the debtor's property;
- oversee the debtor's punctual payment of current creditors' claims, i.e. make sure that current payments of the debtor are made in due time to maintain the debtor's business, and also sees the performance of the judicial rehabilitation plan;
- agree to transactions and resolutions of the debtor in cases envisaged by Paragraph 5 of Article 79, and to furnish information on such transactions and resolutions to creditors, in order to protect creditors' interests and to ensure the integrity and safety of the debtor's property. The court receiver who is accountable for protecting the interests of creditors is empowered to control transactions of the debtor's manager envisaged by Paragraph 5 of Article 79 . When such transactions are made, he/she either gives the consent to such transaction or refuses to. The rehabilitation manager must inform creditors of all activities related to such transactions. Such information may be provided to creditors at the subsequent creditors' meeting. If the rehabilitation manager thinks it necessary to provide creditors with information immediately, taking into account the circumstances, he/she may forward such information to each creditor in writing.
- in the event creditors make complaints against activities of the debtor's manager, if the rehabilitation manager himself/herself reveals wrongful activities of the debtor's manager related to the confirmation of claims or to the admission of grounds for confirming claims, or omission of the debtor's manager in respect of the consideration of creditors' claims, the rehabilitation manager has the right to apply to the economic court for the recognition of the debtor's transactions to be illegal in the manner provided by Articles 59 and 70. During supervision, creditors can lodge their claims against the debtor by forwarding these claims to the economic court, the debtor and the interim receiver. According to Article 70, in case creditors' claims are recognised unreasonable or not supported by the relevant evidence, such claims are subject to return and these claims may be lodged in the course of a subsequent bankruptcy process. Therefore, it may be concluded that the debtor's manager is obliged to consider such claims when they are lodged again. Failure of the debtor's manager to consider creditors' claims is recognised as his/her omission related to the consideration of creditors' claims. This serves as a ground for the court receiver to apply to the economic court for the recognition of such action to be illegal.

- in case the court receiver receives information on failure in implementation or improper implementation of the judicial rehabilitation plan by the debtor's manager, or on his/her actions (omissions) violating the rights and legitimate interests of the debtor, creditors or the sureties, the court receiver can apply to the economic court for the dismissal of the debtor's manager. If the application of the rehabilitation manager is satisfied by the economic court, duties of the debtor's manager may be assigned on the rehabilitation manager.
 - the rehabilitation manager may apply to the economic court for additional measures to preserve the debtor's property. They may include such measures as the transfer of property to third parties for keeping and the ban on alienating property. The rehabilitation manager may also apply to the economic court for the cancellation of these measures.
2. Paragraph 2 of this Article provides that the rehabilitation manager may have other rights according to the legislation.

Article 82. Obligations of Rehabilitation Manager

1 The rehabilitation manager shall be obliged to:

- **maintain the creditors' register;**
- **convene the creditors' meetings in cases envisaged by Article 12 of this Law;**
- **consider reports submitted by the debtor on the progress of the implementation of the judicial rehabilitation plan and the debt repayment schedule, and submit the relevant opinions to the creditors' meeting;**
- **provide information on the progress of the realisation of the judicial rehabilitation plan for the creditor's meeting and creditors' committee and also to the state body for bankruptcy proceedings, if the charter capital of the debtor enterprise partially or wholly belongs to the state.**

2 The rehabilitation manager may also bear other obligations according to the legislation.

This Article compiles a list of the basic obligations of the rehabilitation manager, but this list is not exhaustive.

1. The rehabilitation manager is obliged to:

1) maintain the creditors' register.

The rehabilitation manager does not compile a new creditors' register, but takes over the register compiled by the interim receiver and keeps account of lodged creditors' claims.

During judicial rehabilitation, creditors can lodge their claims in accordance with Article 70. Claims which have not been objected within the time established by Paragraph 4 of Article 70, and claims against which objections have been filed with the economic court and in respect of which the court have rendered a ruling to revise the creditors' register as a result of consideration of the objections are included in the creditors' register by the rehabilitation manager. Claims already in the creditors' register before the introduction of judicial rehabilitation do not need to be lodged again.

When the debtor's manager satisfy claims during judicial rehabilitation, the rehabilitation manager enters the corresponding records in the register, if evidences of such are presented to him/her (see the comment on Art.83, Para.3);

2) convene the creditors' meetings in cases envisaged by Article 12 .

According to this provision, the rehabilitation manager summons the creditors' meeting during judicial rehabilitation for purpose of:

- passing a resolution applying to the economic court for the approval of changes in the debt repayment schedule (Art.84, Para.1);
- considering the application to the economic court for the early termination of judicial rehabilitation (Art.86, Para.2).

Even if the rehabilitation manager does not fulfil this obligation, the creditors' meeting may be convened at the request of the creditors' committee, of creditors representing not less than one third in value of claims for monetary obligations and (or) mandatory payments, included in the creditors' register, and of creditors representing not less than one third in number of all creditors (Art.12, Para.1);

3) consider reports on the progress of the implementation of the judicial rehabilitation plan and the debt repayment schedule submitted by the debtor and submit the relevant opinions to the creditors' meeting.

The rehabilitation manager submits his/her opinion on the debtor's reports on the progress of the implementation of the judicial rehabilitation plan in the following cases:

- if the debtor's manager submits such report to the creditors' meeting, convened for purpose of considering the application to the economic court for the early termination of judicial rehabilitation. The rehabilitation manager along with the report submitted by the debtor's manager give to the creditors' meeting his/her opinion on the report of the debtor's manager (Art.86, Para.3);
- if the debtor's manager submits to the economic court a report on the results of judicial rehabilitation at least fifteen days before the expiration of the period of judicial rehabilitation. This report must be annexed with the opinion of the rehabilitation manager on this report (Art.87, Para.1).

Additionally, in case the debtor fully discharge claims according to the debt repayment schedule before the expiration of the term of judicial rehabilitation established by the economic court, the debtor's manager in line with Article 87 produces to the economic court a report on the early completion of judicial rehabilitation (Art.85, Para.1). Hence, in this case, again, such report should be accompanied with an opinion of the rehabilitation manager on this report.

In the above cases, the creditors' meeting are not summoned. Therefore, the report of the debtor's manager on the results of judicial rehabilitation or the early completion of judicial rehabilitation, and also the opinion of the rehabilitation manager on the relevant reports are submitted not to the creditors' meeting, but directly to the economic court.

Upon the completion of settlements with creditors or upon the expiry of the term set by the economic court for repayment of creditors' claims, the rehabilitation manager must produce to the economic court a report on the results of the sureties' discharge of obligations (Art.89, Para.1). It should be paid attention to that in this case, a report of the debtor's manager on the results of the implementation of the judicial rehabilitation plan and the debt repayment schedule does not need to be prepared, and that a report of the rehabilitation manager is produced directly to the economic court as the creditors' meeting is not assembled;

- 4) submit information on the progress of the realisation of the judicial rehabilitation plan to the creditor's meeting (creditors' committee), and also to the state body for bankruptcy proceedings, if the charter capital of the debtor partially or wholly belongs to the state.

This duty corresponds to the provisions that the creditors' meeting may request court receivers to submit information on the debtor's financial situation and on the progress of the bankruptcy process (Art.15, Para.4, Item 1). Article 25 provides the powers of the state body for bankruptcy proceedings in case of the debtor enterprise the charter capital of which partially or wholly belongs to the state, and Item 8 of Paragraph 1 of Article 25 allows this body to "carry out other powers according to the legislation." Therefore, it may be concluded that this body is entitled to request such information from the rehabilitation manager. Additionally, Paragraph 22 of the Regulations on court receivers provides that the rehabilitation manager should at least once a month hand in a report on his/her activities and information on the debtor's financial situation to the creditors' meeting (creditors' committee).

2. The rehabilitation manager may have other obligations according to the legislation.

Article 83. Judicial Rehabilitation Plan and Debt Repayment Schedule

- 1 The judicial rehabilitation plan prepared by the debtor's manager, founders (participants) or the property owner of the debtor must provide for methods that the debtor receives funds necessary to satisfy creditors' claims according to the debt repayment schedule in the course of judicial rehabilitation. The judicial rehabilitation plan shall be subject to approval of the creditors' meeting.**
- 2 The judicial rehabilitation plan may provide for the sale of the enterprise (business) of the debtor or a part of the debtor's property. The sale of the enterprise (business) or a part of the debtor's property shall be conducted in the manner envisaged by Articles 110 and 111 of this Law.**
- 3 The debt repayment schedule must provide for the repayment to all creditors. The debt repayment schedule shall be subject to approval of the economic court.**
- 4 Creditors' claims against the debtor which arise in the course of judicial rehabilitation shall be satisfied in the manner established by Articles 133, 134 and 169 of this Law.**
- 5 The debtor shall be entitled to fulfil the debt repayment schedule ahead of time.**

This Article provides for the requirements to the judicial rehabilitation plan and the debt repayment schedule, the procedure for approving the plan and the schedule and for discharging creditors' claims during judicial rehabilitation, and also the right of the debtor to fulfil the debt repayment schedule ahead of time.

1. According to Paragraph 1 of this Article, the judicial rehabilitation plan is originated by the debtor's manager, founders (participants) or the property owner of the debtor who applies for the introduction of judicial rehabilitation. In case a third party so applies, the judicial rehabilitation plan does not need to be presented (Art.76, Para.5).

As the primary goals of judicial rehabilitation are the restoration of the debtor's solvency and the discharge of all creditors' claims, the judicial rehabilitation plan should provide methods to store up funds (including manufacturing and realising goods, performing work and providing services, taking

out loans, increasing the charter capital, etc.), in order to satisfy claims according to the debt repayment schedule. The judicial rehabilitation plan may provide for other measures to turn around the debtor (converting business, closing unprofitable activities, etc.), though they are not considered to be measures for the accumulation of funds to repay debts.

The prepared judicial rehabilitation plan must be approved by the creditors' meeting. However, in case an application for the introduction of judicial rehabilitation is filed under Paragraph 3 of Article 75, the judicial rehabilitation plan attached to this application does not need the approval of the creditors' meeting.

It is deemed that the approval by the creditors' meeting is necessary in case the plan is amended (including the plan attached to the application filed by virtue of Paragraph 3 of Article 75).

The judicial rehabilitation plan specifies the period of this process. The judicial rehabilitation plan is not required to be approved by the economic court, but the period of judicial rehabilitation is indicated by the economic court in its ruling to introduce judicial rehabilitation (Art.78, Para.2).

2. Paragraph 2 of this Article provides that the judicial rehabilitation plan may provide for the sale of the enterprise (business) or a part of the debtor's property. The enterprise (business) or a part of the debtor's property is sold in the manner envisaged by Articles 110 and 111.

Proceeds from such sale must be added to the liquidation estate and allocated according in order of priority provided in Articles 133, 134 and 169 (Art.110, Para.18; Art.111, Para.8).

3. Paragraph 3 of Article 83 sets the procedure for payment of creditors' claims according to the debt repayment schedule. According to Paragraph 3 of this Article, the debt repayment schedule should provide payment of debts to all creditors. "All creditors" means all creditors included in the creditors' register. The creditors' register contains information on claims of each creditor, the ascertained amount of claims for monetary obligations and (or) mandatory payments, priority of satisfaction of each of claim (Art.14, Para.2). These data are included in the debt repayment schedule (the debt repayment schedule also specifies the payment date), i.e. the data contained in this schedule are identical to those of the creditors' register. Proceeding from this, it is considered that persons applying for the introduction of judicial rehabilitation are allowed to know the content of the creditors' register even if they are not considered as creditors (Art.14,Para.5), because these persons need to prepare a debt repayment schedule (see the comment on Art.76).

As "all creditors" means all creditors included in the creditors' register, the debt repayment schedule does not list the following creditors:

- creditors who are not included in the creditors' register, i.e. creditors with claims for damage to life or health, founders (participants) of the debtor, creditors for current payments, etc. (see the comments on Art.3 regarding the concept of "creditors" and on Art.14);
- creditors with claims that may be included in the creditors' register, but have not been lodged in the manner stipulated by this Law.

If claims are satisfied by the debtor's manager during judicial rehabilitation, the rehabilitation manager insert the relevant changes into the creditors' register, upon receiving evidences of satisfaction of these claims (by analogy with Art.88,Para..3 or Art.138,Para.6).

The debt repayment schedule must be approved by the economic court. Such approval incurs a unilateral obligation of the debtor to repay its debts within the terms established in the schedule. The sureties are directly interested in determining the procedure and terms of payment of claims, as they are liable for performing the debtor's obligations. In this connection, the sureties should also sign the debt repayment schedule.

The procedure for revising this schedule approved by the court is stipulated in Article 84.

4. This Law does not clarify the detailed procedure and term for satisfying claims of a particular priority, according to the debt repayment schedule.

Unlike Paragraph 4 of Article 84 of the Law of the Russian Federation “On Insolvency (Bankruptcy)”, which provides that "the debt repayment schedule shall provide for the proportional repayment of creditors' claims in order of priority set by Article 134 of this Law", this Paragraph just mentions claims which arise during judicial rehabilitation (such claims are referred to be on current payments, which should be satisfied regardless of priority of other claims, under Paragraph 1 of Article 134). Nevertheless, it should be understood that the rule of this Paragraph is applied to all claims subject to satisfaction during judicial rehabilitation according to the debt repayment schedule, like Paragraph 4 of Article 84 of the aforementioned Law of the Russian Federation.

Hence, as concerns the priority of satisfaction of each claim, the following rules must be observed: the priority of satisfaction of creditors' claims shall be obligated to the provisions of Article 133 and Paragraphs 1 through 7 of Article 134; claims of each subsequent priority shall be satisfied after the full discharge of claims of the previous priority (Art.134, Para.8); where assets available to pay are insufficient to satisfy all claims of the same priority in full, these claims shall be satisfied in pro rata to the amount of each claim (Art.134, Para.11), etc. Secured claims hold the third priority (Art.134, Para.4). but if they are paid out of proceeds from the sale of property securing such claims (asset subject to security), these secured creditors receive payment out of these proceeds, ahead of other creditors, regardless of priority of other claims (Art.133, Para.1). In case these proceeds are insufficient to fully discharge the secured claims, the outstanding part of these claims is satisfied in order of priority stipulated by Article 134, i.e. in the third priority (Art.133, Para.2). In case during judicial rehabilitation, settlements with secured creditors are carried out without sales of property securing their claims (asset subject to security)) (i.e. in case as a result of the implementation of the judicial rehabilitation plan, the debtor has restored its economic activities of the debtor, and saved funds enough to satisfy claims in full without selling an asset subject to security), Paragraph 1 of Article 133 is not applicable. There secured claims are satisfied according to the general priority of satisfactions (Art.134), i.e. in the third priority.

It is understood that provisions of Article 138 providing for the procedure for settling with creditors during liquidation proceedings are applicable, too, to the procedure for satisfying claims during judicial rehabilitation, as long as they comply with rules of judicial rehabilitation.

During judicial rehabilitation, settlements with creditors are made, according to the debt repayment schedule. The debt repayment schedule may not provide for the reduction of debts, while it may provide for payment deferral or payment by instalment. Therefore, Paragraph 12 of Article 134 and Paragraph 5 of Article 138 are not applied.

5. Paragraph 5 provides that the debtor can satisfy claims ahead of time stipulated by the debt repayment schedule.

During judicial rehabilitation, claims may be paid off earlier than their due date stipulated by the debt repayment schedule, with the financial aid from the sureties. By analogy with Paragraph 2 of Article 88, it should be understood that funds as the financial aid from the sureties are put in the debtor's account, and the debtor itself make payment to creditors.

Article 84. Amendment of Debt Repayment Schedule

- 1 If the debtor fails to fulfil the debt repayment schedule (fails to repay debts within the established periods and (or) in the established amount), the debtor shall be entitled to apply to creditors for the approval of amendments to the debt repayment schedule within two weeks from the maturity date. A copy of the application shall be forwarded to the rehabilitation manager. By virtue of this application, the rehabilitation manager shall convene the creditors' meeting within two weeks from the date when he/she receives the application. If the creditors' meeting passes a resolution amending the debt repayment schedule, the creditors' meeting shall be entitled to apply to the economic court for the approval of these amendments.**
- 2 Claims of a creditor who was not timely notified of the commencement of the bankruptcy case and joined the case after the economic court approved the debt repayment schedule, or claims which have matured during supervision shall be entered in the debt repayment schedule upon a ruling of the economic court.**
- 3 The economic court shall be entitled to render a ruling to amend the debt repayment schedule only in respect of claims included in the creditors' register.**

This Article sets the case when amendments are entered in the debt repayment schedule upon the initiative of the debtor.

1. Paragraph 1 of this Article establishes the procedure for amending the debt repayment schedule in case the debtor fails to implement the debt repayment schedule.

If the debtor is not in a situation to implement the debt repayment schedule, he/she may apply to creditors for the approval of amendments to the schedule within two weeks after the maturity date.

“The debtor fails to fulfil the schedule” means that the debtor fails to discharge debts on the date established by the schedule or in the prescribed amount.

A copy of the application is forwarded to the rehabilitation manager. The rehabilitation manager convenes the creditors' meeting based on the received application within two weeks after he/she receives the copy. Having passed a resolution amending the schedule, the creditors' meeting can apply to the economic court for the approval of amendments to the debt repayment schedule.

As regards a court ruling to approve these amendments, neither the Code of Economic Procedure nor this Law envisages a provision of the possibility of appealing against this ruling. Hence, this ruling may not be appealed (Para.21, the Resolution of the SEC Plenum No.142). Nevertheless, persons participating in the bankruptcy case may appeal in the economic court against the resolution of the creditors' meeting amending the debt repayment schedule (Art.13, Para.5).

2. Paragraph 2 of this Article states that claims lodged during judicial rehabilitation and recorded in the creditors' register are included in the debt repayment schedule by a ruling of the economic court rendered upon an application of creditors. These are the following claims:

- claims of a creditor who was not timely notified of the commencement of the bankruptcy case and joined the case after the economic court approved the debt repayment schedule;
- claims which were once lodged but not recognised during supervision (Art.70,Para.5), they may also be included in the creditors' register upon a ruling of the economic court;
- claims which have matured during supervision.

Here “claims which have matured during supervision” mean claims which have arisen before the commencement of a bankruptcy case and matured during supervision. They do not cover claims

which have arisen after the commencement of a bankruptcy case and matured during supervision, because such claims are considered as current payments in judicial rehabilitation.

In the course of judicial rehabilitation, creditors may lodge their claims in the same procedure as provided by Article 70. Unlike Article 70, however, the time limitation for lodging claims is not stipulated, i.e. claims may be lodged at any time.

Lodged claims shall be examined in the manner stipulated by Paragraphs 2 through 4 of Article 70. The rehabilitation manager has the right to appeal in the economic court against the debtor's actions to confirm claims or to recognise grounds for confirming claims, or the debtor's omission regarding considering of creditors' claims (Art.81, Para.1, Item 6).

Claims included in the creditors' register before the introduction of judicial rehabilitation does not need to be lodged again.

In case the debtor or the rehabilitation manager raise objections against creditors' claims lodged during judicial rehabilitation, and the economic court issues any ruling on the results of consideration of these objections, no more objections against such claims may be filed in the economic court, by analogy with Paragraph 3 of Article 100.

3. According to Paragraph 3 of this Article, the economic court may render a ruling to amend the debt repayment schedule only in respect of claims included in the creditors' register. Hence, the economic court may not render a ruling to amend the debt repayment schedule in respect of current payments, which are not included in the creditors' register and, hence, in the debt repayment schedule.

Article 85. Early Completion of Judicial Rehabilitation

- 1 If the debtor has repaid all creditors' claims envisaged by the debt repayment schedule prior to the expiry of the period of judicial rehabilitation set by the economic court, the debtor's manager shall submit to the economic court a report on the early completion of judicial rehabilitation in the manner envisaged by Article 87 of this Law. The report of the debtor's manager on the early completion of judicial rehabilitation and creditors' complaints shall be considered by the economic court at session.**
- 2 The rehabilitation manager shall be obliged to notify all creditors with claims included in the debt repayment schedule, of the date, time and place of a court session for consideration of the report of the debtor's manager on the early completion of judicial rehabilitation in the manner established by the legislation.**
- 3 Upon the results of the consideration of the report of the debtor's manager and creditors' complaints, the economic court shall:**
 - approve the report of the debtor's manager and terminate bankruptcy proceedings, if no debt proves outstanding and creditors' complaints are recognised to be unjustified;**
 - refuse to approve the report of the debtor's manager, if some debts prove outstanding and creditors' complaints are recognised to be justified;**
- 4 The economic court shall render a ruling to approve the report of the debtor's manager and terminate bankruptcy proceedings or to refuse to approve such, which may be appealed (protested).**

This Article focuses on the procedure in case a report of the debtor's manager on the early completion of judicial rehabilitation is produced in the economic court.

1. According to Paragraph 1 of Article 85, the early completion of judicial rehabilitation takes place in case the debtor has repaid debts to all creditors in the debt repayment schedule prior to the expiry of the period of judicial rehabilitation set by the economic court.

According to Paragraph 5 of Article 83, the debtor can perform the debt repayment schedule ahead of schedule.

Paragraph 1 of this Article provides that if the debtor has repaid all creditors' claims in the schedule prior to the expiry of the period of judicial rehabilitation set by the economic court, the debtor's manager submits to the economic court a report on the early completion of judicial rehabilitation in the manner envisaged by Article 87. This Law has no provision of the concrete time limit by which the debtor's manager should produce the report. By analogy with external management (Art.117, Para.1), it may be assumed that the manager should hand in the report to the court within fifteen days after a ground for the early completion occurs.

In the event stipulated by Paragraph 1 of this Article, the creditors' meeting is not held, and the report on the early completion of judicial rehabilitation prepared by the debtor's manager and documents attached thereto are produced not in the creditors' meeting, but directly in the economic court.

In the manner stipulated by Paragraph 1 of Article 87, the report on the early completion of judicial rehabilitation should be annexed with the debtor's balance sheet as of the latest date, a report on the debtor's financial results, the creditors' register specifying the amount of discharged claims and documents evidencing such discharge, the rehabilitation manager's opinion on the report of the debtor's manager, complaints of creditors with undischarged claims.

As the rehabilitation manager's opinion should be attached to the report on the early completion of judicial rehabilitation, the debtor's manager, before producing the report and enclosed documents in the economic court, should provide the rehabilitation manager the report, the debtor's balance sheet as of the latest date, the report on the debtor's financial results, the creditors' register with specification of the amount of discharged claims and the documents evidencing such discharge. The rehabilitation manager should examine these documents and give the debtor's manager its opinion on the report on the early completion of judicial rehabilitation.

The rehabilitation manager's opinion contains the following points:

- the implementation of the judicial rehabilitation plan;
- the performance of the debt repayment schedule;
- the repayment of creditors' claims.

The report of the debtor's manager on the early completion of judicial rehabilitation and creditors' complaints are considered in a session of the economic court (for the procedure of filing complaints, see the comment on Art.87, Para.1).

2. Paragraph 2 of this Article provides that the rehabilitation manager is obliged to notify all creditors with claims which were included in the debt repayment schedule, of the date, time and place of a court session for the consideration of the debtor's manager's report in the statutory manner.

As to "the statutory manner", this Law does not provide for such procedure, thus it is necessary to apply the provision of Article 124 of the Code of Economic Procedure that rules the procedure of notification of hearings. According to Paragraph 1 of the above article, persons participating in a case are informed of the time and place of proceedings by a court ruling, which is forwarded by registered mail with the assurance of receipt. In case of this Article, it is provided that it is the

rehabilitation manager, instead of the economic court, who shall notify of the date, time and place of a court session. Such information is provided to creditors by the court receiver and this Law does not stipulate the forwarding of any other information.

3. According to this Article, after receiving the opinion of the rehabilitation manager, the economic court appoints the date of its session for considering the results of judicial rehabilitation and creditors' complaints against actions of the debtor and of the rehabilitation manager, as a result of which, it may render one of the ruling stipulated by this Article.

Paragraph 3 of this Article stipulates what rulings shall be rendered by the economic court upon the results of the consideration of the report of the debtor's manager and creditors' complaints:

- the economic court approves the report of the debtor's manager and terminates bankruptcy proceedings, if it recognises no outstanding debt and creditors' complaints to be unreasonable.

According to Article 56, the economic court terminates bankruptcy proceedings in case the debtor's financial ability is restored during judicial rehabilitation. A ruling to terminate bankruptcy proceedings constitute a ground for cancelling all restrictions stipulated by this Law and consequences of the introduction of judicial rehabilitation;

- the economic court issues a ruling to refuse to approve the report of the debtor's manager if it recognises some outstanding debts and creditors' complaints to be reasonable.

The presence of outstanding debts is considered as a conclusive factor to decide which ruling should be issued.

If creditors present complaints to the court, while no outstanding debt is confirmed upon the results of the consideration of the report, the economic court hands over a ruling to terminate bankruptcy proceedings, on condition that creditors' complaints are recognised to be unjustified. If complaints are recognised to be justified, the economic court renders a ruling to refuse to approve the report of the debtor's manager.

In case some outstanding debts are revealed upon the results of the consideration of the report of the debtor's manager, the court renders a ruling to refuse to approve the report even in the absence of creditors' complaints or their reasonableness.

As a rule, the economic court examines the fact that the debtor has repaid debts to creditors included in the creditors' register. Therefore payment of current payments is not checked, as these payments are not included in the creditors' register. Grounds for incurring these payments are connected with business of the debtor enterprise and they are reimbursed by the debtor under the control of the rehabilitation manager (Art.81,Para.1,Item 4) during judicial rehabilitation. The debtor's manager is not obliged to attach to the report documents evidencing reimbursement of current payments, and it is obviously impossible for the court to check the fact of their repayment. Additionally, Paragraph 4 of Article 83 provides that creditors' claims for the debtor's obligations which have arisen during judicial rehabilitation are paid off according to Article 134, i.e. the court receiver certainly ensures preferential reimbursement of current payments.

4. According to Paragraph 4 of this Article, the economic court issues a ruling to approve the debtor's manager's report and terminate bankruptcy proceedings or to refuse to approve the report, which may be appealed (protested).

The ruling to approve the report and terminate bankruptcy proceedings is equivalent to "the ruling to terminate bankruptcy proceedings" stipulated in Item 5 of Paragraph 1 of Article 50 and may be appealed according to the Code of Economic Procedure (Paras.21 and 22, the Resolution of the SEC Plenum No.142).

The ruling to refuse to approve the report may be appealed, too, but according to Article 60 (Para.21, the Resolution of the SEC Plenum No.142).

Article 86. Early Termination of Judicial Rehabilitation

- 1 The grounds for the early termination shall be:**
 - that the debtor repeatedly or substantially (for more than one month) fails, in the course of judicial rehabilitation, to pay creditors' claims on their maturity date set by the debt repayment schedule;
 - that there are circumstances clearly evidencing that the debtor is unable to fulfil the debt repayment schedule.
- 2 The rehabilitation manager shall be obliged to convene the creditors' meeting to consider the application to the economic court for the early termination of judicial rehabilitation, on his/her own initiative or by virtue of a resolution of the creditors' committee, within two weeks from the date when the grounds specified in Paragraph 1 of this Article arise.**
- 3 The debtor's manager shall be obliged to submit to the creditors' meeting a report on the results of the implementation of the debt repayment schedule and the judicial rehabilitation plan. The balance sheet of the debtor as of the latest reporting date, the profit and loss account of the debtor, the creditors' register with the amount of discharged claims and documents confirming such discharge must be attached to the report. When the report of the debtor's manager is submitted, the rehabilitation manager shall submit to the creditor's meeting his/her opinion on this report of the debtor's manager.**
- 4 Upon the results of the consideration of the report of the debtor's manager and the opinion of the rehabilitation manager on this report, the creditors' meeting shall be entitled to pass a resolution applying to the economic court for the introduction of external management or for the initiation of liquidation proceedings. A copy of minutes of the creditors' meeting and complaints of creditors who have voted against the resolution passed by the creditors' meeting or who did not participate in voting shall be attached to the application of the creditors' meeting.**
- 5 By virtue of the application of the creditors' meeting, the economic court shall render a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings.**

This Article provides for the grounds for the early termination of judicial rehabilitation and the procedure which should be followed when these grounds occur.

1. Paragraph 1 of this Article stipulates the following grounds for the early termination of judicial rehabilitation:
 - that the debtor repeatedly or substantially (for more than one month) fails, in the course of judicial rehabilitation, to pay creditors' claims on their maturity date set by the debt repayment schedule;
 - that there are circumstances clearly evidencing that the debtor is unable to fulfil the debt repayment schedule.

It should be paid attention to that the debtor can apply to the creditors' meeting for amendments to the debt repayment schedule within two week after payment is due when it is incapable to observe the debt repayment schedule (Art.84, Para.1).

In this case the creditors' meeting can apply to the economic court for the early termination of judicial rehabilitation, having refused to approve such amendments.

2. Paragraph 2 of this Article provides that the rehabilitation manager is obliged to convene the creditors' meeting to consider the application to the economic court for the early termination of judicial rehabilitation, on his/her own initiative or by virtue of a resolution of the creditors' committee, within two weeks after the grounds specified in Paragraph 1 of this Article arise.

According to Item 1 of Paragraph 1 of Article 81, the rehabilitation manager may request the debtor's manager to provide information on the debtor's current activity and on the progress of the implementation of measures envisaged by the judicial rehabilitation plan, and on the progress of the debt repayment schedule. It means that the rehabilitation manager bears an obligation to oversee the implementation of the judicial rehabilitation plan and the debt repayment schedule by the debtor's manager (see the comment on Art.81, Para.1). In this connection, this Paragraph provides that the rehabilitation manager convenes the creditors' meeting at the occurrence of grounds for the early termination of judicial rehabilitation.

This Paragraph provides that the creditors' meeting is summoned for the purpose of considering the early termination of judicial rehabilitation, upon the initiative of the rehabilitation manager or the relevant resolution of the creditors' committee. Article 12 is applicable to this situation, too, so that the rehabilitation manager is obliged to call the creditors' meeting at the request of creditors representing not less one third in value of claims for monetary obligations and (or) mandatory payments in the creditors' register, and also at the request of creditors which comprise not less than one thirds in number of all creditors.

3. Paragraph 3 provides that the debtor's manager is obliged to submit to the creditors' meeting a report on the results of the implementation of the debt repayment schedule and the judicial rehabilitation plan. The balance sheet of the debtor as of the latest reporting date, the profit and loss account of the debtor, the creditors' register with the amount of discharged claims and documents confirming such discharge must be attached to the report. When this report is submitted, the rehabilitation manager submits to the creditor's meeting his/her opinion on this report.

If judicial rehabilitation has been introduced upon an application of a third party, a report on the results of the implementation of the judicial rehabilitation plan is not required, since such plan is not submit when a third party applies for the introduction of judicial rehabilitation (see the comment on Art.76, Para.5). A report on the results of the implementation of the debt repayment schedule is subject to submission.

The report must be accompanied with the balance sheet as of the latest reporting date and the profit and loss account, the creditors' register with the amount of discharged claims and documents confirming such discharge

At the submission of the report of the debtor's manager, the rehabilitation manager present to the creditors' meeting his/her opinion on this report. Hence, the debtor's manager should provide the rehabilitation manager with the report and its attachments, which he/she is going to submit to the creditors' meeting.

The opinion of the rehabilitation manager is on the implementation of the judicial rehabilitation plan and the debt repayment schedule.

From the content of this Article, it may be concluded that the debtor and the rehabilitation manager may submit the mentioned report and documents while the creditors' meeting is proceeding. However it is considered that these documentation should be submitted beforehand to participants of the creditors' meeting in order to enable them to be acquainted with the documentation and analysis the financial situation of the debtor.

4. Paragraph 4 provides that upon the results of the consideration of the report of the debtor's manager and the opinion of the rehabilitation manager on this report, the creditors' meeting may pass a resolution applying to the economic court for the introduction of external management or for the initiation of liquidation proceedings.

Under this Paragraph, the creditors' meeting can also pass a resolution concluding an amicable agreement (Art.145, Para.2) or a resolution applying to the economic court for the termination of judicial rehabilitation.

A copy of minutes of the creditors' meeting and complaints of creditors who have voted against such resolution or who did not participate in voting are attached to the application of the creditors' meeting. Documents listed in Paragraph 10 of Article 10 are also attached to the application. Minutes of the creditors' meeting and the attached documents are forwarded to the economic court within five days after the date of the meeting (Art.10, Para.11).

This Law does not rule the procedure for notifying persons participating in the bankruptcy case of the date, time and place of the court session. It is understood that Article 124 of the Code of Economic Procedure which provides for the procedure of judicial notices is applied in this case. According to Paragraph 1 of Article 124 of the Code of Economic Procedure, persons participating in a case are informed of the time and place of proceedings by a court ruling, which is forwarded by registered mail with the assurance of the receipt.

5. Paragraph 5 of this Article provides that by virtue of the application of the creditors' meeting, the economic court renders one of the following judicial acts:
- a ruling to introduce external management, when there is the feasibility of restoring the debtor's financial ability;
 - a decision to declare the debtor bankrupt and initiate liquidation proceedings, when there is no ground for introducing external management, but are indications of bankruptcy according to Article 4.

The opinion of the rehabilitation manager and the application of the creditors' meeting have no binding force on the economic court when it issues any of the abovementioned judicial acts. The economic court may agree to the resolution of the creditors' meeting and satisfy its application by rendering a correspondent judicial act, or may reject the application. If the creditors' meeting applies for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, but it is revealed in the court session that the debtor has the possibility of restoring its solvency, the economic court should issue a ruling to introduce external management. When rendering such ruling, the economic court should not only consider the possibility of restoring the debtor's financial ability, but also should observe the requirement of Paragraph 3 of Article 91, according to which, the economic court may not render a ruling to introduce external management, if more than thirty-six months have passed since the introduction of judicial rehabilitation when the court considers this matter.

If the creditors' meeting passes a resolution concluding an amicable agreement in case of Paragraph 4 of this Article, the economic court examines the requirements provides by this Law and

render a ruling to approve the amicable agreement and terminate bankruptcy proceedings (Art.145, Para.5). If the creditors' meeting passes a resolution terminating judicial rehabilitation, the court issues a ruling to terminate or complete judicial rehabilitation (Art.88, Para.1).

Article 87. Completion of Judicial Rehabilitation

- 1 Not later than fifteen days prior to the expiry of the period set for judicial rehabilitation, the debtor's manager shall be obliged to submit to the economic court a report on the results of judicial rehabilitation. The balance sheet of the debtor as of the latest date, the profit and loss account of the debtor, the creditors' register with the amount of discharged claims and documents confirming such discharge⁴¹, the opinion of the rehabilitation manager on the report of the debtor's manager, and complaints of creditors with undischarged claims must be attached to the report of the debtor's manager on the results of judicial rehabilitation. The report and creditors' complaints shall be considered by the economic court at session.**
- 2 The rehabilitation manager shall be obliged to notify all creditors with claims included in the debt repayment schedule, of the date, time and place of a court session on the consideration of the report of the debtor's manager on the results of judicial rehabilitation in the manner established by the legislation.**
- 3 Upon the results of the consideration of the report of the debtor's manager and creditors' complaints, the economic court shall:**
 - approve the report of the debtor's manager and render a ruling to terminate bankruptcy proceedings, if no debt proves outstanding and creditors' complaints are recognised to be unjustified;**
 - refuse to approve the report of the debtor's manager, if some debts prove outstanding and creditors' complaints are recognised to be justified;**
- 4 In case of the refusal to approve the report of the debtor's manager, the economic court shall render a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings.**

Whereas Articles 85 and 86 provide for the procedure of the early termination and early completion of judicial rehabilitation, this Article sets rules of the completion of this process due to the expiry of the period of judicial rehabilitation.

1. Paragraph 1 of this Article provides that the debtor's manager is obliged to submit to the economic court a report on the results of carried out judicial rehabilitation, not later than fifteen days prior to the expiry of the period of judicial rehabilitation.

This Law does not explain consequences which occur when the debtor's manager does not hand in a report on the results of judicial rehabilitation to the rehabilitation manager within the above set term (fifteen days before). Nonetheless, the report should be considered even when it is submitted after the specified term.

⁴¹ The original text literally provides "the creditors' register with specification of the amount of discharged claims and of documents confirming such discharge", but it was explained as described above.

In case the debtor's manager does not provide the report to the rehabilitation manager upon the expiry of the period the rehabilitation manager can call the creditors' meeting, which is empowered to pass a resolution applying to the court for the introduction of external management or for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings.

The report should be accompanied with the debtor's balance sheet as of the latest date, the debtor's profit and loss account, the creditors' register with the amount of discharged claims and documents confirming such discharge, the rehabilitation manager's opinion on the debtor's manager's report, complaints of creditors whose claims have not been discharged.

Since the rehabilitation manager's opinion should be attached to the report on the results of judicial rehabilitation, the debtor's manager should submit to the rehabilitation manager such report together with the debtor's balance sheet as of the latest date, the debtor's profit and loss account, the creditors' register with the amount of discharged claims, documents confirming such discharge, before presenting them to the economic court.

The rehabilitation manager must check the documents submitted by the debtor's manager and issue his/her opinion on the report to the debtor's manager.

When complaints are raised by creditors whose claims have not been discharged, these complaints should be forwarded to the debtor's manager or to the rehabilitation manager so as to attach them to the report and submit them to the court.

In case creditors with unsatisfied claims file complaints after the debtor's manager's report and the rehabilitation manager's opinion have been given to the court, these complaints are forwarded to the court.

The rehabilitation manager forms his/her opinion upon considering the results of:

- the implementation of the judicial rehabilitation plan;
- the fulfilment of the debt repayments schedule;
- the discharge of creditors' claims.

In a case stipulated by Paragraph 1, the creditors' meeting is not convened and, consequently, the report prepared by the debtor's manager and its attachments are presented not to the creditors' meeting, but directly to the economic court.

The report of the debtor's manager and creditors' complaints are examined by the economic court at session.

2. Paragraph 2 provides that the rehabilitation manager shall be obliged to notify all creditors with claims included in the debt repayment schedule, of the date, time and place of a court session on the consideration of the debtor's manager's report in the statutory manner.

As regards "the statutory manner", this Law does not provide for such manner. It is considered that thus it is necessary to apply the provision of Article 124 of the Code of Economic Procedure that stipulates the procedure of notification of hearings. According to Paragraph 1 of Article 124 of the Code of Economic Procedure, persons participating in the case shall be informed of the time and place of proceedings by a court ruling which shall be forwarded by registered mail with the assurance of the receipt. But in case of this Article it is provided that it is the rehabilitation manager, instead of the economic court, who notifies the date, time and place of a court session. This Law does not state the forwarding of any other information. In practice, the rehabilitation manager sends only notification in writing which contains the abovementioned information. This Law does not provide either the forwarding of a copy of creditor's complaints to other creditors.

This Law does not set a particular time of conducting a court session to consider the report submitted by the debtor's manager. In practice, however, if the period of judicial rehabilitation is going to expire soon, the session should be conducted before the last day of such period.

3. Paragraph 3 of this Article lists rulings that may be rendered by the economic court upon the results of the consideration of the debtor's manager' report, and creditors' complaints. The economic court shall:

- approve the debtor's manager's report and render a ruling to terminate bankruptcy proceedings, if no debt proves outstanding, and creditors' complaints are recognised to be unjustified;

The ruling to terminate bankruptcy proceedings is mentioned in Item 5 of Paragraph 1 of Article 50 and, therefore, it may be appealed in the manner stipulated by the Code of Economic Procedure (Paras.21 and 22, the Resolution of the SEC Plenum No.142);

- refuse to approve the debtor's manager's report, if some debts prove outstanding, and creditors' complaints are recognised to be justified;

Usually, the economic court examines the fact of the repayment of claims included in the creditors' register, while it does not check current payments, as these payments are not included in the creditors' register. Grounds to incur such payments are connected to the on-going business of the debtor enterprise, and they must be reimbursed by the debtor under the control of the rehabilitation manager (Art.81,Para.1,Item 4). The debtor's manager is not obliged to attach to the report documents confirming the reimbursement of current payments, and it is obviously impossible for the court to confirm the fact of such reimbursement.

If it is revealed in the course of the consideration of the results of judicial rehabilitation that not all creditors' claims included in the creditors' register are satisfied, but the debtor has the possibility of restoring its solvency, the economic court should render a ruling to introduce external management. In rendering such ruling, however, the court should not only rely on the debtor's possibility of its financial recovery, but also observe the requirement set in Article 91, according to which, the court may not render such ruling, if more than thirty-six months have passed since the introduction of judicial rehabilitation at the moment when the court considers the introduction of external management.

By virtue of Article 145, judicial rehabilitation may terminate, also in case the debtor and creditors have reached an amicable agreement.

4. Paragraph 4 of this Article provides that in case of the refusal to approve the debtor's manager's report, the economic court renders one of the following judicial acts:

- a ruling to introduce external management, when there is the possibility of the debtor's financial recovery;
- a decision to declare the debtor bankrupt and initiate liquidation proceedings, when no ground for introducing external management is revealed and indications of bankruptcy according to Article 4 are present.

The economic court can render a ruling to terminate or to complete judicial rehabilitation in case it refuses to approve the debtor's manager' report (Art.88, Para.1).

Article 88. Performance of Obligations by Sureties

- 1 The right of creditors to claim against the sureties shall arise on the date when the economic court renders a ruling to terminate or to complete judicial rehabilitation. Claims against the**

sureties shall be lodged by the representative of the creditors' meeting (creditors' committee) or by the rehabilitation manager.

- 2 Monetary assets gained as a result of the sureties' performance of obligations shall be transferred to the debtor's account for the purposes of settling with creditors. Settlements with creditors shall be made by the debtor in the manner established by this Law.**
- 3 When evidences that creditors' claims have been discharged are presented, the rehabilitation manager shall enter the relevant record in the creditors' register.**

This Article determines the moment when an obligation of the sureties to perform the debtor's obligations occurs, and the procedure for settlements with creditors from funds received as a result of the sureties' fulfilment of obligation.

1. Paragraph 1 of this Article provides that the right of creditors to claim against the sureties arises on the date when the economic court renders a ruling to terminate or to complete judicial rehabilitation.

In deciding the matter of the early termination (Art.86), in addition to the ruling to terminate or to complete judicial rehabilitation mentioned in this Paragraph, the economic court hands over, upon an application of the creditors' meeting, a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings under Paragraph 5 of Article 86. The court may specify the early termination of judicial rehabilitation and the introduction of external management in the one and same ruling. In case of the declaration of the debtor' bankruptcy and initiation of liquidation proceedings, the court issues both a ruling to terminate judicial rehabilitation ahead of time and a decision to declare the debtor bankrupt and initiate liquidation proceedings.

The court, having come to the opinion on the early termination of judicial rehabilitation, renders a ruling to terminate judicial rehabilitation ahead of time, which entails the transition to the next stage where the sureties should perform their obligations.

In deciding the matter of the completion of judicial rehabilitation (Art.87), the economic court renders, upon the results of the consideration of the report on the results of the implementation of this process and of the creditors' complaints, a ruling to refuse to approve the report of the debtor's manager, if some debts prove outstanding and creditors' complaints are recognised to be justified (Art.87,Para.3,Item 2). In case of such refusal, according to Paragraph 4 of Article 87, the economic court issues a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings. In addition to these judicial acts, the court may render a ruling to terminate or complete judicial rehabilitation as specified in this Paragraph, which entails the transition to the next stage where the sureties should perform their obligations.

The procedure for appealing against a ruling to terminate or complete judicial rehabilitation mentioned in this Paragraph is not stipulated either in this Law or in the Code of Economic Procedure. Therefore it cannot be appealed (Para.21, the Resolution of the SEC Plenum No.142).

On the date when the economic court renders a ruling to terminate or complete judicial rehabilitation, the representative of the creditors' meeting (committee of creditors) or rehabilitation manager becomes able to claim against the sureties.

Judicial rehabilitation does not come to the end, upon the economic court ruling to terminate or complete judicial rehabilitation according to this Paragraph, so that the sureties perform their obligations within the period of judicial rehabilitation.

The period of judicial rehabilitation may be extended by a court ruling for not more than six months if the sureties cannot surely fulfil their obligations in the initial period (Art.78,Para.4).

The period extended for settlements with creditors is included in the period of judicial rehabilitation.

2. Paragraph 2 of this Article provides that monetary assets gained as a result of the sureties' performance of their obligations shall be transferred to the debtor's account for the purposes of settling with creditors. Settlements with creditors shall be made by the debtor in the manner established by this Law.

The sureties do not pay directly to creditors to discharge creditors' claims, but should transfer the relevant funds to a bank account of the debtor, which settles with creditors. In case, obligations are secured by an asset, proceeds from the sale of such asset are transferred to the debtor's bank account, and the debtor settles with secured creditors out of these proceeds.

The following rules must be observed in case creditors are paid out of funds the sureties provide, and also in case payments are made out of the debtor's own funds (see the comment on Art.83, Para.4):

- provisions stipulated in Article 133 and Paragraphs 1 through 7 of Article 134, regarding the priority of claims;
 - claims of each subsequent priority shall be satisfied after the full discharge of claims of the previous priority (Art.134, Para.8);
 - where proceeds are insufficient to satisfy all claims of the same priority in full, these claims shall be satisfied in pro rata to the amount of each claim (Art.134, Para.9).
3. Paragraph 3 of this Article provides that when evidences that creditors' claims have been discharged are presented, the rehabilitation manager shall enter the relevant record in the creditors' register.

The debtor, who has satisfied creditors' claims out of funds provided by the sureties, should present to the rehabilitation manager corresponding evidences.

The sureties who have fulfilled an obligation under this Article obtain the right of a creditor's claim for such obligation, and also the right of this creditor as a secured creditor in the amount in which these sureties have satisfied the creditor's claim (Art,295, Para 1, CC).

Bankruptcy proceedings terminate, after the sureties have discharged obligations within the term set by the economic court, and satisfied all creditors' claims in the creditors' register (Art.89, Para.2, Item 1). The sureties may lodge their claims against the debtor in the general proceedings, outside the framework of bankruptcy proceedings, after the termination of bankruptcy proceedings.

In case the sureties have discharged obligations, but not all claims have been satisfied within the term set by the economic court for settlements with creditors, the sureties' claims against the debtor (recourse claims to the debtor) must be included in the creditors' register. The sureties acquire the right to be reimbursed within the bankruptcy process to be introduced after judicial rehabilitation (external management, liquidation proceedings, amicable agreement). In this case, it is understood that all the sureties who have implemented obligations are included in the creditors' register in the priority of a creditor' claim which the sureties have secured and satisfied. For example, the sureties who have secured a bank loan of the debtor and discharge the loan is empowered to file a recourse claim against the debtor. In a subsequent bankruptcy process, they are included in the creditors' register in the second priority as a creditor with the claim for the bank loan. In other cases, the sureties' claims are included in the creditors' register in the fourth priority.

In case the sureties cannot perform obligations arising from security granted by them within the period set by the economic court, they bear the joint or subsidiary liability for the debtor's obligations to creditors according to the legislation (Art.90, Para.2).

Article 89. Report on Results of Performance of Obligations Arising from Security

- 1 Upon the completion of settlements with creditors or upon the expiry of the period set by the economic court for the satisfaction of creditor's claims, the rehabilitation manager shall be obliged to submit to the economic court a report on the results of the sureties' performance of obligations. The report of the rehabilitation manager and creditors' complaints shall be considered by the economic court at session. Requirements for the report and the procedure for its submission and consideration shall be provided by Articles 116 and 117 of this Law.**
- 2 Upon the results of the consideration of the report of the rehabilitation manager and creditors' complaints, the economic court shall:**
 - approve the report of the rehabilitation manager and render a ruling to terminate bankruptcy proceedings if no debt proves outstanding and creditors' complaints are recognised to be unjustified;**
 - refuse to approve the report of the rehabilitation manager if some debts prove outstanding and creditors' complaints are recognised to be justified, and render a ruling to introduce external management or a decision to declare the debtor bankrupt and initiate liquidation proceedings.**

This Article provides the rehabilitation manager's obligation to submit to the economic court a report on the results of the sureties' performance of obligations and the procedure to be taken after the submission of such report.

1. Paragraph 1 of this Article provides that upon the completion of settlements with creditors or upon the expiry of the period set by the economic court for the satisfaction of creditor's claims, the rehabilitation manager is obliged to submit to the economic court a report on the results of the sureties' performance of obligations.

The completion of settlements with creditors in this Paragraph is understood as the satisfaction of all creditors' claims in the creditors' register out of funds provided by the sureties, prior to the expiry of the period of judicial rehabilitation (or the expiry of the extended period, in case the period of judicial rehabilitation is extended by virtue of Paragraph 4 of Article 78).

Hence, the rehabilitation manager is obliged to submit to the economic court the report in case all creditors' claims in the creditors' register has been paid off out of funds provided by the sureties, and also in case the period of judicial rehabilitation (or the extended period) has expired even if some claims remain unsatisfied. This Law gives no concrete time by which the rehabilitation manager must submit the report. In this respect, it is assumed by analogy with the case of external management (Art.117, Para.1) that he/she should submit the report within fifteen days after the relevant grounds occur in case settlements with creditors are completed before the expiry of the period of judicial rehabilitation. Otherwise, the report must be presented fifteen days before the expiry of the period of judicial rehabilitation, in the same manner as the report of the debtor's manager must be (Art.87, Para.1).

It should be noted that the report of the debtor's manager on the results of the implementation of judicial rehabilitation plan and of the debt repayments schedule does not have to be prepared in case of this Paragraph, but instead, the report of the rehabilitation manager on the results of the sureties' performance of obligations and attached documents must be submitted directly to the economic court, not to the creditors' meeting.

This Law lays down the concrete requirements to the content of the report of the rehabilitation manager and the list of documents to be attached thereto. It is specified in this Paragraph that the requirements to the report and the procedure of its submission and consideration are established by Articles 116 and 117, i.e. the same requirements and procedure as in case of external management (see the comment on these Articles). In this case, however, unlike the procedure for submitting the external manager's report, the rehabilitation manager must submit the report not to the creditors' meeting, but to the court. As to the content of the report, the rehabilitation manager must specify information on the sureties' performance of obligations, the amount of monetary funds received and the distribution of the funds among creditors, and also other information regarding the repayment of creditors' claims in the creditors' register.

The report of the rehabilitation manager and creditors' complaints must be considered by the economic court at session. If any creditors forward their complaints to the rehabilitation manager (which is a rare case in practice), these complaints are submitted to the court together with the report. At the same time, this Law sets no special term for filing creditors' complaints, therefore, if any, complaints are attached to the report. Creditors may specify in its complaint their disagreement to the amount or priority of their claims which have been discharged at the settlement, etc. If creditors have documents that prove their arguments, they may enclose them with their complaints. Since their complaints are submitted to the court together with the report of the rehabilitation manager, they must be considered in the same court session as where the report is considered. This Law does not require a copy of complaints to be forwarded to other creditors.

It is considered that the rehabilitation manager must notify all creditors in the creditors' register of the date, time and place of the court session where his/her report on the results of the sureties' performance of obligations is considered in the manner stipulated by Article 124 of the Code of Economic Procedure. This Law does not provide whether other information should be forwarded, besides the specified notice.

This Law sets no special term for holding a court session, in which the report submitted by the rehabilitation manager is considered. In practice, however, in case of the expiry of the period of judicial rehabilitation, this session must be conducted before the last day of the period of judicial rehabilitation in case the report is submitted in connection with the expiry of such period.

2. Paragraph 2 provides for decisions taken by the economic court upon considering the report of the rehabilitation manager on the results of the sureties' performance of obligations. The economic court shall:
 - approve the report of the rehabilitation manager and render a ruling to terminate bankruptcy proceedings if no debt proves outstanding and creditors' complaints are recognised to be unjustified. Hence, if the debtor's debts are all redeemed, the submitted report must be approved. It is considered, however, that not only creditors' claims in the creditors' register, but also all other payments, including current payments, must be discharged by the time when the court considers the report. According to Paragraph 4 of Article 83, claims for obligations which have arisen during judicial rehabilitation are paid off in the manner established by Article 134,

i.e. regardless of priority of other claims. Therefore, such claims must be satisfied preferentially, and all other claims are discharged in order of priority in the creditors' register. The ruling to terminate bankruptcy proceedings is mentioned in Item 5 of Paragraph 1 of Article 50. Accordingly it may be appealed in the manner stipulated by the Code of Economic Procedure (Paras.21 and 22, the Resolution of the SEC Plenum No.142);

- refuse to approve the report of the rehabilitation manager if some debts prove outstanding and creditors' complaints are recognised to be justified. In this case the court hands over either: a ruling to introduce external management when there is the possibility of restoring the debtor's financial ability; or a decision to declare the debtor bankrupt and initiate liquidation proceedings when no ground for introducing external management is revealed and indications of bankruptcy according to Article 4 (see the comment on Art.90, Para.1)

Article 90. Consequences of Sureties' Failure to Perform Obligations

- 1 If the sureties fail to perform obligations arising from the granted security within a period set by the economic court for the satisfaction of creditors' claims and there is no grounds for the introduction of external management, the economic court shall render a decision to declare the debtor bankrupt and initiate liquidation proceedings.**
- 2 The sureties' failure to perform obligations arising from the granted security within the period set by the economic court for the satisfaction of creditors' claims shall result in them being jointly or subsidiarily liable for the debtor's obligations to creditors according to the legislation.**

This Article stipulates consequences which take effect in case the sureties fail to perform their obligations within the term established by the economic court to satisfy creditors' claims.

1. As provided by Paragraph 1 of this Article, in case the sureties do not perform their obligations arising from the granted security within the time limitation set by the economic court for the satisfaction of creditors' claims, and there is no ground for introducing external management, the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings.

The time frame set by economic court to satisfy creditors' claims means the period of judicial rehabilitation established by the economic court (in case this period is extended by virtue of Paragraph 4 of Article 78, it means the extended period).

2. Paragraph 2 of this Article provides that the sureties' failure to perform their obligations arising from the granted security within the period set by the economic court for the satisfaction of creditors' claims results in them being jointly or subsidiarily liable for the debtor's obligations to creditors according to the legislation.

According to Paragraph 1 of Article 88, the sureties must fulfil their obligations within the period of judicial rehabilitation determined by the economic court, when the representative of the creditors' meeting (committee of creditors) or the rehabilitation manager make the relevant claim against the sureties. The sureties' default entails their liability under civil law.

If security by property is adopted as a method to ensure the debtor's performance of its obligation, and the obligator does not discharge its obligations, the rehabilitation manager is entitled to take an action to enforce security over such property.

According to Paragraph 2 of Article 293 of the Civil Code, a guarantor is accountable to a creditor in the same scope as the debtor, including payment of interest, judicial expenses for the recovery of debts and other losses to the creditor caused by the debtor's failure to perform or improper performance of obligations, unless otherwise stipulated by the guarantee agreement. According to Paragraph 3 of Article 293 of the Civil Code, parties who jointly guarantee someone (the principal debtor)'s debt are jointly liable to a creditor, unless otherwise stipulated by the guarantee agreement.

The principal debtor's failure to perform its obligation to its creditor entitles the creditor to make a claim against guarantees for payment of the amount of money under the bank guarantee (Art.299, 300 and 305, CC).

In addition, the rehabilitation manager has the right to lodge to the sureties who has failed to perform their obligations, claims on compensation for losses caused by such failure, by virtue of Article 14 of the Civil Code

The rule that which the sureties is liable for the debtor's failure to perform its obligations according to the debt repayment schedule within the limits of the value of property or property rights granted as security, is not applicable in this case. In this case, the sureties are responsible for their own default. Thus, their responsibility for damages caused by such default should not be limited to the value of such security which they offer.

CHAPTER VI. EXTERNAL MANAGEMENT

This Chapter defines the process of external management.

External management is a bankruptcy process which is carried out with the participation of the court, for the purpose of restoring the debtor's financial ability and satisfying creditors' claims against the debtor, under which the external manager is vested with powers to manage the debtor's business and dispose of its property. In this process, the debtor's manager and other persons with powers to manage the debtor's affairs and dispose of its property are deprived of these powers. External management is introduced by the economic court by virtue of a resolution of the creditors' meeting or a petition of the state body for bankruptcy proceedings. At the issuance of a ruling to introduce external management, the moratorium takes effect with a view to ensuring the fair satisfaction of claims for monetary obligations and mandatory payments. Only few types of claims are not subject to the moratorium, namely: claims that arise before the court accepts a petition for the declaration of the debtor's bankruptcy and mature after external management is introduced; claims that arise after the court accepts a petition for the declaration of the debtor's bankruptcy; claims related to labour law relations; claims for alimony; claims for damage to life or health, etc. The debtor's manager shall be dismissed from his/her duties and the economic court shall, upon an application of the creditors' meeting, appoint an external manager. The external manager takes inventory; is entitled to file actions for the invalidation of transactions that have caused or may cause the debtor losses; is entitled to refuse to fulfil contracts made by the debtor before the commencement of the bankruptcy case under certain conditions within three months after the introduction of external management; considers newly lodged creditors' claims, and upon considering them enters relevant changes in the creditors' register or raises objections against unreasonable claims. At the same time, creditors are entitled to file with the economic court objections against the amount and priority of their claims which the external manager has ascertained, etc. The external manager, within one month from the date of his/her appointment, develops an external management plan, which shall outline the process of the restoration of the debtor's financial ability and the satisfaction of creditors' claims. The external manager performs this plan after its approval from the creditors' meeting, and recovers the debtor's financial situation. The external management plan may provide for such measures of the financial recovery, as the conversion of production, the closure of unprofitable business, the sale of the enterprise (business), the sale of a part of property, etc. As a general rule, external management is introduced for twenty-four months. At the expiry of the period of external management or at its early termination, the external manager prepares and produces a report on the conducted management to the creditors' meeting for its consideration, and makes one of the following proposals: to terminate external management due to the restoration of the debtor's financial ability and shift to settlements with creditors; to conclude an amicable agreement; to extend the period of external management; to declare the debtor bankrupt and initiate liquidation proceedings. The creditors' meeting passes a resolution applying for the above mentioned processes, including an amicable agreement. The economic court, having considered the report of the external manager, renders a ruling to approve or refuse to approve this report and renders one of the following judicial acts: a ruling to terminate bankruptcy proceedings; a ruling to approve an amicable agreement; a ruling to shift to settlements with creditors; a ruling to extend the period of external management; a decision to declare the debtor bankrupt and initiate liquidation proceedings.

Article 91. Procedure for Introducing External Management

- 1 External management shall be introduced by the economic court by virtue of an application of the creditors' meeting or of the state body for bankruptcy proceedings in case of enterprises the charter capital of which partially or wholly belongs to the state, if the real possibility of restoring the debtor's financial ability has been determined.**
- 2 The economic court ruling to introduce external management shall be subject to immediate execution and may be appealed (protested) within the period set by the legislation.**
- 3 External management shall be introduced for a period from twelve up to twenty-four months unless otherwise envisaged by this Law. The aggregate period of judicial rehabilitation and external management may not exceed thirty-six months.**
- 4 Pursuant to an application of the creditors' meeting, a resolution of the state body for bankruptcy proceedings, or an application of the external manager, the established period of external management may be reduced or extended by the economic court within the time limits established by Paragraph 3 of this Article.**

This Article lays down the general provisions concerning the introduction of external management, its grounds, the period of external management and also the procedure for reducing and extending the period.

1. The ground for the introduction of external management by the economic court is a resolution of the creditors' meeting (as a general rule), which so applies to the court (Art.10,Para.5) or an application of the state body for bankruptcy proceedings in respect of enterprises the charter capital of which partially or wholly belongs to the state. The creditors' meeting may pass a resolution applying to the economic court for the introduction of external management during supervision (Art.72;Art.74,Para.1), judicial rehabilitation (Art.86,Para.5;Art.87,Para.4;Art.89, Para.2, Item 2), and also liquidation proceedings, provided that judicial rehabilitation and (or) external management have never been applied in respect of the debtor (Art.141,Para.1). This resolution shall be passed by the majority vote in value of all creditors, not of creditors present at the meeting (Art.13,Para.3). Along with that, the state body for bankruptcy proceedings has the right to apply to the economic court for the introduction of external management in respect of the debtor the charter capital of which partially or wholly belongs to the state, irrespective of whether the creditors' meeting has passed a resolution introducing another bankruptcy process, or no resolution.

It is necessary to note that external management of township-forming enterprises and enterprises equalled thereto is introduced upon a petition of the local body of state power or ministry, state committee, agency or body of economic administration (in the absence of the relevant resolution of the creditors' meeting) in condition that they grant security for obligations of the debtor (Art. 157,Para.1).

The significant condition of the introduction of external management is the real feasibility of restoring the debtor's financial ability, i.e. the availability of conditions for profitable business activities, favourable market conditions, personnel potential in respect of the debtor, etc. This feasibility should be specified in the application filed with the economic court by the creditors' meeting or the state body for bankruptcy proceedings.

The creditors' meeting considers the interim receiver's opinion regarding the possibility of the restoration of the debtor's financial ability, prepared based on the results of analysis of the debtor's financial situation, and determines the real possibility of restoring the debtor's financial ability.

According to Item.1 of Paragraph 1 of Article 25, the state body for bankruptcy proceedings monitors enterprises the charter capital of which partially or wholly belongs to the state, with the purpose of revealing enterprises incapable to pay, unprofitable or economically insolvent. When implementing this power, the state body for bankruptcy proceedings independently studies the financial situation of enterprises the charter capital of which partially or wholly belongs to the state, and determines the real possibility of restoring the debtor's solvency.

2. Paragraph 2 of this Article provides that a ruling of the economic court to introduce external management is subject to immediate enforcement and that it may be appealed within the term established by the law. The same provision is given in Paragraph 21 of the Resolution of the SEC Plenum No.142, which provides that this ruling may be appealed in compliance with the general rules of the Code of Economic Procedure (the period to appeal to appeal instance is within one month). However, the appeal does not interfere with procedural actions or the effect of the ruling.
3. External management shall be introduced for the period from twelve up to twenty-four months. The total period of judicial rehabilitation and external management may not be more than thirty-six months. Thus, if the period of judicial rehabilitation lasted for twenty-four months, external management can operate only for twelve months, but no more.

It is necessary to point out that the period of settlements with creditors under Paragraph 2 of Article 119 is not taken into calculation of the period of external management, as explained by Paragraph 28 of the Resolution of the SEC Plenum No.142.

An exception to this rule is external management in respect of township-forming enterprises and enterprises equalled thereto, where its period may be provided for twenty-four months and may be extended thereafter, according to Paragraph 1 of Article 158, for not more than one year.

4. In practice, the term of external management established by the court can be shorter or longer. Upon an application of the creditors' meeting, the external manager or the state body for bankruptcy proceedings (in respect of enterprises the charter capital of which partially or wholly belongs to the state), the court may curtail the period of external management due to the restoration of the debtor's financial ability or due to the fact of the impossibility of the debtor's financial recovery, or may extend the period within the time-framework stipulated by Paragraph 3 of this Article if necessary.

According to Paragraph 28 of the Resolution of the SEC Plenum No.142, the reduction or extension of the period of external management is considered by the economic court and the economic court notifies persons participating in the case of the time and place of the court session.

To introduce external management, extend or reduce its period, the economic court renders a ruling. By virtue of Paragraph 21 of the Resolution of the SEC Plenum No.142, it is allowed to appeal against the ruling to extend the period of external management pursuant to the Code of Economic Procedure, as this ruling is included in judicial acts stipulated by Article 50, however this Law does not stipulate the right of appeal against the ruling to shorten such period.

Article 92. Consequences of Introduction of External Management

1 As of the date of the introduction of external management:

- **the debtor's manager shall be dismissed from his/her duties, the management of the debtor's affairs shall be imposed on the external manager. The external manager shall be obliged to issue an order to terminate the labour contract of the debtor's manager or to transfer him/her to another job;**
 - **the powers of management bodies of the debtor shall terminate. The powers of the manager and other management bodies of the debtor shall be transferred to the external manager, except the powers transferred to other persons (bodies) in accordance with this Law. Management bodies of the debtor shall be obliged, within three business days from the date when the external manager is appointed, to ensure the transfer of the debtor's accounting and other documentation, seals and stamps, material and other valuables to the external manager;**
 - **provisional measures to preserve creditors' claims that have been taken earlier shall be cancelled;**
 - **attachment of the debtor's property and other restrictions on the debtor's powers to dispose of property owned by the debtor may be imposed solely within the framework of the bankruptcy process;**
 - **the moratorium on satisfaction of creditors' claims for monetary obligations and (or) mandatory payments of the debtor shall come into effect, except as envisaged by Article 93 of this Law.**
- 2 Upon the completion of external management, penalties (fines, late payment interest) and losses which the debtor is obliged to pay to its creditors on monetary obligations and (or) mandatory payments may be claimed for payment in the amount existing as of the date when external management is introduced.**

This Article provides for the consequences of introduction of external management.

1. The peculiarity of the legal regime of the debtor within the period of external management is devoted to reaching two closely interlinked goals: the restoration of the debtor's solvency and the satisfaction of creditors' claims against the debtor. In this regard, this Law determines the following consequences which take effect by virtue of a ruling to introduce external management in respect of the debtor:
 - as of the date of the introduction of external management, the duties of the debtor's manager terminate and he/she is dismissed from the position, along with that according to Paragraph 1 of Article 97, the management of the debtor's affairs is imposed on the external manager. This Paragraph of Article stipulates, as a mandatory provision that the external manager is obliged to issue an order to dismiss the debtor's manager or to transfer him/her to another job (the procedure and conditions for this actions is regulated by the labour law). The external manager shall, within three days, make sure to dismiss the debtor's manager and issue an order to terminate the labour contract with the debtor's manager. However, the debtor's manager may be transferred to a position of the vice-manager, the assistant of the external manager or to another post available at the enterprise upon his/her consent (Paragraph 29, the Regulation on court receivers);
 - when external management begins, the legal regime of the debtor's management changes, i.e. the management of the debtor's affairs passes over to the external manager appointed by the court.

The powers imposed on the external manager are much wider than those of the debtor's manager, because the change of the legal regime of the debtor's activity leads not only to the dismissal of the debtor's manager, but also to the termination of powers of management bodies of the debtor. For purpose of this Article, 'management bodies' mean bodies which are not executive bodies, i.e. the general meeting of founders (participants) and the boards of directors (supervisory board). The executive bodies (administrations, executive committees) continue to carry out their functions in the period of external management as an organisation of the external manager. They are not empowered to take any legally significant decisions, since a decision-making power on matters of regular activities, day-to-day management and administrative character belongs to the competence of the external manager.

None the less, the termination of powers of the management bodies does not necessarily mean their dismissal. Upon the introduction of external management, the management bodies of the debtor still retain certain powers. They are entitled to pass resolutions issuing additional shares and other resolutions related to the status of founders (participants) of the debtor, for example, resolutions electing a representative of founders (participants) of the debtor, defining the procedure for conducting the shareholders' meeting and the like. The powers of the management bodies of the debtor and their competence, the procedure for convening and holding meetings (assemblies) and the procedure for passing resolutions of the management bodies of the debtor are regulated by laws on legal entities and by founding documents of the legal entity debtor.

In order to ensure the prompt assumption of an office by the external manager and the termination of powers of the management bodies and the dismissal of the debtor's manager, this Law envisages that the debtor's accounting and other documentation, seals and stamps, material and other valuables must be transferred to the external manager within three business days from the date when the external manager is appointed. The debtor's management bodies and its manager are obliged not only to transfer the affairs, but also to entitle the external manager to access the legal entity. They should not impede the external manager and interfere with his/her activities. Persons who interfere with the external manager are accused of responsibilities, including a criminal liability;

- provisional measures to preserve creditors' claims that have been taken earlier are cancelled. This is explained by the fact that upon the introduction external management, the bankruptcy case moves to another stage, where the management of the debtor's affairs and administration of its property are transferred to the external manager, and the external management plan should be implemented. In view of this, provisional measures to preserve creditors' claims shall not be an obstacle to realising the above goals;
- attachment of the debtor's property and other restrictions on the debtor's powers to dispose of property owned by the debtor may be imposed solely within the framework of the bankruptcy process. It means that neither any other court nor any officials (authorities) are entitled to issue acts that restrict the external manager's right to dispose of the debtor's property during the period of external management.

Persons interested in such restrictions, including those not participating in bankruptcy proceedings, may apply to the economic court which handles the bankruptcy case for restrictions;

- for the period of external management, the moratorium is effective with respect to the debtor's obligations which have arisen before the bankruptcy case is commenced and those obligations which have matured by the time the external management starts (see the comment on Art. 93). The moratorium on the satisfaction of creditors' claims is an important precondition for the implementation of measures for the financial recovery of the debtor during external management.

The external manager must forward to all creditors a notice of the introduction of the moratorium on their claims from the date when external management is effected (Paragraph 33, the Regulations on court receivers).

2. In order to safeguard the creditors' interests, Paragraph 2 of this Article provides that upon the completion of external management, penalties (fines, late payment interest) and losses which the debtor is obliged to pay to its creditors on monetary obligations and (or) mandatory payments may be presented for payment in the amount existing as of the date of the introduction of external management.

Article 93. Moratorium on Satisfaction of Creditors' Claims

- 1 The moratorium on satisfaction of creditors' claims shall be applied to monetary obligations and (or) mandatory payments which have matured before the introduction of external management, except obligations and (or) mandatory payments which have arisen after the introduction of supervision and (or) judicial rehabilitation in relation to the debtor.**
- 2 Within the period of the moratorium on monetary obligations and (or) mandatory payments envisaged by Paragraph 1 of this Article:**
 - the recovery under execution documents and other documents, and the recovery in the out-of-court manner (without acceptance of the debtor) shall not be permitted;**
 - penalties (fines, late payment interest) and other economic (financial) sanctions for not performing or improperly performing monetary obligations and (or) duties on mandatory payments, except monetary obligations and (or) mandatory payments which have arisen after the introduction of supervision and (or) judicial rehabilitation in relation to the debtor, and also interest payable shall not accrue.**
- 3 Creditor's claims for monetary obligations and (or) mandatory payments as of the date of the introduction of external management shall accrue interest in the manner and amount envisaged by Article 327 of the Civil Code of the Republic of Uzbekistan. This interest shall accrue on claims of a certain priority from the date when external management is introduced in relation to the debtor and up to the date when the economic court renders a ruling to commence settlements with creditors with claims of such priority or up to the date when the court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings. The accrued interest must be paid to a creditor simultaneously with its principal debt.**
- 4 The moratorium shall also be applied to creditors' claims for losses caused by the external manager's refusal to fulfil contracts in accordance with Article 102 of this Law.**
- 5 The rules envisaged by Paragraph 2 and Paragraph 3 of this Article shall not be applied to monetary obligations and (or) mandatory payments which have matured after the introduction of external management.**

6 The moratorium shall not be applied to claims of citizens arising from labour law relations, for alimony and remuneration under copyright agreements, and to claims of citizens to which the debtor is liable in damages for life or health in the manner established by legislation.

This Article stipulates the procedure for applying one consequence of the introduction of external management, which is the moratorium on the satisfaction of creditors' claims. The institute of the moratorium represents the public-legal interference into private legal relations and serves as one of the methods to secure the economic and legitimate interests of the debtor's creditors. The moratorium on the satisfaction of creditors' claims, that is, the particular legal regime of property does not contradict with the Constitution of the Republic of Uzbekistan and does not prevent creditors from exercising their constitutional right to judicial support. The moratorium halts the execution of all monetary obligations and duties for mandatory payment to the budget and off-budget funds by the debtors, except for monetary obligations and (or) mandatory payments, arising after the introduction of supervision and (or) judicial rehabilitation against the debtor and other exceptions (this Article, Paras.1,5 and 6).

The moratorium is a major measure which enables the debtor to continue functioning, without discharging certain creditors' claims. During the moratorium, no sanctions for not discharging is charged, no losses caused by the moratorium can be exacted from the debtor and the term limited for bringing actions is suspended to run.

1. Paragraph 1 of this Article determines the range of creditors' claims which the moratorium covers. In accordance with this range, the moratorium comes into effect on monetary obligations and mandatory payments which have matured before the introduction of external management.

At the same time, this Law sets up exceptions when the moratorium does not apply to:

- monetary obligations and (or) mandatory payments which have arisen after the introduction of supervision and (or) judicial rehabilitation in respect of the debtor (Para.1,this Article), and also those the maturity date of which has come after the introduction of external management (this Article,Para.5), i.e. current payments;
- claims stipulated by Paragraph 6 of This Article.

It should be noted that nonmonetary claims (claims of nonproperty characters) are also considered as extraordinary and satisfied outside the framework of bankruptcy proceedings, and in this connection, the moratorium does not apply to them.

2. Paragraph 2 of this Article provides for the consequences of the moratorium. Thus, the recovery of penalties under execution documents and other documents and the recovery in the out-of-court manner (without acceptance of the debtor) are not allowed, and penalties (fines, penalties) and other economic (financial) sanctions for the non-performance or improper execution of monetary obligations and (or) duties on mandatory payments do not accrue. This measure is aimed at ensuring that the debtor's funds are directed at the recovery of its financial situation.

The moratorium in respect of the debtor does not suspend any duty of counterparties of the debtor to fulfil contracts between them and the debtor. Exceptions can be set by the law or an agreement. During the moratorium, no sanctions for delay in the performance is charged, no losses caused by the moratorium can be exacted from the debtor and the duration limited for bringing actions is interrupted.

3. Paragraph 3 of this Article stipulates a rule, according to which interest accrues on the amount of creditors' claims over which the moratorium is binding, in the manner and amount provided by

Article 327 of the Civil Code. In accordance with the requirements of such Article of the Civil Code, the interest rate is determined based on the bank rate at the place of creditors' residence or at the place of creditors' location if creditors are a legal entity, as of the date when a lawsuit is brought or the date when a court gives a decision (at the discretion of the court). This measure enables creditors' interests to be secured. The term of interest and its payment are stipulated in this Paragraph as well.

4. In accordance with Paragraph 4 of this Article, the moratorium is applied also to creditors' claims for damage caused when the external manager refuses to fulfil contracts under Article 102. The moratorium on such claims enables the external manager to determine what contractual obligations of the debtor need to be performed or what to be refused without aggravating the debtor's financial situation.
5. The moratorium is not applied to monetary obligations and mandatory payments which have arisen before the economic court accepts the petition for the declaration of the debtor' bankruptcy, but matured after the introduction of external management (current payments). Creditors of such claims are entitled to lodge their claim independently outside the framework of bankruptcy proceedings.
6. In Paragraph 6 of this Article, the legislator exempts from the list of obligations affected by the moratorium claims of citizens in the labour law relation, for alimony and remuneration under copyright agreements, and claims of citizens to whom the debtor is liable in damage for life or health in the manner stipulated in the legislation. It is considered that the moratorium does not apply to claims for moral damage, either, although this Law does not so stipulate explicitly. This Law grants a special status to such claims by providing for their satisfaction regardless of priority of other claims, because they are connected with personal rights of citizens and have a social character.

Article 94. Procedure for Proposing Candidate for External Manager

- 1 The creditors' meeting that passes a resolution to apply to the economic court for the introduction of external management shall approve a candidate for an external manager.**
- 2 A candidate for an external manager may be proposed to the creditors' meeting by any creditor or by the state body for bankruptcy proceedings.**
- 3 A candidate for an external manager that gains the majority of creditors' votes in accordance with the procedure of the creditors' meeting for passing resolutions envisaged by Article 13 of the this Law shall be proposed to the economic court.**
- 4 If the economic court introduces external management without a resolution of the creditors' meeting applying to the economic court for its introduction, the creditors' meeting shall be entitled to consider, approve and propose to the economic court a candidate for an external manager within three weeks from the date when the economic court renders a ruling to introduce external management.**
- 5 If the creditors' meeting fails to propose a candidate for an external manager, the economic court shall appoint an external manager from candidates proposed by the state body for bankruptcy proceedings.**

This Article focuses on the procedure in which creditors present a candidate for an external manager for administering external management.

1. In accordance with Paragraph 1 of this Article, the creditors' meeting that passes a resolution applying to the economic court for the introduction of external management shall pass a resolution approving a candidate for an external manager. Candidates for an external manager must have the attestation of the first category court receiver and meet other requirements imposed by Article 18.
2. It is provided in Paragraph 2 of this Article that any creditor or the state body for bankruptcy proceedings has a right to propose to the creditors' meeting a candidate for an external manager. The state body for bankruptcy proceedings can offer a candidate, regardless of whether the debtor is an enterprise the charter capital of which partially or wholly belongs to the state, or not.
3. A candidate for an external manager who gains the majority of creditors' votes at the meeting is presented to the economic court. The creditors' meeting resolution approving a candidate is passed in the relevant procedure provided by Article 13.
4. In case of the introduction of external management without the creditors' meeting resolution applying to the economic court for the introduction of external management against the debtor, for example, in case of the introduction of such process on the ground of a petition of the state body for bankruptcy proceedings, the creditors' meeting has the priority right to consider, approve and present a candidate for an external manager to the economic court within three weeks after the economic court renders a ruling to introduce external management.
5. If no candidate for an external manager is proposed by the creditors' meeting, the economic court appoints one of candidates proposed by the state body for bankruptcy proceedings as external manager.

Article 95. Appointment of External Manager

- 1 An external manager shall be appointed by the economic court simultaneously at the introduction of external management.**
- 2 In the absence of the possibility of appointing an external manager simultaneously at the introduction of external management, the economic court shall appoint an external manager within one month from the date of the introduction of external management.**
- 3 To appoint an external manager, the economic court shall render a ruling.**
- 4 The ruling to appoint an external manager shall be subject to immediate execution and may be appealed (protested).**

This Article stipulates the procedure for an appointment of an external manager by the economic court.

1. An external manager is appointed by the economic court for performing the procedure of external management. An external manager is appointed by the economic court, as a rule, at the introduction of external management, i.e. at the moment the economic court renders a ruling to introduce external management.

The procedure for proposing a candidate for an external manager to the economic court is stipulated by Article 94. A person may be appointed as external manager when he/she has the eligibilities stipulated by Article 18 of this Law and the Regulations on certification of court receivers.

2. In case it is impossible to appoint an external manager at the introduction of external management, an external manager may be appointed by the economic court within one month after the introduction of external management. In such case, by virtue of Paragraph 4 of Article 75 and Paragraph 5 of Article 80, the duties of the external manager, except that to draft an external management plan, shall be performed by the person who has been acting as interim receiver if external management comes right after supervision, or by the rehabilitation manager if external management is introduced after judicial rehabilitation.

If a candidate for an external manager proposed by the creditors' meeting does not meet the requirements or if a candidate is not proposed at all, the economic court may appoint an external manager from candidates proposed by the state body for bankruptcy proceedings (Art.94,Para.5).

3. To appoint an external manager, the economic court issues a ruling. This ruling takes effect at the moment it is rendered and is subject to immediate execution (this Article,Para.4).

The external manager from the moment of his/her appointment by the court carries out the following duties (Para.27, the Regulations on court receivers):

- to develop a draft calendar plan of actions;
- to notify in writing the debtor's management bodies of the introduction of external management and appointment of the external manager.

The ruling to introduce external manager may be appealed to the appeal instance of the economic court. In this case, the ruling of the court of first instance is appealed in the shortened period in accordance with Paragraph 21 of the Resolution of the SEC Plenum No.142 and Article 60 of this Law. An appeal against the ruling to introduce external manager does not suspend the effect of the ruling.

Article 96. Dismissal of External Manager

- 1 The external manager may be dismissed from his/her duties by the economic court:**
 - by virtue of the creditors' meeting resolution in case the external manager fails to perform or improperly performs duties imposed on him/her. In this case, the resolution of the creditors' meeting must contain information on a candidate for a new external manager;**
 - by virtue of the resolution of the state body for bankruptcy proceedings;**
 - upon his/her application;**
 - where circumstances which prevent a person from being appointed as external manager in accordance with Article 18 of this Law have been revealed,;**
 - in other cases envisaged by the legislation.**
- 2 The economic court ruling to dismiss the external manager from his/her duties shall be subject to immediate execution and may be appealed (protested). The appeal (protest) against the specified ruling shall not suspend execution of the ruling.**

This Article addresses the dismissal of the external manager. Such dismissal may take place either in case the external manager has damaged the debtor or its creditors or in case he/she has not.

1. Paragraph 1 of this Article stipulates grounds for dismissing the external manager.

Under the rules of Item 1 of Paragraph 1 One of this Article, the creditor's meeting can initiate the procedure for dismissing the external manager by filing in the economic court the relevant claim in

case the external manager fails to perform or improperly performs his/her duties, including in case he/she commits repeated breaches or a single gross breach of the legislation. In this case, unlike the regulations of Article 21, the evidence of losses is not necessary. The resolution of the creditors' meeting dismissing the external manager should consist of the two sections:

- 1) A reasonable application for the dismissal of the external manager, specifying the fact of his/her failure to perform or improper performance of his/her duties imposed by this Law;
- 2) A resolution approving a candidate for a new external manager, passed in compliance with the requirements of Article 94

In compliance with Item 2 of this Article, the external manager can be dismissed by the economic court on the ground of the decision of the state body for bankruptcy proceedings. Grounds for such dismissal by the state body for bankruptcy proceedings are stipulated by Paragraph 35 of the Rule "On Certification Commission of Court Receivers" (approved by the Resolution of the Demonopolisation Committee dated 15 May 2006, registered by the Ministry of Justice dated 12 Jun. 2006 No.1581 (see the comment on Art.25, Para.1).

The external manager can resign from his/her duties upon his/her application as well due to Item 3 of Paragraph 1 of this Article. This Law does not require the external manager to justify grounds of his/her inability to continue his/her duties, however the economic court may demand the explanation from the external manager, as the change of the external manager can adversely affect the execution of the external management plan and financial recovery of the debtor. An application of the external manager for his/her dismissal is not an unconditional ground for dismissing him/her. The economic court may reject such application if no reasonable reason is presented. Not only sickness or other circumstances of the personal character preventing the conducting of economic activities, but other reasons can be considered as reasonable reasons.

On the grounds of the Item 4 of Paragraph 1 of this Article, the external manager can be dismissed in case ineligibilities as external management under with Paragraph 2 of Article 18 have been revealed in his/her respect, by evidences provided by persons participating in the bankruptcy case.

In compliance with Item 5 of Paragraph 1 of this Article, this Law can establish other cases when the economic court can dismiss the external manager: for example in cases where the external manager is appointed or elected for the state or any elective office or the like.

It should be mentioned that persons participating in the bankruptcy case are entitled to apply to the economic court for the dismissal of the external manager under Article 21 in case the external manager has caused the debtor or its creditors damage or losses due to his/her failure to perform or improper performance of his/her duties imposed by this Law. Additionally, it should be borne in mind that persons participating in the bankruptcy case are also entitled to petition for the dismissal of the external manager in case the external manager due to a single gross breach or repeated violations of the current legislation in compliance with the Paragraph 13 of the Resolution of the SEC Plenum No.142. In this case, no evidence of damage or loss is required.

In accordance with Article 59 , an application for the dismissal of the external manager presented to the economic court for its consideration shall be considered by a judge within one month. After having considered the application, the economic court renders a ruling to dismiss the external manager or reject such application.

2. In accordance with Paragraph 2 of this Article, the ruling to dismiss the external manager must immediately be executed, and may be appealed in compliance with Article 60 and Paragraph 27 of the Resolution of the SEC Plenum No.142. The term for appealing against this ruling is ten days

from the date of the issuance of the ruling. The fact of such appeal (protest) does not prevent the execution of the ruling.

When making a ruling to dismiss the external manager, the economic court appoints a new external manager or requests the creditors' meeting to present a candidate for an external manager.

A new external manager is appointed by the economic court in the procedure provided by Article 95. By analogy with Item 2 of Paragraph 1 of Article 92, it can be identified that the dismissed external manager must ensure the transfer of the debtor's accounting and other documentation, seals and stamps, material and other valuables to the new external manager within three business days after his/her appointment.

The information on dismissal of external manager and appointment of new external manager shall be published in accordance with the procedure envisaged by Article 52.

Article 97. Rights of External Manager.

- 1 The external manager shall exercise the powers of the manager.**
- 2 The external manager shall be entitled to:**
 - convene the creditors' meeting and creditors' committee;**
 - dispose of the debtor's property within the limitations envisaged by Article 101 of this Law;**
 - enter into an amicable agreement on behalf of the debtor;**
 - receive remuneration in accordance with Article 22 of this Law;**
 - engage other persons on contractual basis at the expense of the debtor in order to perform his/her functions, unless otherwise established by this Law or by an agreement with creditors;**
 - apply to the economic court for the early termination of his/her duties;**
 - refuse to fulfil contracts of the debtor in the manner established by Article 102 of this Law.**
- 3 When exercising his/her powers, the external manager shall be entitled to lodge claims against third parties which are subsidiarily liable in accordance with the legislation for monetary obligations of the debtor as they have brought the debtor to bankruptcy.**
- 4 The external manager may also have other rights in accordance with the legislation.**

This Article stipulates rights of the external manager. The external manager should execute his/her powers and perform his/her duties in compliance with the principles of Article 19 in good faith and reasonably on behalf of the debtor and its creditors.

1. In order to initiate and carry out measures for the financial recovery of the debtor, Paragraph 1 of this Article provides that the external manager executes powers of the debtor's manager. This is fixed also by Items 2 and 3 of Paragraph 1 of Article 92.
2. In compliance with Paragraph 2 of this Article, the external manager has the right to:
 - call the creditor's meeting and the creditors' committee. As most decisions taken by the external manager are directed at disposing of the debtor's property, such decisions should not only be within the framework of the external management plan but also controlled by the creditors' meeting (creditors' committee), which gives the consent to the relevant transactions. In line with this, this Law authorises the external manager to summon the creditors' meeting and

creditors' committee, and accordingly optimises such decision making process with the purpose of the efficient operation to solve the aforementioned issues.

- dispose of the debtor's property according to the external management plan within the limitations provided by Article 101 (for more details, see the comment on Art.101);
 - conclude an amicable agreement on behalf of the debtor. An amicable agreement is developed and concluded by the external manager and creditors, and approved by the economic court in the procedure provided by Chapter VIII;
 - receive remuneration in compliance with Article 22;
 - engage other persons on contractual basis at the expenses of the debtor in order to fulfil his/her functions, unless otherwise stipulated in this Law or an agreement with creditors. Actually, the external manager has to engage various specialists for the fulfilment of his/her functions connected with financial recovery. This provision enables the external managers to engage such specialists and identifies the source to pay for their services;
 - present to the economic court an application for the termination of his/her duties ahead of schedule (actually it means an application for his/her resignation as external manager – see the comments on Art. 96);
 - refuse to fulfil contracts of the debtor in the procedure established by Article 102 (for more details, see the comment on Art.102);
3. Paragraph 3 of this Article enables the external manager to make a claim against third persons who bear the subsidiary liability for monetary obligations of the debtor as they have caused the debtor's bankruptcy, pursuant to the legislation.
4. The given list of rights of external manager established by this Article represents only specific characters of external management and is certainly not a close list. The external manager has both substantive and procedural rights as well, provided by this Law and other regulatory legal acts, particularly by Articles 19 and 103 of this Law, and the Resolution of the Cabinet of Ministers "On measures for organisation of activities of court receivers of the economically insolvent enterprises"(dated 23 Mar. 2004 No.138).

Article 98. Obligations of External Manager.

- 1 The external manager shall be obliged to:**
- **place the debtor's property under his/her management and take its inventory;**
 - **take measures to search, reveal and recover the debtor's property held by third parties;**
 - **open a special account for carrying out external management and settlements with creditors;**
 - **elaborate an external management plan and submit it to the creditors' meeting for its approval;**
 - **keep accounting, statistical recording and reporting;**
 - **raise objections in the established manner against creditors' claims lodged to the debtor;**
 - **take measures to collect credits of the debtor;**
 - **maintain the creditors' register;**
 - **submit reports on the progress and results of the implementation of the external management plan to the creditors' meeting.**
- 2 The external manager may also bear other obligations in accordance with the legislation.**

This Article stipulates obligations of the external manager. It is considered that the external manager takes office at the moment when the ruling to appoint him/her is rendered. He/she performs general duties of court receivers provided by Article 19 and specific obligations determined in Articles 97 through 102.

1. In accordance with Paragraph 1 of this Article the external manager must:
 - place the debtor's assets under his/her management and take its entire inventory in compliance with the established rules. Due to Paragraph 1 of Article 92, the powers of the debtor's manager pass to the external manager, and correspondingly the powers to manage property shall pass as well. The external manager must inventory the debtor's whole property for its effective management.
 - take measures directed to search, reveal and recover the debtor's property in possession of third persons. Measures to recover the debtor's property shall include repossession of the property in adverse possession, including a lawsuit for recovery and so on;
 - open a special account to fulfil external management and settlements with creditors. Such account is opened in the debtor's operating bank. Opening such account is necessary in relation to the fact that the moratorium suspends the satisfaction of creditors' claims for monetary obligations and mandatory payments of the debtor during external management under Article 93. In this connection, a card file No.2 of the debtor for the mentioned obligations stays at bank account of the debtor;
 - draft an external management plan and present it to the creditors' meeting for its approval. The external management plan should be developed by the external manager pursuant to Article 106 and presented to the creditors' meeting for its approval within a month after the appointment of the external manager. Paragraph 1 of Article 107 stipulates that the plan is reviewed by the creditors' meeting which is convened within two months after the introduction of external management and the external manager should give creditors an opportunity to become familiarised with the plan at least two weeks before the creditors' meeting. This implies that the external manager must make an external management plan not later than two weeks before the date of the creditors' meeting called for this purpose. Accordingly, although Paragraph 1 of Article 106 stipulates that the external manager makes a plan within one month after his/her appointment, he/she must in any case prepare a plan two weeks before the creditors' meeting called for consideration of the plan even when the term between his/her appointment and the date by which he must to develop a plan (i.e. two weeks before the creditors' meeting for consideration of the plan) is less than one month due to the delay of his/her appointment by the economic court.
 - keep accounting, statistical recording and reporting;
 - file objections against creditors' claims lodged against the debtor in order to defend the debtor's interests. Objections are presented to creditors having lodged their claims in the manner provided by paragraph 2 of Article 99. In case the creditors having lodged their claims disagree with the external manager's objections, they may appeal against such objections to the economic court on the ground of Paragraph 3 of Article 99.
 - take measures to collect credits of the debtor, including ways of claiming credits, resorting to the court, presenting an execution document to the execution officer in the statutory time period .

- maintain the creditors' register in the manner established by Article 14 of this Law and Paragraph 19 of the Resolution of the SEC Plenum No.142. The external manager receives and keeps the creditors' register which has been made during the previous bankruptcy process. It is necessary to note that the value of monetary obligations and mandatory payments which have been incurred before the commencement of the bankruptcy case but matured after such commencement shall be fixed as of the date of the introduction of external management in compliance with Paragraph 19 of the Resolution of the SEC Plenum No.142;
 - present reports on the progress and results of the implementation of the external management plan to the creditors' meeting;
 - implement actions stipulated by the external management plan, in accordance with the requirement of this Law, for example, obtain the consent of the creditors' meeting if such consent is mandatory and observe the terms and conditions for sale of the debtor's property, etc.
2. It should be noted that as long as the external manager is authorised as the debtor's manager, he/she should take not only liabilities provided by this Law, but also all civil, administrative and criminal responsibilities imposed on the debtor's manager by legal acts of the Republic of Uzbekistan.

Furthermore, the external manager must engage an independent estimator if required for the evaluation of the debtor's property, other specialists and specialised organisations, present reports to the economic court, repay creditors and perform other duties including those provided by Part 2 through 5 of Article 19.

It should be taken into account that activities of the external manager are stipulated by the Regulation on the court receivers as well.

Article 99. Creditor's Claims.

- 1 Creditors shall be entitled to lodge their claims against the debtor at any time within the period of external management. Creditors' claims shall be forwarded to the external manager at the postal address of the debtor. Creditors' claims which are to be recognised to be confirmed in accordance with Paragraph 4 of this Article shall be forwarded to the external manager with documents confirming such claims attached.**
- 2 The external manager shall consider claims lodged by creditors and, upon the results of consideration thereof, enter the relevant record in the creditors' register within two weeks after he/she receives such claims. The external manager shall notify the creditors of the results of consideration within one month after he/she receives such claims.**
- 3 Creditors may raise objections against the results of the external manager's consideration of their claims to the economic court considering the bankruptcy case within one month from the date when they receive notification of the results.**
- 4 Creditors' claims against which no objection is raised within the period set by Paragraph 3 of this Article shall be deemed to be confirmed in the amount, composition and priority determined by the external manager.**

This Article stipulates the procedure for lodging creditors' claims (except those for current payments) against the debtor during the period of the external management.

1. Paragraph 1 of this Article entitles creditors which are to be included in the creditors' register to make their claims against the debtor at any moment before the completion of external management, if they have not been included in the creditors' register for some reasons. For example, there may be creditors which did not know about the commencement of the bankruptcy case against the debtor and failed to lodge their claims, or those which were not recorded in the creditors' register for some reasons, or creditors whose claims were arisen against the debtor before the commencement of the bankruptcy case, but matured before the introduction of external management. Since the external manager is liable for maintaining the creditors' register in compliance with Articles 14 and 98 of this Law, creditors' claims are transferred directly to the external manager at the postal (legal) address of the debtor. Creditors whose claims have been recognised by any court receiver before the introduction of external management need not to lodge their claims again to the external manager. If the amount of such claims has been changed, then the creditors can forward their claims to the external manager again, enclosing relevant supporting documents, so that the creditors' register would be revised.
2. Paragraph 2 of this Article stipulates the procedure for considering claims lodged by creditors, according to which, the external manager must consider these claims within two weeks after he/she receives them, and notify their creditors of the results of consideration within a period of not exceeding one month after he/she receives the claims. According to the results of such consideration, the external manager revises the creditors' register. If creditors which sent their claims to the external manager do not receive the relevant notification of the results or if they disagree with the results, they are entitled to resort repeatedly to the external manager or present complaint to the economic court in the manner set by Article 59 or Paragraph 3 of this Article.
3. Paragraph 3 of this Article qualifies creditors to raise objections to the economic court if they contest the results of the consideration of creditors' claims by the external manager. The right of creditors to file objections is based on the necessity of protecting their rights and interests. Creditors can enforce such right of theirs within a month after they receive notification from the external manager about the results of consideration of their claims.
4. Paragraph 4 of this Article stipulates that creditors' claims against which no objection is raised within the period set by Paragraph 3 of this Article are deemed to be confirmed in the amount, composition and priority determined by the external manager. Thus, if creditors raise no objections regarding their claims under Paragraph 3 of this Article, then they are not allowed to file objections later to the court.

Article 100. Consideration of Creditors' Objections.

- 1 Objections raised by creditors within the period set by Article 99 of this Law against the amount, composition and priority of their claims determined by the external manager shall be considered by the economic court within one month from the date when the court receives such objections.**
- 2 Upon the results of the consideration of creditors' objections, the economic court shall render a ruling specifying the amount, composition and priority of creditors' claims against which creditors' objections are recognised justified.**
- 3 The economic court ruling rendered upon the results of the consideration of creditors' objections may be appealed (protested). Rulings and other judicial acts rendered when**

creditors' objections are considered within the framework of a bankruptcy case shall be precedential when claims of these creditors against the debtor are considered in other proceedings.

4 Objections filed by the representative of the debtor's employees against the amount and composition of wages and severance payments to individuals working under a labour contract shall also be considered in the manner established by this Article.

This Article deals with the consideration of objections against the amount, composition and priority of creditors' claims.

1. If creditors contest the results of the consideration of their claims by the external manager and file objections to the economic court according to the terms and conditions provided by Article 99 of this Law and the requirements of the Code of Economic Procedure, such objections are considered by the economic court within the framework of the bankruptcy case. The economic court considers them within one month from the date when it receives them. Creditors should, however, demand the debtor to enter their claims in the creditors' register, before resorting to the court, which is a mandatory requirement of the out-of-court procedure for settling disputes. In cases where creditors directly file objections to the economic court without demanding the external manager, those objections shall be returned in accordance with Item 6 of Paragraph 1 of Article 118 of the Code of Economic Procedure. Thereby, creditors, filing to the economic court objections against actions of the external manager, should enclose documents confirming that they have taken the out-of-court (complaint) procedure to solve the dispute with the external manager.
2. Objections filed by creditors are considered in the court session in the manner prescribed by the Code of Economic Procedure.

When considering objections filed by creditors, the court reviews submitted documents, checks the accuracy of the calculated amount of their claims and takes into account objections of the external manager if any, and on the base of these, determine the amount of the claims and identifies the priority of the claims. The court may declare objections ungrounded, and in this case, renders a ruling to refuse to include the claims in the creditors' register.

Upon the results of consideration of creditors' objections, the economic court issues a ruling. In case it recognise objections reasonable, the economic court renders a ruling specifying the amount, composition and priority of creditors' claims, in respect to which creditors have filed objections.

3. Under Paragraph 2 of this Article, creditors, the external manager and other persons participating in the bankruptcy case can appeal against a court ruling rendered upon the results of consideration of creditors' claims in the manner provided by Article 60. An appeal against the ruling admitted by this Paragraph does not interfere with the enforcement of the ruling.

This Paragraph also states that rulings and other judicial acts rendered at the consideration of creditors' objections in respect of their claims against the debtor within the framework of the bankruptcy case have precedential force over the consideration of these claims in other proceedings. In other words, judicial acts taken by the court upon the results of the consideration of creditors' objections are binding on further cases and do not require additional proof. This regulation is analogically applied as well to any judicial acts issued in other bankruptcy processes upon the results of the consideration of lodged claims. Thus, if the debtor or the court receiver contests claims lodged by creditors during supervision or judicial rehabilitation, and the economic court considers such

objections and renders a ruling regarding the claims, then no objection regarding such claims is allowed to file to the economic court again , by analogy with the provision of this Paragraph, unless a new evidence to contradict with evidences justified in the previous proceeding is presented.

4. Paragraph 4 of this Article provides that objections filed by the representative of the debtor's employees against the amount and composition of wages and severance payments to individuals working under a labour contract are considered in the manner established by this Article.

The provision of this Paragraph corresponds with that of Item 1 of Paragraph 2 of Article 59. In this regard, it is necessary to note that such provision entitles the representative of the debtor's employees to file objections to the court, but individual employees have no such right.

Article 101. Disposition of Debtor's Property.

- 1 The property owner of the debtor or bodies authorised by founding documents shall not be entitled to pass a resolution limiting powers of the external manager to dispose of the debtor's property or to limit these powers in any other way, except as envisaged by this Law.**
- 2 Major transactions and transactions with interested parties shall be made by the external manager solely with the consent of the creditors' meeting or creditors' committee unless otherwise envisaged by this Law or the external management plan.**
- 3 Transactions resulting in the disposition of immovable property or other property of the debtor the balance value of which exceeds 10 per cent of the balance value of the debtor's total assets as of the date of making such transactions shall be classified as major transactions.**
- 4 Transactions counterparties to which are an interested party in relation to the external manager or creditors shall be recognised as transactions with interested parties.**

This Article imposes some limitations on the disposition of the debtor's property.

1. The function to manage the debtor's affairs (including to dispose of the debtor's property) passes to the external manager at the moment of the introduction of external management. During external management, the external manager acts in the interests of creditors and obtains their consent to the disposal of the debtor's property. In this connection, Paragraph 1 of this Article provides that the property owner of the debtor or bodies authorised by founding documents have no right to take decisions to restrict the external manager's power to dispose of the debtor's property or restrict it in any other way, except for cases stipulated in this Law. This Paragraph restricts the debtor's powers to manage and dispose of the debtor's property, and enables the external manager to work more effectively and objectively.

As an exception to this Article, it can be noted that a resolution of the property owner of the debtor or bodies authorised by founding documents is required, when the debtor's assets are substituted in way of establishing one or several open joint-stock companies (Art.115,Para.3).

2. Paragraph 2 of this Article contains the principle restricting the external manager to conclude major transactions and transactions with interested parties, without the consent of the creditors' meeting (creditors' committee), unless otherwise envisaged by this Law or the external management plan. This restriction enables the creditors' meeting to exercise constant control over the external manager's activities in performing major transaction and transactions with interested parties, as such transactions can affect creditors' interests.

Transactions made by the external manager in violation of the regulations of this Paragraph without the consent of the creditors' meeting (creditors' committee) are contestable and can be invalidated by the court upon an application of interested parties (Art.113,Para.1,CC).

3. Paragraph 3 of this Article clarifies the concept of major transactions which include transactions resulting in the disposition of immovable property, or other property of the debtor the balance value of which exceeds 10 per cent of that of the debtor's total assets as of the date of making such transactions.

Major transactions include not only transactions connected with the alienation of property but also with the acquisition of facilities at the relevant value, because the acquisition of property requires its payment, i.e. converts the resource of the debtor, which can affect the execution of the external management plan.

One business operation to dispose of the debtor's property may consist of two or more interrelated transactions (contracts). When several interrelated transactions handles one and the same object (one unit of the accounting), despite of several contracts, the total balance value of objects of each transaction (the single object) is the criteria to categorise transactions as major transactions. For example, a production complex is sold to a customer in parts with separate contracts for each part being concluded, in such way as the value of each contract does not exceed 10 per cent of the debtor's property. In this case, if the balance value of the complex is more than 10 per cent of that of the total assets, all the contracts concluded for sale of separate parts of the complex constitute a major transaction as a whole, and the external manager should secure the consent of the creditors' meeting (creditors' committee) to each transaction, unless otherwise provided by this Law or the external management plan.

4. According to Paragraph 4 of this Article, transactions with interested parties mean those parties to which are an interested party in relation to the external manager or creditors.

The list of interrelated and affiliated persons, and persons interested in the execution of transactions is contained in other legislative acts and the list of interested persons is indicated in Paragraph 3 of Article 17. The external manager should, before making a transaction on behalf of and in the interest of the debtor, clarify whether a counterparty of this transaction is an interested person in relation to any of creditors. If the aforementioned is revealed, the external manager should ask for the consent of the creditors' meeting (creditors' committee) to the transaction, unless otherwise provided by this Law or by the external management plan. Transactions with interests of anyone are under control of the creditor' meeting (creditors' committee) as they may involve interested persons (Art.15,Para.5,Item 3).

Article 102. Refusal of Fulfilment of Debtor's Contracts

- 1 The external manager shall be entitled, within three months from the date of the introduction of external management, to refuse to fulfil contracts which the debtor has concluded before the commencement of the bankruptcy case.**
- 2 Only those contracts of the debtor which all contracting parties have not fulfilled in full or part may be refused to fulfil, if there is one of the following circumstances;**
 - their fulfilment causes the debtor losses in comparison with the similar agreements entered into under comparable circumstances;**

- they are a long-term agreement (its period is more than one year) or intended to bring the debtor the positive results only in a long-term prospective.

3 The debtor's contracts which all contracting parties have not fulfilled in full or part may be refused to fulfil, if there are other circumstances preventing the debtor's financial ability from being restored.

4 In cases envisaged by Paragraphs 2 and 3 of this Article, a contract shall be deemed to terminate⁴² on the date when all contracting parties receive a statement of the external manager on the refusal to fulfil the contract.

5 Parties to a contract refused by the debtor to fulfil shall be entitled to claim from the debtor for compensation for actual damage caused by the refusal.

Regulations of this Article empower the external manager to reject a specific type of contracts. The necessity to provide the external manager with such right links with the fact that in the debtor's critical situation, some contracts may sometimes be inexpedient to be fulfilled with a view to achieving the main objectives of external management: the satisfaction of creditors' claims and the restoration of the debtor's solvency.

1. According to Paragraph 1 of this Article, the external manager may, within three months from the date of the introduction of external management, refuse to fulfil contracts which the debtor has entered into before the commencement of the bankruptcy case, by sending notification of setting aside such contracts to contracting parties at their address.

It should be noted that this Article does not apply to contracts concluded after the commencement of the bankruptcy case. In case there are grounds provided by Article 103 such as the breach of the legislation at the conclusion of a contact (e.g. the debtor constituted a contact without the necessary consent of the interim receiver during supervision, etc), the economic court has a right to render this voidable contract void and apply consequences of the invalidity upon an application of the external manager.

2. The refusal to fulfil contacts can be decided by the external manager without any consent of any body. This Law establishes, however, some limitations with which the external manager should comply.

The external manager can declare the refusal to fulfil only such contracts as have not been fully or partially performed by any parties, if there is one of the following circumstances:

- 1) the fulfilment of such contracts would result in damage or loss to the debtor in comparison with the similar agreements concluded under comparable circumstances;
 - 2) such contracts are a long-term agreement (its period is more than one year) or intended to bring the debtor the positive results only in a long-term prospective.
3. Paragraph 3 of this Article stipulates that the debtor's contracts which all contracting parties have not fulfilled in full or part may be refused to fulfil, if there are other circumstances preventing the debtor's financial ability from being restored. This provision aims at creating conditions to facilitate the restoration of the debtor's solvency, together with the regulation of the moratorium which stays payment to claims for losses caused by the external manager's refusal to fulfil contracts (Art. 93,Para.4).

⁴² Art.383, CC

4. Paragraph 4 of this Article identifies the moment when contracts are set aside if the external manager send notification of termination of these contacts. When the external manager sends notification of the refusal to fulfil contracts to counterparties, such contracts are deemed to terminate on the date when all parties to such contracts receive this notification. Parties should be notified in writing.
5. Paragraph 5 of this Article mentions consequences of the external manager's refusal to fulfil contracts, according to which the debtor must compensate for actual damage caused by such refusal. In this case, these claims for compensation are also bound by the moratorium in accordance with Paragraph 4 of Article 93. These claims are included in the creditors' register as those of the forth priority and paid within the framework of the bankruptcy case, even though they are incurred after the commencement of the bankruptcy case.

Article 103. Invalidity of Debtor's Transactions

- 1 The debtor's transactions, including those made by the debtor before the introduction of external management, may be recognised invalid by the economic court upon an application of the external manager on the grounds envisaged by the legislation.**
- 2 A transaction made by the debtor with an interested party may be recognised invalid by the economic court upon an application of the external manager if such transaction has prejudiced or may prejudice creditors.**
- 3 A transaction made by the debtor with a specific creditor or other person after the economic court accepts the petition for the declaration of the debtor's bankruptcy may be recognised invalid by the economic court upon an application of the external manager or creditors, if such transaction results in the preferential satisfaction of claims of certain creditors for monetary obligations.**
- 4 A transaction made by the legal entity debtor to redeem apportionment of share from its participants in connection with their withdrawal as its participants after the commencement of the bankruptcy case or within six months prior to the filing of the petition for the declaration of the debtor's bankruptcy may be, upon an application of the external manager or creditors, recognised invalid by the economic court, and everything that the debtor has provided under such transaction shall be returned to the debtor. In this case, participants of the debtor shall be recognised as a creditor of the sixth priority in accordance with Article 134 of this Law.**

This Article outlines cases where transactions may be rendered invalid by the economic court. This is necessary, first of all, to secure the debtor's property (i.e. on behalf of its creditors). Thus, the legislator empowers the external manager to apply to the court for the invalidation of transaction, and adds grounds for voidance as compared with Article 113 of the Civil Code.

1. Paragraph 1 of this Article stipulates the right of the external manager to apply to the economic court for the invalidation of transactions, including those made by the debtor before the introduction of external management. Transactions made by the debtor during supervision or judicial rehabilitation without the required consent of the interim receiver or the rehabilitation manager (Art. 64,Para.2; Art.81,Para.1, etc) may also be considered invalid upon an application of the external manager. This Paragraph mentions only the right of the external manager to apply to the economic

court for the invalidation of voidable transactions. However, in case transactions are not voidable, but void, the external manager has the right to apply to the court for the application of consequences of the invalidity of void transactions. This Paragraph has the same content as Article 113 of the Civil Code stipulating an action for the invalidation of voidable transactions and the application of consequences of the invalidity of void transactions. In this connection, it is important to note that such action provided by this Article is filed only by the external manager on behalf of the debtor and not by the debtor itself. Therefore, the period limited for bringing such action is counted from the date when the external manager learns or may learn such transactions by the debtor.

Actions of court receivers for the invalidation of voidable transactions made by the debtor and for the application of consequences of the invalidity are processed in the general procedure established by the Code of Economic Procedure or by the Code of Civil Procedure, outside the framework of the bankruptcy case (Para.26, the Resolution of the SEC Plenum No.142).

2. Pursuant to Paragraph 2 of this Article, transactions of the debtor with an interested person can be recognised invalid by the economic court upon the application of the external manager in case such transactions have caused or may cause creditors damage (see Art.17,Para.1 about interested parties). Thus, the condition for recognising transactions between the debtor and interested persons to be invalid is damage or the possibility of such damage to creditors as a result of such transaction. Hence, it is considered that when a transaction has just been concluded, but not yet performed, the external manager must present evidences that the forthcoming execution of such transaction would cause creditors damage.
3. Paragraph 3 of this Article states that a transaction made by the debtor with a specific creditor or other person after the economic court accepts the petition for the declaration of the debtor's bankruptcy may be rendered invalid by the economic court upon an application of the external manager or a creditor, if the specified transaction results in the preferential satisfaction of claims of certain creditors for the debtor's monetary obligations. Transactions leading to the preferential satisfaction of claims of certain creditors include a secured transaction by which the debtor's property is offered to a certain creditor as security to secure its claims which arose against the debtor previously, namely, before the commencement of the bankruptcy case.

On the other hand, the payment to specific creditors (except those with superpriority claims, namely claims satisfied, regardless of priority of other claims) by the debtor after the court accepts the petition for the declaration of the debtor's bankruptcy is considered as a void transaction made in violation of Paragraph 1 of Article 10, and thus the external manager can file in the economic court an action for the application of consequences of the invalidity of such void transaction in accordance with Paragraph 1 of this Article.

4. Paragraph 4 of this Article provides that a transaction made by the legal entity debtor to redeem apportionment of share from its participants in connection with their withdrawal as its participants after the commencement of the bankruptcy case or within six months prior to the filing of the petition for the declaration of the debtor's bankruptcy may be, upon an application of the external manager or creditors, recognised invalid by the economic court.

In fact, such transaction is prohibited after the introduction of supervision (Art.63,Para.1,Item 2), so that, in this connection, if such transaction is made after the commencement of the bankruptcy case, it is in fact null and void. Nevertheless, as this Paragraph stipulates that such transaction should be considered invalid, the external manager should bring an action to the court for the invalidation of such transaction.

The same procedure can be applied to a transaction which the legal entity debtor has made within six months before the filing of the petition, associated with the redemption of shares from its participants. Such transaction is a voidable transaction, so that it may be rendered null and void. The reason that such transaction is regarded voidable lies in the fact that it infringes rights and legitimate interests of creditors. In other words, such “recent transaction” takes some part of the debtor’s property out of the source for the satisfaction of creditors’ claims.

In case transactions recognised invalid have already been executed, parties of the transactions should return to the initial position (mutual restitution). Founders (participants) having withdrawn from the list of founders (participants) of the debtor without receiving the real value of their share are identified as creditors in the sixth priority if the debtor is declared bankrupt and liquidation proceedings is initiated. Under these circumstances, the interests of those founders (participants) are protected generally in this way.

Article 104. Monetary Obligations of Debtor Incurred under External Management

- 1 In case monetary obligations of the debtor incurred in the course of external management exceed 20 per cent of the amount of creditors’ claims in the creditors’ register, transactions incurring other monetary obligations of the debtor, except those envisaged by the external management plan, may be made by the external manager solely with the consent of the creditors’ meeting or creditors’ committee.**
- 2 Transactions against Paragraph 1 of this Article may be recognised invalid by the economic court upon an application of creditors, or a newly appointed external manager if such transactions are made by a previous external manager of the debtor.**

This Article limits transactions made by the external manager during the period of external management and stipulates consequences of violation of these limitations.

1. This Law established the range of the possible and allowable increase of the debtor’s liabilities during external management. It is up to 20 per cent of the amount of creditors’ claims included in the creditors’ register. As soon as monetary obligations incurred after the introduction of external management exceeds the acceptable amount, the external manager loses the right to make transactions which incur or may incur new monetary obligations of the debtor without the consent of the creditor’s meeting (creditors’ committee).

The abovementioned limitation does not apply to transactions envisaged in the external management plan, because the external management plan in principle has been approved by the creditors’ meeting under Article 106, i.e. transactions envisaged in the external management plan have actually been approved by the creditors’ meeting. This limitation is aimed at protecting interests of all creditors. Claims arising in the course of external management are considered as current payments, which are made to creditors when they become due (as superpriority claims), regardless of priority of other claims, therefore, in case such current payments increase to the huge amount, creditors included in the creditors’ register may not receive complete satisfaction of their claims. In accordance with Paragraph 2 of Article 97, the external manager can call the creditors’ meeting (creditors’ committee) in order to get its approval to transactions envisaged by this Paragraph and bring up to discussion the question on the relevant transactions.

2. Paragraph 2 of this Article includes consequences of transactions against the requirements noted in Paragraph 1 of this Article, namely transactions performed by the external manager without the consent of the creditors' meeting (creditors' committee), which can be recognised invalid by the economic court, upon an application of creditors or of a newly appointed external manager in case such transactions have been made by the previous external manager.

Transactions against this Article remain valid and executable until they are invalidated.

This Article does not clarify consequences of the invalidation of such transactions. In case transactions are invalidated, consequences provided by Paragraph 2 of Article 114 of the Civil Code take effect, namely, each party (relevantly the debtor and its counterparty) are obliged to return all they have received under a transaction which has been invalidated and if they cannot return back what they have received (including the use of property, performance of works or provision of services), they must compensate for the monetary value. A counterparty of a transaction which has been invalidated by the economic court is classified as a creditor of current payments (superpriority claims), because compensation is incurred as a result of the invalidation of the transaction in the course of external management.

Article 105. Regulation of Debtor's Expenses.

The external manager may decide matters resulting in the increase of the debtor's expenses for consumption, including payment for labour, solely with the consent of the creditors' meeting or creditors' committee, except as envisaged by the legislation.

This Article limits on the external manager's independent resolutions resulting in the increase of the debtor's expenses for consumption.

The debtor's expenses mean expenditure connected with the debtor's business activities to execute measures aimed at recovering its solvency. If the increase of expenses of the debtor for consumption, including wages, is necessary, the external manager can take such decision only with the consent of the creditors' meeting (creditors' committee), except for cases provided by the legislation. Along the purport of this Article, the external manager can increase the debtor's expenses independently without the consent of the creditors' meeting (creditors' committee), only if such possibility is provided by the relevant legislations. The following legislation can be referred to: Decrees of the President regarding the increase of the amount of minimum wage and laws and regulations (Decrees of the President, Government Resolutions and Rules etc.) stipulating the increase of utility charge. All expenses of such function are summarised and covered by the conventional meaning "consumption funds".

The amount of the consumption funds is determined by the expenditure budget and noted in the external management plan. If it is required to increase the amount of consumption funds in the course of external management, the external manager before increasing expenses directed for consumption has to obtain the consent of the creditors' meeting (creditors' committee) to the increase of the budget. The creditors' consent actually means amending the external management plan. Therefore it is appropriate to formalise a resolution of the creditors' meeting on the increase of the consumption funds as a change of the expenditure budget, and correspondingly of the external management plan.

The debtors' expenditure can be increased if the external management plan so stipulates. In this case, it should be considered that the creditors' meeting (creditors' committee) has consented to such

increase. If the external manager has increased the debtor's expenditures without any proper consent of the creditors' meeting (creditors' committee), such increase is considered voidable and can be recognised invalid by the economic court upon a creditors' application. The external manager bears the responsibility for damage caused to creditors (Art.21,Para.2).

Practically, as a rule, the external manager has to justify the increase of the debtor's expenses, and accordingly represent a report on the previously allocated funds for consumption, in order to obtain the consent of the creditors' meeting (creditors' committee) to such increase. Otherwise, creditors can refuse to increase the debtors' expenditures for consumption, having considering such increase to be groundless.

Article 106. External Management Plan.

- 1 The external manager must elaborate an external management plan within one month from the date of his/her appointment, which he/she shall submit to the creditors' meeting for its approval.**
- 2 The external management plan must provide for:**
 - measures to restore the debtor's financial ability, conditions and procedure for the implementation of such measures, expenses for their implementation and other expenses of the debtor;**
 - the period for the restoration of the debtor's financial ability.**
- 3 The debtor's financial ability shall be recognised to be restored in the absence of indications of bankruptcy established by Article 4 of this Law.**
- 4 The external manager shall report to creditors on the progress of external management at the request of the creditors' meeting or creditors' committee.**
- 5 The realisation of the external management plan must not lead to the cessation of the debtor's business, except when a purchaser of the debtor's property undertakes the debtor's monetary obligations and (or) duties on mandatory payments arising after the commencement of the bankruptcy case.**

This Article sets main requirements for the elaboration, content and execution of the external management plan.

1. The external management plan is the main document which the external manager should follow in the course of external management. The necessity of the external management plan lies in the fact that for the efficient implementation of external management, economically reasonable and consistent measures should be developed so that the implementation of such measures can result in the real possibility of restoring the debtor's financial ability and satisfying creditors' claims against the debtor.

The responsibility of preparing this plan is imposed on the external manager, because this figure plays an important role in implementing activities envisaged in the plan. From the moment when the economic court renders a ruling to appoint an external manager, the external manager is obliged to draft an external management plan within a month after his/her appointment, and submit it to the creditors' meeting for its approval.

The plan may include the disposal of the debtor's property subject to security in condition of the consent of its security holder (secured creditor), as such consent is required by Paragraph 2 of Article 277 of the Civil Code.

2. Taking into account that external management is aimed at restoring the debtor's solvency, the external management plan must contain measures for such restoration (Art.109), terms and conditions for the implementation of the mentioned measures, expenses for their implementation and other expenses of the debtor and the period for restoring the debtor's financial ability.

Measures for the restoration of the debtor's solvency should be developed in such way as the debtor could settle with creditors and continue its business at its implementation.

For example, measures for the restoration of the debtor's solvency can include such measures as collecting accounts receivable, converting the enterprise's business into manufacture of competitive products, realising part of property, leasing property, employing highly skilled specialists and other measures aimed at restoring the debtor's solvency.

The format of the external management plan can be various. The legal requirements to the plan should be taken into account when the format is decided.

In practice, as a rule, the external management plan includes the general information on the debtor, its current financial state (indexes) and reasons of its deterioration, the financial analyses for the previous two-three years, the expected volume of production and profit. The plan can also provide the schedule for settling with creditors. In this connection, it should be noted that a ruling of the economic court to commence settlements with creditors of a certain priority is necessary when the external manager settles with creditors in the course of external management according to the schedule for this (Art.118,Para.6,Item 3), except for payment which are not affected by the moratorium (Art.93,Paras.1,5 and 6) because the moratorium operates within the course of external management.

The balance sheet of the debtor as of the latest accounting date, the creditors' register and other documents identifying facilities of the debtor can be attached to the external management plan.

3. Paragraph 3 of this Article states that the debtor's financial ability is recognised to be restored in the absence of indications of bankruptcy established by Article 4, i.e. when the debtor has no liabilities overdue for more than three months.

The restoration of the debtor's financial ability in the course of external management constitutes a basis for the termination of bankruptcy proceedings (Art.56,Para.1,Item 2).

In the course of external management, it is required to satisfy all claims in the creditors' register, which are actually already three month or more overdue. This implies that the restoration of the debtor's financial ability in the course of external management means the satisfaction of all claims included in the creditors' register. Therefore, the debtor's financial ability is deemed to be restored when all claims in the creditors' register are satisfied by the performance of the debtor's obligations by founders or the property owner of the debtor, or a third person (Art.113,Paras.1 and 2), or when they are all paid out of proceeds from the sale of the enterprise (business) (Art.110,Para.18) or when they are discharged on the basis of the economic court ruling to shift to settlements with creditors or to commence settlements with creditors of a specific priority (Art.121,Para.1), and consequently, bankruptcy proceedings terminate.

In case enough funds are accumulated to satisfy claims of all creditors in the creditors' register in the course of external management, the economic court renders a ruling to shift to settlements with creditors in connection with the termination of the external management on the basis of the results of

the external manager's report (Art.118,Para.6,Item 2). It should be borne in mind that such ruling does not end bankruptcy proceedings, but external management is completed.

It is also necessary to note that in the course of external management, those claims satisfied regardless of priority of other claims (i.e. they are superpriority claims), such as current payments and compensation for damage to life or health, can be lodged individually outside the framework of the bankruptcy case, and they are not included in the creditors' register. In this connection, the satisfaction of such claims is not a mandatory condition for rendering a court ruling to terminate bankruptcy proceedings. An exception to this is the sale of the enterprise (business) when proceeds from such sale are distributed in order of priority established by Article 134.

4. After the creditors' meeting approves the external management plan, the external manager proceeds to realise the plan. This Law does not require a regular reporting of the external manager to creditors. However, the external manager should submit reports and report the progress of the realisation of measures in the external management plan to creditors at the request of the creditors' meeting (creditors' committee).
5. The external management plan should not contain measure which leads to the cessation of the debtor's business, because the cessation of the debtor's activities denies the real possibility of the restoration of the debtor's financial ability. In this concern, exceptions are the sale of the enterprise (business) of the debtor as a property complex (Art.110) and the substitution of the debtor's assets (Art.115), when obligations on current payments pass to a purchaser of the debtor's undertaking or new joint stock companies founded as a result of the substitution of the debtor's assets. Since liabilities which have been incurred before the commencement of the bankruptcy case and matured after the introduction of external management are deemed as current payments, and claims for these liabilities are not included in the creditors' register during external management, these liabilities are transferred to a purchaser of the debtor's property at the sale of the enterprise of the debtor. Compensation for damage to life or health, which is not included in the creditors' register, either, is also passed to a purchaser of the debtor's property in the same manner. It is necessary to note here that judicial expenses and expenses for remuneration of court receivers should be refunded out of proceeds from the sale of the enterprise (business).

Article 107. Consideration of External Management Plan.

- 1 The external management plan shall be considered by the creditors' meeting which shall be convened by the external manager within two months from the date of the introduction of external management. The external manager shall notify all creditors in writing of the date, time and place of the creditors' meeting and ensure the possibility for them to familiarise with the external management plan not later than two weeks prior to the date of the meeting.**
- 2 The external manager, the representative of founders (participants) or the property owner of the debtor and the representative of the debtor's employees shall have the right to participate in the creditors' meeting with the right to counsel.**
- 3 The external management plan shall be deemed to be approved if it gains a majority vote of creditors attending the meeting.**
- 4 The creditors' meeting shall be entitled to pass one of the following resolutions:**
 - approving the external management plan;**

- **rejecting the external management plan and applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings.**
 - **rejecting the external management plan and applying to the economic court for the dismissal of the external manager from his/her duties and a simultaneous approval of a candidate for a new external manager. Such resolution must provide for the date of the next convened creditors' meeting for consideration of a new external management plan, and the period may not exceed one month from the date when the creditors' meeting passes such resolution.**
- 5 The external management plan approved by the creditors' meeting and minutes of the creditors' meeting shall be submitted to the economic court by the external manager within five days from the date of the creditors' meeting.**
- 6 If the external management plan is not submitted to the economic court within the period set by Paragraph 1 and Paragraph 5 of this Article, the economic court shall be entitled to render a decision to declare the debtor bankrupt and initiate liquidation proceedings.**

This Article regulates the procedure for the consideration of the external management plan by the creditors' meeting.

1. This Article envisage the term for calling the creditors' meeting for the consideration of the external management plan and the maximum deadline for presenting the external management plan to the creditors' meeting so that the meeting may be familiarised with and consider the plan. This Article stipulates that the external management plan is considered by the creditors' meeting, which is convened within two months from the date of the introduction of external management, and that the external manager ensures the possibility for creditors to familiarise with the external management plan not later than two weeks prior to the meeting. This means that the external manager must draft an external management plan not later than two weeks prior to the date of the meeting convened for its consideration. Hence, although Paragraph 1 of Article 106 states that the external manager must elaborate an external management plan within a month after his/her appointment, he/she must do not later than two week prior to the creditors' meeting convened for its consideration even if the term between the date of his/her appointment as external manager and the deadline for making a plan (two weeks prior to the creditors' meeting for its consideration) is less than a month due to the delay of his/her appointment. As a general rule, the creditors' meeting is convened in the manner envisaged by Articles 11 and 12. An exception to this general rule that requires proper notification to creditors by the external manager by means of informing creditors of the creditors' meeting by post not later than two weeks prior to the meeting (Art.11,Para.1) is the case of the summon of the meeting for the consideration of the external management plan. The external manager notifies all creditors (included in the creditors' register) at least two weeks before the meeting, but in this case, notification provided by Paragraph 1 of Article 11 that ensures its receipt at least five days prior to the meeting is not permitted, because this Article requires notification to creditors of the date of the meeting and the opportunity for creditors to be familiarised with the external management plan not later than two week prior to the date of the meeting.

This Article does not directly specify the responsibility of the external manager for sending the external management plan drafted by him/her to all creditors. However, in light of the necessity to provide the chance for all creditors to know about the external management plan, it is considered that

the external manager should also send the external management plan when notifying of the creditors' meeting, in order to hold the effective meeting. This means that a notification of the meeting (with the external management plan enclosed) should be sent in the way that makes sure that creditors receive such notification at least two weeks prior to the meeting. In case the plan and the number of creditors are so large that sending copies of the plan costs extra expenses, the external manager has only to specify the place where creditors can be familiarised with the plan in the notification of the meeting, as this Law does not obligate the external manager to send copies of the plan to creditors,

2. The creditor's meeting is held in the manner provided by Articles 10 and 13. In general, as Paragraph 3 of Article 10 stipulates, creditors with the voting right participate in the creditors' meeting, and in respect to claims for mandatory payments, state taxation service authorities and other authorised bodies participate. The external manager, the authorised representative of founders (participants) or the property owner of the debtor and the representative of the debtor's employees are able to attend the meeting with the right to counsel.

In order to ensure the right provided for the representative of founders (participants) or the property owner of the debtor and the representative of the debtor's employees to join the creditors' meeting with the right to counsel, the external manager should send notification of the meeting in the way stipulated by Paragraph 1 of Article 11.

3. In accordance with Paragraph 3 of this Article, a resolution approving the external management plan is taken by the creditors' meeting according to the general rule (Art.13,Para.1), i.e. by a majority in value (more than a half) of the votes of creditors present at the creditors' meeting.

If the external management plan provides the sale of property subject to security, the consent of creditors of claims secured by such property is required (Art.277,Para.2,CC). This consent is mandatory for the external management plan to be deemed to be approved.

The external management plan may be amended if necessary. It should be taken into account that it may be amended with the consent of the creditors' meeting. The modified plan is approved in the manner explained in the comment on Paragraphs 1 and 2 of this Paragraph, with the consent of secured creditors (security holders) if an amendment concerns property securing their claims. The modified external management plan should be presented to the economic court within the term envisaged by Paragraph 5 of this Article.

4. Paragraph 4 of this Article explains consequences of the consideration of the external management plan by the creditors' meeting. In case the creditors' meeting accepts the external management plan, the meeting approves it by a majority vote in value.

The creditors' meeting is authorised to pass a resolution rejecting the external management plan. It is assumed that the meeting passes such resolution because it recognises external management based on the plan to be irrational, or the plan submitted to the meeting is inappropriate. Depending on the reasons that it passes a resolution rejecting the plan, the creditors' meeting can apply to the economic court for the declaration of the debtor' bankruptcy and initiation of liquidation proceedings (in case the meeting recognises the irrationality of external management) or for the dismissal of the external manager (in case the plan is not appropriate). When passing a resolution applying to the economic court for the dismissal of the external manager, the creditors' meeting should consider the matter of approving a candidate for a new external manager. In this connection, the meeting should also decide the date when the next meeting is summoned for the consideration of a new external management plan. The date of the next meeting must be within one month from the date when the meeting takes such resolution. The legislator shortens the term for elaborating a new plan (under Paragraph 1 of

this Article, the initial date for the consideration of the external management plan should be within two months after the introduction of external management), which is explained by the fact that since external management needs to be carried out for the limited period, it is desirable that external management is according to the plan from the first days for its effective performance.

The responsibility for elaborating a new external management plan is imposed on a newly appointed external manager. This Article neither requires notification of the recurrent creditors' meeting nor provides the term for familiarising the newly developed external management plan. This is because the previous creditors' meeting has passed a resolution determining the date of the recurrent meeting for the consideration of the new external management plan, therefore, creditors shall know the date of the next creditors' meeting. In view of the preliminary familiarisation of creditors with the new external management plan, it is assumed that the proposed plan should be provided for creditors in such way as enables them to know the plan in advance.

5. The external management plan approved by the creditors' meeting is submitted to the economic court by the external manager within five days after the creditors' meeting. Minutes of the creditors' meeting and other documents specified in Paragraph 10 of Article 10 should be attached to the external management plan.
6. As Paragraph 2 of Article 106 provides, the external management plan should contain measures to restore the debtor's financial ability, conditions and procedure for the implementation of these measures, expenses for their implementation and other expenses of the debtor, and the period for the restoration of the debtor's financial ability as well. Actually, the external management plan plays a very important role in achieving the aim of the restoration of the debtor' financial ability. Without this plan, external management cannot effectively be conducted. In this connection, if the external management plan is not submitted to the economic court within the period set by Paragraphs 1 and 5 of this Article, the economic court may give a decision to declare the debtor bankrupt and initiate liquidation proceedings.

Article 108. Extension of External Management Period

If the creditors' meeting passes a resolution approving the external management plan which sets a period of external management longer than the initially set period, the economic court shall render a ruling extending the external management period, if there are sufficient grounds to believe that such extension or the implementation of the approved external management plan will lead to the restoration of the debtor's financial ability. In this case, the total period must not exceed the period set by Article 91 of this Law.

This Article provides the possibility of extending the external management period.

This Law contains no regulation directly prohibiting the external management plan from setting a period of external management longer than the period fixed by the economic court. Therefore, the creditors' meeting may approve the plan which stipulates the period exceeding the period previously fixed by the economic court. In this case, the external management period is extended by the economic court on the basis of an application of the creditors' meeting (the state body for bankruptcy proceedings, the external manager), if there are sufficient grounds to believe that the extension of the period or the implementation of the external management plan in question would lead to the restoration of the

debtor's financial ability.

The extension of the external management period is also permitted at the expiry of the period previously fixed by the economic court. For example, the debtor-enterprise has organised manufacturing of competitive products in the course of external management, while its financial solvency has not been fully recovered (moreover, its indebtedness has been even increased) on the reasonable grounds due to the insufficient term, as the financial recovery takes time. In this case, the creditors' meeting can pass a resolution approving a modified plan and apply to the economic court for the extension of the previously fixed term, based on the plan and relevant grounds for the reasonableness of extending the period submitted by the external manager .

The total period of external management should not exceed twenty-four months. If judicial rehabilitation has been ever introduced against the debtor before external management, then the aggregate period of external management and judicial rehabilitation should not exceed thirty-six months.

According to Paragraph 4 of Article 91, the creditors' meeting, the state body for bankruptcy proceedings or the external manager may apply to the economic court for the extension of the period of external management. When the aforementioned persons decide the extension of the period, they should present sufficient grounds for its reasonableness that the debtor could really recover its financial ability as a result of the extension of the period. In case the period is extended by the economic court upon an application of the state body for bankruptcy proceedings or the external manager, the external manager has to develop a new plan, secure approval from the creditors' meeting and submit it to the court, according to regulations envisaged by Articles 106 and 107.

Article 109. Measures for Restoration of Debtor's Financial Ability.

1 The external management plan may provide for the following measures to restore the debtor's financial ability:

- conversion of production;
- closure of unprofitable businesses;
- recovery of accounts receivable;
- sale of a part of the debtor's property;
- assignment of the debtor's claims;
- performance of the debtor's obligations by third parties;
- issuance of additional shares of the debtor;
- sale of the enterprise (business) of the debtor as a property complex;
- substitution of the debtor's assets;

2 The external management plan may provide for other measures to restore the debtor's financial ability.

3 Besides the measures envisaged by Paragraph 1 of this Article, on a petition of the state body for bankruptcy proceedings, the economic court may render a ruling to conserve inactive facilities of the debtor enterprise the charter capital of which partially or wholly belongs to the state.

This Article provides main measures (without limitations) which can be included in the external management plan.

1. Measures to recover the debtor's financial situation should be included in the external management plan.

According to Paragraph 1 of this Article, the following activities refer to such measures:

- 1) conversion of production, including its direction to the output of competitive production by employing modern resource saving technologies, cost reduction (prime cost), etc.;
 - 2) closure of unprofitable businesses, rental of unused property, staff redundancy, etc.;
 - 3) recovery of accounts receivable and as a result – replenishment of current assets for purchase of raw materials, equipment, current payments, etc. If the enterprise has accounts receivable, the external management plan specifies their amount, and reasonable ways to collect them, including those to collect in the court proceeding, and to petition the economic court for the declaration of the third party debtor's bankruptcy;
 - 4) sale of a part of the debtor's property which is unpractical to keep in the debtor's ownership in the conditions of external management. Such sale is carried out under Article 111;
 - 5) assignment of the debtor's claims, by which the debtor has a chance to collect its receivables and to satisfy other claims of creditors against the debtor. The procedure for assigning the debtor's claims is performed in compliance with Article 112 ;
 - 6) performance of the debtor's obligations by third parties. This Law does not limit persons who can perform the debtor's obligation to creditors. They may be directly founders (participants) or the property owner of the debtor or any other person interested in the recovery of the debtor's solvency. Features of the performance of the debtor's obligations by founders (participants), the property owner of the debtor or third parties are stipulated by Article 113;
 - 7) issuance of additional shares of the debtor by increasing the authorized fund, as a result of which, the debtor have the possibility to receive additional current assets in the course of external management. Additional shares should be issued under the requirements of Article 114;
 - 8) sale of the enterprise (business) of the debtor as a property complex in the manner envisaged by Article 110;
 - 9) substitution of the debtor's assets. Under Article 115, this measure is carried out by establishing one or several open joint stock companies on the basis of the debtor's enterprise, and as a result, creditors' claims are actually satisfied.
2. Paragraph 1 of this Article gives an inexhaustive list of measures which can be envisaged in the external management plan. Other measures to restore the debtor's financial ability can also be specified in the plan, such as those to engage highly skilled specialist from outside, to train and re-train personnel, to receive financial support from physical and legal entities interested in the restoration of the debtor's solvency and the continuation of its business, the debtor's reorganisation, etc.
 3. Paragraph 3 of this Article states that on a petition of the state body for bankruptcy proceedings, the economic court may render a ruling to conserve inactive facilities of the debtor enterprise the charter capital of which partially or wholly belongs to the state. Conservation means a series of measures to safeguard main assets or unfinished construction facilities for the period stipulated by a relevant resolution, after the expiration of which they are again available to operation or continue the construction.

Relations connected with the conservation of inactive facilities of the debtor should be regulated

by the Regulation”On the procedure for conservation of inactive main assets and unfinished construction sites”(approved by the CM Resolution, dated 16 Sep. 2003 No.401.

Article 110. Sale of Enterprise (Business) of Debtor

- 1 With a view to satisfying creditors’ claims, the external management plan may provide for the sale of the enterprise (business) of the debtor as a property complex.**
- 2 When the enterprise (business) is sold, all types of property intended for carrying out entrepreneurial activities of the debtor, including its land plots, buildings, constructions, equipment, inventory, raw materials, products, rights of claims, means individualising the debtor (trade name, trademarks, service marks), goods, works and services, and also other exclusive rights owned by the debtor, except rights and duties which may not be transferred to other persons, shall be alienated⁴³.**
- 3 When the enterprise (business) is sold, property shall be evaluated by an appraiser with the payment for his/her services out of the debtor's property. An appraiser shall be approved by the creditors’ meeting or creditors’ committee.**
- 4 With the consent of the creditors’ meeting, the external manager shall be entitled to sell the enterprise (business) by instalments within a period not exceeding one year, provided that a purchaser provides the relevant guarantees of its servicing bank.**
- 5 When the enterprise (business) is sold, all labour contracts effective as of the date of the sale of the enterprise (business) shall remain valid, and rights and duties of the employer shall pass to a purchaser of the enterprise (business).**
- 6 The sale of the enterprise (business) shall be carried out by holding an open tender⁴⁴ unless otherwise envisaged by this Article⁴⁵. The form and conditions of holding a tender⁴⁶ shall be determined by the creditors’ meeting or creditors’ committee.**
- 7 If it has property subject to restrictive trade, the enterprise (business) shall be sold at the closed tender⁴⁷ with participation of persons qualified by the relevant law to own such property in the form of ownership or other property right.**
- 8 The initial sale price of the enterprise (business) which is put up to tender shall be established by a resolution of the creditors’ meeting or creditors' committee, in view of the enterprise's property evaluation carried out by an appraiser unless otherwise envisaged by the legislation.**
- 9 The tender must be held on condition that the debtor receive proceeds from the sale of the enterprise (business) not later than thirty days prior to the expiry of the external management period.**
- 10 The external manager shall act as organiser of tender or engage a specialised organisation**

⁴³ Art.85, CC

⁴⁴ Art.380, CC

⁴⁵ By the amendment on 20 Dec., 2005, the phrase “unless otherwise envisaged by the external management plan” was eliminated.

⁴⁶ There are two types of tenders. The one is “auction” (a person who offers the highest buying price wins a tender), the other is “competitive tendering” (a person who offers best conditions wins a tender).

⁴⁷ Art.380, CC

for the purpose of organising a tender with the payment for services out of the debtor's property. A specialised organisation holding a tender may not be an interested party in relation to the debtor and the external manager.

11 The external manager shall be obliged to publish an announcement on the sale of the enterprise (business) at the open tender in an official gazette not later than thirty days prior to the date of the tender. The announcement shall contain:

- information on the enterprise (business) and the procedure for familiarising with it;
- the date, time and place for filing an application for participation in the tender;
- the initial sale price of the enterprise (business);
- the time and place for holding the tender and announcing its results;
- the conditions and date for concluding a sales contract and its payment;
- other information in accordance with the legislation.

12 If no one or only one applicant presents an application within the period specified in the announcement, the tender for the sale of the enterprise (business) shall be recognised to fail and a re-tender shall be held on the conditions envisaged by Paragraphs 8 through 11 of this Article. A re-tender shall also be held, if the enterprise (business) has not been sold at the first tender.

13 If a re-tender is recognised to fail or the enterprise (business) has not been sold, the external manager shall, within twenty days in accordance with a resolution of the creditors' meeting or the creditors' committee, publish a new announcement on the sale of the enterprise (business) in the manner envisaged by this Article and Article 53 of this Law. The sale price of the enterprise (business) may be reduced upon a resolution of the creditors' meeting or creditors' committee, but no more than by 10 per cent⁴⁸ of the price at the previous tender.

14 A sales contract of the enterprise (business) shall be concluded between the winning bidder and the external manager within ten days from the date of the announcement of the tender results. On the day when the tender is held, the winning bidder and the organiser of tender shall sign a protocol on the tender results, which has contractual force. The winning bidder shall lose the advance money paid in by it when it avoids signing a protocol on the tender results or a sales contract. In this case, the advance money shall be included in the debtor's property after the costs of the tender organisers for holding tenders are deducted from such money.

15 If the enterprise (business) has not been sold on the conditions envisaged by Paragraph 14 of this Article, the external manager may put out the enterprise (business) to tender through the public offer⁴⁹ and conclude a sales contract of the enterprise (business) with an entity that offers the highest price for the enterprise (business) within one month after the publication of the public offer in an official gazette, upon a resolution of the creditors' meeting or creditors' committee, unless otherwise envisaged by this Law.

16 If the debtor has the possibility of satisfying creditors' claims in full out of proceeds from the sale of the enterprise (business), bankruptcy proceedings shall be terminated by the economic court upon an application of the external manager.

⁴⁸ By the amendment on 20 Dec., 2005, the phrase "no more than by 15 per cent" was revised to "no more than by 10 per cent".

⁴⁹ Art.369, Para.2, CC

17 If proceeds from the sale of the enterprise (business) are insufficient to satisfy creditors' claims in full, the external manager shall propose to creditors to enter into an amicable agreement. If it is not possible to reach an amicable agreement, the economic court shall render a decision to declare the debtor bankrupt and initiate liquidation proceedings upon the application of the external manager.

18 Proceeds from the sale of the enterprise (business) shall comprise the liquidation estate and shall be subject to distribution in order of priority envisaged by Articles 133, 134 and 169 of this Law.

This Article rules the procedure for the sale of the enterprise (business) of the debtor as a property complex. It is necessary to note the Regulation "On the procedure for evaluation and realisation of enterprises under restructuring and bankruptcy processes" (Annex No.1 to the CM Resolution (dated 18 Apr. 2003 No.188) also stipulates the procedure for evaluating and determining the initial sale price at the tender, selling property of an enterprise against which a bankruptcy process is applied by a ruling of the economic court.

1. Selling the enterprise (business) as a property complex can be planned in the external management plan as a measure for the financial recovery of the debtor and correspondingly for settlements with creditors. To explain the content of this Article, "an enterprise" means a property complex designed to execute business activities. At the sale of the enterprise, all enterprise branches are sold.
2. Paragraph 2 of this Article provide that at the sale of the enterprise (business), all types of property intended to carry out the entrepreneurial activity of the debtor shall be alienated. All types of alienated property including land plots, buildings, constructions, equipment, inventory, raw materials, products, rights of claims, the means individualising the debtor (trade name, trademarks, service marks), its goods, works and services, other exclusive rights owned by the debtor, except for the rights and obligations which may not be transferred to other persons, should be included in a sales contract. The debtor's rights and obligations, i.e. personal rights, not transferable to other persons can not be sold.
3. At the sale of the enterprise (business) as a property complex, the debtor's property to be sold should be evaluated. This evaluation is at the debtor's expense. Paragraph 3 includes a requirement that an appraiser should be approved by the creditors' meeting (creditors' committee). Only after the creditors' meeting or creditors' committee approves an appraiser and his/her remuneration, the evaluation of the enterprise can be initiated. In case of breach of the aforementioned requirement, an evaluation report is considered invalid.
4. Paragraph 4 of this Article provides the possibility of selling the enterprise (business) by instalments with the consent of creditors' meeting (creditors' committee). The period for payment under a sales contract of the enterprise (business) should not exceed one year and the final payment should be made at least thirty days prior to the expiry of the external management period (this Article,Para.9). One of the conditions for selling the enterprise (business) by instalments is that a purchaser should provide relevant guarantees of its servicing bank. A bank giving a guarantee should undertake the responsibility of the purchaser to pay creditors for the unpaid value of the sales contract.
5. Paragraph 5 of this Article considers the legal succession of labour contracts at the sale of the enterprise (business). Thereby this Law guarantees the right for labour of the debtor's employees.

Labour contracts are cancelled only on the grounds provided by Articles 97 through 113 of the Labour Code. Rights and duties of the employer pass to a purchaser of the enterprise (business). The debtor's responsibility to pay wages given execution documents are fulfilled at the first priority in accordance with Paragraph 2 of Article 134.

6. Paragraph 6 of this Article explains the procedure for selling the enterprise (business) by holding an open tender. Open tenders should be conducted by holding a competitive tendering or auction, in the manner stipulated by Article 380 of the Civil Code. The form and conditions of holding a tender shall be determined by the creditors' meeting (creditors' committee).

The form of holding an open tender to sell an enterprise which partially or wholly belongs to the state should be agreed by the State Property Committee and the Demonopolisation Committee (Para. 14, the Regulation on the procedure for evaluation and realisation of enterprises under restructuring and bankruptcy processes).

It should be kept in mind that this Paragraph stipulated previously that the sale of the enterprise (business) is performed by holding an open tender unless otherwise envisaged by this Article and the external management plan. However, this Paragraph has been altered on 20 December 2005, according to which the external management plan may no longer decide the procedure for selling the enterprise. Now the enterprise (business) as a property complex can be sold only at an open tender except as envisaged by Paragraph 15 of this Article.

7. The enterprise might include property subject to restrictive trade.

The sale of such enterprise (business) is carried out at the closed tender with participation of persons qualified to own such property in the form of ownership or other property right.

8. The enterprise (business) is put out to tender at the price decided by a resolution of the creditors' meeting (creditors' committee). The initial sale price is based on the value of the enterprise's (business) evaluated by an appraiser and can be above or below such evaluated value.
9. Payment for the enterprise (business) should be made at least thirty days before the expiry of the external management period. This condition should be met also in case of the sale of the enterprise (business) by instalments stipulated by Paragraph 4 of this Article.
10. In compliance with Paragraph 10 of this Article, the external manager may act as an organiser of a tender or engage a specialised organisation for such purposes. Payment for the services of a tender organiser is made out of the debtor's property.

A specialised organisation holding a tender may not be an interested party in relation to the debtor and the external manager mentioned in Article 17.

At the sale of the enterprise property in relation to which a bankruptcy process is applied (except liquidation proceedings), the following documents are submitted to a tender organiser (Para.15, the Regulation on the procedure for evaluation and realisation of enterprises under restructuring and bankruptcy processes):- minutes of a resolution adopted by an authorised body of founders' (participants) or the property owner in the prescribed manner;

- the list of property put out to tender;
- a document about fixing the initial sale price, evaluated by an appraiser.

11. The external manager must publish an announcement on the sale of the enterprise (business) at the open tender in an official gazette at least thirty days prior to the tender. This requirement is imposed by this Article in order to ensure the transparency of the sale of the enterprise (business). Such announcement must contain information on: the enterprise (business) and the procedure for familiarising with it; the date, time and place for submitting tenders; the initial sale price of the

enterprise (business); the time and place of the tender and announcement of its result; the conditions and date for concluding a sales contract and its payments, and other data in compliance with legislation.

12. If no one or only one applicant present an application within the period set in the announcement, the tender for the sale of the enterprise (business) is recognised to fail. In this case, a re-tender is held on the same conditions of the first tender. The sale price at the re-tender may be cut down by 10 per cent according to the resolution of the creditors' meeting or creditors' committee (this Article, Para.13; Para.19, the Regulation on the procedure for evaluation and realisation of enterprises under restructuring and bankruptcy processes).
13. If a re-tender is recognised to fail, or the enterprise (business) has not been sold, the external manager applies to the creditors' meeting (creditors' committee) for its resolution holding another tender. Having discussed the reasonableness of selling the enterprise (business) at the next tender, the creditors' meeting (creditors' committee) may pass a resolution putting out the enterprise (business) for sale at the tender. When the creditors' meeting (creditors' committee) pass a resolution selling the enterprise (business) at the next tender, the external manager must publish a new announcement on the sale of enterprise (business) within twenty days after such resolution is passed. Publication of such announcement is envisaged by Article 53.

This Article provides the possibility of reducing the initial sale price of the enterprise (business) at the next tender by 10 per cent of the previous tender price. It is necessary to note that the price may, not should, be reduced.

14. Paragraph 14 of this Article states that a sales contract of the enterprise (business) is concluded between the winning bidder and the external manager within ten days after the announcement of the tender results. On the day of the tender, the winning bidder and the tender organiser sign a protocol on the tender results, which has contractual force. The winning bidder loses the advance money paid in by it when it avoids signing a protocol on the tender results or a sales contract. In this case, the advance money is included in the debtor's property after the costs of the tender organisers for holding tenders are deducted from such money.
15. Paragraph 15 of this Article envisages the possibility of putting out the enterprise (business) to tender through the public offer on the basis of a resolution of the creditors' meeting (creditors' committee), when the enterprise (business) has not been sold on the conditions envisaged by Paragraph 14 of this Article, unless otherwise provide by this Law. Such sale through the public offer is conditional on evidences that the enterprise (business) could not be sold at the first and next two tenders.⁵⁰ One of the main conditions for making a sales contract of the enterprise (business) through the public offer is that a month should pass since putting out the enterprise to tender until concluding a sales contract through public offer. A sales contract of the enterprise (business) is concluded with an entity that offered the highest price for the enterprise (business).
16. If the debtor has a possibility to satisfy creditors' claims in full out of proceeds from the sale of the enterprise (business), bankruptcy proceedings must be terminated by the economic court upon an application of the external manager. In this case, creditors' claims are paid without a ruling of the economic court to shift to settlements with creditors under Paragraph 18 of Article 110.

⁵⁰ According to Paragraph 20 of the Regulation on the procedure for evaluation and realisation of enterprises under restructuring and bankruptcy processes, with the consent of the creditors' meeting, the external manager may conclude a sale contract of the enterprise (business) through the public offer, without implementation of re-tenders.

Before applying to the economic court for the termination of external management, the external manager does not have to submit a report to the creditors' meeting for its consideration.

After all creditors' claims in the creditors' register are satisfied, bankruptcy proceedings are terminated by the economic court on the basis of the external manager's application. In this case, the economic court issues a ruling to terminate bankruptcy proceedings under Item 2 of Paragraph 1 of Article 56.

17. If proceeds from the sale of the enterprise (business) are not sufficient to satisfy creditors' claims in full, the external manager proposes to creditors to enter into an amicable agreement. The procedure for concluding an amicable agreement is stipulated by Chapter VIII. If it is not possible to reach an amicable agreement, the economic court, upon an application of the external manager, issues a decision to declare the debtor bankrupt and initiate liquidation proceedings.
18. After the sale of the enterprise (business), settlements with creditors shall be made in order of priority envisaged by Articles 133 and 134, with the peculiarities in case of a bankruptcy case against insurers (Art.169).

Article 111. Sale of Part of Debtor's Property

- 1 After inventorying and evaluating the debtor's property, the external manager shall be entitled to proceed to the sale of a part of property at the open tender unless otherwise envisaged by this Article⁵¹.**
- 2 The sale of a part of the debtor's property must not result in the debtor being unable to carry out its business.**
- 3 The debtor's property subject to restrictive trade shall be sold at the closed tender with participation of persons qualified by the relevant law to own such property in the form of ownership or other property right.**
- 4 The initial sale price of a part of the debtor's property put out to tender shall be established by a resolution of the creditors' meeting or creditors' committee, in view of the evaluation of the debtor's property made by an appraiser unless otherwise envisaged by the legislation.**
- 5 A tender on the sale of a part of the debtor's property shall be held in the manner envisaged by Article 110 of this Law.**
- 6 With the consent of the creditors' meeting, the external manager shall be entitled to sell a part of the debtor's property by instalments for a period of not more than one year, provided that its purchaser provides the relevant guarantees of its servicing bank.**
- 7 In the course of external management, the external manager shall be entitled to sell low-value and rapidly wearing property and the rest of raw materials and finished goods of the debtor under a sales contract without holding a tender, with the consent of the creditors' meeting.**
- 8 Proceeds from the sale of a part of the debtor's property shall comprise the liquidation estate and shall be subject to distribution in order of priority envisaged by Articles 133, 134 and 169 of this Law.**

⁵¹ By the amendment on 20Dec., 2005 the phrase "unless otherwise envisaged by the external management plan" was eliminated.

As a rule, sales of parts of the debtor's property is planned in the external management plan as a measure for the financial recovery of the debtor (Art.109,Para.1,Item 4), and carried out with the consent of the creditors' meeting in compliance with the external management plan.

It is necessary to note that the Regulation on the procedure for evaluation and realisation of enterprises under restructuring and bankruptcy processes also stipulate the procedure for evaluating, fixing the initial sale price at the tender and selling property of an enterprise against which a bankruptcy process is introduced by a judicial act of the economic court.

1. In the course of external management, for the satisfaction of creditors' claims, sales of parts of the debtor's property are allowed, which should be carried out at the open tender, except sales of property subject to restrictive trade (it is sold at the closed tender – see Paragraph 3 of this Article) and low-value property (it is sold without tender, but by concluding directly a sales contract with the consent of creditors' meeting – see Paragraph 7 of this Article). Tenders can be performed in the form of competitive tendering or auction. The participation of several (two or more) participants at the tender is a mandatory condition to consider the tender to be duly formed.
2. Sales of parts of the debtor's property should not result in the debtor being unable to carry out its business. For example, property (separate facilities of immovable property, equipment, buildings, remains of the ready output, productive supplies, raw materials, materials, etc) unused in the production process can be sold in the course of external management.
3. The debtor's property subject to restrictive trade must be sold by holding a closed tender. Closed tenders are held with participation of persons qualified under the legislation to own such property in the form of ownership or other property right.
4. The initial sale price of a part of the debtor's property put out to tender is established by a resolution of the creditors' meeting (creditors' committee). When deciding the initial sale price, creditors can take into account the evaluation of the debtor's property made by an appraiser. In this connection, this Law does not ban the creditors' meeting (creditors' committee) to fix the price lower than the evaluated value.
5. Tenders for sales of parts of the debtor's property are held in the manner envisaged by Article 110.
6. Paragraph 6 of this Article allows the external manager to sell a part of the debtor's property by instalments with the consent of creditors' meeting (creditors' committee). The term for instalment payment under a sales contract should not exceed one year. One of the conditions for instalment sales is that a purchaser should provide relevant guarantees of its servicing bank. A bank giving a guarantee should undertake the responsibility of the purchaser to pay creditors for the unpaid value of the sales contract.
7. One of the exceptions to the general rules stipulated by Paragraph 1 of this Article, in regard with the sale of a part of the debtor's property at the open tender is that low-value and rapidly wearing property and the rest of raw materials and finished goods of the debtor can be sold under a sales contract with the consent of the creditors' meeting. Such property can also be sold at the competitive tendering or auction at the discretion of the creditor's meeting or the external manager. Low-value or rapidly wearing property is certified in compliance with the Accounting Standards of the republic of Uzbekistan.
8. Proceeds from sales of parts of debtor's property comprise the liquidation estate and are subject to distribution in order of priority envisaged by Articles 133, 134 and 169. This means that such funds can not be used for purchasing raw materials and materials or other purposes, but only for repaying

creditors' claims.

In practice, as a rule, proceeds from sales of parts of the debtor's property are not enough to satisfy creditor's claims. In this case, the economic court issues a ruling to commence settlements with creditors of a specific priority upon an application of the creditors' meeting or the external manager under Item 3 of Paragraph 6 of Article 118. The proceeds are applied to payment to claims of a specific priority in compliance with Article 120.

Article 112. Assignment of Rights of Claims of Debtor

- 1 The external manager may assign the debtor's rights of claims by selling such rights at the open tender with the consent of the creditors' meeting or creditors' committee unless otherwise envisaged by the external management plan.**
- 2 If the external management plan provides for the possibility of selling the debtor's rights of claims to a specific buyer without holding a tender, or rights of claims have not been sold at the tender, the creditors' meeting or creditors' committee shall establish the sale price of such rights and other conditions for such sale.**

This Article stipulates the peculiarities of assigning the debtor's rights of claims in the course of external management.

1. The external manager has two choices: either to collect claims of debtor by himself/herself by filing suits against obligators (debtors), or to assign the right to collect them to third parties by changing parties, i.e. cession.

The latter is preferable for the external manager, because it is easier and faster. The only negative position of the latter is that rights of claims cannot be assigned in full value equal to their balance sheet value as it is impossible to find a purchaser who would agree to such price. A price discount is a regular condition for the assignment of claim rights, which is resulted by the market economy nature. This deficiency of the transfer of claims is, however, compensated by its positive features – rights of claims are converted into real monetary assets even in a lower value.

The assignment of claims of debtor in the course of external management is performed by way of selling such rights at the open tender with the consent of the creditors' meeting (creditors' committee), unless otherwise envisaged by the external management plan.

Relations on the assignment of claims of debtor are formulated by its contract.

2. According to Item 5 of Paragraph 1 of Article 109, the assignment of claims of debtor as a measure for recovery and replenishment of the debtor's current assets may be envisaged in the external management plan. This Article stipulates that the external management plan may envisage the assignment of claims of debtor to a specific purchaser without holding an open tender.

As provided by this Article, when claims of debtor have not been sold at the tender, they may be sold by virtue of a direct contract with the relevant consent of the creditors' meeting (creditors' committee) which determines the sale price and other terms of such sale. In this respect, this Article does not require to put rights for sale several times.

In such events, the price and other terms for selling claims of debtor are determined by the creditors' meeting (creditors' committee).

**Article 113. Performance of Debtor's Obligations
by Property Owner of Debtor or by Third Party**

- 1 Founders (participants) or the property owner of the debtor shall be entitled, at any time before the completion of external management, to satisfy claims of all creditors in the creditors' register at one time.**
- 2 A third party (third parties) may perform the debtor's monetary obligations, provided that such performance discharges claims of all creditors in the creditors' register at one time.**
- 3 If it is impossible to discharge creditors' claims in accordance with Paragraphs 1 and 2 of this Article since creditors fail to perform their duties to submit information about themselves necessary for settlements with them, and also if creditors otherwise avoid accepting the performance, monetary assets may be deposited to a notary or a court at the place of location (residence) of the debtor.**

This Article stipulates the peculiarities when founders (participants) or the property owner of the debtor, or third parties perform the debtor's obligations.

1. Paragraph 1 of this Article allows a founder (participant) or the property owner of the debtor to satisfy claims of all creditors in the creditors' register at one time at any time before the completion of external management.

Such satisfaction may be carried out by bank transfer to the debtor's current account, in condition that all claims in the creditors' register are paid off at one time. It is considered that the satisfaction of all claims at one time means a bank transfer of funds sufficient to satisfy claims of all creditors. In this case, creditors must not refuse funds transferred as payment of their claims.

It is necessary to bear in mind that when founders (participants) or the property owner of the debtor transfer funds to the debtor's account for the satisfaction of claims of all creditors in the creditors' register, the debtor must apply these funds, in the first place, to payment of creditors' claims in the creditors' register, before discharging superpriority claims (e.g. judicial expenses, current payments, etc) not included in the creditors' register.

Apart from such way, founders (participants) or the property owner of the debtor may satisfy claims by paying directly to creditors.

When founders (participants) or the property owner of the debtor perform the debtors' obligations, as provided by this Paragraph, the external manager submits a report on the satisfaction of all creditors' claims in the creditors' register directly to the economic court for its approval, without its consideration by the creditors' meeting, because all creditors have received satisfaction of their claims and there is no need for them to consider the external manager's report at the creditors' meeting. The economic court considers the external manager's report, and render a ruling to terminate bankruptcy proceedings, after confirming the satisfaction of all creditors' claims in the creditors' register (Art.118,Para.6,Item 1). It should be noted that the discharge of superpriority claims and other claims not included in the creditors' register is not required for the termination of bankruptcy proceedings.

2. Paragraph 2 of this Article permits any other person, other than founders (participants) or the property owner of the debtor to discharge all claims against the debtor in the creditors' register at one time in the course of external management. The same terms and conditions are applied to the

satisfaction of claims against the debtor by third parties as for the satisfaction by founders (participants) or the property owner of the debtor envisaged by Paragraph 1 of this Article.

3. Paragraph 3 of this Article permits the transfer of funds to a special account in case creditors do not provide proper information on their bank details or in case they avoid accepting the performance of the debtor's obligations. In this case, monetary funds may be deposited in an account of a notary or a court at the place of location (residence) of the debtor. Such deposition is deemed as the appropriate satisfaction of creditor's claims (Art.249,Para.2,CC).

Article 114. Issuance of Additional Shares of Debtor.

- 1 With a view to restoring the debtor's financial ability, the external management plan may provide for the possibility of issuing additional shares of the debtor being an open joint-stock company. The possibility to increase the charter fund by issuing additional shares may be included in the external management plan only upon the petition of the general meeting of the debtor's shareholders, which has passed a necessary resolution and forwarded it to the external manager not later than six months prior to the date of the completion of external management.**
- 2 The creditors' meeting shall pass a resolution increasing the charter fund by issuing additional shares of the debtor being an open joint-stock company. If the increase of the charter fund by issuing additional shares of the debtor necessitates the amendment and addition of the charter of the debtor in respect of the increase of the number of declared shares established by the charter, a resolution increasing the charter fund may only be passed after the charter of the debtor is amended and added in the manner envisaged by the legislation.**
- 3 Additional shares of the debtor may be issued only by an open subscription with the payment of additional shares only by monetary assets. The debtor's existing shareholders shall have the pre-emption right to purchase shares in the number proportionate to the number of their shares at the price determined in accordance with Paragraph 4 of this Article.**
- 4 Additional shares shall be offered to shareholders at the price not lower than the nominal price of the issued shares, provided that the sale of all issued shares at such price shall result in accumulation of monetary assets adequate to discharge all creditors claim in full. The price of shares offered to shareholders shall be determined by the external manager and approved by the creditors' meeting. A period for the debtor's shareholders to exercise their pre-emption right shall be determined by the creditors' meeting, which may not, however, be less than thirty days from the starting date of the issuance of shares.**
- 5 Additional shares which have not been purchased by the debtor's existing shareholders shall be sold by the external manager at the open tender. If a decision to declare the debtor bankrupt and initiate liquidation proceedings is rendered, persons who were not an existing shareholder but have acquired newly issued shares of the debtor shall be entitled to lodge their claims against the debtor in the amount of their acquired shares in the manner envisaged by the legislation.**

This Article envisages the possibility of and the procedure for issuing additional shares of the debtor being an open joint-stock company. This Article is newly employed by this Law 2003.

1. With a view to recovering the debtor's solvency, the external management plan may provide for the possibility of issuing additional shares of the debtor which is an open joint-stock company (Art.109,Para.1,Item 7). The increase of the charter fund by issuing additional shares may be included in the external management plan only upon the petition of the general meeting of shareholders of the debtor to the creditors' meeting.

The resolution of the general meeting of shareholders issuing additional shares should be forwarded to the external manager not later than six months prior to the date of the completion of external management.

2. Based on the abovementioned resolution, the creditors' meeting may discuss the additional issue of shares. In this connection, this Law does not oblige the creditors' meeting to approve the application of the general meeting of shareholders, regarding the issuance of additional shares. The creditors' meeting may refuse such application if it considers such measure of the financial recovery to be inappropriate. If the increase of the charter fund by issuing additional shares necessitates the amendment and addition of the charter of the debtor in respect of the increase of the number of declared shares established by the charter, a resolution increasing the charter fund may only be passed after the charter of the debtor is amended and added in the statutory manner.
3. Paragraph 3 of this Article states that additional shares may be issued only by an open subscription with the payment of additional shares only by monetary assets. This regulation is adopted in order to attract additional liquid funds from the outside for the satisfaction of creditors' claims. The debtor's existing shareholders have the pre-emption right to purchase additional shares. If several persons including existing shareholders want to purchase additionally issued shares, then, such shares are sold to existing shareholders preferentially. The price of shares is determined in accordance with Paragraph 4 of this Article.
4. Additional shares are issued to shareholders at the price not lower than their nominal price. This condition regarding the price is imposed due to the fact that in practice the market price of shares of enterprises under external management is often lower than their nominal price. Therefore, the issuance of shares at the given (market) price does not accumulate funds sufficient to discharge all claims in full. In deciding the price of additional shares issued to shareholders, it is necessary to observe the condition that proceeds from the sale of shares at the given price should be adequate to fully discharge all claims. This is due to the fact that the issuance of additional shares is deployed by the external management plan as a measure for the financial recovery of the debtor. The price of issued shares is determined by the external manager and approved by the creditors' meeting. A period during which the debtor's shareholders can exercise their pre-emption right to purchase additional shares is determined by the creditors' meeting. Such period may not be less than thirty days.

It is assumed that if a specific period for the execution of the pre-emption right is not determined, shareholders can execute their pre-emption right only within a month from the starting date of the issuance of additional shares.

5. After the expiry of the period to exercise the pre-emption right set in Paragraph 4 of this Article, the external manager starts to sell additional shares at the open tender by holding a competitive tendering or auction.

If a decision to declare the debtor bankrupt and initiate liquidation proceedings is rendered, persons who were not shareholders of the debtor, but acquired additionally issued shares of the debtor may lodge their claims against the debtor in the amount of their acquired shares in the

statutory manner. In this respect, the legislator does not specify for what and in which priority those shareholders who have acquired additionally issued shares can lodge their claims against the debtor in the course of liquidation proceedings. In view of the necessity of setting the relevant conditions for selling newly issued shares, due to this Article, shareholders who have purchased newly issued shares can file their claims for funds paid for such shares in the fourth priority.

Article 115. Substitution of Debtor's Assets

- 1 The debtor's assets shall be substituted by establishing one open joint-stock company or several open joint-stock companies on the basis of the debtor's property.**
- 2 The external management plan may include the possibility of substituting the debtor's assets if all creditors in the creditors' register vote for such resolution.**
- 3 The external management plan may include the substitution of the debtor's assets by way of establishing one or more open joint-stock companies on the basis of debtor's property, by virtue of a resolution of the property owner of the debtor or the debtor's management body authorised by founding documents to pass a resolution concluding such transaction.**
- 4 If the external management plan provides for the establishment of one open joint-stock company, all the debtor's property for carrying out entrepreneurial activities, including property rights, shall be contributed to the charter fund of an established company.**
- 5 If the external management plan provides for the establishment of several open joint-stock companies, the debtor's property for carrying out certain types of activities shall be contributed to the charter funds of established companies respectively. The debtor's property contributed as payment to the charter fund of each established open joint-stock company shall be determined by the external management plan.**
- 6 The amount of charter funds of established companies shall be determined on the basis of the assessed value of property contributed to them. Such value is assessed by an appraiser, taking into account opinions of the property owner of the debtor or the debtor's management body authorised by founding documents to pass a resolution concluding such transaction.**
- 7 When the debtor's assets are substituted, all labour contracts which are valid at the moment when a resolution substituting the debtor's assets is passed shall remain in force, and rights and duties of the employer shall be transferred to a newly established open joint-stock company or companies. The debtor's licences for carrying out certain types of activities shall be subject to reissuance in the manner established by the legislation.**
- 8 In case the assessed value of the debtor's property exceeds the amount of creditors' claims, shares of an open joint-stock company or companies established on the basis of the debtor's property shall comprise the debtor's property and may be sold at the open tender unless otherwise established by this Article.**
- 9 The sale of shares of an open joint-stock company or companies established on the basis of the debtor's property must ensure the accumulation of monetary assets for satisfaction of claims of all creditors.**
- 10 Shares of an open joint-stock company or companies established on the basis of the debtor's property shall be sold at the open tender in the manner envisaged by Article 110 of this Law.**
- 11 The external management plan may provide for the sale of shares of an open joint-stock**

company or companies established on the basis of the debtor's property in the securities market.

- 12** Creditors' claims must be satisfied in order of priority provided by Articles 133 and 134 of this Law.
- 13** In case the assessed value of the debtor's property does not exceed the amount of claims in the creditors' register, the creditors' meeting may pass a resolution substituting the debtor's assets by contributing all of the debtor's property to the chartered fund of an open joint-stock company or several open joint-stock companies, without the consent of the property owner of the debtor or the debtor's management body authorised by founding documents to pass a resolution concluding such transactions, provided that all creditors vote for the resolution. In this case, the amount of the charter funds of the abovementioned company or companies shall be determined on the basis of the assessed value of property contributed to them. Such value is assessed by an appraiser. In this case, the external manager shall be obliged, before the substitution of the debtor's assets, to pay out wages payable, alimony with execution documents providing for its satisfaction by way of transferring or paying monetary assets from an account of the obligator, remuneration under copyright agreements ensuring the same priority of performance as the debtor's obligations on mandatory payments and claims arising from labour law relations and law relations equalled thereto, and also compensation to citizens for damages caused to their property by crime or administrative violation.
- 14** Shares in the charter fund of an open joint-stock company or companies shall be distributed among creditors in proportion to their claim amount in the creditors' register, which grants creditors the right to become founders (participants) of such company or companies.
- 15** After the completion of settlements with creditors, the external manager shall prepare a report in accordance with the requirements of Article 142 of this Law and complete the bankruptcy process of the enterprise debtor in the manner established by Article 144 of this Law.
- 16** The substitution of the debtor's assets shall not be applied in a bankruptcy process of banks, insurers, professional participants in the securities market.

This Article stipulates the procedure of one of the new measures of external management – the substitution of the debtor's assets, which is newly employed by this Law 2003, together with the issuance of additional shares (Art.114). The substitution of the debtor's assets is a new institution in the bankruptcy legislation and this procedure can be called the restructuring of the debtor.

1. Paragraph 1 of this Article states that the substitution of the debtor's assets means the creation of one or several open joint-stock companies based on the debtor's property.
2. Paragraph 2 of this Article identifies conditions for including the substitution of the debtor's assets in the external management plan. The execution procedure for substituting the debtor's assets is included in the external management plan if all creditors in the creditors' register vote for this.
3. Paragraph 3 of this Article stipulates an additional condition for including the substitution of the debtor's assets in the external management plan, which is the relevant resolution of the property owner or the management body of the debtor authorised by founding documents to pass a resolution concluding such transactions.

4. Paragraph 4 of this Article stipulates the procedure for incorporating one open joint-stock company, which is envisaged by the external management plan. The procedure for substituting assets is as follows: a new legal entity in the form of open joint-stock company is formed on the basis of the debtor's property. This company is a subsidiary enterprise in relation to the debtor as it is founded by the debtor. The debtor's property is contributed to its charter fund, i.e. the debtor's assets: buildings, facilities, equipment, transport facilities and other material valuables including property rights. Thereby, the payment for the chartered fund and acquisition of shares of this enterprise by the debtor are completed. The debtor's assets in the form of material valuables are substituted for assets in the form of securities – shares of the subsidiary enterprise. All shares of a established enterprise belong to the debtor.

5. Paragraph 5 of this Article stipulates the procedure for forming the charter funds of several open joint-stock companies, created on the basis of the debtor's property in compliance with the external management plan. This is a more complicated task than the creation of one legal entity. In such case, by analogy with the procedure for reorganising a legal entity in the form of corporate demerger (Art.50,Para.3,CC; Art,98, the Law “On Joint-Stock Companies and Protection of Shareholder's Rights”), the debtor's assets are temporally demerged, and separate balance sheets are prepared, where each type of the debtor's property contributed to the charter funds of every new legal entity is specified. The criterion for distribution of the debtor's property among newly created legal entities should ensure each of them a possibility of carrying out certain types of activities which have been performed by the debtor.

Separate parts of the debtor's assets are contributed to the charter funds of newly established enterprises, and they are determined by the external management plan. All shares of joint stock companies created in such way belong to the debtor.

6. Paragraph 6 of this Article stipulates the procedure for determining the amount of the charter fund of established companies. It is decided on the basis of the assessed value of property being contributed, which is determined by an appraiser, in consideration of opinions of the property owner or the management body of the debtor authorised by founding documents to pass a resolution concluding such transactions.

7. Paragraph 7 of this Article rules labour relations of the debtor's employees at the substitution of assets. Besides shares of newly created enterprises, no valuable assets remain in the debtor's property, so that the debtor has no material base necessary for its business activities. The debtor, nonetheless, continues to exist as a legal entity, and its rights and duties under current labour contracts pass to a newly created legal entity which becomes an employer in relation to the debtor's employees. When two or more legal entities are formed as a result of the substitution of the debtor's assets, the debtor's employees are allocated among new subsidiary enterprises by taking into account the distribution of the debtor's property to them based on their separation balance sheets and their business profile.

The debtor's licences for carrying out certain sorts of activities are subject to reissuance in the name of newly created enterprises which are to be engaged in such activities.

8. This Article provides the procedure for selling shares of newly created open joint-stock company or companies in case the assessed value of the debtor's property exceeds the amount of creditors' claims. In this case, the shares are included in the debtor's property, fixed in the balance sheet and may be sold at the open tender or on the stock exchange (this Article,Para.11).

9. Paragraph 9 of this Article stipulates that the sale of shares of an open joint-stock company or

companies established on the basis of the debtor's property must ensure the accumulation of monetary assets for satisfaction of claims of all creditors. The substitution of the debtor's assets is aimed at selling shares of newly established open joint-stock companies, and applying proceeds from the sale to the discharge of creditors' claims. Therefore, the liquidity of these shares is the main issue.

This Article does not specify consequences when the purpose of the substitution of assets has not been achieved: when shares of newly created enterprises have not been sold or only a part of them has been sold, or when shares have been sold at the lower price and the amount of proceeds is not sufficient to restore the debtor's solvency.

In such situation, there is only one option for further development – further destiny of the debtor and a matter of unsatisfied claims of creditors is solved within the framework of a subsequent bankruptcy process – liquidation proceedings.

10. Paragraph 10 of this Article stipulates that shares of newly established open joint-stock companies are sold out in the manner envisaged by Article 110. Thus, those shares are put out to the open tender (auction, competitive tendering or tender sales).
11. Paragraph 11 of this Article notes that the external management plan may provide for sales of shares in the securities market, i.e. on the stock exchange.

It is assumed that a sale of shares on the stock exchange is acceptable in any case, even if such option is not provided by the external management plan. It is advisable to entrust sales of shares to a professional participant in the securities market – a specialised broker or dealer who is interested in sales of shares under such a contract as commission remuneration is paid only after he/she can actually sell the shares.

12. Paragraph 12 of this Article stipulates that creditors' claims must be satisfied in order of priority established by Articles 133 and 134.

Only Paragraph 16 of Article 110 stipulates the possibility for the external manager's report to be directly submitted to the economic court, while the report is submitted at first to the creditors' meeting in other cases after the accumulation of sufficient funds. In the latter case, it is assumed that the court ruling is necessary to pay creditors out of these funds. Exceptionally founders (participants) or the property owner of the debtor or a third person can satisfy all claims against the debtor at one time without the court ruling (see the comment on Art.113).

13. Paragraph 13 of this Article reviews and regulates the substitution of the debtor's assets in case the assessed value of the debtor's property does not exceed the amount of claims in the creditors' register. In this case, the debtor's assets may be substituted based on the relevant resolution of the creditor' meeting where all creditors have voted for such resolution. The creditors' meeting may pass such resolution without the consent of the property owner or the management body of the debtor authorised by founding documents to pass a resolution concluding such transactions. In this case, the amount of the charter funds of companies is established on the basis of the assessed value of the property being contributed, which has been determined by an appraiser. This Article specifies also an obligation of the external manager to discharge, before the substitution of the debtor's assets, wages payable; alimony with execution documents providing for its satisfaction by way of transferring monetary funds or paying from an account of the obligator; remuneration under copyright agreements ensuring the same priority of performance as the debtor's obligations on mandatory payments and claims arising from labour law relations and law relations equalled thereto; and claims of citizens for compensation for damage caused to their property by crime or administrative

violation.

14. Paragraph 14 of this Article stipulates that shares in the charter fund of an open joint-stock company or companies are distributed among creditors in proportionate to their claim amount in the creditors' register, which entitles creditors to become founders (participants) of the open joint-stock company (companies).

After the completion of settlements with creditors, the external manager prepares a report in accordance with the requirements of Article 142, and completes the bankruptcy process of the debtor-enterprise in the manner established by Article 144.

15. The last Paragraph of this Article restricts the range of enterprises to which the substitution of the debtor's assets may be applied. It stipulates that the substitution of the debtor's assets is not applied in a bankruptcy process of banks, insurers, professional participants of the securities market.

Article 116. External Manager's Report

1 The external manager shall be obliged to submit a report to the creditors' meeting for its consideration, when the period of external management expires or when there are grounds for the early termination of external management at the request of persons (bodies) eligible to convene the creditors' meeting, and also when the debtor has accumulated monetary assets sufficient to satisfy claims of all creditors in accordance with the creditors' register.

2 The external manager shall be obliged to submit a report to the economic court, if the creditors' meeting has passed a resolution commencing settlements with creditors of a certain priority upon the results of consideration of the report.

3 The external manager's report must contain:

- the debtor's balance sheet as of the latest reporting date;
- the cash flow statement;
- the debtor's report on financial results;
- information on the availability of free cash that may be intended for the satisfaction of creditors' claims for monetary obligations and (or) mandatory payments of the debtor;
- breakdown of accounts receivable of the debtor and information on unrealised claims of the debtor;
- other information on the possibility of discharging the debtor's accounts payable.

4 The creditors' register must be attached to the external manager's report.

5 When submitting the report, the external manager shall simultaneously make at the creditor's meeting one of the following proposals:

- to terminate external management in connection with the restoration of the debtor's financial ability and shift to settlements with creditors;
- to conclude an amicable agreement;
- to extend the period of external management;
- to terminate external management and apply to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings.

This Article lays down requirements for reports of the external manager.

1. Paragraph 1 of this Article provides for cases where the external manager is obliged to submit a

report for the review of the creditors' meeting, namely when:

- 1) the external management period expires. The external manager makes a report on results of performed activities envisaged by the external management plan;
- 2) there are grounds for the early termination of the external management at the request of the persons (bodies) eligible to convene the creditors' meeting. External management terminates ahead of time if it proves inefficient. The early termination of external management may be addressed at any time during external management. The external manager is obliged to submit a report to the creditors' meeting at the relevant time of external management. In this case, according to Paragraph 5 of this Article, the creditors' meeting discusses a proposal to apply to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings;
- 3) monetary funds have accumulated so as to satisfy claims of all creditors in the creditors' register as a result of the execution of the external management plan. In this case, the external manager submits a report to the creditors' meeting and in addition evidences of such accumulation. The termination of external management due to such accumulation may be considered at any time during external management.

When monetary funds accumulated as a result of the execution of the external management plan are not sufficient to discharge claims of all creditors, but sufficient only to pay claims of some creditors, the external manager may submit a report to the creditors' meeting with a view to discharging claims of creditors of a specific priority.

It is assumed that in case founders (participants) or the property owner of the debtor, or third parties satisfy claims against the debtor in the course of external management, or in case claims against the debtor are all discharged out of proceeds from the sale of the enterprise (business) in accordance with the creditors' register (Arts. 110 and 113), the external manager is entitled to submit a report directly to the economic court for its approval without presenting it to the creditors' meeting, because all creditors have already had satisfaction of their claims and there is no need for them to review the external manager's report.

2. As noted in the comment on Paragraph 1, when as a result of the performance of the external management plan, monetary funds have accumulated enough to satisfy claims of some creditors, the external manager may submit a report to the creditors' meeting with a view to commencing settlements with creditors of a specific priority. This Paragraph lays down the obligation of the external manager to submit this report to the economic court, if the creditors' meeting has passed a resolution commencing settlements with creditors of a specific priority in compliance with the creditors' register upon the results of review of the report,.

It should be pointed out that the external manager is also authorised to apply to the economic court for the commencement of settlements with creditors of a specific priority without submitting a report to the creditors' meeting or in case the creditors' meeting disagrees to such commencement of settlements with creditors (Art.118,Para.4).

3. Paragraph 3 of this Article provides main requirements for the content of the external manager's report. The external manager's report must contain all necessary data on the results of external management on the bases of which the creditors' meeting could make a conclusion – whether the debtor's financial ability has restored or not.

The report of the external manager must contain:

- the debtor's balance sheet as of the latest reporting date. This financial instrument describes

- the general financial state of the debtor;
- the cash flow statement, by help of which the creditors' meeting may check the accuracy of usage of the debtor's funds;
- the debtor's report on financial results;
- information on the availability of free cash that may be intended for the satisfaction of creditors' claims for monetary obligations and (or) mandatory payments of the debtor. Such data include information on the available funds in the current account, cash desk, etc.;
- breakdown of accounts receivable of the debtor and information on unrealised rights of claims of the debtor;
- other information on the possibility of discharging the debtor's accounts payable.

The report of the external manager can contain other information, on the satisfaction of creditors' claims in the creditors' register, on current payments, etc.

4. Paragraph 4 of this Article contains a requirement that the external manager's report must be accompanied by the creditors' register, which is prepared by the external manager prior to the creditors' meeting for consideration of the report. The external manager keeps and manages the creditors' register in compliance with Article 14.
5. The external manager's report should contain proposals for further fate of the debtor, namely:
 - to terminate external management in connection with the restoration of the debtor's financial ability and to shift to settlements with creditors. Such proposal can be introduced by the external manager with the availability of sufficient monetary funds for the satisfaction of claims of all creditors;
 - to conclude an amicable agreement. The procedure for concluding an amicable agreement and its form are stipulated by Chapter VIII;
 - to extend the external management period under circumstances directly evidencing the possibility of the restoration of the debtor's financial ability. It is necessary to take into account that the period of external management should not exceed the period established by Article 91;
 - to terminate external management and apply to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings.

Besides the aforementioned, the report may contain a proposal for the commencement of settlements with creditors of a specific priority.

The creditors' meeting is not bound by proposals presented by the external manager, but passes the relevant resolution, having independently reviewed the situation of the debtor.

Article 117. Consideration of External Manager's Report

- 1 The external manager's report shall be considered by the creditors' meeting convened within ten days after the established period of external management expires or within fifteen days after grounds for the early termination of external management occur, or within one month in case the creditors' meeting is convened at the request of persons (bodies) eligible to convene the creditors' meeting.**
- 2 The external manager shall be obliged to notify all creditors of the creditors' meeting for consideration of the external manager's report in the manner envisaged by Article 11 of this Law.**

- 3 The external manager shall be obliged to provide creditors with the possibility of being preliminarily familiarised with the external manager's report not later than fifteen days prior to the expiry of the established period of external management, or not later than ten days prior to the established date of the creditor's meeting.**
- 4 Upon the results of the review of the external manager's report, the creditors' meeting shall be entitled to pass one of the following resolutions:**
- **applying to the economic court for the termination of external management in connection with the restoration of the debtor's financial ability and for the shift to settlements with creditors;**
 - **applying to the economic court for extension of the period of external management;**
 - **applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings;**
 - **concluding an amicable agreement.**

This Article regulates the procedure in which the creditors' meeting reviews the external manager's report.

1. The creditors' meeting for consideration of the report is convened by the external manager or by persons eligible to convene the meeting. Paragraph 1 of this Article sets the time by which the report of the external manager should be reviewed at the creditors' meeting.

The creditors' meeting is convened:

- 1) within ten days after the expiry of the established external management period. The period of external management shall be established in the economic court ruling to introduce external management or to extend its period;
 - 2) within fifteen days after the occurrence of grounds for the early termination of external management;
 - 3) within one month in case the creditors' meeting is convened at the request of persons (bodies) eligible to convene the meeting.
2. The external manager is obliged to notify the creditors' meeting to all creditors. Such notification is made in the manner envisaged by Article 11.
3. Since the creditors' meeting may have questions to the report of the external manager, the legislator in Paragraph 3 of this Article envisages the possibility to read the report preliminarily, i.e. at least fifteen days prior to the expiry of the designated external management period, or at least ten days prior to the established date of the creditor's meeting. The preliminary reading of the report gives the opportunity for creditors to have explanations from the court receiver prior to the meeting if they have had any questions, or to advance some opinions on the report at the creditors' meeting if they have had any.

Since the external manager report may be extensive and the number of creditors may be large, sending copies of the report to everyone would cost extra expenses. In this connection, the external manager specifies in the notification of the creditors' meeting the place where creditors may read the report, as this Law does not oblige the external manager to send copies of the report to creditors. Therefore, notification which describes the place to read the report should be sent to creditors in such manner as they can receive it at least ten days prior to the established date of the creditor's meeting

4. The creditors' meeting is held in accordance with Article 10. Upon the results of the review of the

external manager's report, the creditors' meeting is authorised to pass one of the following resolutions related with the further fate of the debtor:

- applying to the economic court for the termination of external management in connection with the restoration of the debtor's financial ability and for the shift to settlements with creditors;
- applying to the economic court for the extension of the established external management period;
- applying to the economic court for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings;
- concluding an amicable agreement.

Moreover, the creditors' meeting may apply to the economic court for the commencement of settlements with creditors of a specific priority under Article 116, despite of no direct provision in this Law.

A resolution is passed at the creditors' meeting in accordance with regulation of Article 13. Thus, the meeting passes a resolution applying to the economic court for the extension of the external management period, or for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, or a resolution concluding an amicable agreement, not by the majority vote in value of creditors participating in the meeting but by the majority vote in value of all creditors. If the meeting falls short of the relevant quorum, then the reattempted meeting may pass a resolution, irrespective of the number of creditors participating in the meeting.

Article 118. Approval of External Manager's Report by Economic court

- 1 The external manager's report considered by the creditors' meeting and minutes of the creditors' meeting shall be forwarded to the economic court within five days after the date of the creditors' meeting.**
- 2 The creditors' register and complaints of creditors who voted against the resolution passed by the creditors' meeting or who did not participate in the voting must be attached to the external manager's report.**
- 3 The external manager's report and creditors' complaints shall be considered by the economic court in a session. The external manager and creditors who have filed complaints shall be notified of the date, time and place of the economic court session. The absence of notified persons in a court session shall not preclude the consideration of the bankruptcy case.**
- 4 The external manager's report shall be approved by the economic court, if all claims of creditors in the creditors' register have been discharged; or the creditors' meeting has passed a resolution applying to the economic court for the termination of external management in connection with the restoration of the debtor's financial ability and for the shift to settlements with creditors; or the creditors' meeting has passed a resolution commencing settlements with creditors of a specific priority; or the external manager has applied for the commencement of settlements with creditors of a specific priority; or an amicable agreement has been concluded between creditors and the debtor; or the creditors' meeting has passed a resolution applying to the economic court for the extension of the external management period.**
- 5 The economic court shall refuse to approve the external manager's report, if the following is established:**
 - not all claims of creditors in the creditors' register are discharged;**
 - there is no indication of the restoration of the debtor's financial ability;**

- there is no ground for commencing settlements with creditors of a specific priority;
 - there are obstacles to approving an amicable agreement.
- 6 Upon the results of consideration of the external manager's report, the economic court shall render rulings:**
- to terminate bankruptcy proceedings – in case claims of all creditors in the creditors' register are discharged or in case an amicable agreement is approved by the economic court;
 - to shift to settlements with creditors – in case the application of the creditors' meeting for the termination of external management in connection with the restoration of the debtor's financial ability is satisfied;
 - to commence settlements with creditors of a specific priority – in case the application of the creditors' meeting or the petition of the external manager for the commencement of settlements with creditors of a specific priority is satisfied;
 - to extend the period of external management – in case the application for the extension of the period of external management is satisfied;
 - to refuse to approve the external manager's report – in case circumstances envisaged by Paragraph 5 of this Article are revealed.
- 7 The economic court shall render a decision to declare the debtor bankrupt and initiate liquidation proceedings, when the creditors' meeting applies for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings; or when the economic court refuses to approve the report; or when the external manager does not submit the report within one month from the date of the expiry of the established external management period; or when none of its resolutions envisaged by Items 1 ,2 and 4 of Paragraph 4 of Article 117 of this Law has been passed.**

This Article rules the procedure in which the economic court approves the external manager's report.

1. The external manager should, within five days after the creditors' meeting, forward the report considered by the creditors' meeting and minutes of the meeting to the economic court with other documents relating to the meeting in accordance with Paragraph 10 of Article 10. This Article does not specify how the external manager's report and the minutes should be forwarded to the economic court. It follows from Paragraph 1 of this Article that the external manager may forward the report and the minutes directly to the court (the office at court) or even by post until 12.00 p.m. on the fifth day after the creditors' meeting.

The five day term for such submission is counted starting with the next day of the creditors' meeting where the report of the external manager is reviewed. Herewith when the last (fifth) day of the term for sending the report and the minutes falls on a nonworking day, the deadline is the following working day (Arts.96 and 97,CEP).

It should be noted that if claims of all creditors included in the creditors' register have been discharged, as a result of the performance of the debtor's obligations by founders (participants) or the property owner of the debtor under Article 113, or out of proceeds from the sale of the debtor's enterprise (business) (Art.110,Para.18), the external manager can submit a report to the economic court for its approval without its consideration at the creditors' meeting, because in this case all creditors have already received satisfaction of their claims, and there is no necessity in reviewing the

external manager's report.

It is also necessary to note that the external manager may submit to the economic court his/her report on an application for the commencement of settlements with creditors of a specific priority without its consideration at the creditors' meeting (this Article,Para.4).

2. The creditors' register and complaints of creditors who voted against the resolution passed by the creditors' meeting or who did not participate in the voting must be attached to the external manager's report. Creditors who expressed their disagreement to the passed resolution are also entitled to submit their complaints directly to the economic court prior to the court session set for the consideration of the external manager's report.
3. The external manager's report and creditors' complaints are considered in a court session. The external manager and creditors who have filed complaints participate in this court session as parties and be notified of the date, time and place of the court session. The external manager's report and creditors' complaints may be considered by the economic court even in the absence of any parties if those parties have been properly notified of the date and time of the court session. Notification is made by the economic court in accordance with Article 124 of the Code of Economic Procedure, according to which persons participating in a case are notified of the date and place of a court proceeding by a court ruling which is sent by registered post with the assurance of receipt.
4. Paragraph 4 of this Article clarifies cases where the economic court approves the external manager's report, namely where:
 - 1) all creditors claims are discharged in compliance with the creditors' register in the course of external management. The debtor may have overdue current payments. Nevertheless, the external manager's report is approved by the economic court;
 - 2) the creditors' meeting has passed a resolution applying to the economic court for the termination of external management in connection with the restoration of the debtor's financial ability and for the shift to settlements with creditors. The restoration of the debtor's financial ability is recognised when the debtor has stored funds sufficient to satisfy claims in the creditors' register;
 - 3) the creditors' meeting has passed a resolution commencing settlements with creditors of a specific priority, or the external manager has petitioned directly the economic court for such commencement without its consideration at the creditors' meeting. The creditors' meeting may pass such resolution if the amount accumulated is adequate to pay off creditors' claims of such specific priority. This takes place in the course of external management, i.e. prior to the expire of the period of external management;
 - 4) an amicable agreement has been concluded between creditors and the debtor;
 - 5) the creditors' meeting has passed a resolution applying to the economic court for the extension of the external management period.
5. The economic court, having reviewed the submitted report of the external manager, refuses to approve it in the following cases where:
 - 1) the report on the discharge of all claims is false, i.e. some claims in the creditors' register are unsatisfied, which is established by the court;
 - 2) the report on the restoration of the debtor's financial ability, namely the accumulation of funds sufficient to discharge all claims is false, which is determined by the court;

- 3) there is no ground for commencing settlements with creditors of a specific priority, i.e. the report on the accumulation of funds adequate to settle with creditors of such priority is false, and such fact is recognised by the court;
 - 4) there are obstacles to approving an amicable agreement, i.e. an amicable agreement has been concluded in violation of regulations for the conclusion of amicable agreements stipulated by Chapter VIII.
6. Upon the results of the consideration of the external manager's report, the economic court hands over one of the following rulings:
- 1) to terminate bankruptcy proceedings – in case claims of all creditors in the creditors' register are discharged in the course of external management or in case an amicable agreement is approved by the economic court. In this case, external management terminates with the termination of bankruptcy proceedings;
 - 2) to shift to settlements with creditors – in case an application of the creditors' meeting for the termination of external management in connection with the restoration of the debtor's financial ability is satisfied. By virtue of this ruling, the economic court terminates external management and directs the commencement of settlements with creditors. In this case, settlements with creditors are made out of the framework of external management, but within bankruptcy proceedings;
 - 3) to commence settlements with creditors of a specific priority – in case an application of the creditors' meeting or a petition of the external manager for the commencement of settlements with creditors of a specific priority is satisfied. This ruling is rendered by the economic court within the course of external management prior to its termination, and external management does not terminate;
 - 4) to extend the external management period – in case an application of the creditors' meeting for the extension of the period of external management is satisfied. In resolving the question of the extension of the external management period, it is necessary to take into account Article 91, according to which the aggregate term of external management and judicial rehabilitation may not exceed thirty six months;
 - 5) to refuse to approve the external manager's report – in case the economic court reveals that not all creditors' claims in the creditors' register are discharged; or that indications of the restoration of the debtor's financial ability are not recognised; or that there is no ground for commencing settlements with creditors of a specific priority; or that there are obstacles to approving an amicable agreement. It should be mentioned that the economic court gives a ruling to refusal to approve the external manager's report on the grounds envisaged by Paragraph 5 of this Article, when the report is submitted prior to the expire of the external management period. This ruling does not terminate external management. When the report is submitted at the expire of the period and the economic court reveals grounds envisaged by Part 5 of this Article, the court issues a ruling to declare the debtor bankrupt and initiate liquidation proceedings, in which the court specifies the refusal to approve the report. As this decision is rendered, external management terminates (this Article, Para.7).
7. The economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings in the following cases where:
- the creditors' meeting applies for the declaration of the debtor's bankruptcy and initiation of liquidation proceedings;

- the economic court refuses to approve the external manager's report. This case is regarding the report which is submitted at the expire of the period of external management in the presence of grounds envisaged by Paragraph 5 of this Article (see the comment on Para.6 of this Article);
- the external manager does not submit a report within a month after the expire of the established period of external management;
- the creditors' meeting has passed none of resolutions envisaged by Items 1,2 and 4 of Paragraph 4 of Article 117.

Article 119. Consequences of Ruling to Transit to Settlements with Creditors

- 1 The economic court ruling to shift to settlements with creditors shall be the ground for commencing settlements with all creditors in accordance with the creditors' register.**
- 2 The economic court ruling to shift to settlements with creditors shall state the period of settlements with creditors, which may not exceed six months from the date when such ruling is rendered.**
- 3 Bankruptcy proceedings shall terminate after settlements with creditors are completed and the economic court considers the external manager's report upon the results of settlements with creditors.**
- 4 If settlements with creditors have not been made within the period set by the economic court, the economic court shall render a decision to declare the debtor bankrupt and initiate liquidation proceedings.**

This Article clarifies legal consequences of the court ruling to shift to settlements with creditors.

1. The economic court renders a ruling to commence settlement with creditors after it approves an application of the creditors' meeting for the termination of external management as the debtor has accumulated monetary assets adequate to satisfy claims of all creditors (Art.118,Para.6,Item 2).

Such accumulation constitutes a ground for terminating external management. In this connection, the economic court must render a ruling to shift to settlements with all creditors, and must not render a ruling to commence settlements with creditors of a specific priority. It is necessary to note that the economic court may render a ruling to commence settlement with creditors of a specific priority only in the course of external management.

External management terminates after the economic court issues a ruling to shift to settlements with creditors, while bankruptcy proceedings do not finish at this moment.

The external manager on the basis of such ruling shall begin to settle with creditors in accordance with the creditors' register in order of priority established by Articles 133, 134 and 169. The economic court ruling to shift to settlements with creditors comes into force on the date of its rendering and cannot be appealed.

2. The period for settlements with creditors may not exceed six months from the date when a ruling to shift to settlements with creditors is rendered. This Law does not specify to which bankruptcy process the stage of such settlements belongs. Taking into account that the economic court satisfies an application of the creditors' meeting for the termination of external management, at rendering a ruling to shift to settlements with creditors (Art.118,Para.6,Item 2), the period of settlements with creditors is not included in the process of external management, but such settlements are made

within the framework of the bankruptcy case, i.e. before the termination of bankruptcy proceedings. In respect of this issue, the Resolution of the SEC Plenum No.142 (Para.28) explains that the period established for settling with creditors in accordance with Paragraph 2 of Article 119 is not included in the period of external management.

This Law does not envisage the possibility of extending the period of settlements for more than six months. However, in case the initial period provided by the economic court is less than six months (e.g. three months), this period can be extended, provided that the aggregate term for settling with creditors does not exceed six months.

3. The external manager submits to the economic court a report upon the results of settlements with creditors. This Law does not require the preliminary review of the report by the creditors' meeting, because such an institution in bankruptcy as a creditors' meeting does not exist after all claims have been satisfied. The external manager submits to the economic court the aforementioned report with evidences confirming that claims of all creditors in the creditors' register have been discharged.

On the basis of the justified report of the external manager, the economic court renders a ruling to terminate bankruptcy proceedings.

4. Paragraph 4 of this Article is a mandatory provision which requires the economic court to render a decision to declare the debtor bankrupt and initiate liquidation proceedings if settlements with creditors have not been made within the period established by the economic court. Failure to settle with creditors within the period set for such purpose (not more than six months) is deemed as failure to restore the debtor's financial ability and correspondingly entails the acceptance of a decision to declare the debtor bankrupt and initiate liquidation proceedings.

Article 120. Consequences of Ruling to Commence Settlements with Creditors of Specific Priority

- 1 The economic court ruling to commence settlements with creditors of a specific priority shall be the ground for commencing settlements with creditors in accordance with the creditors' register.**
- 2 The economic court ruling to commence settlements with creditors of a specific priority shall state:**
 - the priority of claims which are to be satisfied;
 - the period of settlements with creditors of such priority, which may not exceed two months from the date when such ruling is rendered;
 - the proportion of satisfaction of creditors' claims of such priority.
- 3 When the economic court determines creditors' claims which are to be satisfied in order of priority based on its ruling to commence settlement with creditors of a specific priority, the economic court shall be entitled to render a ruling to change the order of satisfaction of creditors' claims.**
- 4 If settlements with creditors of a specific priority or settlements in a certain proportion have not been made within a period set by the court, creditors of such priority shall be entitled to claim for interest which accrues on the outstanding sum in the amount envisaged by Article 327 of the Civil Code of the Republic of Uzbekistan from the date when a ruling to commence settlements with creditors of a specific priority is rendered and up to the date when their claims are discharged in full or in a certain proportion respectively.**

This Article stipulates legal consequences that the economic court renders a ruling to commence settlements with creditors of a specific priority.

1. When monetary assets are saved enough to settle with creditors of a specific priority in the course of external management, the creditors' meeting or the external manager may present an application to the economic court for the commencement of settlements with creditors of a specific priority. Having reviewed such application and admitted it to be grounded, the economic court may render a ruling to commence settlements with creditors of such priority (Art.118.Para.6,Item 3), and this constitutes a ground for the external manager to commence settlements with creditors of the priority identified in the ruling.

In view of Item 3 of Paragraph 6 of Article 118, settlements with creditors of a specific priority are made in the course of external management although Article 92 introduces the moratorium on the satisfaction of creditors' claims as one of the consequences of the introduction of external management against the debtor. This Law does not obligate settlements with creditors of a specific priority in the course of external management. Instead, the creditors' meeting or the external manager may consider the commencement of such settlements if the debtor has "available" monetary assets.

The external manager may commence settlements with creditors on the basis of the economic court ruling to commence settlements with creditors of a specific priority and does not have to wait for the completion of external management. This is beneficial both to creditors and the debtor. Interest accrues on creditors' claims from the date of the introduction of external management until the economic court renders a ruling to commence settlements, or a decision to declare the debtor bankrupt and initiate liquidation proceedings (Art.93,Para.3), while the early commencement of settlements with creditors would decrease interest to be paid, which is beneficial to the debtor. This situation is beneficial to creditors as well because they can have their claims satisfied without waiting for the completion of external management.

The aforementioned ruling comes into force on the date of its issue and is not appealable. Creditors must receive payment in accordance with the creditors' register.

2. The economic court ruling to commence settlements with creditors of a specific priority indicates: the priority of creditors' claims to be satisfied; the period for settlements, which may not exceed two months from the date when the specified ruling is rendered; the proportions of satisfaction of creditors' claims of such priority.
3. Paragraph 3 of this Article envisages the possibility of amending the order to satisfy creditors' claims. This is required by the following fact. Creditors not included in the creditors' register may request the external manager to include their claims against the debtor in the creditors' register in the course of external management. In this case, the economic court is be entitled to render a ruling to change the order to satisfy creditors' claims of a specific priority determined by the previously rendered ruling, provided that new claims are included in the creditors' register exactly as claims of the priority which is identified in the court ruling.
4. Paragraph 4 sets down the responsibility of the debtor to creditors in case it fails to satisfy their claims in compliance with the ruling to commence settlements with creditors of a specific priority. Thus, creditors may claim for interest on the outstanding sum in the amount of the bank interest up to the date when their claims are discharged (Art.327,CC). Interest is charged from the date when a ruling to commence settlements with creditors of a specific priority is granted and up to the date

when claims are paid either in full or in a certain proportion.

Article 121. Settlements with Creditors

- 1 Settlements with creditors shall be made by the external manager in accordance with the creditors' register, from the date when the economic court renders a ruling to shift to settlements with creditors or a ruling to commence settlements with creditors of a specific priority.**
- 2 Settlements with creditors shall be made in the manner envisaged by this Law.**
- 3 When monetary obligations and (or) duties on mandatory payments of the debtor are performed, the external manager shall enter the relevant record in the creditors' register.**

This Article provides the procedure for settling with creditors on the basis of the economic court ruling to shift to settlements with creditors or to commence settlements with creditors of a specific priority.

1. The economic court issues a ruling to shift to settlements with creditors if the creditors' meeting applies to the economic court. Thus the external manager is not authorised to settle with creditors until the court grants the relevant ruling, even when sufficient funds are prepared to satisfy claims of all creditors. It is necessary to note as well that the external manager cannot settle with creditors even subject to order of priority stipulated by Articles 133, 134 and 169 without the relevant court ruling, when accumulated funds are adequate to discharge claims of creditors of a specific priority.

Thus, this Article stipulates settlements with creditors during external management by virtue of the ruling to shift to settlements with creditors or to commence settlements with creditors of a specific priority. As an exception, it should be noted that creditors' claims may be satisfied without any court ruling, if founders (participants) or the property owner of the debtor, or third parties perform the debtor's obligations (Art.113) or if creditors are paid out of proceeds from the sale of the enterprise (business) (Art.110,Para.18).

The external manager is entitled and obliged to commence settlements with creditors only from the date when the economic court renders a ruling to shift to settlements with creditors or to commence settlements with creditors of a specific priority.

2. Pursuant to Paragraph 2 of this Article, settlements with creditors is made in the manner envisaged by this Law. In this case "the manner envisaged by this Law" means the priority order and procedure for settling with creditors in liquidation proceedings, regulated by Articles 133, 134 and 138.

Secured claims are satisfied in the third priority (Art.134,Para.4), but if secured claims are paid out of proceeds from the sale of property securing such claims (assets subject to security), the secured creditors receive payment for their secured claims out of proceeds from such sale ahead of other creditors (Art.133,Para.1). In case such proceeds are inadequate to discharge secured claims in full, an undischarged part of the claims is satisfied in order of priority envisaged by Article 134, namely in the third priority (Art.133,Para.2). In case, during external management, settlements with creditors are made without selling the debtor's secured property (assets subject to security) (i.e. in case as a result of the accomplishment of the external management plan, the debtor has recovered its business and stored sufficient resources to discharge all claims without selling secured assets), Paragraph 1 of Article 133 is not applied and secured claims are satisfied in order of priority (Art.134), i.e. in the

third priority.

3. Payments made by the external manager should be recorded in the creditors' register. This requirement of this Paragraph corresponds with Item 8 of Paragraph 1 of Article 98, enumerating obligations of the external manager.

Article 122. Discharge of Creditors' Claims

Creditors' claims which have been satisfied, claims in respect of which compensation or novation or any other termination of monetary obligations has been agreed, and other claims which are recognised to be discharged in accordance with Articles 134 and 138 of this Law shall be deemed to be discharged.

This Article stipulates grounds according to which creditors' claims are considered to be discharged.

Based on this Article, creditors' claims are discharged by virtue of their appropriate satisfaction, an agreement on compensation or novation of obligations, or a set-off agreement or when the debtor and its creditor becomes the same entity.

In compliance Article 342 of the Civil Code, an obligation can terminate by compensation operations (paying money, giving property, etc) under a compensation agreement between the debtor and its creditor. The discharge of creditors' claims by reaching a compensation agreement is allowed, on condition that this discharge observes the order of priority of claims and the principle of proportional satisfaction, and with the consent of the creditors' meeting (creditors' committee) to such agreement (Art.138,Para.4).

Novation is stipulated by Article 347 of the Civil Code. According to a novation agreement, a obligation of the debtor to its creditor can terminate by way of substituting such initial obligation for another obligation that the debtor is liable to the creditor for providing another property or executing its obligation in the different manner. Novation is not permitted in relation to claims for compensation for damage to life or health or for alimony. Novation terminates any other subsidiary obligations connected with the initial obligation unless otherwise agreed.

According to Articles 343 and 352 of the Civil Code, obligations terminate as well in the following cases where:

- they are set off against mutual claims of the same sort. The satisfaction of claims by set-off is allowed on condition that this observes the prescribed order of priority of claims and the principle of proportional satisfaction of claims (Art138,Para.4);
- the debtor and its creditor become the same person;
- they are forgiven;
- the debtor is unable to perform them in case this inability is entailed by circumstance which is out of control of the debtor or its creditor;
- creditors being a physical person die;
- creditors being a legal entity are liquidated.

Regulations of Paragraph 12 of Article 134 and Paragraph 5 of Article 138 are not applied since all claims of creditors shall be satisfied in full and no claims against the debtor shall remain unsatisfied in case of external management.

Article 123. Procedure for Terminating External Manager's Powers

- 1 The terminating of bankruptcy proceedings or the rendering of the economic court decision to declare the debtor bankrupt and initiate liquidation proceedings in respect of the debtor shall result in the termination of the external manager's powers.**
- 2 If external management terminates as an amicable agreement is concluded or creditors' claims are discharged, the external manager shall continue to perform duties of the debtor's manager up to the date when a new manager is elected (appointed).**
- 3 The external manager shall be entitled, on his/her own initiative, to convene the debtor's management body for the consideration of a matter on election (appointment) of the debtor's manager. The powers of other management bodies and the property owner of the debtor shall be reinstated.**
- 4 If the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, and appoints a person other than the external manager as liquidation manager, the external manager shall continue to perform his/her duties up to the date when affairs are transferred to the liquidation manager. The external manager shall be obliged to transfer affairs to the liquidation manager within three business days from the date when the liquidation manager is appointed.**

This Article stipulates grounds and the procedure for terminating the external manager's powers.

1. Paragraph 1 of this Article sets out grounds for terminating the external manager's powers. The terminating of bankruptcy proceedings or the rendering by the economic court of a decision to declare the debtor bankrupt and initiate liquidation proceedings against the debtor results in the termination of the external manager's powers.

Bankruptcy proceedings can be terminated by the economic court in cases envisaged by Article 56.

A liquidation manager is appointed by the economic court in case of the declaration of the debtor's bankruptcy and initiation liquidation proceedings against the debtor in compliance with Article 126.

2. If external management terminates by concluding an amicable agreement (Art.150,Para.1) or by discharging creditors' claims, the external manager continues to perform duties of the debtor's manager up to the date when a new manager is elected (appointed). In this case, all powers of the debtor' manager (director, chairman of the board, etc) pass to a person who has previously acted as external manager. In this case, his/her activities are regulated not by this Law, but, for example, by the charter of the debtor or the Law "On Joint-Stock Companies and Protection of Shareholder's Right". He/she is entitled to receive remuneration established for the manager of the enterprise debtor for exercising powers of the debtor's manager.
3. The external manager may, on his/her own initiative, convene the debtor's management body (founders, participants, the property owner and the like) for the consideration of a matter on election (appointment) of the debtor's manager. The powers of the general meeting of founders, the board of directors and other management bodies of the debtor are reinstated when bankruptcy proceedings terminate due to the conclusion of an amicable agreement or when creditors' claims are discharged.
4. Paragraph 4 of this Article obligates the external manager to transfer affaires to a newly appointed

liquidation manager within three business days from the date of his/her appointment, when the debtor is declared bankrupt and liquidation proceedings are initiated, and a person other than the one acting as external manager is appointed as liquidation manager. If the economic court does not appoint a liquidation manager at the bankruptcy declaration, the external manager continues to perform powers of the liquidation manager in compliance with Article 128.

This Law does not prohibit an appointment of a person who has been acting as external manager as liquidation manager. Therefore, the external manager may be appointed as liquidation manager upon an application of the creditors' meeting or the state body for bankruptcy proceedings, if he/she meets the requirements of a candidate for a liquidation manager set out by this Law.

CHAPTER VII. LIQUIDATION PROCEEDINGS

This Chapter provides for liquidation proceedings in respect of the debtor.

The purpose of liquidation proceedings is to legitimately sell the debtor's property and apply this proceeds to the pro rata satisfaction of creditors' claims, and to declare the debtor free from liabilities. Liquidation proceedings are carried out by the liquidation manager, who is appointed by the economic court upon an application of the creditors' meeting or the state body for bankruptcy proceedings. Liquidation proceedings begin upon rendering a decision to declare the debtor bankrupt. The period of liquidation proceedings is, as a general rule, one year.

From the date when the court renders a decision to declare the debtor bankrupt, the debtor is disproved of all powers to administer and dispose of property, and should transfer to the liquidation manager accounting documents, seals, stamps and other valuables. Apart from maintaining the creditors' register, the liquidation manager should take inventory of and evaluate the debtor's property, prepare the liquidation plan and the property sale schedule, and submit to the creditors' meeting and to the court a report on the debtor's activity and financial situation at least once a month, and do other tasks. The property sale schedule should be approved by the creditors' meeting. The liquidation plan should obtain the agreement of creditors, by way of being approved by creditors representing not less than two thirds in value of the total claims. The debtor's property is subject to sale at open tenders under the procedure established by the legislation. The liquidation estate is formed according to the requirements of Article 130.

The priority of creditors' claims is provided by Article 134. Proceeds from sales of all the debtor's property are spent in settling with creditors, and all obligations are considered discharged, regardless of whether they have been fully satisfied or not. Upon the completion of settlements, the liquidation manager should submit to the economic court a report on the results of liquidation proceedings. The economic court considers the report and renders a ruling to complete liquidation proceedings. Liquidation proceedings are considered to be completed on the date when the debtor's liquidation is recorded in the uniform state register of legal entities. The residual debtor's property is transferred to the balance of government authorities, if founders (participants) or the property owner of the debtor refuse to accept it.

Article 124. Initiation of Liquidation Proceedings

- 1 The rendition of a decision to declare the debtor bankrupt by the economic court shall result in the initiation of liquidation proceedings.**
- 2 The period of liquidation proceedings may not exceed one year. If necessary, the period may be extended by the economic court ruling.**
- 3 The economic court ruling to extend liquidation proceedings may be appealed (protested).**

This Article provides for the procedure for initiating liquidation proceedings, the period of liquidation proceedings and the possibility of its extension.

1. Paragraph 1 of this Article provides that a decision of the economic court to declare the debtor bankrupt constitutes a ground for the initiation of liquidation proceedings.

When the court renders the decision to declare the debtor bankrupt and initiate liquidation proceedings, according to Paragraph 30 of the Resolution of the SEC Plenum No.142, a concrete time by which the liquidation manager should submit a report on liquidation proceedings must be specified in the decision. Besides, the decision must specify information on the liquidation manager, his/her surname, name, patronymic and the amount of his/her remuneration (if a resolution of the creditors' meeting related thereto has been passed). If there is no resolution of the creditors' meeting regarding the amount of the liquidation manager's remuneration, the court can render a ruling later (after rendering the decision to declare the debtor bankrupt) in which the amount of remuneration and the procedure for paying it are specified.

It should be noted that the decision to declare the debtor bankrupt may be appealed in the general manner of appealing court decisions established by the Code of Economic Procedure, as is stipulated also by Paragraph 21 of the Resolution of the SEC Plenum No.142.

2. Paragraph 2 of this Article envisages the period of liquidation proceedings – one year, which commence by virtue of the decision of the economic court and must necessarily be indicated in the decision. This one year period has been decided, taking into account the practice where this Law is applied, and this time-framework of liquidation proceedings was employed for the first time in this Law 1998.

Although this Law establishes that the period of liquidation proceedings is generally one year, the practice shows that the liquidation manager cannot manage to finish the process of liquidation proceedings within twelve months in some cases. Therefore, this period may be extended, if necessary.

The following may be a grounds for extending the period of liquidation proceedings: the debtor's property held by third parties without due grounds is revealed; the debtor has unrecovered outstanding accounts receivable; when the misappropriation of material assets or illegal withdrawal of money of the debtor is revealed, an investigation bodies file materials regarding initiation of a criminal case with the court; materials regarding the restitution of illegally withdrawn money are filed with the economic court, etc.

3. The period of liquidation proceedings may be extended in exceptional cases, upon an application of persons participating in a bankruptcy case (the list of such persons is specified in Art.36). Along with this, this Law does not limit the term for which liquidation proceedings may be extended, but entitles the court to decide the extend term at its own discretion. However, in order to rule the longest period of liquidation proceedings including the extended term, Paragraph 30 of the Resolution of the SEC Plenum No.142 provides that the extended term of liquidation proceedings should not exceed one year. It is necessary to note that the above Resolution expands the range of persons eligible to apply to the economic court for the extension of the period of liquidation proceedings. In particular, the above Resolution lists local government authorities, and the state bodies for bankruptcy proceedings, regardless of whether they are a person participating in a bankruptcy case, and also the creditors' meeting.

As is marked above, an application for the extension of the period of liquidation proceedings may be filed by persons participating in the bankruptcy case, but in practice such applications are usually filed by the liquidation manager on the ground of a resolution of the creditors' meeting. The application is filed in and considered by the economic court in the manner by Article 129 of the Code of Economic Procedure, i.e. there must be a hearing session of the economic court, which summons persons participating in a case.

4. A ruling to extend the period of liquidation proceedings may be appealed or protested. According to Paragraph 21 of the Resolution of the SEC Plenum No.142, complaints (applications) and protest against the extension of the period of liquidation proceedings must be considered in the manner established by the Code of Economic Procedure.

Article 125. Consequences of Initiation of Liquidation Proceedings

- 1 From the moment when the economic court renders a decision to declare the debtor bankrupt and initiate of liquidation proceedings:**
- transactions which are to alienate the debtor's property or to transfer it for the use of third parties may be made only in the manner established by this Chapter;
 - all monetary obligations and deferred mandatory payments of the debtor shall be deemed to mature;
 - penalties (fines, late payment interest) and interest on all types of indebtedness shall terminate to accrue;
 - information on the financial situation of the debtor shall not be categorised as confidential information (including commercial secret);
 - all restrictions on attachment of the debtor's property shall be removed;
 - the execution of all execution documents shall terminate. All claims for monetary obligations and mandatory payments, other property claims may be lodged to the debtor only within the framework of liquidation proceedings, except claims for the recognition of ownership right, for the compensation for moral damage, for the repossession of property held unlawfully by other parties, for the restitution of unjust enrichment, for the invalidation of transactions and the application of consequences of the invalidity thereof and for current payments.
- 2 Execution documents the execution of which has terminated in accordance with Item 6 of Paragraph 1 of this Article must be transferred from execution officers to the liquidation manager in the manner established by the legislation. All obligations of the debtor may be performed only within the framework of liquidation proceedings.**
- 3 From the date when the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, management bodies of the debtor shall be dismissed from functions on management and disposal of the debtor's property if no such dismissal has ever been made; the powers of the debtor's manager shall terminate (the labour contract of the debtor's manager shall terminate); management of the debtor's affaires shall be imposed on the liquidation manager; and the powers of the owner in respect of management and disposal of the debtor's property shall also terminate. The liquidation manager shall issue an order to terminate the labour contract of the debtor's manager or to transfer the debtor's manager to another job.**
- 4 In the course of liquidation proceedings, participants (founders) of the debtor shall have the rights of a person participating in a bankruptcy case in cases established by this Chapter.**

This Article provides for consequences of the declaration of the debtor's bankruptcy and initiation of liquidation proceedings.

1. The consequences stipulated in this Article take effect on the date when the economic court renders a decision to declare the debtor bankrupt. It should be noted that from this moment transactions related to the alienation of the debtor's property or its transfer for the use of third parties can be performed solely in the manner provided by this Chapter. It means that only the liquidation manager has powers to dispose of the debtor's property (Art.128), while transactions and sales of the debtor's property must be carried out upon the consent of the creditors' meeting (Art.129). With this:

- all monetary obligations and deferred mandatory payments of the debtor are considered to mature. Thus, from the moment of the declaration of the debtor enterprise's bankruptcy and initiation of liquidation proceedings, all monetary obligations and mandatory payments which have arisen before the initiation of liquidation proceedings mature. This provision mentions only monetary obligations, and accordingly other obligations do not mature. The rationale behind this consequence is a specific feature of liquidation proceedings, where it is necessary to fix and solve the property-based relations of the debtor in connection with its liquidation. Therefore, after liquidation proceedings start, there are no creditors with monetary claims the due date of which has not yet come. Creditors with claims which have matured, but not been included in the creditors' register earlier are authorised to lodge their claims with the liquidation manager within the term determined by this court receiver in the announcement on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings. According to Paragraph 2 of Article 127, this term may not be less than two months from the date of the publication of the announcement. Superpriority claims, which are to be preferentially satisfied, should be lodged as well, if they arise before the initiation of liquidation proceedings. It should be mentioned that creditors with claims under copyright agreements, claims related to labour law and claims for alimony are not required to be lodged in other bankruptcy processes, but must be lodged with the liquidation manager during liquidation proceedings in order to be included in the creditors' register, because they cannot be satisfied individually but discharged in the first priority in the course of liquidation proceedings (Art.134,Para.2). As to moral damage (this Article,Para.1), it is not necessary to lodge their claims, as they are preferentially satisfied as superpriority claims, regardless of the order of priority of other claims;
- penalties (fines, late payment interest) and interest on all types of indebtedness terminate to accrue. In this respect, only the interest which is considered as financial sanctions, i.e. interest which is subject to payment because the debtor has defaulted or inadequately performed its obligations under a transaction shall cease to be charged. They are interest stipulated by legislation or by contracts, or interest charged according to Article 327 of the Civil Code;
- information on the financial condition of the debtor are no longer categorised as confidential information (including commercial secret). This provision is the principle of the bankruptcy institute as it emphasises that from the moment of the declaration of the debtor's bankruptcy, information about this is transferred from the area of private (individual) interests to the category of public interests. According to this provision, all persons participating in a bankruptcy case may, under Article 36, access documents related to liquidation proceedings, i.e. these persons are allowed to know the financial documentation that the liquidation manager has. At the same time, it is necessary to point out that information available is only that about the debtor's financial condition. Information which the debtor possesses concerning technological, design secrets or other know-how remains confidential;

- all restrictions on attachment of the debtor's property are removed. However it does not mean that anyone can now attach the debtor's property, but means that all measures taken earlier to safeguard property lose their force, because the court receiver must repay creditors' claims by selling out the property;
 - the execution of all execution documents terminates. According to this Paragraph, the execution of execution documents, including those which should have been enforced during supervision, judicial rehabilitation or external management should terminate. After the declaration of the debtor's bankruptcy, all claims for monetary obligations, mandatory payments and other property claims may be lodged with the debtor only within the framework of liquidation proceedings. "Other property claims" mean, inter alia, any non-monetary claims which must be converted by the court receiver in term of money and included in the creditors' register. In this regard, this Law makes exceptions with respect to claims for the recognition of ownership right, for the compensation for moral damage, for the repossession of property in unlawful possession of other parties, for the restitution of unjust enrichment, for the invalidation of transactions and the application of consequences of the invalidity thereof. All claims listed as exceptions may be lodged not within the framework of liquidation proceedings, but independently.
2. Execution documents the execution of which has terminated in accordance with Item 6 of Paragraph 1 of this Article should be given from execution officers to the liquidation manager. For this purpose, the liquidation manager must, on the ground of the economic court decision to declare the debtor bankrupt and initiate liquidation proceedings, apply to the Department on Execution of Judicial Acts for requesting the transfer to himself/herself of execution documents which execute judgement or titles of debt over the debtor's property. Creditors' claims which are granted execution documents are satisfied in the process of liquidation proceedings in order of priority provided by Articles 133 and 134.
 3. When the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, the powers of management bodies of the debtor to manage and dispose of the debtor's property terminate, and they must be dismissed from the functions on management and disposal of the debtor's property, if no such dismissal has ever been made. Participants (founders) of the debtor possess the rights of a person participating in a bankruptcy case in the course of liquidation proceedings, in the cases established by Chapter VII (this Article,Para.4) , or their representative is recognised to be such person (Art.36,Para.2).

The powers of the debtor's manager terminate (the labour contract of the manager terminate). All powers to dispose of the debtor's property are assigned to the liquidation manager. In pursuance to this rule, the liquidation manager must issue an order to terminate the employment contract of the debtor's manager or to transfer him/her to another position. Practically, they occur at one time, i.e. the court receiver issues an order which states that the manager's employment contract terminates or he/she is moved to another post on the X date (the date when the order is handed over).

From Articles 75, 80 and 123, it follows that in case the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, the interim receiver, the rehabilitation manager or the external manager (depending on the process before liquidation proceedings) performs the duties of the liquidation manager until the liquidation manager actually takes office.

The powers of the property owner of the debtor for administration and disposal of property terminate as well, as all such functions pass to the liquidation manager.

4. During liquidation proceedings, participants (founders) of the debtor possess the rights of a person participating in a bankruptcy case in cases established by Chapter VII of this Law, that is, when they receive the debtor's property which is left unsold, according to Paragraph 11 of Article 134 and Paragraph 1 of Article 143. It means that any of them may be involved in a bankruptcy case (if necessary). However, according to Article 134, they may be a creditor of the fifth priority, in respect of claims for dividends which have already occurred, but not been paid yet. This provision is applied to the property owner of the debtor as well.

Article 126. Liquidation Manager

When rendering a decision to declare the debtor bankrupt, the economic court shall appoint a liquidation manager in the manner envisaged for the appointment of an external manager. In case an enterprise the charter capital of which partially or wholly belongs to the state is declared bankrupt, a candidate for a liquidation manager may also be proposed by the state body for bankruptcy proceedings.

This Article provides for the procedure to appoint the liquidation manager.

1. The liquidation manager is a court receiver in charge of administering the liquidation proceedings of the debtor declared bankrupt. The basic requirements to court receivers, their rights and obligations, liabilities for actions, and payment of their remuneration are provided in Articles 18, 19, 21 and 22. A candidate for a liquidation manager is put forward and proposed to the economic court in compliance with the rules provided by Articles 74 and 94, i.e. those set for proposal and appointment of an external manager. Usually a candidate for a liquidation manager is originally proposed by the creditors' meeting, but it is the court that really appoints a court receiver (Art.95). If a candidate for a liquidation manager is not proposed at the time when the court renders a decision to declare the debtor bankrupt is rendered, the creditors' meeting may propose to the economic court a candidate after the court renders the decision. In case no candidate is proposed by the creditors' meeting, the economic court appoints a liquidation manager from candidates proposed by the state body for bankruptcy proceedings.

This Article marks especially that a candidate for a liquidation manager may be proposed by the state body for bankruptcy proceedings in case of the declaration of bankruptcy of the debtor enterprise the charter capital of which partially or wholly belongs to the state. In addition, however, when the creditors' meeting has proposed no candidate for a liquidation manager, a candidate may be proposed by the state body for bankruptcy proceedings, regardless of whether the charter capital of the debtor belongs to the state or not.

A ruling to appoint a court receiver may be appealed or protested. In case of appeal, this does not suspend immediate execution of the ruling. Persons participating in a bankruptcy case have the right to appeal or protest against such ruling. The possibility of appealing against a ruling to appoint a liquidation manager is also stipulated in the Resolution of the SEC Plenum No.142 (Para.21), where it is provided that a ruling to appoint (dismiss, replace) court receivers is appealed (protested) in the manner stipulated by this Law. If the liquidation manager is appointed at the time of the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, his/her appointment is specified in the decision of the economic court to declare the debtor bankrupt. Persons participating in a

bankruptcy case may appeal in part against this judicial act, regarding the appointment of a liquidation manager, while the public prosecutor may protest against it as well, in the manner stipulated by this Law, in case they disagree to the appointed court receiver.

**Article 127. Publication of Information on Declaration
of Debtor's Bankruptcy and Initiation of Liquidation Proceedings**

- 1 Information on the declaration of the debtor' bankruptcy and initiation of liquidation proceedings shall be published by the liquidation manager in the manner envisaged by Articles 52 and 53 of this Law.**
- 2 Publication of information on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings must contain:**
 - the name (surname, name, patronymic) and other details of the debtor declared bankrupt;
 - the name of the economic court which considers a bankruptcy case and its case number;
 - the date of the decision to declare the debtor bankrupt and initiate liquidation proceedings;
 - the period for lodging creditors' claims, which may not be less than two months from the date of the publication;
 - a postal address where creditors lodge their claims against the debtor;
 - information on the liquidation manager.
- 3 Information on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings must be forwarded by the liquidation manager for publication in an official gazette within ten days after the liquidation manager is appointed.**

This Article provides the procedure for publishing a notice on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings.

1. Paragraph 1 of this Article provides that information on the declaration of the enterprise debtor' bankruptcy and initiation of liquidation proceedings is published by the liquidation manager in the manner envisaged by Articles 52 and 53. Along with this, Paragraph 3 of this Article sets the specific term within which this information must be published.
2. Paragraph 2 of this Article lists information which must be specified in the publication. The list is imperative, but not exhaustive. The liquidation manager has the right to specify in the notice other information related to liquidation proceedings.

The term for creditors to lodge their claims must be determined by the liquidation manager. For purpose of determining this term, the liquidation manager takes into account the period of liquidation proceedings set by the court, however, this term should not be less than two months from the date when the information is published, in any case.

3. Paragraph 3 of this Article provides an obligation of the liquidation manager to publish the declaration of the debtor's bankruptcy and initiation of liquidation proceedings not later than ten days, i.e. it is considered in this case that the overall term including the delivering of information to a publishing agency and the fact of the publication should not be more than ten days, which is different from the general rule provided in Article 52. Failure of the liquidation manager to fulfil these requirements may entail his/her liabilities (including liabilities under Art.21).

Article 128. Rights and Obligations of Liquidation manager

- 1 From the date when the liquidation manager is appointed, all powers to manage the debtor's affaires and dispose of the debtor's property shall pass to the liquidation manager.**
- 2 The liquidation manager is entitled to:**
 - dispose of the debtor's property in accordance with Article 101 of this Law;
 - terminate labour contracts of the debtor's employees, and of the debtor's manager;
 - declare to refuse to fulfil contracts of the debtor in the manner established by Article 102 of this Law;
 - file lawsuits for the invalidation of transactions made by the debtor when there are grounds for the invalidation envisaged by the legislation;
 - lodge claims against third parties which are subsidiarily responsible in accordance with the legislation for monetary obligations and (or) mandatory payments of the debtor in connection with bringing the debtor to bankruptcy. The amount of such claims shall be determined based on the difference between the sum of creditors' claims and the liquidation estate. Collected money shall be included in the liquidation estate and may be used only for the satisfaction of creditors' claims in order of priority established by Articles 133, 134 and 169 of this Law.
- 3 The liquidation manager may also have other rights in accordance with the legislation.**
- 4 The liquidation manager shall be obliged to:**
 - place the debtor's property under his/her management, take its inventory, evaluate it, and take measures to preserve it;
 - analyse the financial situation of the debtor;
 - convene the creditors' meeting and creditors' committee;
 - take measures to collect credits of the debtor;
 - protect rights and legitimate interests of the debtor's employees when the debtor is liquidated, and notify the forthcoming termination of their labour contracts to them;
 - maintain the creditors' register and consider creditors' claims;
 - take measures to search, reveal and recover the debtor's property held by third parties;
 - entrust documents of the debtor subject to keeping in accordance with the legislation for the purpose of keeping.
- 5 The liquidation manager may also bear other obligations in accordance with the legislation.**
- 6 Management bodies of the debtor (the external manager) shall, within three business days from the date when the liquidation manager is appointed, ensure the transfer of the debtor's accounting and other information, seals and stamps, material and other valuables to the liquidation manager. In case they fail to perform this obligation, management bodies of the debtor (the external manager), and the manager of the legal entity debtor and the individual entrepreneur debtor shall bear responsibilities in accordance with the legislation.**

This Article provides the rights and obligations of the liquidation manager, which are complementary to the general provisions of the rights and obligations of court receivers in performing their task according to this Law.

1. From the date when the court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, the debtor's powers to manage its activities and dispose of property terminate and pass to the liquidation manager (Art.125, Para.3). In case the liquidation manager is not appointed at the rendition of the decision, duties of the liquidation manager are carried out by a court receiver of a previous process, who performs the functions of the debtor to manage activities and dispose of the debtor's property, up to the appointment of the liquidation manager (Art.75, Para.4; Art.80, Para.5; Art.123, Para.4).

Authorities of the liquidation manager are provided in the similar manner with regard to the external manager (Art.97).

2. The liquidation manager exercises the powers of the manager of the legal entity debtor, has the right to dispose of the debtor's property, within the limitations stipulated by Articles 101, 129, 135 and 136, i.e. the property owner of the debtor or bodies authorised by founding documents have no right to pass a resolution to limit the liquidation manager's powers to dispose of the debtor's property or limit these powers in any other way, except for the cases stipulated by this Law.

Unlike the powers of the external manager who should obtain the consent of the creditors' meeting (creditors' committee) only when he/she makes large transactions and transactions with interested persons, it is stipulated that the approval of the creditors' meeting should be secured to the procedure and term of sales of all property in liquidation proceedings (Art.135). In practice, the liquidation plan, which is approved by the creditors' meeting, provides the procedure and terms of sales of the debtor's property, so that the liquidation manager does not have to ask for the consent of the creditors' meeting each time (Arts.129,135 and 136), when the liquidation manager subsequently carries out sales of the debtor's property. However, with regard to transactions with interested persons, the consent of the creditors' meeting is required in any case.

The liquidation manager has the right to terminate employment contracts of employees, including the debtor's manager, which is regulated by the labour law.

With a view of safeguarding the debtor's property and protecting of creditors' interests, the liquidation manager is entitled to: refuse to fulfil the debtor's contracts in accordance with Article 102; to file lawsuits for the invalidation of transactions performed by the debtor and to apply for the application of consequences of the invalidity of void transactions when there are grounds provided by the legislation (including grounds stipulated by Art.103); to lodge claims against third parties which are subsidiarily responsible in accordance with the legislation for monetary obligations and (or) mandatory payments of the debtor in connection with bringing the debtor to bankruptcy (for example, on Arts.48 and 67, Civil Code).

This Article establishes the procedure of determining the amount of subsidiary liabilities. Their amount is determined, by a difference between the amount of creditors' claims and the liquidation estate. According to provisions of this Article, funds recovered or collected are included in the liquidation estate and may be used only for the satisfaction of creditors' claims in order of priority provided by Articles 133, 134 and 169.

In practice, however, the rule concerning a subsidiary liability of persons is rarely applied. First, it is required to prove wrongful conduct (omission) of third parties which brought the debtor to bankruptcy. Second, it is impossible to determine the real damage caused thereby until the liquidation estate is fully formed, when the difference between the amount of creditors' claims and that of liquidation estate can be fixed. This is only possible at the end of liquidation proceedings.

3. The liquidation manager may have other rights related to the performance of him/her duties.

4. Paragraph 4 of this Article lists obligations of the liquidation manager to:
- place the debtor's property under his/her management, take its inventory and evaluate it and take measures to preserve it. This means that all actions related to receiving the debtor's property under management, examining its quantity, quality and other parameters must be carried out by the liquidation manager. An inventory of property and its evaluation must be carried out by the liquidation manager without fail according to Article 131 (even if they have been carried out shortly before the declaration of the debtor's bankruptcy). Besides, the liquidation manager should ensure the safety of the taken property, i.e. take legal and actual measures to safeguard property. For example, they may include measures to engage security companies to secure property, or to entrust property to third parties for storage, etc.;
 - analyse the financial situation of the debtor. This rule is an innovation of this Law. This rule is linked with Article 141, which enables bankruptcy proceedings to shift from liquidation proceedings to external management. If during the financial analysis, the liquidation manager reveals sufficient grounds for the restoration of the debtor's financial ability by applying external management, the liquidation manager is obliged to so arrange, according to requirements of Paragraph 2 of Article 141. In addition, the analysis can be conducted at various stages of liquidation proceedings for purpose of the sale of the entire enterprise debtor or sales of separate parts of property or the substitution of assets, etc.;
 - convene the creditors' meeting and creditors' committee. This rule corresponds to Articles 12 and 19;
 - take measures to collect credits of the debtor, namely, recover accounts receivable of the debtor and include them in the liquidation estate for the proportional satisfaction of creditors' claims. For purpose of this duty, when taking inventory of the debtor's assets, the liquidation manager must clarify the structure of accounts receivable, taking into account the time limit to bring lawsuits, the location of persons owing to the debtor, the possibility of recovering them;
 - protect rights and legitimate interests of the debtor's employees of the debtor in the debtor's liquidation, and notify to them the forthcoming termination of their labour contracts. The dismissal of employees is an imperative sequence in the liquidation of the bankrupt enterprise. However, according to the fact that this Law provides the sale of the debtor's property as a property complex (business) (Art.135), the substitution of assets (Art.137), or the possibility of an amicable agreement, the dismissal of employees is not necessarily required. The rule of this Paragraph may be treated as follows: the dismissal of the debtor's employees is a right of the liquidation manager, but he/she is **obliged** to notify to employees **their forthcoming** dismissal. This Law does not provide the period of such notification, so that the liquidation manager must, under Article 102 of the Labour Code, notify the dismissal at least two months before;
 - work on the creditors' claims, i.e. analyse their claims and maintain the creditors' register. This Law does not envisage the period in which the liquidation manager must consider creditors' claims. It is considered, however, that creditors' claims should be considered by analogy with the period and manner envisaged in Article 99. In this case, if the liquidation manager neglects this duty to consider creditors' claims, creditors may file their complaints with the court, which are considered according to Articles 59 and 100;
 - take measures to search, reveal and recover the debtor's property held by third parties. These measures are aimed at swelling the liquidation estate;

- entrust documents of the debtor which are subject to mandatory keeping in accordance with the legislation.

5. The liquidation manager may have other obligations in administering liquidation proceedings, according to the legislation (for example, scheduling liquidation – Art.129, evaluating property – Art. 131).

Additionally, Paragraphs 1 and 4 of Article 139 provide the following obligations: to submit monthly to the creditors' meeting (creditors' committee) (and to the economic court upon request) a report on his/her activity, information on the debtor's financial condition and its property at the moment of the initiation of and during liquidation proceedings.

Paragraphs 40 through 57 of the Regulation on court receivers also provides a series of actions which should be regularly carried out by the liquidation manager.

6. To ensure the performance of powers by the liquidation manager, the management bodies of the debtor or the external manager should, within three business days from the date of the appointment of the liquidation manager, transfer the debtor's accounting and other information, seals and stamps, material and other valuables to the liquidation manager. This Law also provides that in case they default the above duty, management bodies of the debtor (the external manager), the manager of the legal entity debtor and the individual entrepreneur debtor bear responsibilities in accordance with the legislation.

Article 129. Liquidation Plan of Legal Entity Bankrupt

- 1 The liquidation plan of the bankrupt being a legal entity (hereinafter referred to as 'the legal entity bankrupt') must provide:**
- **information on the financial situation of the bankrupt;**
 - **the conditions, procedure, priority and proportionality of satisfaction of creditors' claims;**
 - **the consideration of the interests of the property owner of the bankrupt and its employees;**
 - **the list of property subject to sale;**
 - **the date, time, place and method of sales of property;**
 - **conditions of payment for judicial expenses, the liquidation manager's remuneration, experts' and other persons' activities;**
- 2 The liquidation plan of the legal entity bankrupt must obtain the agreement of the creditors' meeting and shall be deemed to be approved if creditors presenting not less than two thirds in value of claims vote for it. If the liquidation plan is not approved and creditors do not provide their own liquidation plan of the legal entity bankrupt within the established period, the liquidation manager shall approve his/her own plan.**
- 3 If the debtor itself has initiated the bankruptcy case, it is entitled to provide its own liquidation plan.**
- 4 By virtue of the approved liquidation plan of the legal entity bankrupt, property shall be sold and creditors' claims against the debtor shall be satisfied in the manner established by Articles 133, 134, 135 and 169 of this Law.**

This Article outlines the content and the procedure of the consent of the creditors' meeting to the liquidation plan of the legal entity debtor. The liquidation plan of the legal entity debtor is the basic

document prepared by the liquidation manager, in line with which the liquidation manager administers liquidation proceedings.

1. The liquidation manager prepares a liquidation plan of the legal entity debtor. Paragraph 1 of this Article provides that the liquidation plan should contain information and data on the financial situation of the bankrupt, the conditions, procedure, priority and proportionality of satisfaction of creditors' claims, the consideration of interests of the property owner and employees of the bankrupt, the list of property subject to sale, the date, time, place and method of sales of property (as required by Art.135), conditions of payment for judicial expenses, for the liquidation manager's remuneration and for experts' and other persons' activities. This Law does not set a definite term for developing a liquidation plan and securing the consent to the plan, nevertheless it might make sense that after the inventory of property and the financial analysis of the debtor's financial activities, the procedure and schedule of sales of the debtor's property are agreed by creditors, and then the liquidation plan is prepared and obtains the consent of creditors. Since the issue of sales of the debtor's property is a part of the liquidation plan and considered to be fundamental in the plan, the liquidation manager must, first of all, secure the consent of the creditors' meeting regarding this issue, in order to implement the mechanism of sales. After this issue obtains the consent, the issue must be reflected in the liquidation plan. The term for creditors to give the consent is not specified in the judicial act, however, reasonably this term cannot be long, as the general period of liquidation is limited, and the liquidation manager and creditors are interested in early sales of property and early satisfaction of claims.

2. Paragraph 2 of this Article provides that, unlike in external management where the external management plan is approved by the creditors' meeting, the liquidation plan should only secure the consent of the creditors' meeting. In this case, it should be noted that the liquidation plan should be supported by creditors representing not less than two thirds in value of the total claims of creditors included in the creditors' register. In liquidation proceedings, the support of a larger number of creditors is required. The difference here is that under the liquidation plan the whole property is to be sold and the enterprise ceases its activities, while in external management there is the possibility of recovering the debtor's financial situation and the enterprise may continue to trade. In case the creditors' meeting does not grant the consent to the liquidation plan, creditors are authorised to propose their own liquidation plan.

This Article does not provide exactly the timelimit by which creditors must propose the liquidation plan when they do not agree to the plan offered by the liquidation manager. In this case, it would be expedient for creditors to assign one of them in charge of developing a liquidation plan by a resolution of the creditors' meeting and to determine a deadline of its proposal to the creditors' meeting for consideration. If creditors do not propose a new liquidation plan within the time determined by themselves, the liquidation manager approves his/her own liquidation plan. In this way, the mentioned collision will be eliminated

3. If the debtor itself has initiated a bankruptcy case, it may provide its own liquidation plan. In this case, creditors consider two alternatives of the liquidation plan: the one proposed by the liquidation manager, and the other prepared by the debtor. In case the creditors' meeting do not agree to either, creditors may offer their liquidation plan, according to Paragraph 2 of this Article.

4. Paragraph 4 of this Article provides that by virtue of the approved liquidation plan of the legal entity bankrupt, its property is sold (according to Art.135) and creditors' claims against the bankrupt are satisfied in the manner established by Articles 133, 134, 135 and 169.

Article 130. Liquidation Estate

- 1 All assets of the legal entity bankrupt, regardless of whether it is listed in its balance sheets or not, shall form the basis of the liquidation estate.**
- 2 The following shall not be included in the liquidation estate:**
- property privately owned by the debtor's employees;
 - property which the debtor utilises on a leasehold right under its trust management;
 - assets subject to security, except as envisaged by Paragraph 1 of Article 133 of this Law;
 - goods which are in custody of the debtor by virtue of such obligation⁵²;
 - other property the ownership of which the debtor does not have in accordance with the legislation.
- 3 If objects of social and utility infrastructure which may not be used for other purposes, including commercial purposes, are listed in the balance sheet of the debtor, such objects shall be transferred by the liquidation manager to local bodies of state power at the residual value, within one month from the date when the debtor is declared bankrupt.**

This Article defines one of the basic concepts of liquidation proceedings of a legal entity bankrupt—the liquidation estate. All efforts of the liquidation manager must be directed to forming the liquidation estate.

1. Paragraph 1 of this Article provides that the liquidation estate is the whole property of the bankrupt debtor, regardless of whether it is indicated in the balance sheet of the debtor or not. In this case, the liquidation manager should not be satisfied with only available property, but should take measures to search and reconstitute the debtor's property held by third parties (this duty is stipulated in Art.128, Para.4, Item 7).
2. Paragraph 2 of this Article provides property that is excluded from the liquidation estate. It is, basically, property the ownership of which the debtor does not have: property privately owned by the debtors' employees; property used by the debtor on a leasehold right under its trust management; assets subject to security, except as envisaged by Paragraph 1 of Article 133 (monetary funds left after the satisfaction of secured claims are included in the liquidation estate); goods which are in custody of the debtor; other property the ownership of which the debtor does not have in accordance with the legislation. The special attention in this Paragraph is given to property subject to security. Although assets subject to security are property possessed by the debtor in the form of ownership, proceeds from their sales are not included in the liquidation estate, and directed to repaying secured claims, according to Paragraph 1 of Article 133.
3. If objects of social and utility infrastructure which may not be used for other purposes, including commercial purposes, are listed in the balance sheet of the debtor, these objects are transferred by the liquidation manager to local bodies of state power at the residual value, within a month from the date

⁵² Art.391, CC

of the declaration of the debtor's bankruptcy. According to Paragraph 1 of the Resolution of the Cabinet of Ministers "On measures for increasing the efficiency of restructuring and financial rehabilitation of economically insolvent enterprises" dated 18 Apr. 2003, No.188, it is provided that by virtue of a resolution of the Council of the Demonopolisation Committee, enterprises applied by bankruptcy processes shall transfer the following in their balance sheet as of the current condition in the prescribed manner:

- residential houses, dormitories, kindergartens and other objects of social infrastructure, to be transferred onto the balance of Khokimiyats (local municipalities) of cities and areas at the place of their location;
- objects of industrial infrastructure for the social purpose (objects of an electro network facilities, water supply, transport communications, etc.) to be transferred onto the balance of enterprises of the relevant economic associations according to their functional attributions. The above Resolution provides that objects of social and industrial infrastructure for the social purpose transmitted from the balance onto the balance according to the decision shall not be subject to value added tax for the transmitting parties or subject to income tax (profit tax) for the accepting parties.

The fact of transfer (alienation) of the above property should be reflected in the liquidation plan, because it is necessary to form the liquidation estate exactly, by assessing the value of the above property and the residual value of the debtor's property. A transfer (alienation) of the above property does not require an approval of the creditors' meeting, because such transfer (alienation) is provided by this Law and other relevant legislations.

Article 131. Evaluation of Debtor's Property

- 1 In the course of liquidation proceedings, the liquidation manager shall inventory the debtor's property and determine its value. In order to perform such activity, the liquidation manager shall be entitled to engage appraisers and other specialists at the expenses of the debtor, unless other source of payment is established by the creditors' meeting or creditors' committee. When evaluating property of an enterprise the charter capital of which partially or wholly belongs to the state, appraisers must be engaged. The creditors' meeting or creditors' committee of the debtor shall be entitled to appoint a person who takes responsibility for payment for such services if he/she agrees, and subsequently recovers expenses from the debtor's property preferentially, regardless of the order of priority of other claims.**
- 2 If payment is made with immovable property in the course of liquidation proceedings, such property shall be evaluated by an appraiser before its sale, unless otherwise established by the creditors' meeting or creditors' committee.**
- 3 The debtor's property offered as security must be evaluated by an appraiser in a mandatory manner.**

This Article regulates the evaluation of the debtor's property. This Article outlines the issues that the liquidation manager performs duties to take inventory and determine the value of the debtor's property (Art.128), and also provides for cases of the compulsory engagement of appraisers. The evaluation is carried out by a licensed appraiser to determine the initial sale prices of property put out to tender (including closed tenders) (Art.110,Paras.3 and 8; Art.135,Para.7). In these cases, an appraiser is

engaged in order to prevent wrongful actions of persons who carry out evaluation, which should be paid out of the debtor's property, while the debtor enterprise does not have enough free funds to cover various expenses.

1. The debtor's all property is subject to inventory and evaluation. The evaluation of property, as a rule, is carried out by appraisers, with whom the liquidation manager signs a contract and who are paid for their services from the debtor's property, unless other source of payment is established by the creditors' meeting (creditors' committee) (Para.6, the Regulations on the procedure for evaluation and realisation of property of enterprises under restructuring and bankruptcy process). In addition, this Law entitles the creditors' meeting (creditors' committee) to determine a person on whom, upon his/her consent, an obligation to pay for evaluation is assigned and who is later compensated from the debtor's property, as a superpriority claim, regardless of priority of other claims.

Besides, Paragraph 1 of this Articles provides for the compulsory evaluation and engagement of appraisers, if the charter capital of the debtor enterprise partially or wholly belong to the state (Para.6, the Regulations on the procedure for evaluation and realisation of property of enterprises under restructuring and bankruptcy process), because of the necessity of maintaining the control over and supervising the state's interests.

2. Paragraph 2 of this Article provides a case where it is mandatory that the debtor's property is evaluated by an appraiser. That is, when payment is made with immovable property in the course of liquidation proceedings, this immovable property should be evaluated by an appraiser before its sale, unless otherwise established by creditors' meeting or creditors' committee.

The purpose of this provision is to prevent sales of property at unreasonable price and the infringement of creditors' interests.

3. Paragraph 3 of this Article also specifies the mandatory evaluation by an appraiser of the debtor's property which is subject to security. This rule is aimed at protecting interests of secured creditors and also preventing the infringement of interests of other creditors, namely at preventing the unreasonable evaluation of secured property and the infringement of interests of secured creditors and other unsecured creditors.

Article 132. Debtor's Accounts in the Course of Liquidation Proceedings

- 1 In the course of liquidation proceedings, the liquidation manager shall be obliged to use a single Soum account and single foreign currency account of the debtor (hereinafter referred to as 'the debtor's single accounts'). Other accounts of the debtor in banks which are known as of the date of the initiation of liquidation proceedings and those revealed in the process of liquidation proceedings must be closed by the liquidation manager as far as they are revealed. The balance in such other accounts of the debtor must be transferred to the debtor's single accounts.**
- 2 Monetary assets received in the course of liquidation proceedings shall also be deposited in the debtor's single accounts.**
- 3 Payments to creditors shall be made from the debtor's single accounts in the manner envisaged by Articles 133, 134 and 169, and the following payments shall be made from the debtor's single accounts:**
 - expenses for remuneration of the liquidation manager;**

- **current utility and operational payments of the debtor;**
- **expenses for publication of announcements in the course of bankruptcy processes and for notification to the debtor's creditors;**
- **other expenses for carrying out liquidation proceedings.**

4 A report on the use of monetary assets of the debtor shall be provided by the liquidation manager to the creditors' meeting or creditors' committee at their request.

This Article establishes the procedure, in which the liquidation manager must open and use the single Soum and foreign currency accounts of the debtor (the debtor's single accounts) with a view of accumulating all monetary funds

1. The liquidation manager has the right either to open a new single account or to use the existing one, having closed all others. Other accounts of the enterprise debtor are subject to closure. In this connection, the liquidation manager should take measures to reveal all accounts of the debtor and to close them (except for the debtor's single accounts). Consequently, Paragraph 1 of this Article sets restrictions on the conclusion and performance of the bank service contract by the debtor declared bankrupt. In practice, the court receiver usually closes all accounts and opens a new single (Sum and foreign currency) accounts, as stipulated in this Paragraph.

All monetary funds in the debtor's other accounts should be deposited in the debtor's single accounts.

2. Paragraph 2 of this Article provides that monetary funds received during liquidation proceedings must be deposited in the debtor's single accounts. It is related to that the liquidation manager must use the debtor's single accounts in the course of liquidation proceedings under Paragraph 1 of this Article.
3. The debtor's single accounts serve for accumulating funds received in the course of liquidation proceedings, and also for paying creditors in order of priority stipulated by Articles 133, 134 and 169. The following payments must be made from the single accounts: expenses for remuneration of the liquidation manager; current utility and operational payments of the debtor; expenses for the publication of announcement in the course of bankruptcy processes and the notification of the debtor's creditors; other expenses associated with liquidation proceedings.
4. One of duties of the liquidation manager is to report to creditors (creditors' meeting or creditors' committee) on funds received and paid. A report of the liquidation manager on cash flow must be submitted immediately at the request of the creditors' meeting (creditors' committee).

Article 133. Satisfaction of Creditors' Claims Secured by Debtor's Property

- 1 Secured creditors' claims shall be satisfied by proceeds from sale of the debtor's property securing such claims (assets subject to security). The balance of proceeds in excess of the amount of secured claims shall be applied towards to satisfying other creditors' claims in order of priority established by Article 134 of this Law.**
- 2 If proceeds from sale of property securing claims (assets subject to security) prove to be insufficient to satisfy such secured creditors' claims in full, the outstanding part of such claims must be satisfied in order of priority established by Article 134 of this Law.**

3 If all the debtor's property is subject to security and proceeds from its sale prove to be less than or equal to the amount of secured creditors' claims, such claims shall be discharged after expenses and claims listed in Paragraph 1 of Article 134 of this Law, and salaries under payment documents are discharged⁵³.

This Article provides for the procedure for satisfying secured creditors' claims. As earlier emphasised (Art.130), property subject to security is not included in the liquidation estate. Such property is inventorised, evaluated and sold during liquidation proceedings separately from the rest of the debtor's property free from security.

1. Proceeds from the sale of property securing claims are not included in the liquidation estate, but firstly applied towards to repaying secured claims. When the sale price of a security is higher than the amount of secured claims, this balance is included in the liquidation estate and allocated among other creditors according to their priority provided in Article 134.
2. Paragraph 2 of this Article provides the procedure for settling with secured creditors, when proceeds from sale of property securing claims fall short of the amount of such secured claims. In this case, the liquidation manager satisfies the balance of claims in excess of the value of security from proceeds from sales of the liquidation estate. This part of the claims are paid in the third priority according to provisions of Paragraph 4 of Article 134. Security is deemed to terminate at the sale of secured property (Art.32, the Law "On Pledge").

It should be pointed out that the commencement of a bankruptcy case interferes with the right of secured creditors to enforce their security over property by themselves; therefore in bankruptcy proceedings the rules of Articles 27 and 28 of the Law "On Pledge" are not applicable. Sales of secured assets are carried out only by court receivers in the procedure stipulated by this Law. It should be noted that bankruptcy proceedings employ the particular institute of security, where security is given some advantages and differs from the usual security regulated by civil law. Besides, in bankruptcy proceedings, the priority of satisfaction stipulated by Articles 79 and 80 of the Law "On Execution of Judicial Acts and Acts of Other Authorities" does not apply. Thus, it is possible to conclude that the institute of security in bankruptcy proceedings has a special status, which differs from that under the Laws "On Pledge" and "On Execution of Judicial Acts and Acts of Other Authorities", as secured creditors have priority over other creditors in the course of satisfaction of claims.

According to the Law "On Pledge", there might be a situation where a secured creditor may request for property subject to security itself as payment, instead of money (Art.29,the Law "On Pledge"). The liquidation manager, after the permission of the creditors' meeting, may go on it. However, in view of Paragraph 3 of Article 131, there arises a question in case the estimated value of security is higher than that specified in its security contract. Unfortunately, the legislation does not adjust this problem. In this regard, not only a creditor who holds security over such property but also other creditors have the possibility to receive payment out of such property, therefore it is considered that if the estimated value of property subject to security is higher than the sum specified in its security contract, then such property must be realised.

⁵³ This paragraph was inserted in accordance with amendment on 20 Dec. 2005

3. Paragraph 3 of this Article is a newly employed provision and took effect on 20 December 2005. This rule applies only when security covers the whole property of the debtor enterprise. According to this provision, if proceeds from realisation of the whole property subject to security prove to be less than or equal to the amount of secured claims, such claims may be discharged only after the discharge of all expenses to be preferentially paid regardless of the order of priority of other claims and salaries are discharged.

In case all the debtor's property is subject to security and proceeds from sale of its property do not exceed the amount of claims secured by such property, if these proceeds are applied firstly towards to satisfying secured creditors according to Paragraph 1 of this Article, claims envisaged in Paragraph 1 of Article 134 and claims for salaries would not be satisfied, which would result in that the interests of creditors with the aforementioned claims are not protected. In order to protect social interests of the debtor's employees, this Paragraph provides that in case all the debtor's property is offered as security and proceeds from its sale prove inadequate or equal to the amount of secured claims, these proceeds should be directed for the repayment of claims stipulated by Paragraph 1 of Article 134 and salaries before the repayment of the secured claims,.

Article 134. Priority of Creditors' Claims

- 1 Judicial expenses, remuneration of court receivers, current utility and operational charges, and expenses for the insurance of the debtor's property shall be preferentially satisfied, regardless of the order of priority of other claims. Claims which arise after the commencement of a bankruptcy case and claims of citizens against the debtor for damage to life or health shall also be preferentially satisfied, regardless of priority of other claims in accordance with the legislation.**
- 2 The first priority of satisfaction shall be given to claims for mandatory payments and salaries under payment documents (execution documents); claims for alimony with execution documents providing for its satisfaction by way of transferring or paying money from an account of the obligator; claims for remuneration under copyright agreements ensuring the same priority of performance as the debtor's obligations on mandatory payments and obligations arising from labour law relations and relations equalled thereto; and compensation to citizens for damage caused to their property by crime or administrative violation⁵⁴.**
- 3 The second priority of satisfaction shall be given to claims for mandatory insurance⁵⁵ and for banks' loans and insurance of banks' loans.**
- 4 The third priority of satisfaction shall be given to secured creditors' claims.**
- 5 The fourth priority of satisfaction shall be given to unsecured creditors' claims**
- 6 The fifth priority of satisfaction shall be given to claims of shareholders.**
- 7 The sixth priority of satisfaction shall be given to all other claims.**
- 8 Claims of each priority shall be satisfied after the full discharge of claims of the previous priority.**
- 9 Where assets available to pay are insufficient to satisfy all claims of the same priority in full, these claims shall be satisfied in pro rata to the amount of each claim.**

⁵⁴ Art.784, CC

⁵⁵ Art.922,CC

- 10 Special announcement of the last payment shall be published in an official gazette.**
- 11 The residual property value after the satisfaction of creditors' claims and the reimbursement of expenses for conducting a bankruptcy case and also property that has not been disposed of in process of liquidation shall be received by founders (participants) or the property owner of the debtor being liquidated.**
- 12 Debts which have not been performed due to the insufficiency of property shall be deemed to be discharged.**

This Article regulates the priority of satisfaction of creditors' claims (except secured creditors' claims) and the procedure for reimbursing expenses associated with liquidation proceedings. In this case, the rules of Article 56 of the Civil Code are not applicable, because this Law sets the particular order of priority.

First, the most important provisions of this Article are going to be marked:

- claims of each priority are satisfied after the full discharge of claims of the previous priority. Thus, this provision forbids the satisfaction of claims against priority or in violation of the priority order provides by this Law.
- where proceeds from sales of the debtor's property are insufficient to satisfy fully all claims of one priority, these claims of this priority are satisfied in pro rata to the claim amount.
- creditors' claims which have not been satisfied due to the insufficiency of property are deemed to be discharged.

These requirements of this Law secure the principle of the proportional satisfaction of creditors' claims, specified in the concept of liquidation proceedings in Article 3.

1. Paragraph 1 of this Article provides that the following are considered as claims to be preferentially satisfied, regardless of the order of priority of other claims: judicial expenses, expenses for remuneration of court receivers, current utility and operational payments, expenses for insurance of the debtor's property, and also claims for obligations of the debtor which arise after the commencement of a bankruptcy case (namely, claims for current payments). It is necessary to point out that those creditors' claims which arise before the declaration of bankruptcy (the initiation of liquidation proceedings) but are lodged after the expiry of the term specified in the publication of the initiation of liquidation proceedings (not less than two months) are given the sixth priority, and so do mandatory payments which arise after the initiation of liquidation proceedings, according to Paragraph 3 of Article 138.

Claims for compensation for damage to life or health are satisfied according to the legislation, preferentially as superpriority claims, as well.

It is necessary to note that citizens' claims to whom the debtor is liable in damage to life or health are calculated in line with the Regulation "On compensation of employees for severe injury, occupational disease or other damage to health caused in the course of their performance of professional duties", approved by the CM Resolution dated 11 Feb. 2005, No.60. According to Article 1015 of the Civil Code for compensation for damage to life or health, the liquidation manager must make a capitalisation of compensation to be monthly paid to the victim as per the rules established by the legislation. This capitalised amount is calculated in line with the established rules, and if the debtor holds sufficient funds available for this purpose, the court receiver deposits the estimated amount in a special account of the authorised body which makes subsequent monthly

payments to persons to whom the debtor is liable in damage to life or health. If its capitalisation is not possible due to the debtor's insufficient property, the government pays compensation for damage (Art.1015,Para.4,CC).

Although this Paragraph does not explicitly provide, claims for indemnification of moral damage (Arts.1021 and 1022,CC) are also superpriority claims and preferentially satisfied.

2. Paragraph 2 of this Article provides for the procedure for satisfying claims given the first priority. These claims are the following: claims for mandatory payments and salaries under payment documents⁵⁶ (execution documents) (regardless of whether writs of execution are granted if salaries are confirmed by accounting documents, such as pay sheets); claims for alimony with execution documents providing for its satisfaction by way of transferring or paying money from an account of the obligator (Art.137, the Family Code); claims for remuneration under copyright agreements ensuring the same priority of mandatory payments and claims incurred from labour law relations and relations equalled thereto; and claims of citizens for compensation for damage caused to their property by crime or administrative violation. Since salaries are paid under pay sheets in the Republic of Uzbekistan, the abovementioned accounting documents are considered as payment documents, payment by virtue of which is stipulated in Paragraph 2 of this Article.
3. Paragraph 3 of this Article provides the procedure for satisfying claims of the second priority. These claims are the following: claims for mandatory insurance (Art.922,CC); claims for banks' loans and insurance of banks' loans (Art.744,CC).
4. Paragraph 4 of this Article provides for the procedure for satisfying of claims of the third priority. These are mentioned as secured creditors' claims. Here it is necessary to note that they are creditors' claims which used to be actually secured by property, but left unsatisfied, because proceeds from the sale of secured property prove inadequate to pay off secured claims in full; therefore, in essence, they are not secured by property. As regards this, there might appear a problem, when property free from security is sold, but property subject to security is not. Meanwhile, it would be only possible to satisfy claims of the first and second priority. Claims of each priority are satisfied after the full discharge of claims of the previous priority, according to Paragraph 8 of this Article. In this regard, when proceeds from sale of secured property are insufficient, the rest of claims must be satisfied from the liquidation estate in the third priority as is provide in Article 133, however, until secured property is actually realised, the liquidation manager cannot know the exact value of the property, which in turn indicates the amount of secured claims left unsatisfied, that is,the amount of the third priority claims. In practice, usually, only after all property is sold first and the liquidation estate is formed, settlements with creditors commence.
5. Paragraph 5 of this Article provides the procedure for satisfying claims of the fourth priority. These are claims of unsecured creditors.
6. Paragraph 6 of this Article provides for the procedure for satisfying claims of the fifth priority. They are claims of shareholders. It might not be appropriate that this Paragraph only referres to shareholders, which mean participants of only joint-stock companies. This Paragraph covers also claims for dividends which have been payable but not paid to founders (participants) and the property owner of the debtor enterprise being not only in the form of joint-stock company, but also in any other organisational-legal forms. This Paragraph does not apply to claims for the return of apportionment of shares, or for the residual property. These claims, except for situations provide in

⁵⁶ Instrument for demanding payment like bill and check

- Paragraph 4 of Article 103, are subject to satisfaction only after the full repayment of all creditors' claims (Art.134,Para.11).
7. Paragraph 7 of this Article provides the procedure for satisfying claims of the sixth priority. They include all other claims. This Paragraph corresponds to Paragraph 3 of Article 138. The sixth priority is given to creditors' claims which arise before the initiation of liquidation proceedings, but are lodged after the expiry of the term for lodging creditors' claims specified in the publication of liquidation proceedings, and also claims for mandatory payments which arise after the initiation of liquidation proceedings. According to Paragraph 4 of Article 103, in case of the invalidation of a transaction related to payment (apportionment) of shares, counterparties to this transaction (founders, the property owner) become a creditor of the sixth priority.
 8. Paragraph 8 of this Article sets a general rule, according to which claims of each priority are satisfied after the full discharge of claims of the previous priority. If property is not enough, the rule provided in Paragraph 9 of this Article is applied. The rule of this Paragraph is applied in case of set-off of claims and compensation to satisfy creditors' claims (Art.138,Para.4).
 9. Paragraph 9 of this Article provides that where proceeds of sale are insufficient for the full satisfaction of all claims of one priority, these claims are satisfied in pro rata to the claim amount. As an exception to this rule, it is possible to take the transfer of the debtor's property to a commercial bank according to the Resolution of the Cabinet Ministers dated 18 Apr.2003, No.188. In this case, a bank is obliged to satisfy in full claims stipulated in Paragraph 1 of Article 134 and to pay off wages payable.
 10. Paragraph 10 of this Article states that special announcement on the last payment is published in an official gazette. Any publication in bankruptcy proceedings is made with observance of requirements provided in Articles 52 and 53. This Law does not provide for the requirement of publishing information on the completion of liquidation proceedings.
 11. According to Paragraph 11 of this Article, the rest of property value after the satisfaction of creditors' claims and payment of expenses incurred in a bankruptcy case, and also property that has not been sold in process of liquidation are received by founders (participants) or the property owner of the debtor being liquidated. If the liquidated debtor is a joint-stock company, property and monetary funds are distributed as per the rules of Article 103 of the Law "On Joint-Stock Companies and Protection of Shareholders' Rights". If the abovementioned persons do not accept the remaining property, it may be transferred to local government authorities (Art.143,Para.1).
 12. Creditors' claims which have not been satisfied due to the insufficiency of property are deemed to be discharged.

Article 135. Sales of Debtor's Property

- 1 After inventorying and evaluating the debtor's property, the liquidation manager shall proceed to sales of such property at the open tender⁵⁷.**
- 2 The procedure and terms (schedule) for selling the debtor's property must be approved by the creditors' meeting or creditors' committee.**

⁵⁷ The word "unless otherwise established by the creditors' meeting or creditors' committee" was deleted in this paragraph in accordance with amendment on 20 Dec. 2005

- 3 If the creditors' meeting or creditors' committee does not approve the procedure and terms (schedule) for selling the debtor's property proposed by the liquidation manager within one month from day when the liquidation manager submits such proposal, the creditor's meeting or creditors' committee or the liquidation manager shall be entitled to apply to the economic court for the settlement of this matter. Upon the results of consideration of the matter, the economic court shall either approve the procedure and terms (schedule) for selling property or dismiss the liquidation manager from his/her duties.**
- 4 If circumstances which require amendments of the terms (schedule) for selling property arise in the course of liquidation proceedings, the liquidation manager shall be obliged to elaborate the relevant proposals on amendments of the terms (schedule) and submit them to the creditors' meeting or creditors' committee within one month from the date when such circumstances arise.**
- 5 The debtor's property subject to restrictive trade may only be sold at the closed tender. Persons qualified under the legislation to own such property in the form of ownership or other property right shall participate in the closed tender.**
- 6 The liquidation manager may act as organiser of tender or engage a specialised organisation to hold a tender on contractual basis. A specialised organisation holding a tender may not be an interested party in respect of the debtor and the liquidation manager.**
- 7 The enterprise (business) of the debtor or a part of the debtor's property shall be sold in the manner established by Articles 110 and 111 of this Law.**

This Article provides the procedure for selling the debtor's property in the course of liquidation proceedings. This Article envisages a certain procedure in which the liquidation manager must carry out operations in order to arrange sales of property.

1. According to Paragraph 1 of the Article, the liquidation manager may proceed to sales of the debtor's property only after taking its inventory and making its evaluation (see the comment on Art. 131). As provided by this Article, the debtor's property should be sold, as a rule, at the open tender.

An exception is the rule of conducting the closed tender, which is mentioned in Paragraph 5 of Article 135. Besides, no tender is organised at all if property is transferred to the balance of local authorities of state power by virtue of Paragraph 3 of Article 130.

Another exception to the prescribed procedure of sale is the satisfaction of claims of banks. According to Paragraph 4 of the Resolution of the Cabinet of Ministers dated 18 Apr.2003, No.188 if a commercial bank has claims against the debtor, which account in value for 70 and more per cent of the total claims against the debtor included in the creditors' register, this bank has the right to apply to the court for the transfer of the debtor's enterprise (property) to the bank's possession, except for property which is subject to security. In this case, there is a requirement provide by the abovementioned Resolution, according to which such transfer is conditional on that the bank provides funds to cover superpriority claims (claims provided in Art.134,Para.1) and wages of employees of the enterprise (the same is provided in Para.38 of the Resolution of the SEC Plenum No.142). According to the Resolution of the President dated 15 Apr.2005,No.PP-56, property received by a commercial bank as a result of the transition into its possession is not subject to property taxes and land taxes until it is sold to a new owner.

2. Paragraph 2 of this Article provides that after taking inventory of and evaluating the debtor's property, the liquidation manager must submit his/her proposals concerning the procedure and terms (schedule) of sales of the debtor's property. These proposals are subsequently included in the liquidation plan (in case the liquidation plan is not made at the development of the procedure and terms (schedule) of sales of the debtor's property). The procedure and terms (schedule) of sales of the debtor's property should be approved by the creditors' meeting (creditors' committee). Unfortunately, this Law does not provide a concrete period by which the liquidation manager should prepare and submit his/her proposal on sales of property to the creditors' meeting (creditors' committee). In our opinion, in view of the practice, this term should not exceed two weeks after the inventory and evaluation of property end.

If the liquidation plan does not regulate transactions made by the liquidation manager, the disposal of the debtor's property is carried out in line with the requirements of Paragraph 2 of this Article.

Since the liquidation plan contains several items (Art.129), including an item on the procedure for selling property, it might be recommendable to fix the issue of the procedure and terms (schedule) of sales in the first place, which is subject to approval of creditors, and to include the approved procedure and terms (schedule) of sales in the liquidation plan. This may be possible in such way as the creditors' meeting addresses the above issue at the beginning and subsequently consider the approval of the liquidation plan as a whole at the end (or may hold another creditors' meeting).

3. Paragraph 3 of this Article provides the procedure for working out a conflict regarding the procedure and terms of sales of the debtor's property between the liquidation manager and creditors. After the court settles the conflict, the procedure and terms of sales are included in the liquidation plan, so that there is no need for preparing a new plan.

After one month from the date when the liquidation manager submits his/her proposals on the procedure and terms of sales to creditors, both the liquidation manager and creditors acquire a right to apply to the economic court for the consideration of the proposals.

Thus, if the creditors' meeting (creditors' committee) disagrees to the liquidation manager's proposals, or if the creditors' meeting (creditors' committee) has not passed any resolution within the specified term regarding these proposals, the liquidation manager or creditors (on behalf of the creditors' meeting or creditors' committee) may apply to the economic court for the settlement of this matter. It is assumed that an individual creditor is not entitled to apply to the court. The application should be supported by the creditors' meeting (creditors' committee). Upon the results of consideration, the economic court either approves the procedure and terms (schedule) of sales of property or dismisses the liquidation manager. At this point, it is questioned in what period the court should consider this matter. This Article does not provide any period for this. Most likely, it would be pertinent here to apply the provisions of Article 59, as the issue in question is about conflicts between the liquidation manager and creditors, which falls under Paragraph 1 of Article 59.

4. During sales of the debtor's property, there might occur circumstances that make it difficult to sell property in the procedure and terms as authorised by the creditors' meeting (creditors' committee). In this case, according to this Paragraph, the liquidation manager is **obliged** to elaborate proposals on the amendment of the procedure and terms of sales and to submit them to the creditors' meeting (creditors' committee) for its approval within one month from the date when the circumstances arise.
5. Paragraph 5 of the Article rules sales of the debtor's property subject to restrictive trade. Unlike the general rule that the debtor's property must be sold at the open tender, property subject to restrictive

trade must be sold at the closed tender, where only those persons qualified under the legislation to own this property in the form of ownership or other property right may participate.

6. The liquidation manager may act as an organiser of tender or to entrust the arrangement of tenders to a specialised organisation by virtue of a contract. There is a condition provided by this Paragraph with respect to such specialised organisation. Such organisation should not be an interested person in respect of the debtor or the liquidation manager (Art.17). Expenses incurred in engaging a specialised organisation are paid out of the debtor's property preferentially as superpriority claims.
7. Paragraph 7 of this Article provides that in the course of liquidation proceedings, the entire enterprise (business) is sold in the manner established by Article 110 and parts of property are sold according to requirements of Article 111. An exception to this is the transfer of the bankrupt enterprise to a commercial bank according to the Resolution of the Cabinet of Ministers dated 18 Apr.2003, No.188.

Article 136. Sales of Rights of Claims of Debtor in Process of Liquidation Proceedings

- 1 The liquidation manager shall be entitled to put out rights of claims of the debtor to the open tender, unless other procedure for selling the debtor's rights of claims is established by the creditors' meeting or creditors' committee.**
- 2 The debtor's rights of claims shall be sold at the open tender according to the norms envisaged by Article 112 of this Law.**

This Article states the procedure for selling rights of claims in the process of liquidation proceedings.

1. The debtor's rights of claims are one of components of its assets and they are considered to comprise the liquidation estate. In this connection, this Law provides that the liquidation manager has the right to put out the debtor's rights of claims to the open tender in the same manner as the debtor's property, unless the creditors' meeting (creditors' committee) provides another procedure of sales of rights of claims.
2. Paragraph 2 of this Article provides that the debtor's rights of claims are sold in the process of liquidation proceedings under the same rules as in external management, i.e. according to requirements of Article 112.

It is necessary to note here that this operation of selling rights is unfeasible in fact, because of the lack of the relevant mechanism established by the legislation.

Article 137. Substitution of Debtor's Assets in Process of Liquidation Proceedings

- 1 By virtue of a resolution of the creditors' meeting, the debtor's assets may be substituted in the course of liquidation proceedings, provided that all creditors in the creditors' register vote for such resolution.**
- 2 The substitution of the debtor's assets in the course of liquidation proceedings does not require the consent of the property owner of the debtor or the debtor's management body authorised by founding documents to pass a resolution concluding such transaction.**
- 3 The debtor's assets shall be substituted in the manner and on the conditions provided by Article 115 of this Law.**

This Article provides that the debtor's assets may be substituted in the process of liquidation proceedings as it may be in external management (see the comment on Art.115).

This operation has significance in that the court receiver may create one or several open joint-stock companies based on the debtor's property, which is contributed to the charter capital of newly established companies, and that the debtor in exchange of its property acquire shares of new joint-stock companies. Shares of new joint-stock companies may be sold, inter alia, on the securities market, and proceeds from these sales are applied to repayment of creditors' claims included in the creditors' register. Purchasers of shares become a shareholder of a newly incorporated legal entity which has the debtor's property, but, is free from debts unlike the debtor.

1. Paragraph 1 of this Article provides that in substituting assets, all creditors included in the creditors' register should vote for this (accordingly, creditors who are not listed in the creditors' register must not vote). A report upon the results of voting is prepared, which should be in line with the requirements of Paragraph 10 of Article 10, i.e. by way of ballots because the voting is usually carried out by using ballots.
2. Paragraph 2 of this Article contains an essential difference between the substitution of assets in liquidation proceedings and external management. As regards external management, Article 115 sets a condition that if the assessed value of the debtor's property exceeds the amount of claims, the substitution of assets necessitates the consent of the property owner or management body of the debtor authorised by founding documents to pass a resolution on conclusion of the relevant transactions. In liquidation proceedings, such consent is not required in the substitution of assets, according to this Paragraph.
3. Paragraph 3 of this Article provides that assets are substituted in the process of liquidation proceedings in the same manner and on the same conditions as in the process of external management (Art.115). However, there is an important difference from the requirements of Article 115, which is stipulated in Paragraph 2 of this Article.

Article 138. Settlements with Creditors

- 1 The liquidation manager shall settle with creditors in accordance with the creditors' register.**
- 2 If it is impossible to transfer the amount of monetary funds due to creditors to their accounts, such sum shall be deposited by the liquidation manager in a notary or court at the place of location (place of residence) of the debtor, and such creditors shall be so notified. In the event the creditors do not receive this deposit within three years from the date when it is deposited in a notary or court, this deposit shall be transferred from the relevant notary or court to the state budget.**
- 3 Creditors' claims lodged after the expiry of the period set in the publication of the initiation of liquidation proceedings for lodging creditors' claims, and claims for mandatory payments arising after the initiation of liquidation proceedings shall be satisfied, regardless of the time of their lodging, from the debtor's property which remains after the satisfaction of creditors' claims lodged within the established period. The priority of satisfaction of such claims from the**

debtor's property which remains after the satisfaction of creditors' claims lodged within the established period shall be determined in accordance with Article 134 of this Law.

- 4 The following claims shall be deemed to be discharged: satisfied creditors' claims; those claims in respect of which an agreement on compensation to satisfy creditors' claims has been reached; claims in respect of which the liquidation manager has exercised the right of setoff ; and claims for obligations which have terminated on other grounds. Setoff and compensation to satisfy creditors' claims shall be permitted only when the discharge of claims by virtue of setoff or compensation to satisfy creditors' claims complies with the principle of priority and proportionality of satisfaction of filed claims. Compensation to satisfy creditors' claims may be permitted in case the creditors' meeting or creditors' committee agrees thereto. Novation of the debtor's obligations as to discharge creditors' claims may not be permitted in liquidation proceedings.**
- 5 Creditors' claims which have not been satisfied due to the insufficiency of the debtor's property shall also be deemed to be discharged. Creditors' claims which have not been recognised by the liquidation manager shall also be deemed to be discharged if creditors have not applied to the economic court or if such claims have been recognised by the economic court to be unjustified,.**
- 6 The liquidation manager shall enter information of the discharge of creditors' claims in the creditors' register.**

This Article regulates the procedure in which the liquidation manager settles with creditors.

1. Settlements with creditors must be carried out in strict compliance with the creditors' register and according to the priority established by Articles 133, 134 and 169 (except for the discharge by a commercial bank according to the Resolution of the Cabinet of Ministers dated 18 Apr.2003, No.188).
2. There might be cases where it is impossible to transfer the amount due to creditors to their account. The impossibility of satisfying creditor's claims of a certain priority, on its turn, leads to delaying the satisfaction of creditors' claims of the subsequent priority, as Paragraph 8 of Article 134 provides that the satisfaction of creditors' claims of each subsequent priority is allowed only after the full satisfaction of claims of the previous priority. In such situation, the liquidation manager must, according to Paragraph 2 of this Article, deposit the amount due to creditors in a notary or court at the place of location (place of residence) of the debtor, and the creditors are so notified.
If the creditors do not receive this amount within three years from the date it is deposited in a notary or court, this amount is transferred from the relevant notary or court to the state budget.
3. Paragraph 3 of this Article addresses the issues as regards the satisfaction of creditors' claims which are lodged after the expiry of the period set in the publication of the initiation of liquidation proceedings during which creditors should present their claims and also claims for obligatory payments which arise after the initiation of liquidation proceedings. These claims, irrespective of the time when they are lodged, are satisfied from the debtor's property which is left after the satisfaction of creditors' claims lodged during the above period. Thus, this Law provides, by reference to Article 134, that these claims should be repaid in the sixth priority.
4. Paragraphs 4 and 5 of this Article clarify which creditors' claims are deemed to be discharged. Creditors' claims satisfied in full are considered to be discharged. If an agreement on compensation

to satisfy creditors' claims is concluded with respect to creditors' claims, or the liquidation manager declares set-off of claims, or there are other grounds for terminating obligations, these claims are also regarded as discharged. In order to set off claims and discharge claims by providing compensation (the certain amount of money or an alternative thing), it is vitally important to comply with the principle of priority (Art.134,Para.8) and proportionality of satisfaction of filed claims (Art134, Para.9). Not less important are the following requirements of this Paragraph. An agreement on compensation to satisfy creditors' claims is permitted in case the creditors' meeting (creditors' committee) consents to this agreement. The discharge of creditors' claims by way of novation of the debtor's obligation is not permitted in liquidation proceedings.

5. Creditors' claims which have not been satisfied owing to the insufficiency of the debtor's property are also considered to be discharged. If creditors' claims are not recognised by the liquidation manager and creditors do not apply to the economic court or these claims have been recognised by the economic court to be unjustified, these claims are also deemed to be discharged.
6. According to Paragraph 6 of this Article, the liquidation manager enters a record in the creditors' register on repayment and a way of repayment of each of creditors' claims.

Article 139. Oversight of Activities of Liquidation Manager

- 1 The liquidation manager shall submit to the creditors' meeting or creditors' committee a report on his/her activities, information on the debtor's financial situation and its property as of the date of the initiation and in the course of liquidation proceedings, and other information as well, not less than once a month.**
- 2 The liquidation manager's report shall contain the following information on:**
 - **the formed liquidation estate, including the progress and results of the inventory and evaluation of the debtor's property;**
 - **the amount of monetary assets deposited in the debtor's single account and their source;**
 - **the progress of the realisation of the debtor's property and the amount of proceeds from sales of property;**
 - **the quantity and amount of claims against third parties for money filed by the liquidation manager, including in a court procedure;**
 - **measures to preserve the debtor's property, and reveal and recover the debtor's property in possession of other persons;**
 - **measures to invalidate the debtor's transactions, and to refuse to fulfil the debtor's contracts;**
 - **activities to maintain the creditors' register of the debtor and the total amount of creditors' claims in the creditors' register and the separate amount of claims of each priority;**
 - **the number of the debtor's employees who are continuously working during liquidation proceedings, and employees whose labour contracts have terminated during the period of liquidation proceedings;**
 - **activities to close the debtor's accounts and the results of such activities;**
 - **the amount of expenses for liquidation proceedings and purposes of such expenses;**
- 3 The liquidation manager's report must also contain other data on the course of liquidation proceedings, the composition of which shall be determined by the liquidation manager and also at the request of creditors' meeting or creditors' committee, or of the economic court.**

4 Upon the request of the economic court, the liquidation manager shall be obliged to provide the economic court with all data relating to the carrying out of liquidation proceedings.

This Article provides the procedure in which the liquidation manager carries out one of his/her duties - reporting his/her activities.

1. According to requirements of this Paragraph, the liquidation manager must, at least once a month, report his/her activities to the creditors' meeting (creditors' committee).

First of all, the liquidation manager should submit to creditors information on the bankrupt debtor's property and financial situation as of the date of the initiation of liquidation proceedings.

The liquidation manager must be sure to inform creditors of the debtor's financial situation as of the date of the report is submitted.

In addition, it should be pointed out that this Law requires the liquidation manager to submit to creditors a report on expenditure paid from the debtor's single account (Art.132,Para.4).

Having analysed Paragraph 1 of this Article, we may conclude that this Article indirectly provides the periodicity of sessions of the creditors' meeting and the creditors' committee, although this is not provided by Articles 10 and 12. It actually means that the liquidation manager must at least once a month convene the creditors' meeting (creditors' committee). It should also be noted that the creditors' meeting (creditors' committee) may be specially convened by persons eligible thereto (Art.12), with the purpose of considering the report of the liquidation manager.

2. Paragraph 2 of the Article lists concrete requirements to information to be provided to creditors and must be specified in the report: about the liquidation estate, the progress of sales of the debtor's property, the amount of creditors' claims and the creditors' register and so on..
3. Paragraph 3 of this Article provides that the report of the liquidation manager must contain other data on the progress of liquidation proceedings. The structure of these data is determined by the liquidation manager himself/herself, and it is considered that it should correspond to requests of the creditors' meeting (creditors' committee) or the economic court.
4. According to Paragraph 4 of this Article, the economic court has the right to request and the liquidation manager is obliged to provide any data pertaining to the carrying out of liquidation proceedings. For this purpose, this Law does not provide the concrete time (minimal and maximal) regarding the economic court's right to request a report from the liquidation manager.

Article 140. Dismissal of Liquidation Manager

- 1 **The liquidation manager may be dismissed from his/her duties by the economic court:**
 - in case the liquidation manager fails to perform or improperly performs duties imposed on him/her, upon an application of the creditors' meeting or creditors' committee or by virtue of an application of the state body for bankruptcy proceedings;
 - upon his/her application;
 - in other cases envisaged by the legislation.
- 2 **When dismissing the liquidation manager, the economic court shall simultaneously appoint a new liquidation manager in the manner envisaged by Article 126 of this Law.**
- 3 **The economic court ruling to dismiss the liquidation manager from his/her duties is subject to immediate execution and may be appealed (protested).**

This Article regulates the procedure in which the economic court dismisses the liquidation manager.

1. According to Paragraph 1 of the Article, the following serve to be grounds for dismissing the liquidation manager:

The non-performance or improper performance of duties. When these circumstances are revealed, the liquidation manager can be dismissed by virtue of a resolution of the creditors' meeting (creditors' committee). It is necessary to note that when an application is filed with the economic court for the dismissal of the liquidation manager, the fact that creditors or the debtor has suffered from loss may be present or may not.

The state body for bankruptcy proceedings may file an application for the dismissal of the liquidation manager both when the liquidation manager commits repeated breaches or a single gross breach of the legislation (regardless of whether loss has been caused thereby), and when he/she does not perform his/her duties or does improperly (provided that loss has been caused) as stipulated in Paragraph 35 of the Rule on the Certification Commission of Court Receivers. Along with this, it is necessary to note that according to Article 26, territorial administration of the state body for bankruptcy proceedings are entitled to apply to the economic court for the dismissal of court receivers upon the consent of the state body for bankruptcy proceedings. The liquidation manager may also be relieved of his/her post upon its own application of resignation. In this case, the economic court removes the liquidation manager according to his/her will.

In addition, the liquidation manager may be dismissed on other statutory grounds. An example of other grounds is a requirement of Paragraph 2 of Article 18 when circumstances preventing an appointment of a person as liquidation manager are revealed, and also a case when these circumstances take place after the appointment of the liquidation manager. According to Paragraph 3 of Article 18 and Paragraph 1 of Article 21, the economic court may dismiss the liquidation manager in the presence of proof submitted by persons participating in a bankruptcy case.

Besides, the court has the right to dismiss the liquidation manager under Paragraph 3 of Article 135, in case the procedure and terms (schedule) of sales of the debtor's property have not been approved by the creditors' meeting (creditors' committee) within one month after the liquidation manager proposed this procedure and terms (schedule) of sales, and the creditors' meeting (creditors' committee) or the liquidation manager have applied to the economic court for the settlement of such arisen disagreement. Upon the results of this consideration, the economic court may either approve the procedure and terms (schedule) of sales, or dismiss the liquidation manager.

Another ground for dismissing court receivers is an application of persons participating in a bankruptcy case, in case court receivers commit repeated breaches or a single gross breach of laws (Para.13, the Resolution of the SEC Plenum No.142).

As the above-stated concludes, the economic court has no right to dismiss the liquidation manager on its own initiative, except for the situation specified in Paragraph 3 of Article 135.

2. Paragraph 2 of this Article provides that at the dismissal of the liquidation manager, the economic court appoints a new liquidation manager in the manner envisaged by Articles 95 and 126.
3. According to Paragraph 3 of this Article, the economic court issues a ruling to dismiss the liquidation manager from his/her duties, which is subject to immediate execution

A ruling to dismiss the liquidation manager may be appealed (protested) in the manner provided by Article 60, as is stated in Paragraph 21 of the Resolution of the SEC Plenum No.142.

Article 141. Possibility of Shifting to External Management

- 1 If judicial rehabilitation and (or) external management have never been introduced in respect of the debtor, and there have appeared in the course of liquidation proceedings sufficient grounds for the restoration of the debtor's financial ability, including grounds confirmed by data of the financial analysis, the liquidation manager shall be obliged to convene the creditors' meeting within one month from the date when the specified circumstances are revealed, for the purpose of considering the matter on the application to the economic court for the termination of liquidation proceedings and shift to external management.**
- 2 A resolution applying to the economic court for the termination of liquidation proceedings and shift to external management shall be passed by the majority vote of the total creditors' claims outstanding as of the date of the creditors' meeting considering the matter on passing such resolution.**
- 3 The creditors' meeting resolution applying to the economic court for the termination of liquidation proceedings and shift to external management must contain a proposed period of external management and a candidate for an external manager, and also information on him/her.**

This Article provides for the procedure of the shift from liquidation proceedings to external management.

1. Paragraph 1 of this Article defines the conditions on which the shift to external management is possible. Such shift is allowed if judicial rehabilitation and (or) external management have never been introduced in respect of the debtor (i.e. no recovery process has ever been applied and the economic court rendered a decision to declare the debtor bankrupt and initiate liquidation proceedings). The second condition is that during liquidation proceedings sufficient grounds appear, including those confirmed by data of the financial analysis, to believe that the solvency of the debtor may be recovered. Actually it means that the court receiver, on the ground of the financial analysis conducted by him/her, declares the possibility of the restoration of the debtor's financial ability through the shift to external management.

When the above-stated circumstances are present, a new obligation is imposed on the liquidation manager. The liquidation manager **is obliged** to convene the creditors' meeting within a month from the date when the aforementioned circumstances are revealed with the purpose of considering the application to the economic court for the termination of liquidation proceedings and shift to external management.

2. Paragraph 2 of this Article envisages provisions regarding the procedure in which the creditors' meeting passes the relevant resolution. In this case the resolution applying to the economic court for the termination of liquidation proceedings and shift to external management must be passed not by the majority vote in value of creditors entered in the creditors' register, but by the majority vote in value of creditors whose claims are not yet discharged as of the date of the creditors' meeting considering the shift to external management.
3. Paragraph 3 of this Article provides for the requirements to the content of the creditors' meeting's resolution applying to the economic court for the termination of liquidation proceedings and shift to

external management. Creditors should specify in the resolution a proposed period of external management and propose a candidate for an external manager with his/her information.

Article 142. Liquidation Manager's Report on Results of Liquidation Proceedings

- 1 After completing settlements with creditors, the liquidation manager shall be obliged to submit to the economic court a report on the results of liquidation proceedings.**
- 2 The following shall be attached to the report on the results of liquidation proceedings:**
 - documents confirming sales of the debtor's property;**
 - the creditors' register with specification of the amount of discharged creditors' claims;**
 - data on the debtor's property which remains after all creditors' claims are discharged, and also on the debtor's property which has been proposed for sale, but not realised in the course of liquidation proceedings when creditors refuse to accept such property as payment of their claims and when founders (participants) or the property owner of the debtor do not exercise their rights to property which remains after creditors' claims are discharged.**

This Article provides for the procedure of the liquidation manager's report upon the completion of settlements with creditors.

1. The liquidation manager must, upon finishing settlements with creditors, provide to the court a report on the results of liquidation proceedings. The same report, in our opinion, should be provided by the liquidation manager in case an amicable agreement is concluded. In this case, if all creditors' claims have been fully satisfied in the process of liquidation proceedings and there is a possibility for the debtor to continue its business activity, the court, having considered the report submitted by the liquidation manager, renders a ruling to terminate a case, which must mention that a decision to declare the debtor bankrupt is not subject to execution. The same is specified in Paragraph 25 of the Resolution of the SEC Plenum No.142. If there is no such feasibility for the debtor, the court, having considered the report of the liquidation manager, renders a ruling to complete liquidation proceedings, and the enterprise debtor is excluded from the state register of legal entities, despite of the fact that all creditors' claims are fully discharge.

This Law does not determine the time limit of the submission of the report, but it is understood that the time limit should be a reasonable one (proceeding from Art.139, the period should not be longer than one month after settlements with creditors are over). In addition, the court may determine this period on its own initiative according to Article 139, because delaying submission of or failure to provide the report may hamper the completion of liquidation proceedings. The same is provided in the Resolution of the SEC Plenum No.142, Paragraph 30 of which provides that the courts are recommended to determine the term for submitting reports. This Article does not requires to provide the report to the creditors' meeting (creditors' committee), hence, the creditors' meeting (creditors' committee) is not entitled to approve or disapprove it, though according to Article 139, they are empowered to request such report for consideration.

2. According to Paragraph 2 of this Article, the liquidation manager is obliged to attach to the report the following documents: documents confirming sales of the debtor's property; the creditors' register with specification of the amount of discharged creditors' claims; data on the debtor's property

remaining after the discharge of creditors' claims, and also on the debtor's property which has been proposed for sale, but not realised in the course of liquidation proceedings, when creditors refuse to accept the property as payment of their claims and founders (participants) or the property owner of the debtor do not apply to enforce their rights to such residual property. The court needs these documents for purpose of analysing the completed repayment of creditors' claims and of tracking the destiny of the debtor's property.

The results of consideration of the liquidation manager' report are outlined in Article 144.

Article 143. Debtor's Property Remaining after Discharge of Creditors' Claims.

- 1 The liquidation manager shall notify to local bodies of state power the debtor's property which remains after creditors' claims are discharged, and also the debtor's property which has been proposed for sale, but not realised in the course of liquidation proceedings when creditors refuse to accept such property as payment of their claims and founders (participants) or the property owner of the debtor do not exercise their right to property which remains after creditors' claims are discharged.**
- 2 Local bodies of state power shall, within one month from the date when they receive notification, take the property onto their balance and bear all expenses for holding the property. In case they refuse to accept or avoid accepting the property, the liquidation manager shall be entitled to apply to the economic court for the coercion of the relevant body to accept such property. By virtue of documents on the transfer of property, the economic court shall render a ruling to terminate liquidation proceedings.**
- 3 Property of the bankrupt enterprise the charter capital of which partially or wholly belongs to the state and property which has been proposed for sale, but not realised in the course of liquidation proceedings when creditors refuse to accept such property as payment of their claims during the established period of liquidation proceedings of the bankrupt legal entity shall become the state ownership, and the liquidation manager shall transfer such property onto the balance of local bodies of state power. By virtue of documents on the transfer of property, the economic court shall render a ruling to terminate liquidation proceedings.**

This Article resolves the problem regarding the debtor's property which remains unrealised after the repayment of creditors' claims and completion of settlements with creditors

This Article contains new provisions in comparison with this Law 1998. Previously, if property was proposed for sale, but not sold, it was proposed only to the property owner of the debtor, and in case it refused to receive this property, it was transferred to local bodies of state power. The current Law provides that property may be transferred to creditors as payment of their claims, and only after creditors refuse to take this property and founders (participants) or the property owner of the debtor does not submit an application on their right to the property, it is transferred to local bodies of state power.

1. Paragraph 1 of this Article provides the following order of actions of the liquidation manager in respect to the debtor's property which remains after the discharge of creditors' claims, and also its property which has been put up for sale, but not sold off.

From this provision it follows that there are two variants of conduct of the liquidation manager. In case there are outstanding creditors' claims and the debtor's property has not been sold during liquidation proceedings within three months after the latest open tender, this property is proposed by the liquidation manager to creditors in order to discharge their claims (Para.21, the Regulation on the procedure for evaluation and realisation of property of enterprises under restructuring and bankruptcy process). The liquidation manager's proposal specifies the procedure for acquiring property and conditions of its transfer as payment of claims and also the period for creditors to reply to notification of the liquidation manager, regarding their consent or refusal to take the property as discharge of their claims. If a creditor is interested in taking this property as payment of its claims, the property may be transferred to this creditor. In this case, by virtue of Article 134, such proposals to creditors must be made in order of priority established by Article 134. Although it is not specified in Article 138, claims of a creditor which has accepted the debtor's property should be deemed discharged.

If creditors refuse to accept the debtor's property to discharge their claims, the residual property is proposed to founders (participants) or the property owner of the debtor. In this case, founders (participants) or the property owner of the debtor must beforehand forward to the liquidation manager an application in which they express their readiness to accept the unsold property.

According to Paragraph 21 of the Regulations on the procedure for evaluation and realisation of property of enterprises under restructuring and bankruptcy process, if creditors refuse to take the property (such refusal must be made in writing), the property is transferred to the owner within one month.

If property remains unsold after the satisfaction of creditors' claims, the liquidation manager must inform founders (participants) or the property owner of the debtor of their right to acquire this property within five days. If founders (participants) or the property owner of the debtor do not submit to the liquidation manager an application to enforce their above right within two weeks after they are informed, the liquidation manager must notify local bodies of state power that they should take this property onto their balance, according to Paragraph 56 of the Regulation on court receivers.

Only such property as is refused by all creditors with outstanding claims and founders (participants) or the property owner of the debtor may be transferred to local bodies of state power.

2. Paragraph 2 of this Article provides for the procedure for transferring unrealised property to local bodies of state power.

Local bodies of state power are obliged to take the residue of the debtor's property onto their balance within one month after they receive notification from the liquidation manager and bear all charges for holding this property. In case they refuse or avoid accepting such property, the liquidation manager is entitled under Paragraph 2 of this Article to apply to the economic court for the coercion of the relevant body to accept the property.

After transferring the debtor's property, the liquidation manager should submit documents on the transfer to the economic court. On the basis of the submitted documents, the economic court must render a ruling to complete liquidation proceedings.

3. Paragraph 3 of this Article provides for the procedure for dealing with property of the debtor the charter capital of which partially or wholly belongs to the state, when such property has been put up for sale, but not realised.

In this case the liquidation manager must propose unsold property to creditors whose claims have not been discharged during liquidation proceedings. When creditors refuse to take this property (all

requirements mentioned in the comment on Para.1 of this Article must be fulfilled), the property becomes the state ownership, and the liquidation manager transfers it onto the balance of local bodies of state power. By virtue of documents on the transfer of property, the economic court renders a ruling to complete liquidation proceedings. There is one collision in this Paragraph. The rule provided by this Paragraph is quite understandable, in case the debtor enterprise is a wholly state owned unitary enterprise. However, in case the state is only one of shareholders or participants of the bankrupt enterprise, that is its charter capital partially belongs to the state, there is an infringement of the right of the other shareholders or participants of this legal entity debtor. In this situation, it would be ideal that local bodies of state power receive only a part of the property on a pro rata base to the state share in the charter capital, and the remaining part of the property is allocated among the other shareholders or participants.

Article 144. Completion of Liquidation Proceedings

- 1 After considering a report which the liquidation manager submit on the results of liquidation proceedings, the economic court shall render a ruling to complete liquidation proceedings and oblige the liquidation manager to present this ruling to the authority which deals with the state registration of legal entities within ten days.**
- 2 The economic court ruling shall be a ground for entering the record of liquidation of the debtor in the uniform state register of legal entities. The relevant record must be entered in the register within three days from the date when the economic court ruling is presented.**
- 3 From the date when the record of liquidation of the debtor is entered in the uniform state register of legal entities, the powers of the liquidation manager shall terminate and liquidation proceedings shall be deemed to be completed and the debtor – liquidated.**

This Article regulates the procedure of the completion of liquidation proceedings.

1. A report on the results of liquidation proceedings provided by the liquidation manager, according to this Article must be considered by the economic court, if necessary in a court session following the requirements of Paragraph 1 of Article 128 of the Code of Economic Procedure. If the report of the liquidation manager is recognised to be justified, the economic court renders a ruling to terminate liquidation proceedings. If the report is recognised to be not justified it is returned. This rule is explained in Paragraph 41 of the Resolution of the SEC Plenum No.142.

By its ruling to complete liquidation proceedings, a judge obliges the liquidation manager to provide this ruling within ten days to the authority handling the state registration of legal entities (regional (city) khokimiyats (local municipalities) or regional departments of justice). The ruling to complete liquidation proceedings is subject to immediate execution and may not be appealed (protested), according to Paragraph 21 of the Resolution of the SEC Plenum No.142. It would be advisable to concede a right of appeal against such ruling and then an appeal could be possible only up to the date when liquidation of the debtor is recorded in the uniform state register of legal entities, because there would be no sense to appeal against this ruling after that, as the bankrupt enterprise is already actually excluded from the register and from civil relations (it no longer exists). This could be provided for as an explanation in the Resolution of the SEC Plenum or as an amendment of this Law.

Although this is not stipulated in this Law, we believe that when violations or shortcomings in the conduct of the liquidation manager are revealed during consideration of the report, the court is entitled to return this report for the revealed defects or lacks to be eliminated. Such decision, in our opinion, should be made in the form of a ruling, in which revealed lacks, a period of their elimination and a period of the submission of a new report of the liquidation manager should be specified.

2. According to Paragraph 2 of this Article, on the ground of the economic court ruling to complete liquidation proceedings, the body dealing with the state registration of legal entities must enter a record of liquidation of the debtor in the uniform state register of legal entities, within three days after it receives the court ruling.
3. Paragraph 3 of this Article provides that the debtor is deemed to be liquidated and liquidation proceedings is considered to be completed on the date when the record is entered in the state register. The powers of the liquidation manager are deemed to terminate at this moment as well.

CHAPTER VIII. AMICABLE AGREEMENT

This Chapter is devoted to amicable agreements.

An amicable agreement is defined in this Law as an agreement of parties to terminate judicial disputes on the ground of mutual concessions, and this process is aimed at terminating bankruptcy proceedings on the ground of an agreement reached between the individual entrepreneur debtor or the manager of the legal entity debtor, or court receivers on one side, and the representative of the creditors' meeting or another person authorised by the creditors' meeting on the other side, with regards to the amount of claims, due date, way of payment, etc.

A resolution concluding an amicable agreement is passed at the creditors' meeting by a majority vote in value of all creditors and with the consent of all creditors secured by the debtor's property. Creditors and the debtor have a right to enter into an amicable agreement. Third parties are allowed to participate in an amicable agreement to take over the rights and obligations stipulated in this agreement. An amicable agreement should be made in written form and enters into force after the approval by the economic court. Creditors voting against an amicable agreement may receive satisfaction of their claims on conditions not worse than conditions provided for creditors of the same priority voting in favour of an agreement. An amicable agreement does not apply to those creditors which are not in the creditors' register; such creditors may realise their right of claims after the termination of bankruptcy proceedings.

An amicable agreement may be reached at any stage of bankruptcy processes, and upon the approval of an amicable agreement, bankruptcy proceedings terminate. In liquidation proceedings and external management, it is the court receiver that decides on behalf of the debtor on an amicable agreement. The economic court approves an amicable agreement only on condition of the discharge of claims subject to preferential satisfaction, such as judicial expense, and claims under payment documents for salaries. The economic court refuses to approve an amicable agreement in case of violations of the established procedure for its conclusion, violations of rights of third parties and non-compliance of its content with the legislation. Even after the approval by the economic court, an amicable agreement may be invalidated by virtue of a relevant application, and in this case, bankruptcy proceedings reopen, when grounds for invalidating the agreement are revealed, for example, when the agreement contains more advantageous or adverse conditions for some creditors.

If the debtor does not perform an amicable agreement, creditors may resort to the court, claiming its fulfilment.

Article 145. Procedure for Entering into Amicable Agreement

- 1 The debtor and its creditors shall be entitled to enter into an amicable agreement at any stage of the consideration by the economic court of a bankruptcy case.**
- 2 A resolution entering into an amicable agreement on behalf of creditors shall be passed by the creditors' meeting. The resolution of the creditors' meeting entering into an amicable agreement shall be passed by a majority vote in value of the total creditors and shall be deemed to be passed if all creditors secured by the debtor's property vote for it. Powers of the representative of a creditor to vote on the conclusion of an amicable agreement must be specially envisaged in its power of attorney.**

- 3 A resolution entering into an amicable agreement on behalf of the debtor shall respectively be passed by the individual entrepreneur debtor or by the debtor’s manager, the external manager or liquidation manager.**
- 4 Third parties shall be permitted to participate in an amicable agreement, and shall enjoy rights and bear obligations envisaged by an amicable agreement.**
- 5 An amicable agreement shall be subject to approval by the economic court, whereof a ruling shall be rendered, in which the termination of bankruptcy proceedings shall be specified. If an amicable agreement is concluded in process of liquidation proceedings, the economic court shall render a ruling to approve an amicable agreement, which specifies that a decision to declare the debtor bankrupt and initiate liquidation proceedings shall not be subject to execution.**
- 6 An amicable agreement shall become effective to the debtor, creditors and also third parties participating in an amicable agreement from the date of its approval by the economic court and shall be binding on them. Unilateral refusal to perform an amicable agreement having come into legal force shall not be permitted.**
- 7 Creditors which have voted for an amicable agreement, and founders (participants) or the property owner of the debtor shall be entitled to perform the debtor’s monetary obligations and (or) duties on mandatory payments to creditors which have voted against an amicable agreement, or which did not participate in voting. In this case, these creditors shall be obliged to accept such performance provided for the debtor, and these creditors’ rights shall pass to a person who has performed the debtor’s obligation.**
- 8 Third parties shall be entitled to grant warranties or guarantees for the satisfaction by the debtor of monetary obligations and (or) to make mandatory payments under an amicable agreement, and ensure its proper performance in any other way. If an amicable agreement provides the alienation of the debtor’s property to a third party, it may be concluded only on the condition that such third part shall offer such property as security for the discharge of creditors’ claims.**

This Article provides for the conditions that must be followed for entering into amicable agreements.

1. An amicable agreement is an agreement of parties to terminate judicial disputes on the ground of mutual concessions. Just like the rule of the Code of Economic Procedure which grants parties a right to end disputes in court by entering into an amicable agreement at any instance of the court (Art.40,Para.3,CEP), this Article provides for an opportunity to enter into an amicable agreement at any stage of the consideration of a bankruptcy case. “Any stage of the consideration by the economic court of a bankruptcy case” means such bankruptcy processes as supervision, judicial rehabilitation, external management and liquidation proceedings. Hence, at such stage of the consideration of a case as from the date when the court accepts a petition for the declaration of the debtor’s bankruptcy and until the date when the creditors’ register is compiled during supervision, an amicable agreement cannot be entered into. During this stage, a creditors’ register has not yet been made, accordingly neither does the creditors’ meeting, which would consider the text of an amicable agreement and pass a resolution thereon.

2. The legislator provides that passing a resolution entering into an amicable agreement is an exclusive competence of the creditors' meeting, and thereby imposes two compulsory conditions for an amicable agreement. Firstly, a resolution must be passed by a majority vote in value of all creditors, and, secondly, all creditors secured by the debtor's property must vote for such resolution. Unlike an amicable agreement concluded between parties in the consideration of a general case at the economic court, where an amicable agreement needs the intention of the claimant, respondent and third parties, an amicable agreement in a bankruptcy case requires the consent of not all creditors. In a bankruptcy case, it would be sufficient to have the consent of creditors representing the majority in value of all creditors, and of all secured creditors, and to meet some mandatory requirements stipulated in Paragraph 1 of Article 149. It is not allowed to enter into an amicable agreement between the debtor and individual creditors in any process without a resolution of the creditors' meeting, i.e. Article 132 of the Code of Economic Procedure (amicable agreement of parties) is not applicable in bankruptcy proceedings.
3. A resolution entering into an amicable agreement on behalf of the debtor is passed by:
 - the individual entrepreneur debtor, if a bankruptcy case has been initiated in respect thereof;
 - the manager of the legal entity debtor in supervision and judicial rehabilitation. If the debtor's manager is dismissed, such resolution is passed on behalf of the debtor, accordingly by the interim receiver or the rehabilitation manager;
 - the external manager or the liquidation manager .
4. As third parties who may participate in an amicable agreement under Paragraph 4 of this Article, any person can be recognised, besides the debtor and its creditors included in the creditors' register. The legislator does not restrict the range of eligible persons. The only condition for their participation in an amicable agreement is that they take over the rights and obligations under an amicable agreement. In this case, when considering the approval of an amicable agreement, the court must check the authorities of the manager (management bodies) of third parties to grant warranty or guarantee or other security for the debtor's performance of obligations. The form of participation of third parties in an amicable agreement is stipulated by Paragraph 8 of this Article.
5. An amicable agreement becomes a document generating certain rights and duties on the date of its approval by the court. Upon the approval of an amicable agreement, the court states in its ruling the termination of bankruptcy proceedings. An exception to this rule is the approval of an amicable agreement in liquidation proceedings, when the court in its ruling states that a decision to declare the debtor bankrupt and initiate liquidation proceedings is not subject to execution. Such should be indicated in the ruling, firstly because when an amicable agreement is approved by the court, the debtor is no longer economically insolvent (bankrupt), and, secondly because the "destiny" of the judicial act by which the debtor was declared bankrupt and liquidation proceedings were initiated should be determined. According to the legislation (the Law "On Courts", the Code of Economic Procedure, etc.), judicial acts which have taken effect should be executed to everyone. Having approved an amicable agreement, the court describes the conditions of the agreement in the operative part of a ruling to approve the agreement.
6. From the date of approval, an amicable agreement comes into force and becomes binding on parties of the agreement. The debtor, its creditors and third parties which take over certain duties under an amicable agreement are recognised as persons participating in the agreement. In this point, "creditors" must be understood as creditors included in the creditors' register as of the date of the

creditors' meeting that considers an amicable agreement (Para.31, the Resolution of the SEC Plenum No.142).

This Law prohibits a unilateral refusal to fulfil conditions of an amicable agreement. In case of failure to perform an amicable agreement, there come consequences stipulated by this Law (see the comment on Art.155).

7. It is provided that creditors which have voted for an amicable agreement and founders (participants) or the property owner of the debtor are **entitled** (instead of obliged) to perform monetary obligations and (or) duties for mandatory payments of the debtor to creditors which are voted against an amicable agreement, or did not participate in voting. From the wording of this Paragraph, it follows that this is a right, not an obligation of creditors.

As it is stipulated by Paragraph 3 of Article 148, if creditors voting for an amicable agreement have not expressed their intention to perform the debtor's obligations to creditors voting against an agreement, not participating in voting, the conditions of an amicable agreement in respect of the latter creditors may not be less advantageous than those for the former creditors.

Along with this, there arises a question of what should be done with those creditors who are not included in the creditors' register, when, accordingly, an amicable agreement has no provision regarding the debtor's obligations to such creditors. An answer to this question is given in Paragraph 31 of the Resolution of the SEC Plenum No.142, according to which, these creditors may request the debtor to perform obligations to them after the approval of the agreement and the termination of bankruptcy proceedings.

8. Paragraph 8 of this Article provides the form and conditions of participation of third parties in an amicable agreement. The legislator does not pose any restrictions on the form of their participation, from which, it follows that any ensurance is allowed for the debtor's fulfilment of monetary obligations and mandatory payments under an amicable agreement. A classical example is granting warrantee, guarantee or security (lien, mortgage, etc.). Other measures to ensure the debtor's performance of an amicable agreement include those to assign debts, to allow third parties to use any property of the debtor for a certain period and give rental income directly to creditors; or to conclude a purchase contract where a company (third party) interested in goods produced by the debtor makes advance payments for the cost of goods produced in future, which are applied to repayment of creditors' claims.

The legislator makes an exception, where the alienation of the debtor's property to third parties under an amicable agreement is conditional on that the third parties offer this property as security for creditors' claims.

Article 146. Specifics of Entering into Amicable Agreement in Bankruptcy Processes

- 1 In supervision and judicial rehabilitation, a decision entering into an amicable agreement on the side of the debtor shall be taken by the debtor's manager and in case of his/her dismissal – by a court receiver.**
- 2 If an amicable agreement for the debtor is a transaction which may be made upon a resolution (approval) of the debtor's management bodies, in accordance with the legislation or founding documents of the debtor, a resolution entering into an amicable agreement on behalf of the debtor may be passed after the relevant resolution (approval). When an amicable**

agreement is concluded in the process of external management or liquidation proceedings, such resolution (approval) shall not be required.

- 3 When an amicable agreement is concluded with the participation of third parties being interested parties in respect of the debtor, court receivers or creditors, such amicable agreement must contain information that it is a transaction involving interested parties with specification of characteristics of such interest. An amicable agreement shall apply to creditors' claims which have matured by the date of the introduction of the relevant bankruptcy process, except for claims which arise after the commencement of a bankruptcy case.**

This Article can be regarded as a continuation of Article 145, since this Article, just like the previous article, lists certain conditions which should be followed in entering into an amicable agreement, and these conditions depend on bankruptcy process in which an amicable agreement is concluded.

1. Paragraph 1 of this Article lists persons empowered to take a decision to enter into an amicable agreement on behalf of the debtor in supervision and judicial rehabilitation. Those are the debtor's manager and, if he/she is dismissed, the interim receiver or the rehabilitation manager. In this Article, the legislator does not stipulate persons who decide on such matter on behalf of the debtor in the process of external management and liquidation proceedings. In this connection, Paragraph 3 of Article 145 enumerates persons entitled to decide on an amicable agreement on behalf of the debtor, from which, it follows that a decision is take by a court receiver in the above processes.
2. Several requirements are set to conclude an amicable agreement in supervision and judicial rehabilitation. Thus, if an amicable agreement is a transaction which requires the consent of the debtor's management bodies, the debtor's manager may take a decision to enter into an amicable agreement only after obtaining such consent. These transactions include major transactions and transactions made by persons in interests, which require a resolution of the general meeting of shareholders or of the supervisory board of a company, according to the Law "On Joint-Stock Companies and Protection of Shareholders' Rights". Pursuant to Article 89 of the above Law, the following are regarded as large transactions:
 - a transaction or several interrelated transactions which purchase or alienate or may purchase or alienate, directly or indirectly, property the value of which is more than 25 per cent of the balance value of a company's assets as of the date when a resolution concluding such transactions is passed, except for transactions made in the course of usual business activities;
 - a transaction or several interrelated transactions to issue general (plain) stocks or preferred stocks convertible into general stocks, which comprise more than 25 per cent of the previously issued general stocks of a company.

The supervisory board of a company determines the value of property - a subject of major transactions.

Article 91 of the abovementioned Law outlines the list of persons having interests in transactions made by a company, and Article 93 of the same Law provides the list of requirements that transactions involving certain interests must follow.

The following persons shall be regarded as those interested in transaction made by a company: members of the supervisory board of a company, persons in office of other management bodies of a company, stockholders shares of which, including those shares held by their interested (affiliated)

persons, comprise 20 or more per cent of voting stocks of a company, and their spouses, parents, children, brothers, sisters, and also all their affiliated persons.

According to Article 93 of the above Law, a resolution on a transaction involving certain interests is passed at the supervisory board by a majority vote of its members who are not interested in the transaction. If the amount of payment under this transaction and the value of property being a subject of this transaction exceeds 5 per cent of assets of a company, or if a transaction and (or) several interrelated transactions provide the issuance of voting stocks of a company or other securities convertible into voting stocks in the amount exceeding 5 per cent of the previously issued voting stocks, a resolution on a transaction involving certain interests is passed by the general meeting of shareholders of voting stocks by the majority vote of stockholders who are not interested in the transaction. An exception to this rule is a transaction on which an interested party grants a loan to a company.

Founding documents of the debtor may stipulate other types of transactions which should secure the consent of management bodies of the debtor. It would be pertinent here to pay attention to such question whether an amicable agreement should obtain the authorisation of the management body of the debtor, if the manager is dismissed and a resolution entering into the agreement is passed by the court receiver. It is provided that the authorisation of the management body on an amicable agreement is required under the above circumstances, regardless of who passes a resolution, the debtor's manager or the court receiver.

3. Paragraph 3 of this Article sets requirements to transactions with interested persons listed in Article 17. In order to enter into an amicable agreement with an interested party, the legislator requires to specify in the agreement that it is a transaction involving certain interests, and clarify characteristics of such interests. This Law does not provide a consequence of failure to observe these requirements. It have to be recognised that non-compliance of requirements in this Law serves as a ground for finding such transaction invalid in the manner stipulated by Article 153.

Paragraph 6 of Article 145 provides the compelling power of an amicable agreement over the debtor, creditors, and third parties participating in the agreement, and this Paragraph concretises this as an amicable agreement shall apply to creditors' claims which have matured by the date of the introduction of the relevant bankruptcy process, except for claims for obligations which arise after the commencement of a bankruptcy case. Nevertheless, Paragraph 31 of the Resolution of the SEC Plenum No.142 provides that "conditions of an amicable agreement entered into according to this Law shall apply only to those claims included in the creditors' register as of the date of the creditors' meeting which passes a resolution entering into an amicable agreement". In this connection, the creditors' register includes creditors' claims which arise before the economic court accepts a petition for the declaration of the debtor's bankruptcy and mature before the relevant bankruptcy process is introduced (Para.19,the Resolution of the SEC Plenum No.142).

This Paragraph also provides that conditions of an amicable agreement do not apply to those claims which arise after the commencement of a bankruptcy case. This is because these claims are not included in the creditors' register, as they are regarded as current payments, and accordingly, they must be discharged by the time when an amicable agreement is entered into according to Paragraph 1 of Article 149. Along with this, it is also necessary to note that, although this is not explicitly stipulated in this Paragraph, conditions of an amicable agreement do not apply to claims which mature after the introduction of the relevant bankruptcy process, as they are also regarded as

current payments, i.e. claims which arise after the court accepts a petition for the debtor's bankruptcy, and claims which mature after the introduction of the relevant bankruptcy process (Para.19, the Resolution of the SEC Plenum No.142).

Article 147. Form of Amicable Agreement

- 1 An amicable agreement shall be made in writing.**
- 2 On behalf of the debtor, an amicable agreement shall be signed accordingly by the individual entrepreneur debtor, the debtor's manager or a court receiver. On behalf of creditors, an amicable agreement shall be signed by a person authorised by the creditor's meeting.**
- 3 If third parties participate in an amicable agreement, it shall be signed by these third parties or their representatives.**

This Article sets the requirements to the form of amicable agreements as one sort of transactions.

1. An amicable agreement shall meet the requirements set by the civil legislation (Art.108,CC) to normal written form of transactions. Unlike the civil legislation which provides that as a written form of transactions (contracts), an exchange of letters handed over directly or through means of communication (including by e-mail) is regarded, for the purpose of this Law, an amicable agreement is concluded by a single written document.
2. Paragraph 2 of this Article determines persons who must sign an amicable agreement. On behalf of the debtor, it must be signed by the individual entrepreneur debtor, the debtor's manager or a court receiver, while on behalf of creditors – a person authorised by the creditors' meeting. The latter must be understood as a concrete individual authorised by the creditors' meeting that has passed a resolution entering into an amicable agreement, to sign an agreement. This Law does not pose any requirement to this individual, but only concretises that this person should have power to sign an amicable agreement, delegated to him/her by the creditors' meeting. Hence, this may be any person, including a representative of any of creditors included in the creditors' register, or the representative of the creditors' meeting who acts on behalf of the creditors' meeting in bankruptcy proceedings. Along with this, it is necessary to keep in mind that if the powers of the debtor's manager terminate in supervision by a ruling of the court and are assigned to the interim receiver, an amicable agreement is signed on behalf of the debtor by the interim receiver, who functions actually as the debtor's manager (Para.32,the Resolution of the SEC Plenum No.142).
3. If third parties participate in an amicable agreement and grant security for the debtor's performance of monetary obligation and mandatory payments under an amicable agreement, this Law requires that these persons (or their representatives) sign an amicable agreement as well. When an amicable agreement is signed by a representative of a third party, it is necessary to attach a power of attorney confirming his/her powers to sign an amicable agreement.

Article 148. Content of Amicable Agreement

- 1 An amicable agreement must contain provisions on the amounts, procedure and periods for the performance of monetary obligations of the debtor and (or) on the termination of monetary**

obligations of the debtor by compensation (alternatives), novation, relinquishment or in any other way envisaged by the legislation.

- 2 An amicable agreement may contain conditions on:**
 - the postponement or extension of the maturity date;
 - the assignment of rights of claims of the debtor;
 - the performance of monetary obligations of the debtor by third parties;
 - the reduction of debts;
 - changes in periods and procedure for payment of mandatory payments in accordance with the legislation;
 - the satisfaction of creditors' claims in other ways which are not against the legislation.
- 3 The terms and conditions of an amicable agreement for creditors who did not take part in voting on the matter of an amicable agreement, and creditors who voted against an amicable agreement may not be worse than those for creditors of the same priority who voted for an amicable agreement.**
- 4 Unless otherwise envisaged by an amicable agreement, security over the debtor's property for the debtor's performance of obligations shall remain in force.**

The previous Article provides for the requirements to the form of an amicable agreement, and this Article outlines the list of requirements to the content (text) of an amicable agreement. Non-observance of these requirements leads to the court's refusal to approve an amicable agreement.

1. Just like the civil legislation which sets requirements to the content of contracts, this Law provides for the requirements to the content of an amicable agreement. An amicable agreement should contain provisions on the procedure, terms and ways of its performance, as agreed with creditors. An amicable agreement must not contain uncertain conditions. Paragraph 1 of this Article provides that an amicable agreement may contain provisions of the termination of monetary obligations of the debtor by compensation (alternatives), novation, relinquishment or any other way envisaged by the legislation. Thus, it should be noted that as concerns mandatory payments, their termination is not allowed by the above mentioned methods. The Resolution of the SEC Plenum No.142 (Para.33) explains that providing financial support to the debtor by way of postponing the due date of, making instalment payment of and (or) reducing debts shall be considered as a subject of an amicable agreement, and shall not be considered as a measure to recover the debtor's financial situation in the course of other bankruptcy processes (except for financial support by way of reducing debts).
2. Paragraph 2 of this Article lists conditions which may be provided in an amicable agreement. However, this list is not exhaustive, so that an amicable agreement may include other ways to satisfy creditors' claims, provided that they do not contradict with the legislation. Along with this, the reduction of the amount of mandatory payments may not be applied.

Unlike general court proceedings, where the legislation does not allow an amicable agreement on the disputes of administrative law relations, the bankruptcy legislation does not mention whether an amicable agreement is binding on claims for mandatory payments, but this Law does not directly prohibit this, either. Item 5 of Paragraph 2 of Article 148 provides that an amicable agreement may contain conditions to change the terms and ways of payment of mandatory payments in accordance with the legislation. But, here the legislator makes a stipulation "in accordance with the legislation".

This Law does not clarify this clause. This issue is not clarified in the Resolution of the SEC Plenum No.142, either. It is considered that “in accordance with the legislation” shall mean that a decision to change the terms and the procedure of payment of mandatory payments must be made by an authorised body. According to the legislation, **this authorised body** is the Governmental Commission for Decrease in Outstanding Claims and Debts and Strengthening the Discipline of the Payments to the Budget (the Resolution of the Cabinet of Ministers “On establishing the Governmental Commission for Decrease in Outstanding Claims and Debts and Strengthening the Discipline of the Payments to the Budget“ dated 9 Feb.2004,No.61).

Hence, an amicable agreement may be entered into by the state body being a creditor on mandatory payments, i.e. state taxation service authority, but on condition of the relevant resolution of the abovementioned Governmental Commission. In this connection, it is necessary to note that the reduction of debts and forgiveness of penalties accrued on mandatory payments are not allowed, since Item 5 of Paragraph 2 of Article 148 only allow changes of the due date and payment way regarding mandatory payments.

3. Paragraph 3 of this Article contains a rule that is called for protecting the interests of creditors who does not take part in voting or creditors who vote against an amicable agreement. It is provided that the terms and conditions of an amicable agreement for such creditors may not be disadvantageous compared to those for creditors of the same priority who vote for an amicable agreement. It should be noted here that a breach of this requirement constitute a ground for finding an agreement void.
4. Article 145 provides that the creditors’ meeting resolution entering into an amicable agreement is passed by a majority vote in value of all creditors and deemed to be passed provided that all creditors secured by the debtor’s property vote in favour of such resolution. By maintaining the validity of security over the debtor’s property for obligations which the debtor undertakes under an amicable agreement, the legislator secures the interests of secured creditors (security holders) in case an amicable agreement is concluded. However, parties may provide in an amicable agreement for another rule, by virtue of which security contracts terminate.

Article 149. Conditions for Economic Court to Approve Amicable Agreement

- 1 An amicable agreement may be approved by the economic court only after the discharge of expenses and claims envisaged by Paragraph 1 of Article 134 of this Law, and claims granted execution documents for wages.**
- 2 The debtor, the external manager or the liquidation manager must, within five days from the date of signing of an amicable agreement, apply to the economic court for the approval of an amicable agreement.**
- 3 The following must be attached to the application for the approval of an amicable agreement:**
 - the text of an amicable agreement;**
 - minutes of the creditors’ meeting which has passed a resolution entering into an amicable agreement;**
 - the creditors’ register;**
 - documents confirming the discharge of expenses and claims specified in Paragraph 1 of this Article;**

- **written objections of creditors who did not participate in voting on the matter of an amicable agreement or who voted against it;**
- **other documents in accordance with the legislation.**

4 The economic court shall notify to interested parties the date of the consideration of an amicable agreement. The absence of notified persons shall not preclude the consideration of a bankruptcy case.

This Article impose requirements to the procedure for applying to the court for the approval to an amicable agreement and outlines conditions which should be observed for the court to satisfy the application for the approval of an amicable agreement.

1. An amicable agreement comes into legal force on the approval by the economic court. When considering the matters of the approval of an amicable agreement, the court examines its conformity not only to requirements of this Article, but also to this Law as a whole, and also sees whether an agreement violates right of any third parties or not.

As a mandatory condition set by this Law for entering into an amicable agreement, Paragraph 1 of this Article requires payments of judicial expenses, remuneration of court receivers, current utility and operational payments, expenses for the insurance of the debtor's property, debts which arise after the commencement of a bankruptcy case, other current payments (Para.19,Subpara.8,the Resolution of the SEC Plenum No.142), claims of citizens for damages to life or health according to the legislation, and also claims under execution documents for salaries. Additionally, it should be noted that claims for moral damage must also be satisfied before an amicable agreement is conclude, although Paragraph 1 of Article 134 does not include them in those claims to be preferentially satisfied as superpriority claims. By providing the mandatory discharge of claims for salaries, the legislator pursues the social protection of the debtor's employees. Consequently, the debtor should pay off expenses and satisfy the above-mentioned claims by the date of the creditors' meeting, summoned to consider the entering into of an amicable agreement.

2. Paragraph 2 of this Article sets the period within which an application for the approval of an amicable agreement must be filed with the economic court. In this connection, this Law does not envisage the legal consequence of the filing of the application after such period expires. In this regard, this shall not be a ground for the refusal to approve an amicable agreement.
3. Paragraph 3 of this Article clarifies documents which must be attached to an application for the approval of an amicable agreement. The purpose of this requirement of producing in the court documents listed in this Paragraph is to enable the court to check whether requirements which this Law poses on the conclusion of amicable agreements are observed or not. Failure to provide any requisite document together with the application constitutes a ground for the refusal to approve an amicable agreement. However, if such defect is amended later, parties are entitled to reapply to the court for the approval of an amicable agreement.

It should be pointed out that this list of documents is not exhaustive. Additional documents might need to be provided, depending on conditions of an amicable agreement. For example, if an agreement include a provision regarding security, it would be necessary to provide a document confirming the consent of this security holder (secured creditor) to this amicable agreement. Or, if an amicable agreement is for the debtor a transaction which requires the consent of the debtor's

management body, then, the debtor's manager may only take a decision to enter into an amicable agreement after the above consent is given, and the consent should be presented with the application.

4. Upon receiving an application for the approval of an amicable agreement and all attachments stipulated by this Law, the court appoints a session to consider the application and informs interested parties thereof. In this respect, even if persons properly notified do not attend the court session, no influence occurs over the consideration of the application. This Law does not set the period within which the court must consider the application. It might depend on concrete circumstances. If an amicable agreement is entered into at the first creditors' meeting in supervision, the agreement should be approved by the court on the date when a petition for the declaration of the debtor's bankruptcy is considered. If an amicable agreement is concluded during judicial rehabilitation, external management or liquidation proceedings, the courts should consider the application within one month from the date when it receives the application, according to the rules of the Code of Economic Procedure (Art.125) that provide for the period of one-month for the consideration of applications.

Article 150. Consequences of Approval by Economic Court of Amicable Agreement

- 1 The approval by the economic court of an amicable agreement in the course of supervision, judicial rehabilitation, external management and liquidation proceedings shall be a ground for the termination of bankruptcy proceedings.**
- 2 From the date when the economic court approves an amicable agreement, the powers of court receivers shall terminate. The external manager and the liquidation manager of the legal entity debtor shall continue to exercise their powers up to the date when the debtor's manager is elected (appointed).**
- 3 From the date of the approval of an amicable agreement, the individual entrepreneur debtor or the debtor's manager, the external manager or the liquidation manager, or third parties respectively shall proceed to repay debts to creditors.**

This Article outlines the consequences of the approval of an amicable agreement.

1. The approval of an amicable agreement by the economic court during supervision, judicial rehabilitation and external management constitutes a ground for terminating bankruptcy proceedings. In case an amicable agreement is made in the process of liquidation proceedings, from the date of its approval, the court decision to declare the debtor bankrupt and initiate liquidation proceedings is not subject to execution, which the court indicates in the operational part of a ruling to approve an amicable agreement. From this moment, general procedural actions in a bankruptcy case are no longer possible, except for appeals against the economic court ruling to approve an amicable agreement. This court ruling is appealable in the manner provided in the Code of Economic Procedure, according to Paragraphs 21 and 22 of the Resolution of the SEC Plenum No.142.
2. From the date when the court approves an amicable agreement, the powers of the interim receiver, the rehabilitation manager, the external manager or the liquidation manager end. If an amicable agreement is concluded in external management or liquidation proceedings, a person who has been acting as external manager or liquidation manager of the legal entity debtor continues to act as the debtor's manager up to the date of the appointment (election) of the debtor's manager. Such is

provided in order to exclude blank in the business of the debtor entity. The same rule is applied in a situation when an amicable agreement is made in supervision and judicial rehabilitation during which the interim receiver or the rehabilitation manager has been exercised the powers of the debtor's manager who has been dismissed.

3. After the approval of an amicable agreement, the individual entrepreneur debtor or the debtor's manager, the external manager or the liquidation manager, or third parties respectively proceed to redeem debts to creditors.

Article 151. Refusal of Economic Court to Approve Amicable Agreement

- 1 In case expenses and claims specified in Paragraph 1 of Article 149 of this Law are not discharged, the economic court shall refuse to approve an amicable agreement.**
- 2 The economic court shall also refuse to approve an amicable agreement, in case of:**
 - violation of the procedure for concluding an amicable agreement established by this Law;
 - failure to comply with the prescribed form of an amicable agreement;
 - violation of third parties' rights;
 - contradiction of the terms and conditions of an amicable agreement with the legislation.
- 3 The economic court shall render a ruling to refuse to approve an amicable agreement, which may be appealed (protested).**

This Article provides cases where the court refuses to approve an amicable agreement, and its aims to prevent such situations in concluding an amicable agreement.

1. As it has been marked above (see the comment on Art.149), a mandatory condition which this Law imposes on the conclusion of an amicable agreement is to reimburse expenses and satisfy claims stipulated by Paragraph 1 of Article 134, and claims granted payment documents for salaries. The debtor's failure to discharge these claims provided in Paragraph 1 of Article 149 constitutes a ground for the court to refuse to approve an amicable agreement. By the date when the economic court considers an application for the approval of an amicable agreement, they must be really discharged. The real discharge should be confirmed in writing, and such documents should be attached to an application for the approval of an amicable agreement. They may be payment bills evidencing bank transfer, payment receipts, account warrants, written acknowledgements of persons specified in Paragraph 1 of Article 134 that the debtor has paid them and so forth.
2. Paragraph 2 of this Article contains a list of violations which serve as grounds for the refusal to approve an amicable agreement. Each of such violations may occur in various forms. For example, a violation of the prescribed procedure for entering into amicable agreements may be committed in that a resolution entering into an amicable agreement on behalf of the debtor is passed by an unauthorised person, or that not all creditors secured by the debtor's property have been involved in voting for such resolution. Failure to comply with the prescribed form of an amicable agreement is that an agreement is not concluded in writing although it is so required. As an example of a violation of the rights of third parties, such amicable agreement can be taken as stipulates obligations of persons who are not involved in drafting or signing this agreement. The economic court also refuses to approve an amicable agreement in the event the court reveals grounds for the invalidation of an

agreement as provided in the civil legislation. For example, when the content of an amicable agreement does not meet requirements of the legislation (Art.116,CC) or when an amicable agreement is concluded just for form without any intention to create any legal consequences corresponding to it (Art.124, CC). Thus, it is necessary to take into account that grounds for the invalidity of transactions provided in the civil legislation are considered as grounds for the economic court to refuse to approve an amicable agreement.

3. To refuse to approve an amicable agreement. the economic court renders a ruling, which is appealable. However, this Law does not provide for the procedure and terms of such appeal. This issue is addressed in Paragraph 21 of the Resolution of the SEC Plenum No.142, according to which, rulings rendered by the economic court within the framework of bankruptcy proceedings may be, if they are not stipulated in the Code of Economic Procedure, appealed (protested) only in the cases and the procedure established by this Law. Hence, as the Code of Economic Procedure does not mention a ruling to refuse to approve an amicable agreement, this ruling rendered under Article 151 may be appealed in the manner and period stipulated by Articles 59 and 60, which provide that a ruling should be appealed within ten days from the date when it is rendered, and that upon the results of consideration, the court of appeal instance should, within ten days, render a resolution, which is regarded as a final decision.

Article 152. Consequences of Refusal to Approve Amicable Agreement

- 1 If the economic court renders a ruling to refuse to approve an amicable agreement, the agreement is deemed to be unconcluded.**
- 2 The rendition by the economic court of a ruling to refuse to approve an amicable agreement shall not preclude a new amicable agreement from being concluded.**

In this Article, the legislator provides for consequences which take place in case the court refuses to approve an amicable agreement.

1. Consequences of the court's refusal in terms of substantial law are that those consequences expected by parties reaching an amicable agreement do not take effect. In this case, those relations between the debtor and creditors which exist until an amicable agreement is concluded revive.

Consequences of the court's refusal in terms of procedural law are that a bankruptcy case proceeds. From the procedural point of view, parties' attempt to reach an amicable agreement does not in any way affect a course of bankruptcy proceedings; they proceed at the same process in which parties (interested persons) undertook an attempt to enter into an amicable agreement.

2. Paragraph 2 of this Article provides that the economic court ruling to refuse to approve an amicable agreement does not deprive parties of the right to make another agreement later, taking into account those grounds on which the court refuses to approve an agreement.

Article 153. Invalidity of Amicable Agreement

Upon an application of the debtor, creditors, the prosecutor, and persons whose rights and legal interests are violated by an amicable agreement, an amicable agreement may be recognised by the economic court to be invalid, if:

- **an amicable agreement contains terms and conditions which are advantageous to certain creditors or detrimental to rights and legal interests of certain creditors;**
- **there are other grounds for the invalidity of transactions envisaged by the legislation.**

This Article lists grounds for invalidating an amicable agreement.

This Article outlines persons eligible to file claims for the invalidation of amicable agreements and also grounds for invalidating them. For the purpose of application of this provision, it should be recognised that claims for the invalidation of an amicable agreement may be filed with the court by any person who believes that this agreement violates its rights or interests, since under Article 1 of the Code of Economic Procedure, any interested person has the right to apply to the economic court for the protection of its violated or challenged rights or interests subject to protection by the legislation in the manner established by the Code of Economic Procedure. A similar provision is provided in the Code of Civil Procedure. Having examined claims for the invalidation of an amicable agreement only the court can determine whether this person's rights or interests are violated or not.

It is necessary to distinguish cases, where the court may refuse to approve an amicable agreement from cases, where claims for the invalidation of an amicable agreement may be filed. According to Article 151, the refusal to approve an amicable agreement are grounded on the non-observance of requirements of the bankruptcy legislation in the process of drafting and entering into an amicable agreement, and the incompliance of its conditions with the legislation, i.e. these are grounds for recognising an amicable agreement as transactions to be void (see the comment on Article 151). Objections of creditors or third parties are not essential in refusing to approve an amicable agreement: the court, having studied documents submitted together with the application in a court session, renders a ruling to approve or refuse to approve an amicable agreement. As a compulsory condition for the invalidation of an amicable agreement, this Article provides for the existence of a written application of interested parties, and also grounds listed in Items 1 and 2 of Article 153. In practice, Item 1 of this Article does not cause any disputes. However, as regards Item 2, there might be some problems, because it refers to the other legislation. It is considered that "grounds for the invalidity of transactions" mean grounds stipulated by the civil legislation, based on which the court may recognise a transaction to be invalid, i.e. voidable transaction. There might be a question when there is a ground for the invalidity of an amicable agreement as it is a void transaction, but the court has already approved this agreement. In this case, an interested party has the right to appeal against the court ruling to approve this agreement within the framework of bankruptcy proceedings. The procedure of the invalidation of an amicable agreement is carried out according to the general rules of court proceedings within the framework of the Code of Economic Procedure and (or) Code of Civil Procedure, and beyond the framework of bankruptcy proceedings. Such conclusion follows from the purport of this Article, and also from the wording of the rule which states that an amicable agreement may be invalidated only by a decision of the court, not by a ruling of the court. There might be a complexity in this case with determining parties - participants in a case on the invalidation of an amicable agreement. A question is who should be involved as respondents of this case, all creditors or the creditors' meeting in the person of its representative who has signed an amicable agreement on behalf of creditors. Another question takes place when not all interested parties are invited to participate in the case by a person who has applied to the court. It is considered that all creditors and third parties for whom an amicable agreement

provides rights and obligations should be involved to participate in proceedings, as the invalidation of an amicable agreement would entail the termination of their rights and obligations. In this case, there would be no difficulty for sure if creditors are three or five, while when creditor are ten or twenty, or more, it might be problematic for courts to notify the time and place of the court session, and to hold a court session itself.

This Law does not contain provisions about the period within which a claim for the invalidation of an amicable agreement may be filed, so that such claims may be filed at any time. However, if such claim is filed after the expiry of the period of limitation on lawsuits established by the civil legislation, or if a petition is lodged for the application of consequences of the above expiration in the process of consideration of the claim, these shall be grounds for the court to refuse the claim.

Article 154. Consequences of Invalidation of Amicable Agreement

- 1 The invalidation of an amicable agreement shall be a ground for bankruptcy proceedings to reopen. The economic court shall render a ruling to reopen bankruptcy proceedings, which may be appealed (protested).**
- 2 In the event of the invalidation of an amicable agreement, creditors' claims the payments of which has been postponed and (or) divided or claims the amount of which has been reduced shall be re-established in respect of the unsatisfied part thereof.**
- 3 The invalidation of an amicable agreement shall not incur an obligation to return to the debtor the sum of reimbursed expenses and satisfied claims envisaged by Paragraph 1 of Article 149 of this Law.**
- 4 In respect of matters which are not regulated by this Article, consequences of the invalidation of transactions which are envisaged by the legislation shall occur.**
- 5 In the event of the invalidation of an amicable agreement, an announcement on the reopening of bankruptcy proceedings in respect of the debtor shall be published in an official gazette by the economic court at the expense of the debtor in the manner envisaged by Articles 52 and 53 of this Law.**
- 6 Creditors' claims which have been satisfied on the terms and conditions of an amicable agreement not contradicting with this Law shall be deemed to be discharged. If claims have been satisfied on the terms and conditions of an amicable agreement which are advantageous to them or detrimental to rights and legal interests of other creditors, these creditors shall be obliged to return everything that has been received while an amicable agreement is carried out. Given this, the specified claims shall be re-established in the creditors' register.**

This Article outlines the consequences which come upon the invalidation of an amicable agreement.

1. In case of the invalidation of an amicable agreement, there occur consequences stipulated in this Article, namely, bankruptcy proceedings reopen, whereof the economic court renders a ruling. As the legislator does not regulate the "destiny" of a ruling to approve an amicable agreement, it is understood that, by analogy with the procedural law regulating the revision of an already effective judicial act due to newly revealed circumstances (Arts.204 through 208, CEP), the court must, in its ruling to reopen proceedings, state that the former ruling is cancelled.

Upon the reopening of bankruptcy proceedings, a bankruptcy process during which an amicable agreement has been concluded is revived in respect of the debtor. A court receiver, earlier appointed by the court restarts his/her duties. In case this court receiver cannot carry out his/her duties, the court appoints another court receiver from candidates proposed by the creditors' meeting or by the state body for bankruptcy proceedings. In case an amicable agreement is made in the process of supervision or judicial rehabilitation, the debtor's manager is reinstated.

A ruling of the court to recognise an amicable agreement invalid⁵⁸ shall be subject to immediate enforcement and may be appealed in line with Article 60.

2. Paragraph 2 of this Article provides for the consequences of the invalidation of an amicable agreement in respect of creditors' claims the payments of which has been postponed and (or) divided or claims the amount of which has been reduced, according to conditions of an amicable agreement. It is stipulated that these claims are re-established in respect of their unsatisfied part. It does not give explanations regarding those claims which were given up by creditors as "the reduction of debts". It is regarded in this case that it would be reasonable to apply the general rules regarding consequences of the invalidity of transactions, provided by the civil legislation (Art.114, CC). Exceptions to these general rules are envisaged in Paragraph 3 of this Article.
3. Like the invalidation of any other transaction, the invalidation of an amicable agreement brings parties to the original condition. However, in Paragraph 3 of this Article, it is stated that this rule does not apply to discharged expenses and satisfied claims envisaged by Paragraph 1 of Article 149.
4. Paragraph 4 of this Article provides that in respect of matters which are not regulated by this Article, consequences of the invalidation of transactions under the civil legislation take place. According to Article 114 of the Civil Code, in case of the invalidity of a transaction, each party is obliged to return all received under the transaction to another party. However, it is necessary to take into account that Paragraphs 2, 3 and 6 of this Article stipulate exceptional cases where it is not allow to bring parties to the original condition.
5. The economic court should publish in an official gazette a notice of the invalidation of an amicable agreement and the reopening of bankruptcy proceedings, which is conducted at the expense of the debtor. The requirements to information to be specified in, and the content of such notice are provided in Articles 52 and 53.
6. Paragraph 6 of this Article provides for cases where creditors with which settlement has been made on the terms and conditions of an amicable agreement prior to its invalidation do not have to return the amount discharged in accordance with this agreement, and cases where they have to.

Claims which have been paid on the terms and conditions of an amicable agreement not contradicting with this Law are deemed to be discharged.

From this Paragraph, it follows that the statutory requirements to restore circumstances to the original condition do not apply to those creditors' claims which have been discharged on the terms and conditions of an amicable agreement, provided that these terms and conditions do not constitute a ground for the invalidation of the agreement. If these terms and conditions serve as a ground for the

⁵⁸ It is considered to be "a ruling to reopen bankruptcy proceedings, which also indicates the cancellation of a ruling to approve an amicable agreement, from the context here and the comment on Article 153, which explains that an amicable agreement may be recognised invalid only by a decision of the court.

invalidation of the agreement, as stipulated by Article 153, this shall result in parties being obliged to restore things to the original condition.

The legislator does not provide consequences of default of the obligation to return everything received under an amicable agreement. This implies that in case of such default, a court receiver should take measures to recover from creditors everything provided on terms and conditions of an amicable agreement in line with the generally established civil legislation procedure, i.e. by filing a lawsuit with the court.

Article 155. Consequences of Non-Performance of Amicable Agreement

- 1 In the event of non-performance by the debtor of an amicable agreement, creditors shall be entitled to lodge claims in the amount envisaged by an amicable agreement, in the manner established by the legislation.**
- 2 In the event of the commencement of a new bankruptcy case, the amount of creditors' claims in respect of which an amicable agreement has been concluded shall be determined by the terms and conditions envisaged by an amicable agreement.**

This Article regulates legal relations among the debtor, creditors and third parties in case the debtor fails to perform the terms and conditions of an amicable agreement.

1. Paragraph 1 of this Article provides the right of creditors to lodge claims against the debtor, if the debtor fails to fulfil an amicable agreement. In this case, however, their claims are limited to the amount envisaged in the amicable agreement. In practice, the realisation of this right may have some difficulties. According to the Code of Economic Procedure, if parties reach an amicable agreement in the course of general court proceedings, the economic court, approving such agreement, issues a writ of execution which entitles a party to claim compulsory performance in case the agreement is not implemented voluntarily. It is questioned whether this procedure may be applied in bankruptcy proceedings, in case when an amicable agreement concluded is not performed by the debtor. From the purport of this Article, it follows that creditors may file a lawsuits based on their claims in the court in the general procedure in case the debtor does not perform an amicable agreement. This matters is outlined in Paragraph 32 of the Resolution of the SEC Plenum No.142, according to which “in case the debtor does not fulfil conditions of an amicable agreement, creditors shall be entitled to file an action in the court of general jurisdiction or in the economic court as per the jurisdiction”. In this case, the amount of claims is determined according to the terms and conditions of an amicable agreement and the consideration is limited only to the concrete amount of the claims as of the date of the filing. If an amicable agreement contains the terms and conditions for sanctions for the debtor's improper performance of the agreement, creditors may claim such sanctions, as well. It is considered that the absence of such terms and conditions in an agreement (i.e. those about sanctions) does not prevent creditors from filing in the court their claims for penalties, as they are determined by the legislation (in particular, interest by Article 327 of the Civil Code, sanctions by the Law “On Contractual Legal Basis of Activity of Business Entities”), because an amicable agreement made in bankruptcy proceedings is regarded as a transaction.

In practice, there might arise a question: how to deal with matters, if the court have issued a writ of execution against the debtor within the framework of general court proceedings prior to the

commencement of a bankruptcy case in respect of this debtor. According to Paragraph 32 of the Resolution of the SEC Plenum No.142, it follows that these creditors may file their claims against the debtor again within the framework of general court proceedings. In this case, the amount of creditors' claims is decided by the terms and conditions of an amicable agreement. However, it does not mean that creditors have no right to claim sanctions stipulated by the terms and conditions of an amicable agreement and by the legislation.

2. Paragraph 2 of this Article sets the provisions regarding the amount of creditors' claims admitted in a bankruptcy case newly commenced, or ascertained in bankruptcy proceedings already commenced. The legislator explicitly states that in the event of the commencement of a new bankruptcy case, the amount of creditors' claims in respect of which an amicable agreement has been concluded within a previous bankruptcy case are considered based on the same terms and conditions as those envisaged in the amicable agreement.

CHAPTER IX. SPECIFICS OF BANKRUPTCY OF CERTAIN CATEGORIES OF DEBTORS BEING LEGAL ENTITIES

This Chapter establishes specifics of bankruptcy processes of a township-forming enterprise and an enterprise equalled thereto, agricultural enterprises, banks, insurers and professional participants in the securities market.

For a township forming enterprise and an enterprise equalled thereto, specific provisions are established on indications of bankruptcy, introduction and extension of external management, conditions of enterprise sale as a property complex, etc. For agricultural enterprises, specifics of prejudicial rehabilitation, possibilities of extending period of supervision, judicial rehabilitation and external management are envisaged, and also specific conditions of enterprise sale as a property complex are provided. For banks, specific provisions are envisaged on declaration of bank to be a bankrupt, impossibility to introduce external management, and also persons participating in a bankruptcy case. For insurers, specifics of sale of its property as a property complex, termination of insurance agreements, order of priority of satisfaction of claims are envisaged. For professional participants in the securities market, specific provisions on court receivers and limitations to make transactions after the commencement of a bankruptcy case are assigned. These specifics are preconditioned by specification of activity of the indicated entities.

§ 1. Bankruptcy of Township-Forming Enterprise and an Enterprise Equalled Thereto

Article 156. Specifics of Bankruptcy of Township-Forming Enterprise and Enterprise Equalled Thereto

- 1 A bankruptcy case of a township-forming enterprise and an enterprise equalled thereto may be commenced by the economic court, if the debtor is unable to satisfy creditors' claims for monetary obligations and (or) perform duties on mandatory payments, and such obligations and (or) duties have not been performed within six months from the date when they occurred, provided that the claims against the debtor in aggregate amount to not less than five thousand-fold minimum wage.**
- 2 When a bankruptcy case of a township-forming enterprise and an enterprise equalled thereto is considered, the relevant local body of state power and (or) the relevant ministry, state committee, agency, body of economic administration shall be recognised as a person participating in the case.**
- 3 The procedure for certifying enterprises as township-forming enterprises and enterprises equalled thereto shall be determined by the Cabinet of Ministers of the Republic of Uzbekistan.**

This Article determines procedural specifics of consideration of bankruptcy cases of a debtor - township-forming enterprise and an enterprise equalled thereto.

1. In Paragraph 1 of this Article indications of bankruptcy of a township-forming enterprise and an enterprise equalled thereto are determined, given which the economic court may commence a

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bankruptcy case. Such indications are existence of debts on monetary obligations and mandatory payments of a township-forming enterprise and an enterprise equalled thereto which are six month overdue in the amount exceeding five thousand-fold minimum wage. This rule is an exception to the general rule envisaged by Articles 4 and 5.

According to Article 3, a township-forming enterprise and an enterprise equalled thereto is a legal entity, employees of which inclusive of members of their families comprise not less than a half of population of the relevant population centre, or the employees' number of which is not less than three thousand, or which is engaged in the state defence and security, or which is in a natural monopoly industry.

According to Articles 3 and 4 of the Law "On Natural Monopolies", natural monopolies are legal entities which perform:

- Transportation of oil, oil products and gas by pipelines;
- Production and transportation of electrical and heating power;
- Activity in the area of using railway infrastructure;
- Services of public postal communication;
- Water and sewage servicing;
- Services of aero-navigation, ports and airports.

Bodies of state regulation of activity of natural monopolies are:

- The Cabinet of Ministers of the Republic of Uzbekistan;
- Body authorised by the Cabinet of Ministers of the Republic of Uzbekistan.

Control of activity of entities of natural monopoly is carried out by the Demonopolisation Committee according to the Resolution of the President "On organisation of activity of the State Committee on Demonopolisation, Support of Competition and Entrepreneurship" dated 2 May 2005 No.PR-66 .

2. According to Paragraph 2 of this Article, a bankruptcy case of a township-forming enterprise and an enterprise equalled thereto is considered by the economic court with participation of the relevant local body of state power and also the relevant superior body (ministry, state committee, agency, body of economic administration). For example, in practice depending on type of activity of a debtor-enterprise such bodies may be Ministry of Agriculture and Water Resources, State Stock Company "Uzbekyengilsanoat", Association "Uzbek ipagi", etc.

When accepting a petition for the declaration of bankruptcy of a township-forming enterprise and an enterprise equalled thereto, the economic court invites the indicated bodies to participate in the case. Participation of these bodies is mandatory.

3. Paragraph 3 of this Article determines that procedure for referring enterprises to township-forming enterprises and enterprises equalled thereto is determined by the Cabinet of Ministers of the Republic of Uzbekistan.

According to Paragraph 34 of the Resolution of the SEC Plenum No.142, prior to determination by the Cabinet of Ministers of the Republic of Uzbekistan procedure for referring enterprise to township-forming enterprises and an enterprises equalled thereto, confirmation of whether the debtor is a township enterprise and an enterprise equalled thereto is existence of one of the following documents:

- certificate issued by the State Committee of the Republic of Uzbekistan on Statistics or its local body, confirming that average annual number of employees of the enterprise not less than three thousand;

- certificate, issued by the State Committee of the Republic of Uzbekistan on Statistics or its local body confirming that the number of enterprise employees inclusive members of their families comprise not less than a half of population of the relevant population centre;
- certificate of the Ministry of Defence of the Republic of Uzbekistan, confirming that enterprise is engaged in the state defence and security;
- certificate of the State Committee of the Republic of Uzbekistan on Demonopolisation, Support to Competition and Entrepreneurship or its local body on that the legal entity is in the register of entities in natural monopoly industries of commodity markets, according to its main type of activity.

**Article 157. External Management of Township-Forming Enterprise
and Enterprise Equalled Thereto**

- 1 External management of a township-forming enterprise and an enterprise equalled thereto may be introduced by the economic court by virtue of a resolution of the creditors' meeting, and if there is no such resolution – it may also be introduced upon a petition of the local body of state power or ministry, state committee, agency or body of economic administration, provided that they grant security for the debtor's obligations. The external management plan of a township-forming enterprise and an enterprise equalled thereto must be agreed, prior to its submission to the creditors' meeting, by the local body of state power, and in respect of enterprises executing government's defence order – by the ministry, state committee, agency and body of economic administration.**
- 2 Upon a petition of the local body of state power and ministry, state committee, agency, body of economic administration respectively, if there is its security for performance of the debtors' obligations, including governmental guarantees, the economic court may render a decision to transit to judicial rehabilitation of the debtor, if such procedure has never been applied to the debtor.**

This Article determines specifics of the introduction of external management in respect of a township-forming enterprise and an enterprise equalled thereto.

1. By the general rule, external management is introduced pursuant to Article 91, by virtue of a resolution of the creditors' meeting.

Specifics of the introduction of external management in respect of a township-forming enterprise and an enterprise equalled thereto is that if there is no resolution of the creditors' meeting applying to the court for the introduction of external management, the economic court may introduce external management upon a petition of local body of state power or ministry, state committee, agency or body of economic administration, provided that they grant security for the debtor's obligations.

Security for obligations of the debtor - a township-forming enterprise and an enterprise equalled thereto may be security (pledge, mortgage, etc.), guarantee and other types of security, envisaged by the legislation.

By the general rule, external management is introduced according to Article 91 for period from twelve to twenty four months.

2. Paragraph 2 of this Article envisages mandatory agreement of the external management plan with

local body of state power, and in respect of enterprises, executing government's defence order – with the ministry, state committee, agency and body of economic administration. Responsibility of development and agreement of the external management plan with the indicated bodies is assigned to the external manager. The indicated bodies are entitled to introduce appropriate changes and additions to the external management plan while agreeing.

In process of external management of a township-forming enterprise and an enterprise equalled thereto, shift to judicial rehabilitation is possible. One of the conditions of shift to judicial rehabilitation is security for performance of the debtors' obligations by the local body of state power and ministry, state committee, agency, body of economic administration.

When introducing judicial rehabilitation, rules of Chapter V of this Law must be followed accordingly.

The economic court refuses to satisfy an application for the shift to judicial rehabilitation of a township-forming enterprise and an enterprise equalled thereto in case this procedure has been earlier once applied to the debtor.

When shifting to judicial rehabilitation, the economic court decides an issue of reappointment of a court receiver. Pursuant to Article 80, a candidate for a rehabilitation manager is represented to the economic court by the creditors' meeting or by persons who provided security for performance of obligations.

By the general rule, pursuant to Article 78, judicial rehabilitation of a township-forming enterprise and an enterprise equalled thereto is introduced for not more than twenty four months, which may be extended by the economic court for not more than six months in order to satisfy creditors' claims by persons, providing security for performance of obligations. Herewith, rules of Article 91 concerning the total period of judicial rehabilitation and external management are not applied.

Article 158. Extension of External Management

- 1 External management of a township-forming enterprise and an enterprise equalled thereto may be extended by the economic court for not more than one year, if there is a petition of the local body of state power.**
- 2 The financial recovery plan of a township-forming enterprise and an enterprise equalled thereto that contains investment, employment, creation of jobs and other ways of financial recovery of the debtor may serve the ground for extending external management for a period envisaged by Paragraph 1 of this Article by way of investing activity,.**
- 3 Upon a petition of the relevant local body of state power, ministry, state committee, agency and body of economic administration, provided that the warranty for monetary obligations and (or) mandatory payments of the debtor has been granted, the period of external management of a township-forming enterprise and an enterprise equalled thereto may be extended up to five years. In this case, the debtor and his/her warrantor shall be obliged to proceed to settlements with creditors within the periods envisaged by this Article.**
- 4 Failure to comply with the requirements envisaged by Paragraph 3 of this Article shall be the ground for declaring the debtor bankrupt and initiating liquidation proceedings.**

This Article determines specifics of the extension of external management in respect of a township-forming enterprise and an enterprise equalled thereto.

1. By the expiry of the initially provided period of external management, the local body of state power may apply to the economic court for the extension of external management for not more than one year with purpose of further financial recovery of a township-forming enterprise and an enterprise equalled thereto. Based on this, the total period of external management of a township-forming enterprise and an enterprise equalled thereto must not exceed thirty six months, which is an exception to the general rule established by Article 91.
2. The application for the extension of the local bodies of state power must be justified. As motivation for extending the period of external management, there may serve additional investment of the debtor's activity, employment of workers, creation of jobs and other ways of financial recovery of the debtor. Such measures in practice may be conversion of business to manufacturing competitive products, outsourcing of highly qualified specialists, etc.
3. Paragraph 3 of this Article envisages an exception to the general rule for the extension of period of external management of a township-forming enterprise and an enterprise equalled thereto, indicated in Paragraph 1 of this Article. Thus, upon a petition of the relevant local body of state power, ministry, state committee, agency and body of economic administration, provided that the warranty for monetary obligations and (or) mandatory payments of the debtor has been granted, the period of external management may be extended up to five years. In this connection, the total period of external management of a township-forming enterprise and an enterprise equalled thereto, including the extension period may not exceed five years.

Settlements with creditors must be made by the debtor and its warrantor within the extended period established by the economic court upon a petition of the relevant local body of state power, ministry, state committee, agency and body of economic administration. Settlements with creditors are performed according to the procedure of Article 121. Herewith this Law does not envisage certain amounts of monetary funds, directed to discharge debts to creditors, and also periodicity of discharge of debts.

4. When failing to comply with requirements of Paragraph 3 of this Article, i.e. when failing to make settlements with creditors within the period of the extension of external management, established by the economic court upon a petition of the local body of state power, ministry, state committee, agency or body of economic administration, the economic court may render a decision to declare the debtor bankrupt and initiate liquidation proceeding.

Article 159. Conditions of Sale of Debtor Township-Forming Enterprise and Enterprise Equalled Thereto

- 1 In order to satisfy creditors' claims in the course of external management, the debtor township-forming enterprise and an enterprise equalled thereto as a property complex may be sold. The sale of a township-forming enterprise and an enterprise equalled thereto shall be carried out by holding a competitive tendering or auction.**
- 2 The following conditions shall be mandatory for the sale on competitive tendering of a township-forming enterprise and an enterprise equalled thereto:**
 - **jobs for not less than 70 per cent of workers engaged in the township-forming enterprise at the date of its sale are preserved;**
 - **a purchaser retrains or employs workers in case the business of a township-forming**

enterprise is changed.

- 3 The following conditions shall be mandatory for the sale on competitive tendering of a enterprise engaged in the state defence and security:
 - the designated purpose of a property complex of the enterprise engaged in the state defence and security and property of mobilisation designation are preserved;
 - the debtor's agreements on works under government's defence order, works to meet the state needs in the area of the state defence and security are be performed.
- 4 The following conditions shall be mandatory for the sale on competitive tendering of the enterprise in a natural monopoly industry:
 - a purchaser agrees to undertake the debtor's obligations under contracts for supply of goods regulated by natural monopolies laws, and obligations to ensure the availability of produced and (or) realised goods (works, services) for consumers;
 - a purchaser has a licence to perform the relevant type of activity, if the debtor's activity is subject to licensing.
- 5 The conditions of competitive tendering which are not envisaged by Paragraphs 2, 3 and 4 of this Article may be established solely with the consent of the creditors' meeting in the manner envisaged by Article 13 of this Law.
- 6 If a township-forming enterprise and an enterprise equalled thereto have not been sold on the conditions of competitive tendering, it shall be subject to sale on auction.
- 7 If an enterprise which executes government's defence order has property subject to restrictive trade, the sale of such enterprise shall be performed in form of competitive tendering only at the closed tender participants of which may solely be persons which are qualified by the legislation to own such property in the form of ownership or other property right.
- 8 The property of the enterprise executing government's defence order which is withdrawn from commerce shall be transferred to the property owner within three months from the date when the external manager notifies the owner of the availability of such property.
- 9 Ministries, state committees, agencies and bodies of economic administration shall, within one month when the protocol on tender results is signed, have the pre-emption right to purchase the enterprise executing government's defence order at the price established as a result of holding the tender.
- 10 Local body of state power shall, within one month after the protocol on tender results is signed, have the pre-emption right to purchase an enterprise in a natural monopoly industry at the price established as a result of holding the tender.

A sale of a township-forming enterprise and an enterprise equalled thereto is carried out by the general rule according to Articles 110 and 111 of this Law, with specifications contained in this Article.

1. According to Paragraph 1 of this Article, a township-forming enterprise and an enterprise equalled thereto may be sold as a property complex by holding competitive tendering or auction.

According to Article 380 of the Civil Code, competitive tendering may be open and closed. Any person may participate in open auction and open competitive tendering. In closed auction and closed competitive tendering, only persons specifically invited for this purpose may participate.

Auctions, carried out with breaching rules, established by this Law, may be invalidated by the

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court on the claim of an interested party.

Invalidation of auction involves invalidation of the agreement made with the person winning the auction.

2. When buying a township-forming enterprise and an enterprise equalled thereto as a property complex on competitive tendering, a purchaser must take obligations on preservations of jobs for not less than 70 per cent of employees, engaged in the township-forming enterprise on the date of its sale, and it also must retrain or employ workers in case the business of a township-forming enterprise is changed.

The mentioned obligations are essential conditions for sale of a township-forming enterprise and an enterprise equalled thereto. When failing to follow these conditions, a sales contract may be cancelled.

3. In Paragraph 3 of this Article, mandatory conditions for the sale on competitive tendering of the enterprise, engaged in the state defence and security are foreseen, according to which the purchaser takes over obligations on:

- preservation of the designated purpose of property complex of the enterprise, engaged in the state defence and security and preservation of property of mobilisation designation. This means that after selling the enterprise, engaged in the state defence and security, the new owner may not stop production of outputs produced earlier by the debtor and necessary to maintain the state defence and security. In practice, such enterprises are those that fulfil military orders, enterprises of fuel and power sector, aircraft industry, machine manufacturing and metallurgic engineering, etc.
- performance of the debtor's agreements in respect of performance of works under government's defence order, works to meet the state needs in the area of the state defence and security.

4. When selling the enterprise in a natural monopoly industry on competitive tendering, a mandatory condition is the consent of a purchaser to undertake debtor's obligations under contracts for supply of goods, which are the subject of regulation of natural monopolies laws, and obligations to ensure availability of produced and (or) realised goods (works, services) for consumers. For example such goods (services) in practice can be electric power, oil products, maintenance services, services of electric connections and postal services, services of water supply and sewer utility.

Such requirements are also envisaged in Articles 15 and 16 of the Law "On Natural Monopolies", according to which entities of natural monopolies are obliged to:

- Provide equal conditions to consumers to buy their goods. In case of insufficient capacity for servicing all the consumers, it is obliged to regulate goods distribution among consumers according to resolutions of the Cabinet of Ministers of the Republic of Uzbekistan:
- Not to infringe consumers' rights in respect of receiving goods in required capacities and of appropriate quality.

Entities in natural monopoly industries are prohibited to refuse to conclude agreements with certain consumers on production (realisation) of goods providing the entity of natural monopoly is able to produce (realise) such goods.

The next mandatory condition of sale of the enterprise in a natural monopoly industry is the existence of purchaser's license to carry out corresponding type of activity, if the debtor's activity is subject to be licensed.

5. Other conditions not envisaged by this Article may also be included in a sale agreement. For this, the intention of creditors is required, which is stated by voting at the meeting according to Article 13

of this Law.

6. Paragraph 6 of this Article determines a condition of transition of enterprise sale on auction. According to this rule, a township-forming enterprise and an enterprise equalled thereto first is put on sale on competitive tender. In case if a township-forming enterprise and an enterprise equalled thereto is not realised in competitive tender, then it is subject to sale on auction.
7. In Paragraph 7 of this Article a special procedure is envisaged for sale of an enterprise, which executes government's defence order and has **property subject to restrictive trade**. The sale of such enterprise may be performed only in form of competitive tendering only on the closed tender, the participants of which may solely be persons qualified under the legislation to own the specified property by virtue of the right of ownership or other property right.
Pursuant to Article 380 of the Civil Code only persons specifically invited for this purpose participate in the closed competitive tender.
8. Paragraph 8 of this Article contains specifics, pursuant to which property of an enterprise executing government's defence order, withdrawn from commerce is not sold, but must be transferred to its owner within three months. Therefore, the court receiver must exclude such property from the liquidation estate of a township-forming enterprise and an enterprise equalled thereto to be sold.
9. Ministries, state committees, agencies and bodies of economic administration, within one month after protocol on tender results is signed, may apply to the court receiver for the conclusion of an agreement of purchasing property of a township-forming enterprise at the price established as a result of holding the tender. This right of the mentioned parties is considered pre-emptive before other purchasers of the township-forming enterprise property who actually won the tender. The court receiver must conclude a sales agreement with the mentioned parties in the manner established by this Law, and in case of concluding the agreement with other purchasers – cancel the agreement based on this Article.
10. Local body of state power has the analogical pre-emption right to purchase within one month after protocol on tender results of property of the enterprise in a natural monopoly industry is signed at the price established as a result of holding the tender.

**Article 160. Sale of Property of Debtor Township-Forming Enterprise
and Enterprise Equalled Thereto Declared Bankrupt**

- 1 When selling property of the debtor township-forming enterprise and an enterprise equalled thereto which are declared bankrupt, the liquidation manager must propose for sale of the enterprise as a property complex at the first tender.**
- 2 If property of the debtor township-forming enterprise and an enterprise equalled thereto has not been sold as a property complex, it shall be sold according to Article 111 of this Law.**
- 3 The property of the debtor enterprise in a natural monopoly industry which is used by the debtor enterprise in process of production and (or) realisation of goods (works, services) shall be put up to tender only as a property complex.**
- 4 The liquidation manager shall be obliged to ensure the performance of contracts for supply of goods (works, services) of the debtor enterprise in a natural monopoly industry during the period of liquidation proceedings in cases when termination of performance of such contracts violates the living environment of population or operation of enterprises with continuous**

production cycle.

5 Liquidation proceedings of the debtor enterprise in a natural monopoly industry must be completed within six months from the date when the economic court renders a decision and appoints a liquidation manager. If the property of the enterprise remains unsold at the expiration of the specified period, the liquidation manager shall complete liquidation proceedings by substituting assets according to the manner envisaged by Article 115 of this Law, upon a resolution of the creditors' meeting, or a resolution of local body of state power in case the meeting refuses to pass such resolution.

1. Paragraph 1 of this Article determines that when selling the property of the debtor township-forming enterprise and an enterprise equalled thereto, which are declared to be a bankrupt, the liquidation manager must propose for sale on the first tender the enterprise-debtor as a property complex, on conditions, defined by Article 159 of this Law.
2. If property of debtor township-forming enterprise and a debtor enterprise equalled thereto has not been sold on the first tender as a property complex, the liquidation manager sells the debtor's property pursuant to Article 111. Herewith tender on sale of the debtor's property is performed in the manner envisaged by Article 110.
3. Paragraph 3 of this Article envisages specifics of realisation of property of debtor-enterprise in a natural monopoly industry, which is used by the debtor enterprise in process of production and (or) realisation of goods (works, services). Considering the particular importance of activities of enterprises in natural monopoly industries, the legislator envisages in this Paragraph realisation of such property only as a property complex, because if property of an enterprise in a natural monopoly industry which is used in the process of production and (or) realisation of goods (works, services) is sold in part, then production cycle of the enterprise itself (natural monopoly) may stop.
4. Considering that in conditions of natural monopoly it is impossible or economically not efficient to create competitive conditions to meet the demand for a certain type of goods (works, services) due to high production cost, Paragraph 4 of this Article envisages responsibility of the liquidation manager to ensure performance of contracts for supply of goods (works, services) of the debtor enterprise in a natural monopoly industry during the period of liquidation proceedings if the termination of performance of such contracts might violate the living environment of population or operation of enterprises with continuous production cycle.
5. Paragraph 5 of this Article determines the particular period and specifics of the completion of liquidation proceeding of the debtor-enterprise in a natural monopoly industry. By the general rule, pursuant to article 124, the period of liquidation proceeding may not exceed one year. An exclusion to this rule is that liquidation proceeding of the debtor-enterprise in a natural monopoly industry must not exceed six months.

Additionally, an exception to the general rule (Art.143) is that if upon the expiry of six month period of liquidation proceeding, property of liquidated entity of natural monopoly remains unsold, then the liquidation manager, upon a resolution of the creditors' meeting, completes liquidation proceedings by substituting assets according to the manner envisaged by Article 115, i.e. by creating one or several open joint-stock companies on the basis of natural monopoly's property. Herewith, in case of the refusal of the creditors' meeting, such substitution is carried out upon a resolution of local body of state power.

§ 2. Bankruptcy of Agricultural Enterprises

Article 161. Specifics of Bankruptcy of Agricultural Enterprises

- 1 Prior to the commencement of a bankruptcy case of agricultural enterprises, prejudicial rehabilitation may be applied to them in the manner established by the legislation.**
- 2 If the decline in production and deterioration of financial condition of agricultural enterprises in connection with natural calamities and other force majeure took place during the period of prejudicial rehabilitation, such period may be extended for twelve months.**
- 3 When a bankruptcy case of agricultural enterprises is considered, the local bodies of state power may also be persons participating in the case.**

This Article determines specifics of the financial recovery of agricultural enterprises by providing prejudicial rehabilitation and also determines persons participating in a bankruptcy case of such enterprises.

1. Prejudicial rehabilitation of agricultural enterprises is regulated by rules of Chapter II of this Law and the Law “On Rehabilitation of Agricultural Enterprises”.

The Law “On Rehabilitation of Agricultural Enterprises” determines that prejudicial rehabilitation is carried out prior to the commencement of a bankruptcy case of agricultural enterprises and is aimed at recovering the financial and economic solvency of agricultural enterprise and creating conditions for further performance of its efficient activity.

Major objectives of rehabilitation of agricultural enterprise are:

- Performance of necessary reorganisations, aimed at improving organisation and management of activity of the agricultural enterprise;
- Creation of necessary conditions for production and realisation of competitive outputs;
- Security of its financial sustainability.

Objects of rehabilitation are unprofitable, insolvent and economically unsustainable agricultural enterprises.

Subjects of rehabilitation may be owners of property of agricultural enterprise, creditors or other legal and physical entities.

Prejudicial rehabilitation may be performed with or without involvement of government funds. Involvement of government funds in process of rehabilitation is carried out on onerous basis.

The basic measures of prejudicial rehabilitation may be:

- set-off of mutual debts;
- buy-out of whole or partial overdue debts;
- postponement of the discharge of taxes, duties and other mandatory payments and state loans repayment for the period of prejudicial rehabilitation
- conversion of business to manufacturing competitive productives;
- outsourcing of highly qualified specialists;
- training and re-training of personnel;
- financial assistance by legal entities and individuals interested in the financial recovery and continuation of the activity of agricultural enterprise ;
- agreement between the enterprise and the creditor (creditors) on the postponement and (or)

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division of payments to the creditors or on the reduction of debts, for the continuation of the activity of the enterprise;

- Reorganisation of enterprise, etc.

Prejudicial rehabilitation is introduced for up to twenty four months.

When performing prejudicial rehabilitation of agricultural enterprise, the authorised body may impose the moratorium on monetary obligations, taxes, charges and other mandatory payments of the enterprise, which mature before a decision on prejudicial rehabilitation is made.

2. The period of prejudicial rehabilitation may be extended to twelve months in case during the period of prejudicial rehabilitation, the decline in production and deterioration of financial condition of agricultural enterprise in connection with natural calamities and other force majeure take place.

According to Article 333 of Civil Code under force majeure, it is necessary to understand emergency and unavoidable circumstances.

3. By the general rule, according to Article 36, persons participating in a bankruptcy case of agricultural enterprise are the debtor, a court receiver, creditors, the state body for bankruptcy proceedings, the prosecutor. Herewith, according to this Paragraph, the local bodies of state power may also participate in a bankruptcy case of an agricultural enterprise. Based on rule of Paragraph 3 of this Article, participation of the local bodies of state power (Khokimiyats) is possible but not mandatory.

**Article 162. Specifics of Supervision, Judicial Rehabilitation
and External Management of Agricultural Enterprises**

- 1 Supervision, judicial rehabilitation and external management of agricultural enterprises shall be introduced for a period which is until the relevant period of agricultural works expires, and decided in consideration of the time necessary to realise produced marketable agricultural production. Given this, the period of supervision procedure may not exceed three months and the period of judicial rehabilitation and external management procedures may not exceed the period established by Paragraph 3 of Article 91 of this Law.**
- 2 If the decline in production and deterioration of financial condition of agricultural enterprise in connection with natural calamities and other force majeure took place during the period of judicial rehabilitation or external management, such period may be extended for twelve months.**
- 3 The early termination of judicial rehabilitation according to the requirements of Article 86 of this Law may be carried out only taking into consideration the completion date of the relevant period of agricultural works and the time necessary to realise produced marketable agricultural production.**
- 4 In respect of farming enterprises and peasants' enterprises incorporated as a legal entity, the external management procedure shall not be introduced.**

This Article regulates specifics of performing in respect of agricultural enterprise such procedures as supervision, judicial rehabilitation and external management.

1. Unlike the general rule, supervision, judicial rehabilitation and external management in respect of agricultural enterprise are introduced for a period until the expiry of the relevant period of

agricultural works taking into consideration the time which is necessary to realise produced marketable agricultural production. Based on this Paragraph, when introducing indicated bankruptcy processes depending on specialization of agricultural enterprise (production of agricultural outputs), an individual approach is needed while introducing either of bankruptcy processes.

By the general rule pursuant to Article 49, the period of supervision may be extended up to five months. Unlike this rule, the period of supervision of agricultural enterprise may not exceed three months, i.e. a bankruptcy case of agricultural enterprise must be considered on the session of the economic court within three months from the date when the court renders a ruling to accept a petition for the declaration of the debtor's bankruptcy.

The aggregate period of judicial rehabilitation and external management of agricultural enterprise may not exceed thirty six months according to the general rule pursuant to Paragraph 3 of Article 91.

2. The period of judicial rehabilitation or external management of agricultural enterprise may be extended for twelve months if during the period of judicial rehabilitation or external management, the decline in production and deterioration of financial condition of agricultural enterprise in connection with natural calamities and other force majeure take place. Herewith, natural calamities may be of technogenic, natural or ecological character.
3. With repeated violations or a gross violation by the agricultural enterprise debtor of the debt repayment schedule, and circumstances evidencing that the debtor enterprise is unable to fulfil the debt repayment schedule, judicial rehabilitation may be terminated ahead of time, only taking into consideration the completion date of the relevant period of agricultural works and the time, which is necessary to realise produced marketable agricultural production.
4. Paragraph 4 of this Article contains an exception, pursuant to which external management is not introduced in respect of farming enterprises and peasants' enterprises incorporate as a legal entity. Herewith, in respect of these enterprises, other bankruptcy processes (supervision, judicial rehabilitation, liquidation proceedings, amicable agreement) may be introduced, and also out-of-court bankruptcy procedure – prejudicial rehabilitation in the manner established by the legislation.

Article 163. Specifics of Sale (Assignment) of Property and Property Rights of Agricultural Enterprises

- 1 When selling (assigning) the debtor's property, court receivers or the debtor's manager must put up for sale on the first tender the agricultural enterprise as a property complex.**
- 2 Persons being engaged in producing agricultural products and possessing the land plot which is directly adjacent to the debtor's land plot shall have the pre-emption right to purchase the debtor's property and the title to land. When selling (assigning) the specified property and property rights, court receivers or the debtor's manager shall be obliged to assess the value of the specified property and property rights and offer to persons to purchase such property at the assessed value.**
- 3 If persons specified in Paragraph 2 of this Article fail to declare their willingness to purchase the property and property rights of agricultural enterprise within one month, court receivers or the debtor's manager shall realise property according to the legislation.**
- 4 In case of liquidation of agricultural enterprises due to bankruptcy, the land plots granted to them may be alienated or transferred to other person in the manner determined by the**

legislation.

This Article determines specifics of sale (assignment) of property and property rights of agricultural enterprises in any bankruptcy proceedings.

1. Realisation of agricultural enterprise is carried out by the general rule pursuant to Articles 110 and 111. This Paragraph is aimed at creating conditions for preservation of a property complex of an agricultural enterprise as a single unit and envisages mandatory put up for sale property of the agricultural enterprise on the first tender as a property complex. If the agricultural enterprise is not realised as a property complex on the first tender, then in the next tenders the agricultural enterprise may be put up for sale both as a property complex and in part.
2. Paragraph 2 of this Article determines persons having the pre-emption right to purchase property of the agricultural enterprise. These are persons who meet two requirements at a time, and namely: 1) engaged in production of agricultural products and, 2) possessing the land plot, which is directly adjacent to the debtor's land plot. Herewith, property of the agricultural enterprise is subject to sale after a court receiver assesses the value of the specified property and property rights.
3. Paragraph 3 of this Article regulates the period, during which persons having the pre-emption right to purchase the debtor's property and the title to land may enforce such right. Pursuant to this Paragraph, the indicated persons have the pre-emption right during one month from the moment of putting up for sale property and property rights of the agricultural enterprise. If persons having the pre-emption right do not declare their willingness to purchase property and property rights of agricultural enterprise within a month, the court receiver or the debtor's manager may realise it in the manner determined by the legislation.
4. Paragraph 4 determines that in case if agricultural enterprise is announced to be a bankrupt and initiating the liquidation proceeding, the land plots granted to it may be alienated or transferred to other persons in the manner to be determined by the legislation.

§ 3. Bankruptcy of Banks

Article 164. Ground For Declaration of Bank's Bankruptcy

An application for the declaration of a bank' bankruptcy shall be accepted for consideration by the economic court only after the Central Bank withdraws its licence for the right to perform banking transactions.

This Article determines a ground for the declaration of bankruptcy of a bank.

Mandatory condition for applying to the economic court for the declaration of bank's bankruptcy is the revocation by the Central Bank of the Republic of Uzbekistan of a licence for the right to perform banking transactions.

According to Article 14 of the Law "On Banks and Activity of Banks" the Central Bank may revoke the licence to perform banking transactions if:

- the bank becomes insolvent, when liabilities overrun assets;
- it is established that license was granted on the basis of the inadequate information;

- bank fails to fulfil obligation in respect to the own depositor and other creditors;
- reporting data is regularly falsified;
- performed bank operations contradict to the legislation and the license conditions;
- delay in performing bank operations for more than one year after issuing the license;
- anti-monopoly rules are violated;
- license of the foreign bank, with the branch in Uzbekistan is revoked.

Article 165. Specifics of Consideration of Bank's Bankruptcy Case

- 1 Relations arising when the debtor bank fails to satisfy creditors' claims and specifics of consideration of banks' bankruptcy cases shall be regulated in the manner established by the legislation.**
- 2 External management shall not be introduced against banks.**
- 3 Besides the persons envisaged by Article 36 of this Law, the Central Bank of the Republic of Uzbekistan and Fund for Guaranteeing Citizen's Deposits in Banks shall be persons participating in a bank's bankruptcy case.**

This Article determines specifics of consideration of bankruptcy of banks.

1. Paragraph 1 of this Article envisages that relations arising when the debtor bank fails to satisfy creditors' claims and that specifics of consideration of bank's bankruptcy cases are regulated in the manner established by the legislation. Currently in the legislation of Uzbekistan there are no special regulatory-legislative acts available which regulate banks' insolvency. General provisions regulating banks' activity are envisaged in the Laws "On Central Bank of the Republic of Uzbekistan", "On Banks and Activity of Banks", and also in other legislative and sub-legislative acts.
2. Paragraph 2 of this Article contains an exception from the general rule of legal entity's bankruptcy, according to which external management in respect of banks is not introduced.
3. Persons participating in a bankruptcy case may be: the debtor; court receivers; creditors which have lodged their claims with the debtor in the manner established by this Law; the state body for bankruptcy proceedings; the prosecutor if a bankruptcy case is considered based on its petition, and also the Central Bank of the Republic of Uzbekistan and Fund for Guaranteeing Citizen's Deposits in Banks.

Activity of Fund for Guaranteeing Citizen's Deposits in Banks is regulated by the Law "On Guarantees for Protection of Citizens' Deposits in Banks" and the Regulation on Fund for Guaranteeing Citizen's Deposits in Banks approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 19 September 2002, No 326.

In accordance with the Regulation on Fund, the purpose of Fund's activity is ensuring payback on citizens' deposits in banks in case the Central Bank of the Republic of Uzbekistan revokes a licence of the bank to perform banking transactions on terms and amount envisaged by the Law "On Guarantees for Protection of Citizens' Deposits in Banks".

§ 4. Bankruptcy of Insurer

Article 166. Consideration of Insurer's Bankruptcy Case

Besides the persons envisaged by Article 36 of this Law, the specially authorised state body in the area of regulation of insurance activity shall be a person participating in a bankruptcy case of an insurer.

This Article determines persons participating in a bankruptcy case of insurers.

Insurer's activity is regulated by the Law "On Insurance Activity". According to Article 6 of the Law "On Insurance Activity", an insurer is a legal entity taking obligations to pay insurance indemnity (insurance amount) according to an insurance contract.

There is no reference to other special laws regulating bankruptcy of insurers in this Law, in this connection bankruptcy of insurer is regulated by Chapters III – IX of this Law.

Persons participating in a bankruptcy case may be: the debtor; court receivers, creditors which have lodged their claims with the debtor in the manner established by this Law; the state body for bankruptcy proceedings; the prosecutor if a bankruptcy case is commenced based on its petition, and also a specially authorised body in the area of regulation of insurance activity.

A specially authorised body in the area of regulation of insurance activity is the State Inspection on Insurance Supervision under the Ministry of Finance of the Republic of Uzbekistan, activity of which is regulated by the Regulation, approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 8 July 1998, No.286.

Proceeding from the rule of this Article, the State Inspection on Insurance Supervision has all the procedural rights of a person participating in a bankruptcy case.

Article 167. Sale of Property Complex of Insurer

- 1 A property complex of an insurer may be sold in process of external management according to Article 110 of this Law.**
- 2 Only insurers may act as purchaser of a property complex of an insurer.**
- 3 In case of sale of a property complex of an insurer in process of external management, all rights and duties in respect of insurance contracts under which an insurance event has not occurred as of the date of the sale of a insurer's property complex shall pass to its purchaser.**
- 4 When liquidation proceedings are carried out, an insurer's property complex may be sold only with the consent of its purchaser to assume insurance contracts under which an insurance event has not occurred as of the date of the declaration of an insurer's bankruptcy.**

This Article determines specifics of sale of the debtor-insurer's property complex in process of external management and liquidation proceedings.

1. A sale of the debtor-insurer's property complex is carried out by the general rules of sale of the enterprise (business) of the debtor, envisaged in Article 110.
2. Paragraph 2 of this Article limits the number of persons which may act as purchaser of insurer's

property complex. Such persons may be only insurers having an appropriate licence, issued by the specially authorised state body, and having assets adequate to perform obligations on insurance contracts which are being received.

3. By virtue of Paragraph 3 of this Article, when selling property complex of insurer in process of external management, a purchaser receives legal obligations on insurance contracts under which an insurance event has not occurred as of the date of sale on insurer's property complex.

Insurants by contracts under which an insurance event has occurred shall become creditors which are paid for their claims according to Article 169.

4. A sale of insurer's property complex in process of liquidation proceeding is possible only with the consent of a purchaser to assume insurance contracts under which an insurance event has not occurred as of the declaration of an insurer's bankruptcy. Herewith, the consent of insurants to transfer rights and responsibilities from the contracts is not required.

Article 168. Insurants' (Beneficiaries) Right of Claim in Case of Bankruptcy of Insurer

- 1 In the event the economic court renders a decision to declare an insurer bankrupt and initiate liquidation proceedings, all insurance contracts under which an insurance event has not occurred as of the date when the specified decision is rendered shall terminate, except as envisaged by Paragraphs 3 and 4 of Article 167 of this Law.**
- 2 Insurants (beneficiaries) to insurance contracts which terminate on the grounds envisaged by Paragraph 1 of this Article shall have the right to claim the return of insurance premium's part paid to the insurer proportionally to the difference between the period of their insurance contracts and the period during which these contracts have been actually in force, unless otherwise envisaged by the legislation.**
- 3 Insurants (beneficiaries) to insurance contracts under which an insurance event have occurred prior to the date when the economic court renders a decision to declare an insurer bankrupt and initiate liquidation proceedings shall have the right to claim for the payment of insurance indemnity (insurance amount) from the liquidation manager.**

This Article determines insurants' (beneficiaries) right of claim on insurance contracts in case of bankruptcy of insurer.

1. Paragraph 1 of this Article determines the termination of insurance contracts in the event the economic court renders a decision to declare an insurer bankrupt and initiate liquidation proceedings, except cases when legal succession of insurance contracts occurs when selling the debtor's property complex in process of external management and liquidation proceedings.
2. In Paragraph 2 of this Article, a right of insurants (beneficiaries) to claim the return of insurance premium's part paid to the insurer proportionally to the difference between the period of their insurance contracts and the period, during which these contracts have been actually in force, unless otherwise envisaged by the legislation.
3. Pursuant to Paragraph 3 of this Article insurants have the pre-emption right to claim from the liquidation manager on insurance events which have occurred prior to the issuance of a decision to declare an insurer bankrupt and initiation of liquidation proceeding. Satisfaction of such claims is carried out in process of liquidation proceeding.

Article 169. Satisfaction of Claims of Insurer's Creditors

If the economic court declares an insurer bankrupt, creditors' claims shall be satisfied in the following order:

- **claims of insureds under mandatory life insurance contracts shall have the first priority;**
- **claims of insureds under other mandatory insurance contracts shall have the second priority;**
- **claims of other insureds (beneficiaries) shall have the third priority;**
- **mandatory payments under payment documents (execution documents) shall have the fourth priority. After such payments are made in full, claims for social insurance and claims of citizens for compensation for damage caused to their property by crime or administrative violation shall be satisfied.**
- **claims of other insurer's creditors shall have the fifth priority.**

This Article determines the order of priorities in which claims of bankrupt insurer's creditors are satisfied.

This Paragraph contains the order of priority of creditors' claims satisfaction, which is an exception to the general rule of creditors' claims satisfaction (Art.134). Thus, the order is preserved, according to which creditors' claims indicated in Paragraph 1 of Article 134 are satisfied preferentially as superpriority claims, namely: judicial expenses, expenses associated with remuneration of court receivers, current utility and operational charges, expenses for the insurance of the debtor's property and also claims for obligations of the debtor which arise after the commencement of a bankruptcy case, and claims of the citizens to which the debtor is liable for damage to life or health are satisfied in accordance with the legislation.

Insureds' claims under mandatory life insurance contracts are satisfied at the first priority.

Insureds' claims under other mandatory insurance contracts have the second priority.

Claims of other insureds (beneficiaries) have the third priority;

Mandatory payments under payment documents (execution documents) have the fourth priority. After such payments are made in full, claims for social insurance and claims of citizens for compensation for damage caused to their property by crime or administrative violation are satisfied;

Claims of other insurer's creditors are given the fifth priority.

§ 5. Bankruptcy of Professional Participants in Securities Market

Article 170. Specifics of Bankruptcy of Professional Participants in Securities Market

- 1 Besides the persons envisaged by Article 36 of this Law, an authorised state body for regulation and coordination of securities markets shall be a person participating in a bankruptcy case of a legal entity or an individual being a professional participant in the securities market.**
- 2 Specifics of bankruptcy processes of professional participants in the securities market, which are not regulated by this Law, and measures to protect investors' rights and interests in the**

securities market, may be established by the legislation.

- 3 The procedure for preventing bankruptcy and carrying out prejudicial procedures in respect of the restoration of the financial ability of professional participants in the securities market shall be established by the legislation.**

This Article determines specifics of bankruptcy of professional participants in the securities market.

1. Paragraph 1 of this Article determines persons participating in a bankruptcy case of the professional participants in the securities market. These are: the debtor (professional participants in the securities market), court receivers, creditors which have lodged their claims to the debtor in the manner established by this Law, the prosecutor if a bankruptcy case is considered upon its petition and an authorised state body for regulation and coordination of securities markets.

The authorised state body for regulation and coordination of securities markets is the Centre on Coordination and Control over Securities Market Functioning under State Property Committee of the Republic of Uzbekistan according to the Decree of the President dated 26 March 1996 No.UP-1414. Activity of this body is regulated by the Regulation on the centre on coordination and control of functioning of securities market under the State Property Committee of the Republic of Uzbekistan, approved by Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 30 March 1996 No.126. This body was established in order to increase the efficiency of functioning and state regulation of securities markets, coordination of its participants' activity, provision of solid security of rights and interests of investors.

2. The legislation of the Republic of Uzbekistan does not have a special regulatory-legal act, regulating bankruptcy of professional participants in the securities market. Bankruptcy processes (supervision, judicial rehabilitation, external management, amicable agreement and liquidation proceedings) are carried out by the general rule envisaged by Chapters IV – VII of this Law with specifics envisaged in other Laws. For example, in the Law “On Protection of Rights of Investors in the Securities Market”, measures on protection of investors' rights are envisaged.
3. Pursuant to Paragraph 3 of this Article, a procedure for preventing bankruptcy and carrying out prejudicial procedures for the financial recovery of professional participants in the securities market is established by the legislation. Currently, there is no special act available in the legislation regulating such order. The prevention of bankruptcy is carried out by the general rule according to Chapter II of this Law, and the Regulation on the procedure for prejudicial rehabilitation, approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 26 July 1996 No.362.

Article 171. Requirements to Court Receivers

Court receivers in a bankruptcy case of professional participants in the securities market must pass a certification exam for acting as court receiver, and also have a licence issued by an authorised state body for regulation and coordination of the securities market.

This Article determines additional requirements placed on a candidate for a court receiver in a bankruptcy case of professional participants in the securities market.

Along with general requirements applied to court receivers, envisaged in Article 18 of this Law and the Regulation on certification of court receivers, approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 23 March 2004 No.138, a court receiver in a bankruptcy case of professional participants in the securities market must also have a licence issued by the Centre on coordination and control of securities market functioning under the State Property Committee of the Republic of Uzbekistan.

**Article 172. Limitations on Transactions Made
by Professional Participants in Securities Market**

The limitations on transactions imposed on professional participants in the securities market in bankruptcy processes applied to them shall not be applied to transactions with securities of their customers made upon the instructions of investors in the securities market, confirmed by such investors after the commencement of a bankruptcy case.

This Article determines the specifics of limitations on making transactions by professional participants in the securities market when applying bankruptcy processes in their respect.

When applying bankruptcy processes in respect of professional participants in the securities market envisaged in Articles 64, 79 and 101, the limitations on making transactions by professional participants in the securities market shall not be applied to transactions with securities of their customers which are made upon the instructions of investors in the securities market, confirmed by such investors after the commencement of a bankruptcy case i.e. the debtor – professional participant in the securities market when accepting transaction by the investor after the commencement of a bankruptcy case has a right to carry out brokerage activity.

Article 173. Specifics of Supervision, External Management and Liquidation Proceedings

- 1 From the date of the introduction of supervision, the interim receiver shall be obliged, within ten days after his/her appointment, to forward to investors in the securities market who have transferred the securities owned by them to the debtor-professional participant in the securities market for management, the notice of the commencement of the bankruptcy case and the appointment of the interim receiver. Customers' securities and other property which are held by the debtor-professional participant in the securities market shall not be included in the liquidation estate.**
- 2 From the date of the introduction of external management or liquidation proceedings, the remaining securities of customers shall be subject to return to customers, unless otherwise envisaged by an agreement of external manager or liquidation manager with customers.**
- 3 If customers' claims for the return of one type of securities owned by them (one issuer, one class, one type, one series) exceed the number of such securities held by the debtor-professional participant in the securities market, such securities shall be returned to customers proportionally to customers' claims. Customers' claims in respect of the unsatisfied part thereof shall be recognised as monetary obligations and be satisfied (discharged) in the manner envisaged by Chapter VII of this Law.**

4 In the course of external management of the debtor-professional participant in the securities market, the external manager shall be entitled to transfer the securities which customers have transferred to him/her for management, to other professional participants in the securities market with the consent and on behalf of customers.

This Article determines specifics of supervision, external management and liquidation proceedings carried out in respect of the debtor-professional participant in the securities market.

1. According to Paragraph 1 of this Article, from the date of the introduction of supervision in respect of the debtor – professional participant in the securities market, the interim receiver is obliged within ten days after his/her appointment to forward to investors in the securities market who have transferred their securities for management to the debtor – professional participant in the securities market, notification of the commencement of a bankruptcy case and his/her appointment as interim receiver. This Law does not provide certain requirements on contents of the indicated notification. However, the notification must contain information on the date and number of the case on which a ruling has been rendered, the economic court which rendered ruling and also information about the interim receiver.

Claims of investors against the debtor – professional participant in the securities market on transfer of securities for management are not considered within a bankruptcy case, as investors are not creditors on monetary obligations and mandatory payments. Accordingly, securities and other property of customers which is at the disposal of professional participant in the securities market are not the debtor's property and are not included in the liquidation estate.

2. Paragraph 2 of this Article determines the termination of earlier concluded contracts between a customer and the debtor on securities for management with their return to the customer when introducing external management and liquidation proceeding in respect of the debtor. Thereto, securities may be left with the debtor, provided that an appropriate agreement is concluded between the debtor and the customer.
3. If the debtor – professional participant in the securities market cannot return securities (the same issuer, class, type, series) on all claims of customers, securities is returned proportionally to customers' claims. Customers' claims which have not been satisfied by the debtor are recognised as monetary obligations and so satisfied (discharged). As these monetary claims arise after the commencement of a bankruptcy case, they must be satisfied preferentially, pursuant to Article 134.
4. Paragraph 4 of this Article envisages the possibility to transfer by the external manager securities which have been transferred to him/her by the customers for management, to other professional participants in the securities market with the consent and on behalf of customers.

CHAPTER X. BANKRUPTCY OF AN INDIVIDUAL ENTREPRENEUR

This Chapter establishes peculiarities of a bankruptcy process of individual entrepreneurs.

As a ground for declaring an individual entrepreneur debtor bankrupt, debts in the amount of thirty-fold minimum wage is adequate. Creditors (including authorised bodies) have right to file the petition in the court only in respect of claims arising in connection with the debtor's economic activities. Creditors with claims for compensation for damage to life or health, for alimony and claims of personal nature have no right to petition the court for the declaration of the individual entrepreneur debtor's bankruptcy, though they are eligible to pursue those claims within the framework of the bankruptcy process against the debtor.

The economic court, accepting the petition, attaches all property of the individual entrepreneur debtor, other than those which the legislation bans attaching. Transactions of the individual entrepreneur debtor to alienate or transfer its property in any other way to interested parties, after the petition is filed with the economic court are void. The economic court forwards to all known creditors a decision to declare the individual entrepreneur debtor bankrupt and initiate liquidation proceedings, where the period for creditors to lodge their claims is indicated. This period should not exceed two months. In bankruptcy of the individual entrepreneur debtor, a court receiver is not assigned in principle. The economic court itself administers claims of creditors and establishes their amount and priority. In regard with the satisfaction priority, court expenses, claims for compensation for damage to life or health and others are preferentially satisfied as superpriority claims, regardless of priority of other claims; claims for mandatory payments, for alimony and for wages are be satisfied in the first priority; the second priority is given to claims secured by the debtor's property; the third priority is given to the other claims.

The petition filed by the debtor for the declaration of its bankruptcy can be accompanied by the debt repayment plan, which is approved by the economic court in the absence of creditors' objections. In this case, bankruptcy proceedings are suspended for up to two months. In case such plan is implemented, and accordingly creditors' claims are fully discharged, bankruptcy proceedings terminate. If not all claims are discharged, the court grants a decision to declare the debtor bankrupt and initiate liquidation proceedings. In such case, the economic court in its decision indicates the deadline for creditors to lodge their claims against the debtor and the invalidation of the state registration of the debtor as an individual entrepreneur. In case of bankruptcy of an individual entrepreneur, such processes as supervision, judicial rehabilitation and external management are not applied. Property of the individual entrepreneur debtor included in the liquidation estate is sold by an execution officer in accordance with the requirements of the Law "On Execution of Judicial Acts and Acts of Other Authorities". Property is sold by the liquidation manager only when he/she is appointed by the court in connection with the necessity to manage immovable or valuable property of the debtor. The debtor declared bankrupt is discharged from its obligation to satisfy undischarged creditors' claims, after the completion of settlements with creditors.

Article 174. Regulation of Bankruptcy of Individual Entrepreneur

The rules of Chapters I through III of this Law shall be applied to the relations connected with

the bankruptcy of individual entrepreneurs, unless otherwise envisaged by this Chapter.

This Chapter is informative and specifies provisions which are applied to bankruptcy of an individual entrepreneur debtor.

According to Paragraph 1 of Article 4 and Paragraph 1 of Article 6 of the Law “On Guarantees of Freedom of Entrepreneurship (individual business)”, an individual entrepreneur is a physical person who:

- carries out business without forming a legal entity;
- registers in the established order and carries out entrepreneurial activities (business).

Paragraph 1 of Article 26 of the Civil Code defines that an individual entrepreneur which is incapable to satisfy claims of creditors related to carrying out its entrepreneurial activities (business) can be declared insolvent (bankrupt) in the prescribed order. This procedure is envisaged by this Law, and this Article states that the rules of Chapters I through III of this Law, namely general provisions (I), prejudicial rehabilitation (II) and the consideration of bankruptcy cases in the economic court (III) are applied to bankruptcy of the individual entrepreneur debtor. As Article 31 determines that prejudicial rehabilitation is applied to a debtor, which may encompass an individual entrepreneur, too, therefore, prejudicial rehabilitation can also be applied to an individual entrepreneur. In such case, subjects of prejudicial rehabilitation are creditors or third parts.

Accordingly, this Law determines the same ground for declaring the individual entrepreneur debtor bankrupt as those in respect of the legal entity debtor envisaged by Articles 4 and 5. That is to say, this is the inability to satisfy creditors’ claims for monetary obligations and (or) to perform duties on mandatory payments, if the relevant obligations and (or) duties have not been performed by the debtor within three months from their maturity date. However, the amount of obligations required for the declaration of bankruptcy in regard to the individual entrepreneur debtor is different from that to legal entity debtor (Art.5, Para.2).

It is also observed that some rules of Chapters I through III are not applied in a bankruptcy case of an individual entrepreneur, for instance: provisions on the creditors’ meeting, the creditors’ committee, the creditors’ register. An exception to this is convening the creditors’ meeting for passing a resolution entering into an amicable agreement, as according to this Law (Art.10, Para.5; Art.13, Para.3, Item 1; Art.145, Para.1), the concluding of an amicable agreement is within the exclusive competency of the creditors’ meeting, and such resolution is passed by the majority vote in value of all creditors.

As provided in Article 28, such processes as liquidation proceedings and an amicable agreement ruled in Chapters VII and VIII are applied in a bankruptcy case of an individual entrepreneur, although this is not directly indicated in this Article. Herein, it is necessary to note that certain provisions of Chapters VII and VIII are applied to the individual entrepreneur debtor with some modifications. For example, regarding Chapter VII, Article 124 (the initiation of liquidation proceedings) and Article 133 (the satisfaction of secured creditors’ claims) are applied, while such provisions as Article 129 (the liquidation plan of the legal entity bankrupt), Article 141 (the possibility of transferring to external management) and Article 144 (the completion of liquidation proceedings) are not applied to individual entrepreneurs because they are designed for legal entities. Also provisions of Chapter VII about rights and obligations of the liquidation manager are not applied to a case of individual entrepreneurs in principle or are applied with peculiarities, since a liquidation manager is not assigned in bankruptcy of individual entrepreneurs, and even in case he/she is appointed, his/her authorities are limited to managing and selling valuable property (Art.181, Para.2). Moreover, in case there are conflicts between

provisions of Chapter VII and those of this Chapter, this Chapter prevails. As an example, priority of creditors' claims can be taken. Paragraph 2 of Article 134 of Chapter VII and Item 1 of Paragraph 2 of Article 183 of this Chapter give different order of priority. In this case, the latter is applied.

Such bankruptcy processes as supervision, judicial rehabilitation and external management are not applied to individual entrepreneurs (Art.28, Para.2).

Most probably, this is explained as follows. Judicial rehabilitation and external management are a recovery process, and supervision is a preparatory period for these two processes. These processes require much time and work. With this regard, it is not necessary to apply them to individual entrepreneurs, whose financial and economic activities are much less significant and small scaled, compared to legal entities. Moreover, the abovementioned processes are expensive, so that it would be problematic for the individual entrepreneur debtor to reimburse expenses incurred during these processes out of its funds. Therefore, these processes are not applied to individual entrepreneurs.

Article 175. Petition for Declaration of Bankruptcy of Individual Entrepreneur Debtor

- 1 The petition for the declaration of the individual entrepreneur debtor's bankruptcy may be filed with the economic court by the individual entrepreneur debtor, its creditor, the prosecutor, the state taxation service authorities and other authorised bodies.**
- 2 Creditors shall have the right to file the petition for the declaration of the individual entrepreneur debtor's bankruptcy, except creditors in respect of claims for compensation for damage to life or health, claims for alimony, and other claims of personal nature.**
- 3 When the process for the declaration of the individual entrepreneur debtor's bankruptcy is carried out, creditors in respect of claims for compensation for damage to life or health, claims for alimony, and other claims of personal nature shall be entitled to lodge such claims. Such claims which have not been filed in the bankruptcy process of the individual entrepreneur shall remain in force after the completion of the bankruptcy process.**

This Article clarifies the range of persons eligible to petition for the declaration of the individual entrepreneur debtor, and also regulates rights of persons having claims of personal nature against the debtor.

1. Paragraph 1 of this Article defines persons who may file a petition for the declaration of the individual entrepreneur debtor's bankruptcy. They are the individual entrepreneur debtor, its creditors, the prosecutor and other authorised bodies, such as the state tax service authorities and the state body for bankruptcy proceedings in the presence of circumstances envisaged by Articles 42 and 43.
2. One of the particularities of the legal regulation for bankruptcy of the individual entrepreneur debtor is the limitation on the range of creditors eligible to file the petition. Only those creditors who hold claims connected with the debtor's entrepreneurial activities (business) are eligible. This Law defines creditors who are not eligible in this regard as follows:
 - creditors in respect of claims for compensation for damage to life or health. It should be noted that under this Law, creditors with claims for compensation for moral damage are equal to those with claims for compensation for damage to life or health. Therefore, creditors with claims for

compensation for moral damage are not qualified to file a petition for the declaration of the individual entrepreneur debtor's bankruptcy;

- creditors in respect of claims for alimony (which the debtor is obliged to pay as a family member)⁵⁹;
- creditors in respect of claims which are inseparably linked to their personality (for instance, claims for inheritance right)

Creditors which are a physical person, but not a individual entrepreneur have no right to petition the court for the declaration of the individual entrepreneur debtor's bankruptcy, even when these creditors' claims have arisen in connection with entrepreneurial activities (business) of the individual entrepreneur debtor.

3. According to Paragraph 3 of this Article, creditors may present claims of personal nature after a bankruptcy process is initiated against the debtor, despite of the fact that they may not file a petition for the declaration of the debtor's bankruptcy. The debtor is not discharged from obligations to satisfy these remaining claims of personal nature even after the completion of the bankruptcy process.

This fact is explained in Article 23 of the Code of Economic Procedure, according to which the economic court has the jurisdiction over disputes which arise in the economic field of civil, administrative and other matters between legal entities, citizens who are involved in entrepreneurial activities (business) without incorporating a legal entity but as an individual entrepreneur the status of which they have obtain in the appropriate registration manner. Thus, if disputes arise not in connection with entrepreneurial activities (business), such disputes are considered at courts of the general jurisdiction, not at the economic court. Exceptionally, however, this Law allows creditors' claims of personal nature which have nothing to do with entrepreneurial activities (business) of the individual entrepreneur debtor to be lodged in a bankruptcy case commenced against the individual entrepreneur debtor for the purpose of the timely and objective consideration of disputes.

Article 176. Debt Repayment Plan

- 1 The debt repayment plan, a copy of which is forwarded to creditors and other persons participating in a bankruptcy case, may be attached to the petition for the declaration of the individual entrepreneur debtor.**
- 2 In the absence of creditors' objections, the economic court may approve the debt repayment plan, which shall be the ground for suspending bankruptcy proceedings for a period of not more than two months.**
- 3 The debt repayment plan must include:**
 - the period of its implementation;**
 - the sum of monthly living expenses of the debtor or its family;**
 - the sum for expected monthly distribution to creditors to discharge their claims;**

⁵⁹ There are two types of obligations to pay alimony. The debtor is obliged to pay alimony to his/her family. In this case, the employer of such debtor is also imposed an obligation to pay alimony to the debtor's family by way of deducting the relevant amount from wages that the employer owes the debtor (Art.137, the Family Code).

- 4 The economic court shall be entitled, upon a reasoned application of persons participating in a bankruptcy case, to amend the debt repayment plan, and to increase or reduce the period of its implementation, the sums of monthly living expenses of the debtor or its family.**
- 5 If creditors' claims are fully discharged as a result of the implementation of the debt repayment plan by the individual entrepreneur debtor, bankruptcy proceedings shall terminate.**

This Article allows the debtor to submit the debt repayment plan together with the petition, and provides requirements put forth to the content of the plan, and the right of the court to approve and (or) change the plan and also a consequence of the implementation of the plan by the debtor.

1. Paragraph 1 of this Article envisages that the individual entrepreneur debtor can, in order to rehabilitate its solvency, attach the debt repayment plan to its petition for the declaration of its bankruptcy. In this case, the debtor should, according to Article 113 of the Code of Economic Procedure, forward a copy of the plan along with a copy of the petition to its creditors and other persons participating in a bankruptcy case.

Forwarding to creditors a copy of the plan apart from a copy of the petition must be proved by postal receipts (Art.124, CEP). It is also possible, however, to present to the court proof of handing over a copy of the plan to the concerned persons.

2. When accepting the debtor's petition, the court renders a ruling to accept the petition and place the case to the consideration, indicating the time and place of the court session in its ruling. This ruling is forwarded to persons participating in the case.

In the court session, the court approves or rejects the debt repayment plan attached to the petition, in respect of which a ruling is rendered. Objections which creditors raise against the debt repayment plan presented by the debtor in the court session under Paragraph 2 of this Article are considered by the court. Creditors' objections against the plan may be claimed before the court approves the plan, and must be considered by the court within one month from the date when the court receives such objections according to Paragraph 1 of Article 59. When necessary, the court session can be suspended in order to enable creditors to file their objections against the debt repayment plan. In the absence of creditors' objections or in case the court rejects these objections and approves the plan, the court hands over a ruling to suspend bankruptcy proceedings for not more than two months in order for the debtor to discharge its debts. The implementation of the debt repayment plan is also included in the bankruptcy process. From the procedural point of view, the court approval of the debt repayment plan constitute a ground for suspending bankruptcy proceedings for not more than two months, and thereby this Law enables the debtor to repay its existing debts within this period. The term of the implementation of the debt repayment plan is not counted in as the term of the bankruptcy case consideration, which may not exceed three months (if the case consideration is postponed – up to five months), according to Article 49.

Objections under Paragraph 2 of this Article are not limited to disagreement to the debt repayment plan. They may also be filed against some parts of the content of the plan. Creditors' objections against the debt repayment plan must be motivated, i.e., proved in writing.

After the court approves the debt repayment plan, this plan becomes binding on persons participating in the case.

A difference between Paragraph 2 and Paragraph 4 of this Article is that objections under Paragraph 2 can be filed before the court approves the plan, whereas an application for the amendment of the plan under Paragraph 4 can be filed after the court approves the plan.

The economic court ruling to approve the debt repayment plan can be appealed, according to Paragraph 2 of Article 85 of the Code of Economic Procedure, as such ruling is a ground for suspending bankruptcy proceedings. In case the court gives a ruling to refuse to approve the plan, this ruling may not be appealed, as this Law does not envisage appeal against such ruling.

3. Paragraph 3 of this Article envisages that the following data should be presented in the plan: the period of the implementation of the plan; the sums of monthly living expenses of the debtor or its family; and the sums for expected monthly distribution to creditors to discharge their claims. The period of the implementation of the plan should not exceed two months (this Article,Para.2).
4. The economic court is entitled, upon a reasoned application of persons participating in the bankruptcy case, to amend the debt repayment plan, and to increase or reduce the period of its implementation, the sums of monthly living expenses of the debtor or its family. In this connection, the court cannot extend the period of repayment for more than the term envisaged by Paragraph 2 of this Article, i.e., for more than two months. A reasoned application under this Paragraph means a request to change the plan to another, for instance, an opinion that the existing debts cannot be repaid monthly in such amount or in such period as are established in the debt repayment plan. An application for the amendment of the plan can be filed before the deadline of the implementation of the plan, and is considered by the court within one month after the court receives the petition (Art.59, Para.1).

If creditors find that their claims are not included in the debt repayment plan after the court approves the plan, they are eligible to apply to the economic court for the amendment of the plan for including their claims in the plan. The economic court, after declaring the application reasonable, renders a ruling to amend the plan and includes such claims in the plan. Claims arising after the introduction of the bankruptcy process against the debtor are considered as current payments, and accordingly, are not included in the plan.

An application for the amendment of the debt repayment plan under this Paragraph must be considered by the economic court, and in case it is reasoned, bankruptcy proceedings reopen, according to Article 84 of the Code of Economic Procedure. The application is considered in the court session with notification of persons participating in the case. Upon the result of the consideration, a ruling is issued. In case several applications are filed, they may be considered in one court session with notification of persons participating in the case.

In case the court does not satisfy the application for the amendment of the debt repayment plan, the court ruling to refuse to amend the plan may not be appealed, because this Law does not envisage the possibility of appealing such ruling.

5. If creditors' claims are fully discharged, as a result of the implementation of the debt repayment plan by the debtor, bankruptcy proceedings terminate in accordance with Item 5 of Paragraph 1 of Article 56, in respect of which a ruling is granted by the court. In this case, it is assumed that the individual entrepreneur debtor is able to continue to trade and its solvency has been restored, as long as it is able to implement the plan and discharge all its debts.

In case the debtor has not satisfied all creditors' claims included in the debt repayment plan, if the debtor does not file an application for the postponement of the case consideration under Paragraph 2 of Article 179 or if the court refuses to satisfy such application by Paragraph 2 of Article 179, the

economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings according to Paragraph 4 of Article 179.

Article 177. Property of Individual Entrepreneur Debtor Not Included in Liquidation Estate

- 1 Property of the individual entrepreneur debtor which may not be attached according to the legislation shall not be included in the liquidation estate.**
- 2 The economic court shall be entitled, upon a reasoned application of the individual entrepreneur debtor and other persons participating in the bankruptcy case, to exclude from the liquidation estate property of the individual entrepreneur debtor which may be attached according to the legislation, property which is of no liquidity, or property proceeds from realisation of which do not materially affect the satisfaction of creditors' claims.**
- 3 The total value of property of the individual entrepreneur debtor which is excluded from the liquidation estate according to the provisions of Paragraph 2 of this Article may not exceed fifty-fold minimum wage. The list of such property shall be approved by the economic court, whereof a ruling shall be rendered, which may be appealed (protested).**

This Article provides explanations on what is the liquidation estate, which property may not be included in the liquidation estate, the procedure for excluding property from the liquidation estate, and up to what amount the debtor's property may be excluded from the liquidation estate.

1. Paragraph 1 of this Article defines that the debtor's property which may not be attached according to the legislation is not included in the liquidation estate. There is no provision in this Law defining what property forms the liquidation estate of the individual entrepreneur debtor. Therefore, by analogy with provisions of Paragraph 1 of Article 130, which define the formation of the liquidation estate of the legal entity debtor, all assets of the individual entrepreneur bankrupt form the basis of the liquidation estate, regardless of whether they are recorded in the balance sheet or not. On the same basis, by analogy with Paragraph 2 of Article 130, it should be considered that those property mentioned in Paragraph 2 of Article 130 is not included in the liquidation estate of the individual entrepreneur debtor.

In addition to these provisions, this Paragraph defines that the debtor's property over which attachment is prohibited according to Article 52 of the Law "On Execution of Judicial Acts and Acts of other Authorities" (house, flat, pieces of domestic utensils, equipment, clothes and other things necessary for normal living of the debtor's family, excluding cases envisaged by the legislation) do not constitute the liquidation estate.

2. The economic court can, based on a reasoned application of the individual entrepreneur debtor or any other person participating in the bankruptcy case, exclude from the liquidation estate the citizen's property which may be attached under the legislation (this Article, Para.1), property which is of no liquidity, property proceeds from the sale of which are small, or property proceeds from the sale of which have no materially influence on the satisfaction of creditors' claims. An example of a reasoned application can be the presentation of evidences of the low property value (conclusion of an evaluation organisation).
3. The total value of property which can be excluded from the liquidation estate according to the provisions of Paragraph 2 of this Article may not exceed fifty-fold minimum wage.

According to this Paragraph, the list of the debtor's property which is exempted from the liquidation estate is approved by the economic court, whereof a ruling is rendered, which may be appealed (protested) under Article 60.

Similar regulations are provided in the Bankruptcy Code of the United States of America, according to which personal use items of the debtor being a physical person, real estate which is worth no more than 7500 dollars and cars which are worth no more than 1200 dollars shall be excluded from the liquidation estate.

Similar regulations are also provided in the German Regulation on Bankruptcy dated 1999. In particular, items used in household of the debtor (of small value) shall not be included in the liquidation estate.

Article 178. Invalidity of Transactions of Individual Entrepreneur Debtor

- 1 Transactions of the individual entrepreneur debtor to alienate or transfer its property in any other way to interested parties after the petition for the declaration of bankruptcy of the individual entrepreneur debtor is filed with the economic court shall be void.**
- 2 Upon the request of a creditor, the economic court shall apply consequences of the invalidity of a void transaction, by designating property which is an object of the transaction to be returned to the individual entrepreneur debtor or by confiscating such property in the possession of interested parties.**

This Article gives the definition of a void transaction used for bankruptcy of an individual entrepreneur, and explains the consequence applied by the court related to a void transaction.

1. Grounds for classifying transactions as void transactions are provided in the Civil Code. In addition to these in the civil legislation, the bankruptcy legislation provides, as a ground of void transactions, the alienation of the debtor's property to interested parties after the petition for the declaration of the debtor's bankruptcy is filed.

Transactions made by the debtor are considered void on the following conditions:

- firstly, they are directed to terminate the right of property ownership of the debtor. These may include sale, donation and exchange.
- secondly, the debtor and interested parties listed in Article 17 are parties to transactions.

Interested parties in relation to the individual entrepreneur debtor are deemed to be its spouse, ascendants, descendants, sisters, brothers and their descendants, parents, sisters and brothers of its spouse (Art.17, Para.2).

A void transaction is invalid, regardless of the recognition by the court (Art.113, CC). According to the general rule of the Civil Code, any party in interest may demand to apply consequences of the invalidity of void transactions, or the court may apply such consequences on its own initiative.

2. According to the bankruptcy legislation, the economic court, at the request of creditors, applies consequences of the invalidity of a void transaction, by designating property of the debtor which is an object of the transaction to be returned in the composition of the debtor's property or by attaching and confiscating such property held by interested parties.

The purpose of such consequences is to form or swell the liquidation estate to satisfy creditors' claims. Therefore, such consequences are to return property to the debtor or attach property which interested parties have received from the debtor.

This Law does not regulate whether the court considers the issue of the invalidity of transactions within the framework of the bankruptcy case or outside it. In this connection, Paragraph 26 of the Resolution of the SEC Plenum No.142 provides that an action for the application of consequences of the invalidity of void transactions is considered by the economic court in the general order envisaged by the Code of Economic Procedure, namely, outside the bankruptcy case.

**Article 179. Consideration by Economic Court of Bankruptcy Case
of Individual Entrepreneur Debtor**

- 1 When accepting the petition for the declaration of bankruptcy of the individual entrepreneur debtor, the economic court shall simultaneously attach its property, except those which may not be attached according to the legislation. Upon the application of the individual entrepreneur debtor, the economic court may release its property (part of property) from attachment, provided that third parties grant a guarantee or other security as a surety for monetary obligations of the debtor.**
- 2 Upon the application of the individual entrepreneur debtor, the economic court may postpone the consideration of the bankruptcy case for not more than one month in order for the individual entrepreneur debtor to settle with creditors or to reach an amicable agreement.**
- 3 If there is information on the commencement of succession in respect of a citizen which is the individual entrepreneur debtor, the economic court shall be entitled to suspend bankruptcy proceedings of the individual entrepreneur debtor, until the matter on succession is settled in the manner established by the law.**
- 4 If the individual entrepreneur debtor fails to produce evidences of the satisfaction of creditors' claims within the period set by Paragraph 2 of this Article and an amicable agreement has not been concluded within the specified period, the economic court shall render a decision to declare the individual entrepreneur debtor bankrupt and initiate liquidation proceedings.**

This Article regulates the court actions related to accepting the petition for the declaration of the individual entrepreneur debtor's bankruptcy and considering the bankruptcy case.

1. When accepting the petition for the declaration of the debtor's bankruptcy, the economic court attaches its property, except those which may not be attached according to the legislation (see the comment on Art.177), in respect of which the court gives a ruling and its writ of execution, which is sent to an execution officer according to Paragraph 1 of Article 181. The process for procedural actions to attach the debtors' property, namely, to take inventory of property and compile a property list, is carried out by an execution officer according to Article 53 of the Law "On Execution of Judicial Acts and Acts of other Authorities".

This Law envisages a certain scheme to allow the debtor to settle with its creditors. In exceptional circumstances, the economic court may, upon the application of the debtor, release its property (part

of property) from attachment. Such release is possible in case third parties grant a guarantee or other security by a surety for obligations of the debtor.

Paragraph 1 of Article 259 of the Civil Code lists methods to ensure the performance of obligations. Among them, security, guarantee and other security as a surety are admitted as a measure to allow the above release, while penalties, lien and deposit is not considered as security admitted by this Paragraph.

2. The economic court may postpone its consideration of the bankruptcy case for not more than one month in order for the debtor to settle with creditors or to reach an amicable agreement, on an application of the debtor in case it proves reasonable and supported by evidences. In this specific case, the court decides the postponement of the case, taking into account all circumstances. Documents provided to the court as a ground of the application may be bank statements that state the availability of funds in the debtor's account adequate to discharge claims, or a proposal of an amicable agreement, etc. The court ruling to postpone the case consideration must be rational, stating a reason which constitutes a ground for the postponement.

An application for the postponement of the case consideration may be filed within the period specified in Article 49, that is, within the period not more than three months from the date when a court ruling to accept the petition for the declaration of the debtor's bankruptcy is rendered, but before a final decision on the case is made.

If the debtor does not provide evidences of the satisfaction of creditors' claims or the conclusion of an amicable agreement within the prescribed period, then consequences envisaged in Paragraph 4 of this Article take place.

Because Paragraph 1 of Article 10 states that after the economic court accepts the petition for the declaration of the debtor's bankruptcy, creditors cannot pursue their claims against the debtor to receive satisfaction in the individual manner, the satisfaction of creditors' claims is only acceptable provided that it is completed at one time in respect of all claims.

To conclude an amicable agreement, it is necessary to call the creditors' meeting for passing the relevant resolution, because the entering into of amicable agreements belongs to the exclusive competency of the creditors' meeting, and its resolution concluding an amicable agreement should be passed by the majority vote in value of all creditors, according to this Law (Art.10, Para.5; Art.13, Para.3, Item 1; Art.145, Para.1).

3. If there is information on the commencement of succession in respect of the individual entrepreneur debtor, the economic court may suspend bankruptcy proceedings against the debtor until the matter on succession is settled in the statutory manner (Art.1146, CC – within six months from the date of the commencement of succession).

If the debtor succeeds to some property, such property is applied to settle with creditors.

4. If the debtor presents no proof of the satisfaction of creditors' claims within the period set by Paragraph 2 of this Article, and no amicable agreement has been concluded within the specified period, the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings.

If an amicable agreement has been concluded, the court terminates its consideration of the bankruptcy case, in respect of which it renders a ruling. If any evidences are provided to prove the satisfaction of creditors' claims, the court gives a decision to refuse to declare the individual entrepreneur debtor bankrupt.

Article 180. Consequences of Declaration of Bankruptcy of Individual Entrepreneur Debtor

- 1 From the date when the economic court renders a decision to declare the individual entrepreneur debtor bankrupt and initiate liquidation proceedings:
 - the debtor's monetary obligations shall be deemed to mature;
 - Penalties (fines, late payment interest), interest and other economic (financial) sanctions on all the debtor's obligations shall terminate to accrue;
 - the execution of all execution documents against the debtor shall terminate, except those in respect of claims for alimony and for the compensation for damage to life or health.**
- 2 The economic court shall forward to all known creditors its decision to declare the individual entrepreneur debtor bankrupt and initiate liquidation proceedings with specification of the period for lodging creditors' claims, which may not exceed two months. The economic court decision shall be forwarded at the expense of the individual entrepreneur debtor.**
- 3 From the date when the economic court renders a decision to declare the individual entrepreneur debtor bankrupt, the state registration of the debtor as an individual entrepreneur shall cease to be in force, and the licences granted to the debtor to perform certain types of activity shall terminate.**
- 4 The economic court shall forward a copy of the decision to declare the individual entrepreneur debtor bankrupt to the body that registers it as an individual entrepreneur and the licensing body.**

This Article designates consequences of the declaration of bankruptcy of the individual entrepreneur debtor.

1. A bankruptcy case of the individual entrepreneur debtor must be considered within the period established by Article 49. From the date when the court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, the following consequences come into force: all obligations of the debtor are deemed to mature, including obligations on mandatory payments; penalties (fines, late payment interest), interest and other economic (financial) sanctions on all debtor's obligations terminate to accrue, including arrears on taxes and mandatory payments to the state budget. In this regard, claims of personal nature are exceptional, as such claims come out of the personality of the debtor as a physical person and citizen, and are closely related to its personality. These claims of personal nature do not depend on whether citizens have a status of an individual entrepreneur, therefore, the declaration of the individual entrepreneur debtor bankrupt do not end the accruing of penalties, interest and other financial sanctions on these claims of personal nature. Another particularity of consequences of the declaration of the individual entrepreneur debtor bankrupt is as follows: the execution of all execution documents against the debtor, except those in respect of claims for alimony (which the individual entrepreneur debtor owes to pay as a family member) and for the compensation for damage to life or health, shall terminate.

Item 3 of this Paragraph means that if there are execution documents in respect of claims for alimony (claims of family members of the individual entrepreneur debtor against such debtor), for compensation for damage to life or health (claims for compensation for moral damage are equated with such claims) and other claims of personal nature, creditors may execute these execution

documents during liquidation proceedings. If the aforementioned claims have not been discharged or have been discharged partially during liquidation proceedings, creditors retain their right for the claims and may lodge them after the completion of this court process in respect of the individual entrepreneur debtor (Art.184,Para.2).

2. In the decision to declare the individual entrepreneur debtor bankrupt, the court specifies the period of liquidation proceedings, which may not exceed one year according to Paragraph 2 of Article 124, and the invalidation of the state registration of the debtor as an individual entrepreneur under Paragraph 4 of Article 51. The period for lodging creditors' claims is indicated in the decision as well, which is forwarded to all known creditors at the expense of the individual entrepreneur debtor. Item 4 of Paragraph 2 of Article 127 defines that the period for lodging creditors' claims may not be less than two months from the date of publication of information on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings. None the less, this Article states that such period may not exceed two months, and accordingly, such period is determined by the economic court within the period not exceeding two months from the date of publication of information on the declaration of the debtor' bankruptcy and initiation of liquidation proceedings.

Copies of the court decision to declare the debtor bankrupt are forwarded to an execution officer and all creditors known to the court, who are defined during the court session or revealed by the court through queries to the bank rendering the debtor services. These copies are sent by the economic court, with the subsequent reimbursement of postal charges from the debtor's property deposited in the economic court, in respect of which a writ of execution is given.

Paragraph 1 of Article 127 specifies that information on the declaration of the debtor' bankruptcy and initiation of liquidation proceedings is published by the liquidation manager in the manner envisaged by Articles 52 and 53. These provisions are also applied in case of the individual entrepreneur debtor, but it is necessary to note that a liquidation manager is, as a rule, not appointed in bankruptcy case of individual entrepreneurs, so that, by analogy with Paragraph 3 of Article 127, the individual entrepreneur debtor itself must forward the abovementioned information for publication in an official gazette within ten days after the court gives the decision to declare it bankrupt.

3. From the date when the economic court renders a decision to declare the debtor bankrupt, the state registration of the debtor as an individual entrepreneur is invalidated, and licences granted to the debtor to perform certain types of activity terminate. The decision to declare the individual entrepreneur debtor bankrupt takes effect on the day of its issuance, and is subject to immediate execution, like the decision to declare the legal entity debtor bankrupt. This decision may be appealed (protested) within a month according to regulations of the Code of Economic Procedure (Paras.21 and 22, the Resolution of the SEC Plenum No.142).

While the state registration of bankrupt legal entities are struck off from the state register only after the court gives a ruling to complete liquidation proceedings, the state registration of individual entrepreneurs lapses on the day when the court renders a decision to declare them bankrupt, according to Paragraph 3 of Article 180. In this connection, even in case all creditors' claims are discharged in order of priority established by Article 183 after the declaration of the debtor's bankruptcy, the state registration of the individual entrepreneur debtor and licences granted to it for the performance of certain types of activities are not restored. None the less, it may be assumed that the state registration and the licences are recovered if an amicable agreement is concluded after the declaration of the debtor's bankruptcy, since when approving an amicable agreement, the court

specifies in its ruling that the decision to declare the debtor bankrupt and initiate liquidation proceedings is not subject to execution (Art.145, Para.5). The same consequence occurs when such decision is cancelled.

4. This Law provides a mechanism to control the individual entrepreneur debtor who has been declared bankrupt. The economic court forwards a copy of the decision to declare the debtor bankrupt to the body that registers the debtor as an individual entrepreneur and to the licensing body.

Article 181. Execution of Economic Court Decision

- 1 The decision of the economic court to declare the individual entrepreneur debtor bankrupt and initiate liquidation proceedings and writs of execution over the debtor's property shall be forwarded to an execution officer for selling property of the individual entrepreneur debtor. All the property shall be subject to sale, except those not included in the liquidation estate according to this Law.**
- 2 If it is required to continuously manage some immovable property or valuable movable property of the individual entrepreneur debtor, the economic court shall appoint a liquidation manager for this purpose of management and shall determine the amount of his/her remuneration. In this case, property of the individual entrepreneur debtor shall be sold by the liquidation manager.**
- 3 Proceeds from the sale of property of the individual entrepreneur debtor and funds available shall be deposited in the economic court, which has rendered a decision to declare the individual entrepreneur debtor bankrupt.**

This Article regulates the procedure for executing the economic court decision to declare the individual entrepreneur debtor bankrupt, and also defines a person who executes this decision.

1. For selling the debtor's property, the court decision to declare the debtor bankrupt and initiate liquidation proceedings and writs of execution over the debtor's property are forwarded to an execution officer, who conducts sales, according to the regulations of the Law "On Execution of Judicial Acts and Acts of Other Authorities". All the property must be sold off, except those not included in the liquidation estate according to this Law.

Since such bankruptcy process as supervision is not applied to the individual entrepreneur debtor, it is assumed that when necessary, the economic court may independently assess the debtor's property by assigning specialised evaluation organisations. Expenses for the assessment are paid by the debtor according to Paragraph 1 of Article 183. Article 54 of the Law "On Execution of Judicial Acts and Acts of other Authorities" envisages that an execution officer evaluates inventoried property and if necessary, engages a specialist to define the property value.

2. Property comprising the liquidation estate of the individual entrepreneur debtor is sold by an execution officer, according to the Law "On Execution of Judicial Acts and Acts of Other Authorities".

If it is necessary to continuously manage some immovable property or valuable movable property of the debtor (in the period of liquidation proceedings set by the court, which may not be more than one year), the economic court appoints a liquidation manager for this purpose of management, and determines the amount of his/her remuneration. In this case, property of the debtor is sold by the

liquidation manager. Remuneration of the liquidation manager as well as judicial expenses is paid out of proceeds of the sale of the debtor's property, according to Paragraph 1 of Article 183.

When it is required to manage the debtor's property, a liquidation manager is appointed. Unlike in liquidation proceedings of legal entities, the court may appoint a liquidation manager on its own initiative, for the management of the debtor's property. In this case, liquidation proceedings may be carried out by a court receiver, having a certificate of the first, second or third category, by analogy with liquidation proceedings in respect of a legal entity in the general process.

In Paragraph 3 of Article 54 of the Law "On Execution of Judicial Acts and Acts of Other Authorities", there given a open list of property subject to mandatory assessment, and in particular: stocks, foreign currency, jewelleryes and other households made of precious metals and stones, antique, work of art and sculpture in original. The listed property may be deemed to be the most valuable property. When defining valuable property, it is necessary to follow the abovementioned provision.

3. All available monetary funds and proceeds from the sale of the debtor's property are deposited in the economic court, which has rendered a decision to declare the debtor bankrupt. Proceeds from the sale of the debtor's property carried out by the liquidation manager, according to Paragraph 2 of this Article are also placed on the deposit of the economic court, which has rendered the decision.

Article 182. Consideration of Creditors' Claims

The economic court shall consider claims filed by creditors within the period set by Paragraph 2 of Article 180 of this Law. Upon the results of the consideration, the economic court shall render a ruling on the procedure for and the amount of the satisfaction of creditors' claims.

This Article defines the procedure and the period in which the court considers creditors' claims.

In case of legal entities' bankruptcy, the economic court considers only those claims of creditors against which objections are raised under Articles 70 or 100. In bankruptcy cases of individual entrepreneurs, unlike in those of legal entities, a special rule is employed, according to which claims filed by creditors are considered directly by the economic court. The economic court considers creditors' claims which are filed within the period of two months provided for lodging claims, as envisaged by Paragraph 2 of Article 180.

Even if the court appoints a liquidation manager according to Paragraph 2 of Article 181, the court considers creditors' claim, in any case, in the manner envisaged by Article 128, since the liquidator manager is only entitled to manage and dispose of immovable and valuable movable property (Art.181, Para.2).

In case of individual entrepreneur debtor's bankruptcy, the debtor is discharged from further obligations after the completion of liquidation proceedings, except obligations to satisfy claims for alimony and compensation for damage to life or health, and also other claims of personal nature. In this regard, the economic court and an execution officer must define the amount of the debtor's liabilities to pay. Therefore, creditors who wish to be paid within bankruptcy proceedings must file their claims in any case, regardless of whether they can be satisfied preferentially as superpriority claims or in the established order of priority.

Creditors' claims which have matured before the commencement of the bankruptcy case and been filed after the expiry of the period for filing claims are satisfied from the debtor's property which remains after the satisfaction of creditors' claims filed within the established period, according to Paragraph 3 of Article 138.

These claims are considered by the court which has commenced the bankruptcy case. Upon the results of consideration, the economic court renders a ruling, where the priority and the amount of creditors' claims are indicated. This ruling may not be appealed, since this Law has no provision of appeal against such ruling.

Unlike in bankruptcy of the legal entity debtor, in bankruptcy of the individual entrepreneur debtor, the creditors' register is not compiled.

Article 183. Procedure for Satisfying Creditors' Claims

- 1 Expenses related to the consideration of the bankruptcy case and the execution of the economic court's decision to declare the individual entrepreneur debtor bankrupt, and claims of citizens to which the individual entrepreneur debtor is liable in damage to life or health according to the legislation shall be reimbursed from monetary funds deposited in the economic court, prior to the satisfaction of creditors' claims.**
- 2 Creditors' claims shall be satisfied in the following order of priority:**
 - claims for mandatory payments, for alimony, for wages and for remunerations under copyright agreements shall have the first priority;**
 - claims of creditors secured by the debtor's property shall have the second priority;**
 - other creditors' claims shall have the third priority.**
- 3 Claims of each priority shall be satisfied after the full satisfaction of claims of the previous priority.**
- 4 If monetary funds deposited in the economic court are insufficient, they shall be distributed among creditors of the same priority proportionally to their claim amount.**

This Article rules the priority order in satisfying creditors' claims.

1. Paragraph 1 of this Article defines claims which are satisfied, regardless of priority of other claims, namely, in the top priority. They include expenses for the consideration of the bankruptcy case, for the execution of the economic court's decision to declare the bankrupt and initiate liquidation proceedings. In case a liquidation manager is appointed, the court determines the amount of his/her remuneration. In this case, the court takes account of the average monthly salary, the forthcoming workload and the value of the debtor's property which may be applied to pay remuneration. Remuneration of the liquidation manager is paid preferentially, regardless of priority of other claims.

It should be mentioned that claims for compensation for moral damage and for damage to life or health, and other claims of personal nature (including those for alimony which the debtor must pay as a family member) may be satisfied preferentially, regardless of priority of other claims.

Current payments are also made, regardless of priority of other claims. Claims incurred after the court accepts the petition for the declaration of the debtor's bankruptcy are categorised as current payments in bankruptcy of the individual entrepreneur debtor.

An execution officer starts satisfying creditors' claims in order of priority envisaged by Article 134 and this Article.

Article 133 is applied to the bankruptcy case of the individual entrepreneur debtor. Thus, secured claims are discharged from proceeds from the sale of property securing such claims, ahead of the other creditors of the debtor.

2. Creditors' claims are satisfied in the following order of priority:
 - in the first priority, claims for mandatory payments to the state budget, which are taxes, mandatory contributions to the state budget and state special purpose funds; claims for alimony which the debtor owes to pay as an employer⁶⁰; and claims for wages and for remuneration under copyright agreements are satisfied. When determining the amount of claims for severance payments and wages of employees working under a labour contract and for remuneration under copyright agreements, the court takes into consideration the amount of undischarged debts as of the date when it accepts the petition;
 - in the second priority, claims for monetary obligations secured by the debtor's property not satisfied under Paragraph 2 of Article 133 are satisfied (claims which were secured by the debtor's property, but not satisfied from proceeds of sale of secured property, due to the low value of such property);
 - other creditors are given the third priority, except those to be satisfied in the first and second priority.
3. Creditors' claims of each priority are satisfied after claims of the previous priority are discharged in full. It is not allowed to satisfy claims of a certain priority while claims of the previous priority are not discharged, namely, some preferential rights of a creditor ahead of other creditors is denied, in order to ensure the principle of the equality.
4. If funds deposited in the economic court are insufficient, they are distributed among creditors of the same priority proportionally to their claim amount.

Article 184. Discharge of Individual Entrepreneur Debtor from Obligations

- 1 After the completion of settlements with creditors, the individual entrepreneur debtor declared bankrupt shall be discharged from obligations to satisfy creditors' claims filed in the process to declare the individual entrepreneur debtor bankrupt, except the claims envisaged by Paragraph 2 of this Article.**
- 2 Creditors' claims for compensation for damage to life or health, claims for alimony and other claims of personal nature which have not been satisfied in the course of the execution of the economic court's decision to declare the individual entrepreneur debtor bankrupt (either satisfied partially, or not lodged in the process to declare the individual entrepreneur debtor bankrupt) shall remain in force and may be lodged in full or in respect of outstanding part thereof respectively after the bankruptcy process against the individual entrepreneur debtor is completed.**
- 3 In case it is revealed that the debtor has concealed its property or illegally transferred its property to third parties, creditors whose claims have not been satisfied in the bankruptcy**

⁶⁰ Art.134,the Family Code

process shall be entitled to petition for attachment on such property and satisfaction of their claims from it.

This Article provides what takes place to the debtor after the completion of settlements with creditors, when claims of personal nature remain fully or partially undischarged, and when the debtor has kept its property hidden.

1. After the completion of settlements with creditors, the debtor declared bankrupt is discharged from obligations to satisfy creditors' claims filed in the process to declare it bankrupt, except the claims envisaged by Paragraph 2 of this Article. There is no need for these exceptional claims to file in the process of bankruptcy as they may be pursued in the general process.

It is also necessary to note that after liquidation proceedings are completed, creditors may not, by virtue of the consequence of discharge, require the debtor to satisfy their claims which were not filed in the course of liquidation proceeding, except the claims envisaged by Paragraph 2 of this Article.

The discharge of the debtor from its obligations is a positive consequence of the declaration of its bankruptcy. The debtor who has gone through bankruptcy proceedings is free from any obligation to discharge unsatisfied claims of its creditors, after settlements with creditors are completed, which is specified in a ruling to complete liquidation proceedings in respect of the debtor. Claims of personal nature are exceptional.

This Law does not establish what judicial act is rendered by the economic court when the debtor declared bankrupt has completed settlements with its creditors. Paragraph 37 of the Regulation of the SEC Plenum No.142 gives the following explanation on this issue:

- after the debtor has completed settlements with creditors and fully discharged all creditors' claims, the economic court renders a ruling to complete liquidation proceedings;
 - in case property of the debtor is insufficient to discharge all creditors' claims, an execution officer returns a writ of execution for the attachment of the debtor's property, according to the rules established by Articles 37 and 39 of the Law "On Execution of Judicial Acts and Acts of other Authorities". After considering documents on the returned writ, the economic court grants a ruling to complete liquidation proceedings;
 - if the court appoints a liquidation manager under Paragraph 2 of Article 181, the completion of liquidation proceeding follows the rules established by Articles 142 and 144.
2. Creditors' claims for damage to life or health, for alimony (which must be paid by the individual entrepreneur debtor as a family member) and other claims closely linked to creditor's personality remain in force if they have not been paid in the course of the execution of the economic court's decision to declare the individual entrepreneur debtor bankrupt (either satisfied partially or not lodged in the process to declare the debtor bankrupt), and may be lodged after the completion of the bankruptcy process in respect of the individual entrepreneur debtor, in full or in respect of outstanding part in the general order to the court of general jurisdiction. A lawsuit to pursue these claims is attached with the court decision to declare the individual entrepreneur debtor bankrupt and also documents approving the partial discharge of these claims or on not discharging them.
 3. In case it is revealed that the debtor has concealed its property or illegally transferred its property to third parties, creditors whose claims have not been satisfied in the bankruptcy process can petition for attachment on such property and satisfaction of their claims from it.

CHAPTER XI. STREAMLINED BANKRUPTCY PROCESSES

This Chapter rules two forms of streamlined bankruptcy processes.

When property of the legal entity debtor in liquidation proves insufficient to satisfy claims in full, and the liquidation commission applies to the court for the declaration of the debtor's bankruptcy, the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings. For such case, a streamlined process is provided, as the debtor is already in the liquidation stage. The other streamlined process is employed for the absent debtor, namely when the individual entrepreneur debtor (which has ceased its activity) or the manager of the legal entity debtor are absent (in case it is impossible to ascertain the place of their location), a petition for the declaration of the debtor's bankruptcy may be filed, irrespective of the amount or due date of the debtor's obligations. In such case, the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, and appoints a liquidation manager within two weeks. The liquidation manager satisfies lodged claims in order of priority established by the legislation.

Such complicated processes as supervision, judicial rehabilitation and external management are not applied in streamlined bankruptcy processes.

§ 1. Specifics of Bankruptcy of Legal Entity in Liquidation

Article 185. Bankruptcy of Legal Entity in Liquidation

- 1 If the value of property of a legal entity, in respect of which a decision on liquidation has been rendered because it is engaged in no financial or economic activity and (or) fails to form its charter capital within the period set by the legislation, is insufficient to satisfy its creditors' claims, such legal entity shall be liquidated in the manner envisaged by this Law.**
- 2 If the circumstances envisaged by Paragraph 1 of this Article are revealed, the liquidation commission (liquidator) shall be obliged to apply to the economic court for the declaration of bankruptcy of the legal entity debtor in liquidation or to the state taxation service authorities for the relevant measures envisaged by the legislation.**

This Article is intended to distinguish cases where this Law governs liquidation of enterprises which do not operate financially or economically and (or) could not complete the charter capital formation within the statutory period, from those cases where liquidation is carried out under the rules of other legal acts.

Legal entities are liquidated in the manner envisaged by the Civil Code, and also by the legislation and other regulatory-legal acts, which regulate liquidation procedures of certain types of legal entities.

Liquidation of legal entities in connection with no financial or economic activity and (or) with failure to form the charter capital within the period set by the legislation is ruled by the Decree of the President "On measures of the simplified procedure for liquidation of enterprises which do not carry out financial and economic activity and have failed to form their charter capital within the period established by the law" dated 28 Jun.1999 No.PD-2331, and the Resolution of the Cabinet of Ministers "On the procedure for liquidation of enterprises which do not carry out financial and economic activity

and have failed to form their charter capital within the period established by the legislation ” dated 3 Jul.1999 No. 237.

1. According to the provisions of this Section, in particular, of this Article, legal entities are declared insolvent (bankrupt), if the following two conditions are fulfilled simultaneously.

The first condition is that in respect of a legal entity which conducts no financial and economic activity and could not form its charter capital within the time limit set by the legislation, a decision to liquidate is made, according Article 53 of the Civil Code. This is possible in two cases where:

- a) founders (participants) of the legal entity or its body authorised by founding documents make a decision to liquidate the legal entity (Art.54,Para.2,Item 1,CC). The procedure of the decision making regarding liquidation is established by founding documents;
- b) the economic court issues a decision to liquidate the legal entity pursuant to Item 3.1 of the Regulation “On the procedure for liquidation of enterprises which do not carry out financial and economic activity or have failed to form their charter capital within the term fixed in the law”(approved by the CM Resolution dated 3 July 1999 No. 237, hereinafter referred to as ‘the Regulation on the simplified procedure for liquidation’) (pursuant to Art.53,Para.2,Item 2 of CC, provided that the abovementioned founders (participants) or body have not taken a decision to liquidate the legal entity). Details of this procedure are explained by Section 3 of the Regulation on the simplified procedure for liquidation ;

The body which deals with the state registration of legal entities should be informed of such decision to liquidate legal entities and of the formation of their liquidation commission (appointment of their liquidator) (Item 3.2 and 3.3 of the Regulation on the simplified procedure for liquidation).

Information that legal entities are in liquidation is recorded in the uniform state register of legal entities;

The second condition is that the value of the debtor’s property is insufficient to satisfy claims.

When the debtor’s property is sufficient, liquidation is administered, not by this Law, but by the regulatory acts, provided in the introductory part of the comment on this Article.

The possibility of paying all creditors by realising and distributing the debtor’s property is determined based on the accounting data and also a report of an independent appraiser on the property value of the legal entity debtor in liquidation.

2. According to Paragraph 2 of this Article, the liquidation commission (liquidator) and the state tax service authorities are qualified to make a petition to the economic court for the declaration of bankruptcy of the legal entity debtor in liquidation or to the state taxation service authorities for the relevant measures envisaged by Paragraph 1 of this Article (Para.36, the Resolution of the SEC Plenum No. 142).

According to Paragraph 3 of Article 8, the liquidation commission (liquidator) is obliged to petition the court within one month from the date when circumstances envisaged in Paragraph 1 of Article 8 occur.

Paragraphs 2 and 3 of Article 8 and also Article 9 are mandatory (imperative) regulations. The breach of the above obligation to file a petition for the declaration of the legal entity debtor’s bankruptcy may impose the civil liability on the chairman of the liquidation commission or the liquidator under Article 187 .

Practically, the petition filed by the liquidation commission (liquidator) must meet requirements

of Articles 37 and 38. According to Paragraph 35 of the Resolution of the SEC Plenum No.142, when the petition for the declaration of the debtor's bankruptcy is filed in the economic court according to Paragraphs 2 of Article 185, the petitioner must attach the decision to liquidate the debtor to the petition and present a candidate for a liquidation manager.

Paragraph 2 of this Article indicates that if the legal entity debtor in liquidation which is engaged in no financial and economic activity and (or) fails to form its charter capital within the statutory period has outstanding debts owed to the budget, the liquidation commission is obliged to apply to the court or the state tax service authorities for appropriate measures, particularly for the writing-off of such debts in the statutory manner⁶¹. According to this Paragraph, the writing-off of debts may also be made without any petition to the court, namely the state taxation service authorities may write off debts to the budget. Therefore, the petitioner can select where to petition, the court or the state taxation service authorities.

Overdue mandatory payments which these enterprises in question owe to the budget and off-budget funds are written off by a decision of the Government Commission on improving mechanisms of settlements and strengthening discipline of payments to the budget as advised by the State Tax Committee of the Republic of Uzbekistan (the CM Resolution on the procedure for liquidation of enterprises which do not carry out financial and economic activity or have failed to form their charter capital within the term fixed in the law" dated 3 Jul.1999 No.327).

Article 186. Specifics of Consideration of Bankruptcy Case of Legal Entity in Liquidation

- 1 The economic court shall render a decision to declare the legal entity in liquidation bankrupt and initiate liquidation proceedings, and appoints a liquidation manager.**
- 2 Supervision, judicial rehabilitation and external management shall not be applied in bankruptcy of the legal entity in liquidation.**
- 3 Creditors shall be entitled to lodge their claims against the legal entity in liquidation within one month from the date when the announcement on the declaration of bankruptcy of the legal entity in liquidation is published.**

The purpose of this Article is to clarify specifics of consideration of bankruptcy cases of legal entities in liquidation, and its procedures.

1. Bankruptcy cases of debtors in liquidation are considered in the manner envisaged by Chapters III and VII of this Law, with specifics established by this Article.

To accept a petition regarding bankruptcy of an entity in liquidation, the following conditions must be satisfied: the debtor has taken a decision to liquidate itself and its property value is inadequate to satisfy creditors' claims. Herewith, the amount of debts has no importance. The same is indicated in the Resolution of the SEC Plenum No.142, Paragraph 35 of which states that the amount of the debtor' debts (Art.5, Para.2) is not taken into consideration. The issue of accepting the petition does not either depend on the due date of these debts (Art.4).

It is necessary to note that pursuant to Paragraph 36 of the Resolution of the SEC Plenum No.142,

⁶¹ This comment needs to be understood along with the provision of Paragraph 36 of the Resolution of the SEC Plenum No.142

when the state taxation service authorities or the liquidation commission petitions in respect of an enterprise which has already entered liquidation upon a decision of the economic court in accordance with the CM Resolution on the procedure for liquidation of enterprises which do not carry out financial and economic activity or have failed to form their charter capital within the term fixed in the law, and it is revealed in the process of liquidation that the debtor is indebted only to the budget and off-budget funds, such petition is subject to refusal of acceptance according to Item 1 of Paragraph 1 of Article 117 of the Code of Economic Procedure.

This Article contains no provision for the period by which the court considers the bankruptcy case of the debtor in liquidation. As such case is considered in the streamlined processes, accordingly by analogy with bankruptcy of the absent debtor (Art.189, Para.1), it is subject to consideration within two weeks of the date when the petition is accepted.

The economic court renders either of the following decisions based on the results of the consideration of the petition filed by the liquidation commission (liquidator) or the state taxation service authorities:

- to declare the debtor bankrupt and initiate liquidation proceedings (Arts.124, 185 and Para. 1 of this Article);
- to refuse to declare the debtor bankrupt (Art.54).

When rendering a decision to declare the debtor in liquidation bankrupt, the economic court must appoint a liquidation manager, a candidate for which is proposed by the petitioner. In this case, as a rule, a person who has the certification of fourth category (see the comment on Art.18,Para.1) is appointed as a liquidation manager.

It is necessary to keep in view that in the above case, the possibility of assigning the liquidation manager's duties on the chairman of the liquidation commission (liquidator) is denied. According to Paragraph 2 of Article 18, their chairman is classified as an interested person in respect of the debtor.

2. Supervision, judicial rehabilitation and external management envisaged by this Law are not applied to bankruptcy of the debtor in liquidation. This is justified by that liquidation of the legal entity has been already determined (voluntarily or mandatorily) outside the bankruptcy case, and there is no possibility for the entity to continue to trade. Therefore, measures to turn the debtor around are not taken.
3. Paragraph 3 of this Article prescribes the period of one month for creditors to lodge their claims against the legal entity debtor in liquidation, which starts on the date when the announcement of the declaration of bankruptcy is published, while the general process (Art.127) gives two months for creditors to lodge their claims. Such shortened period is explained by that the liquidation commission has already done certain work, before the petition is filed, for example it has identified creditors, and as a rule, already compiled the creditors' register. If creditors lodge their claims during the above period of one month, these claims are to be recorded in the creditors' register in the manner established by this Law. The determination of the amount of creditors' claims, including those filed to and considered by the liquidation commission (liquidator), the evaluation and realisation of property, settlements with creditors, the submission of reports by the liquidation manager and its consideration by the court are carried out in the manner envisaged by Chapter VII of this Law, with specifics established in this Chapter.

Article 187. Consequences of Refusal of Liquidation of Legal Entity in Bankruptcy Process

- 1 Violation of the requirements envisaged by Paragraph 2 of Article 185 of this Law shall be the ground for refusing to enter a record of liquidation of the legal entity in the uniform state register of legal entities.**
- 2 The chairman of the liquidation commission or the liquidator shall be subsidiarily liable for unsatisfied claims for monetary obligations and (or) mandatory payments of the legal entity in liquidation, if they have violated the requirements envisaged by Paragraph 2 of Article 185 of this Law.**

The purpose of this Article is to attempt not to overlook, and to prevent breaches of Paragraph 2 of Article 185, which obligates the liquidation commission (liquidator) of the legal entity debtor in liquidation to petition to the economic court for the declaration of the debtor's bankruptcy, or to the state taxation service authorities for relevant statutory measures in case circumstances envisaged by Paragraph 1 of Article 185 are revealed. For the very purpose, this Article imposes an individual civil liability on the chairman of the liquidation commission or the liquidator who have defaulted their above obligation, and allows the relevant organisation to refuse to record liquidation of the legal entity.

1. Liquidation of a legal entity is recorded by the registration authority in the uniform state register of legal entities based on an application and other documents envisaged by the legislation. In this connection, it is confirmed in the application that the legal entity has entered liquidation in the prescribed procedure, settlements with creditors have been made, and liquidation of the legal entity is agreed by concerned state authorities in cases established by the legislation, in particular pursuant to the Regulation on simplified procedure for liquidation.

In case the liquidation commission (liquidator) of the debtor fails to petition the economic court for the declaration of the debtor's bankruptcy, after establishing the impossibility of the debtor to satisfy creditors' claims in full, this failure constitute a ground for liquidation of the legal entity debtor to be refused to record in the uniform state register of legal entities.

2. Paragraph 2 of this Article, which lays down the liability for failure to petition the court is an exceptional case of the general provision of Article 9. This Section regulates bankruptcy of a legal entity in respect of which a decision on liquidation has been rendered, because the legal entity is engaged in no financial and economic activity and (or) fails to form its charter capital within the statutory period, when its property value is not sufficient to satisfy its creditors' claims. In this case, a subject responsible for petitioning the court or state taxation service authorities is only the liquidation commission represented by its chairman or the liquidator, therefore, the legal effect imposing a subsidiary liability for payment of unsatisfied claims covers only the chairman of the liquidation commission or the liquidator.

§ 2. Bankruptcy of Absent Debtor

Article 188. Specifics of Applying for Declaration of Bankruptcy of Absent Debtor

In case the individual entrepreneur debtor which has ceased its activity, or the manager of the legal entity debtor in liquidation are absent and it is impossible to ascertain their place of location (place of residence), an application for the declaration of such absent debtor's bankruptcy may be filed by creditors, the state body for bankruptcy proceedings, the state taxation service

authority or other authorised body, and also by the prosecutor, irrespective of the amount of accounts payable of the debtor.

This Article determines cases and specifics when a petition for the declaration of the absent debtor's bankruptcy is filed and accepted.

The absent debtor may be a legal entity which has indeed ceased its financial and economic activity, has no cash flow in its operation account, and is not located at the place indicated in its founding documents or the state registration of legal entities, and the place of which cannot be ascertained.

If the individual entrepreneur debtor is absent, then it can be considered that this physical person has ceased its trading, is not at the place of its residence and its location is not known.

Furthermore, pursuant to Subparagraph 4 of Paragraph 35 of the Resolution of the SEC Plenum No.142, the absent debtor may encompass not only a debtor the manager of which is absent, but also a business subject which has no property.

It should be noted that the term "absent debtor" used in this Law has nothing in common with the institution of adjudication of citizens' disappearance (Arts.33 through 35, CC).

The petition for the declaration of bankruptcy of the absent debtor (including the debtor with no property) may be filed in the economic court by:

- creditors;
- the state body for bankruptcy proceedings;
- the state taxation service authority;
- other authorised body;
- the prosecutor.

The following documentation can be accepted as evidences of the debtor's absence, namely, documents confirming that the individual entrepreneur debtor or the manager of the legal entity debtor is absent, and it is impossible to ascertain the place of their location: a certificate issued by the address bureau on moving out from the address, or leaving the region; act on not residing at the registered place. A certificate of death or imprisonment may also be considered as evidences of the debtor's absence (Para.35,Subpara.3, the Resolution of the SEC Plenum No.142).

The absence of property of the debtor may be confirmed by a document about the place of location (postal address) of the debtor, made with participation of a representative of citizens' self-government bodies or home management associations of owners, a owner of residential or non-residential premise, and (or) a court receiver, or by a resolution of an execution officer that an execution document is returned without fulfilment due to the absence of the debtor's property (Para.35, Subpara.4, the Resolution of the SEC Plenum No.142).

If the petitioner presents no evidences of the absence of the debtor or its property, the economic court does not apply a streamlined bankruptcy processes, but may accept the petition in the general manner in case such petition complies with the requirements for accepting a petition in the general proceedings. If the manager of the debtor or the individual entrepreneur debtor is present, but their property is absent, the bankruptcy case is also subject to consideration in a streamlined bankruptcy process (Para.35, the Resolution of the SEC Plenum No.142).

As is known, a legal entity and an individual entrepreneur enter bankruptcy, when they are not able to satisfy creditors' claims for monetary obligations and (or) to perform duties on mandatory payments within three months from their maturity date.

These provisions are not applied in case of the absent debtor, because there is no prospect of these

obligations being preformed. In this case, the above general requirement of the non-performance of monetary obligations and duties on of mandatory payments for three months is not applied.

The petition for the declaration of the absent debtor's bankruptcy is accepted by the economic court, irrespective of the amount of creditors' claims against the absent debtor (Para.35, the Resolution of the SEC Plenum No.142).

Article 189. Consideration of Bankruptcy Case of Absent Debtor

- 1 The economic court shall render a decision to declare the absent debtor bankrupt and initiate liquidation proceedings within two weeks from the date when it accepts the petition for the declaration of the absent debtor's bankruptcy.**
- 2 Supervision, judicial rehabilitation and external management shall not be applied in bankruptcy of the absent debtor.**
- 3 The economic court decision shall be forwarded to the state body for bankruptcy proceedings, which shall propose a candidate for a liquidation manager to the economic court within one week from the date when this decision is rendered. The economic court may appoint a liquidation managers from officers of the state body for bankruptcy proceedings.**
- 4 The liquidation manager shall notify in writing bankruptcy of bankruptcy of the absent debtor to all creditors known to him/her, and creditors may lodge their claims to the liquidation manager within one month from the date when they receive notification.**
- 5 Upon an application of the liquidation manager, if he/she has discovered property of the absent debtor, the economic court may render a ruling to terminate the streamlined bankruptcy process and shift to general bankruptcy processes envisaged by this Law.**

The purpose of this Article is to clarify specifics of the consideration of a bankruptcy case against the absent debtor, also gives the brief description about the process and the procedure for shifting from a streamlined bankruptcy process to a general bankruptcy process when property of the absent debtor is discovered.

1. As a rule, the economic court must consider and render a decision on the case within three months from the date it accepts the petition for the declaration of the debtor's bankruptcy (Art.49). In respect of the absent debtor, Paragraph 1 of this Article sets down the shortened period for the case consideration – two weeks, because there is in fact neither the debtor itself nor its property.
2. Paragraph 2 of this Article establishes that supervision is not introduced in respect of the absent debtor, and, judicial rehabilitation and external management are not applied, either. There is no such need as the debtor itself is absent.
3. After rendering a decision to declare the absent debtor bankrupt, the economic court forwards this decision to the state body for bankruptcy proceedings, which must nominate a candidate for a liquidation manager within a week after it receives the decision. In this case, it does not matter whether the state holds any share in the charter capital of the debtor or not. According to this Paragraph, a liquidation manager of the absent debtor is appointed out of candidates presented by the state body for bankruptcy proceedings. In practice, however, the petitioner itself (the state body for bankruptcy proceedings or the state taxation service authority) may present such candidate from its officials who hold a certificate of the court receiver of fourth category or higher category. If the

above body or authority does not present any candidate within the period established by the economic court, then the court can itself appoint a liquidation manager from officials of the above body or authority.

4. The liquidation manager publishes information on the declaration of the debtor's bankruptcy and initiation of liquidation proceedings in the manner envisaged by Article 127. Besides publication, the liquidation manager notifies in writing all creditors known to him/her of bankruptcy of the absent debtor. The creditors may lodge their claims to the liquidation manager within one month after they receive notification. Upon the expiry of this period, the creditors' register may be closed.

The order of priority, amount and procedure of satisfaction of creditors' claims against the absent debtor are envisaged by Articles 134 through 138 (as regards legal entities) and 183 (as regards individual entrepreneurs). The amount of creditors' claims against the absent debtor is determined in accordance with the general rule in the manner envisaged by Article 99 (see the comment on Art.128, Para.4).

The liquidation manager has the right to convoke the creditors' meeting to consider a report on the results of liquidation proceedings. It is considered that liquidation proceedings must be completed, in compliance with the general requirements envisaged in Article 144.

5. Pursuant to Paragraph 5 of this Article, if the liquidation manager finds out property of the absent debtor while administering liquidation proceedings, then he/she is entitled to apply to the court for the termination of the streamlined bankruptcy process and shift to a general bankruptcy process. This Paragraph mentions the discovery of the debtor's property but not its manager. It is understood that if the debtor's manager appears, but there is no property, there is no need to shift to general bankruptcy processes. This issue depends on circumstances of each case. Whether the liquidation manager remain in position or a new court receiver is appointed may depend on a subsequent bankruptcy process.

Upon the results of the consideration of the application, the court may hands over a ruling to transit to one of general bankruptcy processes, which is not subject to appeal.

CHAPTER XII. CONCLUDING PROVISIONS

This Chapter outlines conduct which has brought bankruptcy (in terms of not only criminal but also civil responsibility), and also legal liability for such conduct.

Article 190. Wrongful Acts Resulted in Bankruptcy

- 1 **Wrongful acts which have incurred bankruptcy shall be understood as violations related to deliberate acts of officials or the property owner of the debtor, or creditors or other persons who have caused damage to the debtor or its creditors.**
- 2 **The following shall also be referred to wrongful acts:**
 - **concealment of all or part of the debtor's property or its obligations;**
 - **concealment, destruction, perversion, falsification of any filing document related to the performance of business activity of the debtor;**
 - **transfer of property to other legal entities and individuals for the purpose of concealment (including monetary funds);**
 - **failure to enter the required record in accounting documents;**
 - **sale, destruction, or offer as security, of all or part of the debtor's property which the debtor has purchased on credit and its debts remain unpaid;**
 - **deterioration of the debtor's insolvency for the personal interest of officials or the property owner of the debtor or to the benefit of third parties;**
 - **irrevocable diversion of current assets;**
 - **deliberate incurrence of bankruptcy with a purpose of causing damage to creditors;**
 - **preferential satisfaction of creditors' claims in prejudice of other creditors, consent to such satisfaction;**
 - **deliberate self-liquidation of the debtor for the purpose of avoiding monetary obligations and (or) duties on mandatory payments.**

1. The purpose of this Article is to define the term "wrongful acts which have incurred bankruptcy." Such acts are important in determining liability of officials of the legal entity or individual entrepreneur debtor, as, in practice, this issue may raise debates.

2. Meaning and contents of this Article

As is known, according to the Decree of the President "On the strengthening of responsibilities of officials for economic insolvency of market participants and performance of obligations under agreements" (dated 4 Mar.1998 No.PD-1938), the economic court is entitled to initiate criminal cases, when it finds indications of crime during its case consideration. The definition helps determine qualitative characteristics of wrongful acts undertaken by subjects of bankruptcy proceedings, and accordingly classify components of crime accurately.

A more detailed explanation of this is given in the comment on Article 192.

Article 191. Dispute Resolution

Disputes which arise in the process of bankruptcy shall be resolved in the manner established by the legislation.

This Article contains a reference rule on the resolution of disputes which arise in the process of bankruptcy. Disputes in process of bankruptcy are settled in the manner envisaged by the Civil Code, by the Code of Economic Procedure and also by this Law.

Article 192. Responsibilities for Violation of Bankruptcy Legislation

Persons who are guilty in violation of bankruptcy legislation shall bear responsibilities in the established manner.

The purpose of this Article is to find out and prevent violations of requirements of this Law.

Content and essentials of this Article:

As it can be seen from the content of this Article, it contains a citation of regulations on responsibilities for breaches of the bankruptcy legislation. It should be noted that it is assumed that a legal liability occurs not only for violation of this Law, but also of all the complex of regulatory acts on bankruptcy, in terms of criminal, civil, disciplinary and administrative liabilities.

Thus, according to Paragraph 4 of Article 79, the economic court may dismiss the debtor's manager from his/her duties upon an application of the creditors' meeting, the sureties or the rehabilitation manager which contains information that the debtor's manager has failed to implement or has implemented improperly the judicial rehabilitation plan or that his/her actions (omission) have violated the rights and legitimate interests of the debtor, creditors or the sureties..

As regards an administrative liability, the economic court may impose penalties on managers or other officials of enterprises the financial situation of which is being monitored, for failing to provide or providing late materials on financial and economic activities of those enterprises under Paragraph 1 of Article 25 of this Law and Article 215-1 of the Code of Administrative Liability.

As per a civil responsibility, it may be noted as an example that Article 9 determines a responsibility of the debtor's manager and the liquidation commission (liquidator). As a general rule, court receivers are also responsible for compensation for losses caused by their conduct to the debtor and creditors (Art. 21).

In the area of the criminal legislation, a responsibility for violating rules of bankruptcy is envisaged by Articles 180 and 181 of the Criminal Code.

Article 180 of the Criminal Code establishes the responsibility for false bankruptcy, namely, in case an economic subject declares itself in financial difficulty and not in position to discharge its obligations to its creditors, although it recognises that such is obviously false, which has consequently cause **serious damage**, such subject is penalised with fines from 100 to 200 fold minimum wage, or disqualification of certain rights up to five years, or correction work up to three years, or confinement up to three years. In case material damage is compensated with its three-fold amount, confinement is not applied.

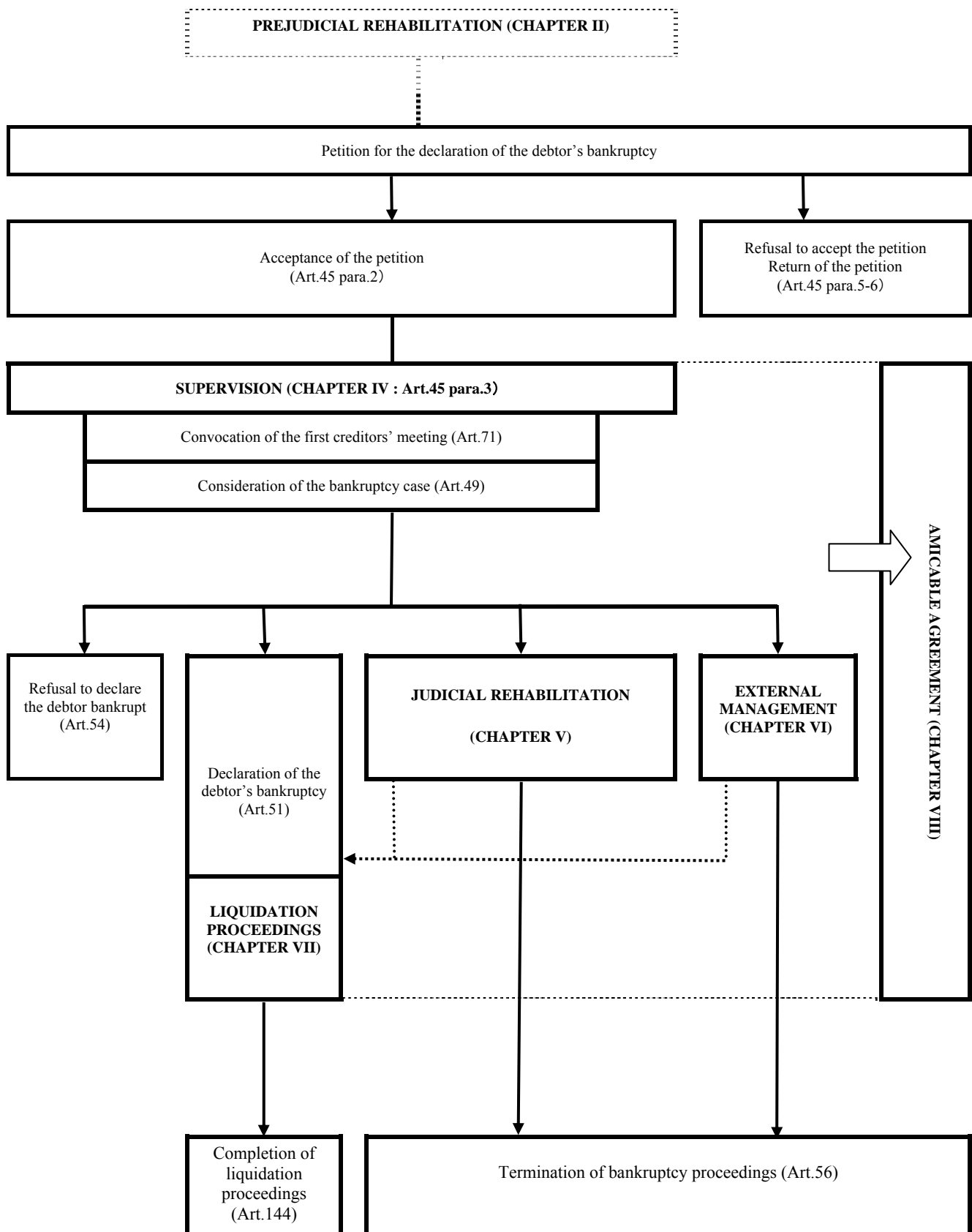
In Part VIII of the Criminal Code, the term "**serious damage**" is defined as a damage within one hundred to three hundred fold minimum wage.

Article 181 of the Criminal Code lays a responsibility for concealing bankruptcy, namely, when an economic subject intentionally conceals its insolvency by presenting false information or documents or by fabricating its accounting records, or disguises its insolvency in any other way, which has consequently caused serious damage to creditors, such subject is charged a penalty of from one hundred to two hundred fold minimum wage or disqualification of certain rights up to five years or correction work up to three years or confinement up to three years. In case material damage is compensated with its three-fold amount, confinement is not applied. It should be noted that according to Paragraph 6 of Article 345 of the Code of Criminal Procedure, the preliminary investigation of criminal cases provided by this Articles is performed by a body which has initiated investigation.

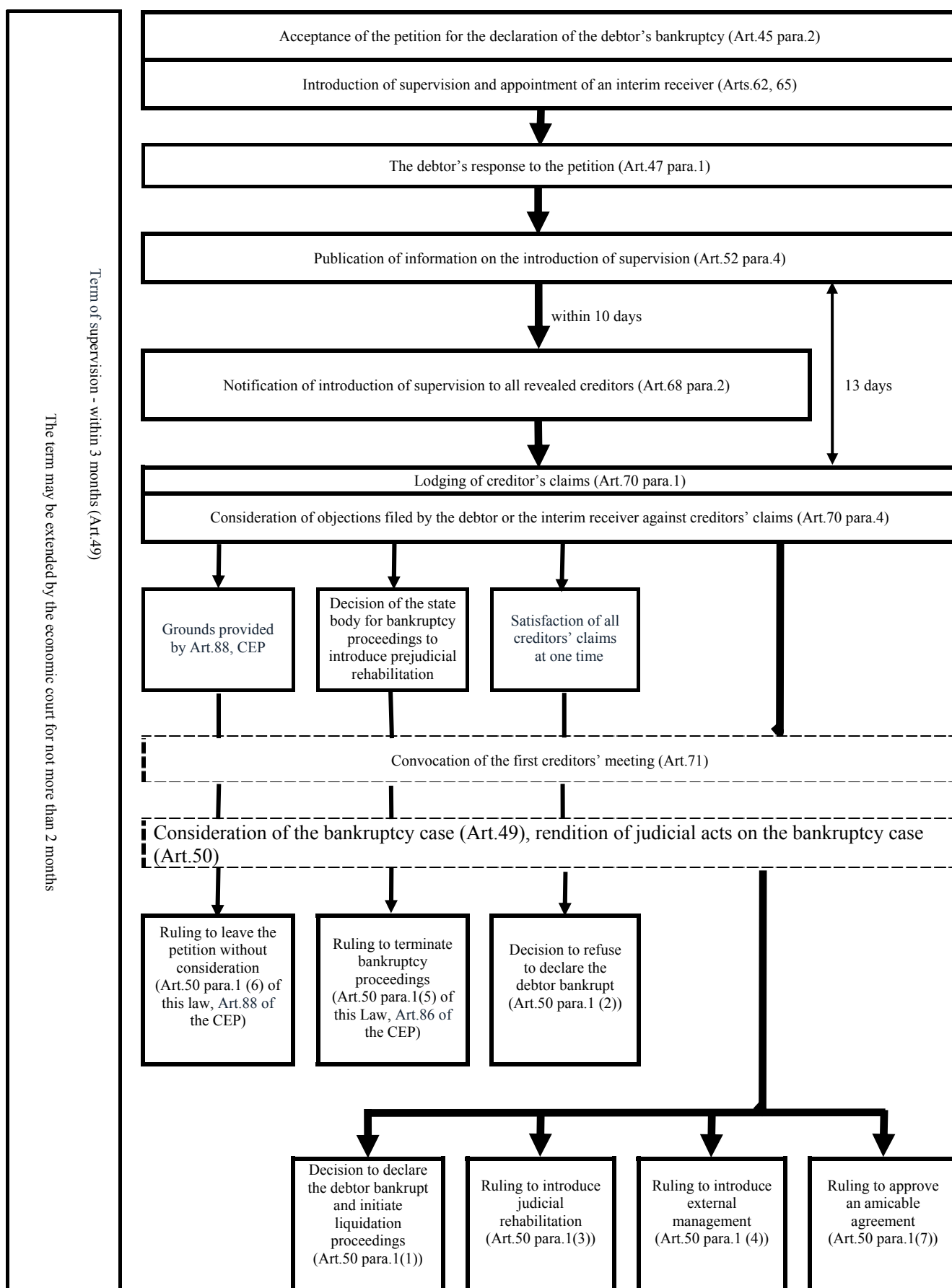
As according to Article 344 of the Code of Criminal Procedure, the preliminary investigation of criminal cases is performed by investigators of the prosecutor's office, internal authorities, national security service and also by prosecutors, so it is conducted correspondingly by one of these bodies which has initiated a criminal case. It should be noted, however, that the prosecutor is empowered to transfer a case from a investigation body to its investigator, or from a body carrying out the preliminary investigation to another, from a investigator to another, in view of its workload, the rationality, its specifics, by virtue of Paragraph 3 of Article 382 of the Code of Criminal Procedure.

A criminal case is commenced, pursuant to Articles 321, 329 and 331 of the Code of Criminal Procedure, by a resolution of a investigator, prosecutor or by a court ruling within three to ten days from the date when an application or information and other data about crime are filed. Grounds for the commencement of a criminal case include an application of persons, a statement of enterprises, institutions, organisation, community unions and officials, mass media messages, or reveal of information and signs denoting to crime, directly by investigation bodies, investigators, prosecutors or the court, or confession, under Article 322 of the Code of Criminal Procedure.

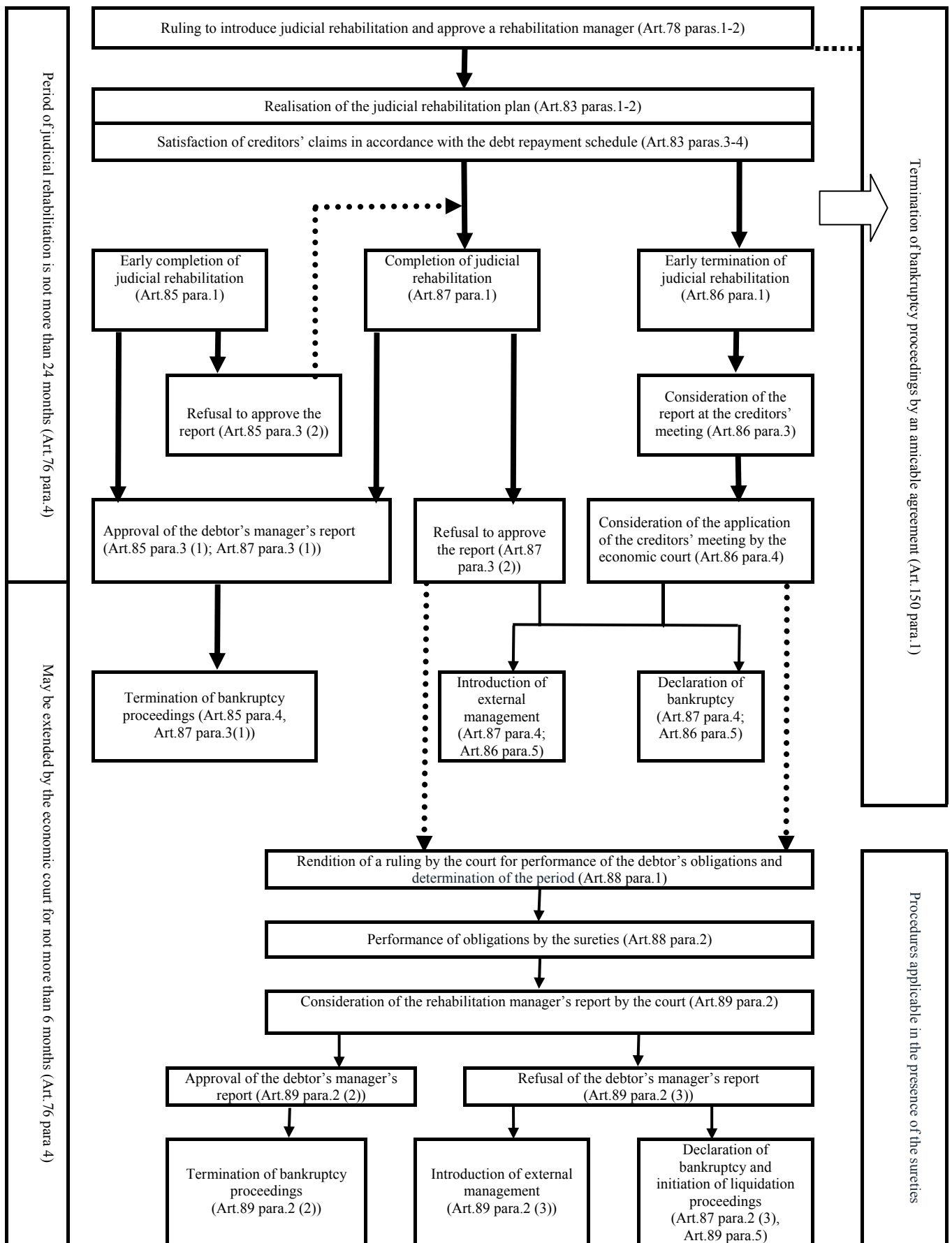
General scheme of a bankruptcy case of the Law of the Republic Uzbekistan "On Bankruptcy"

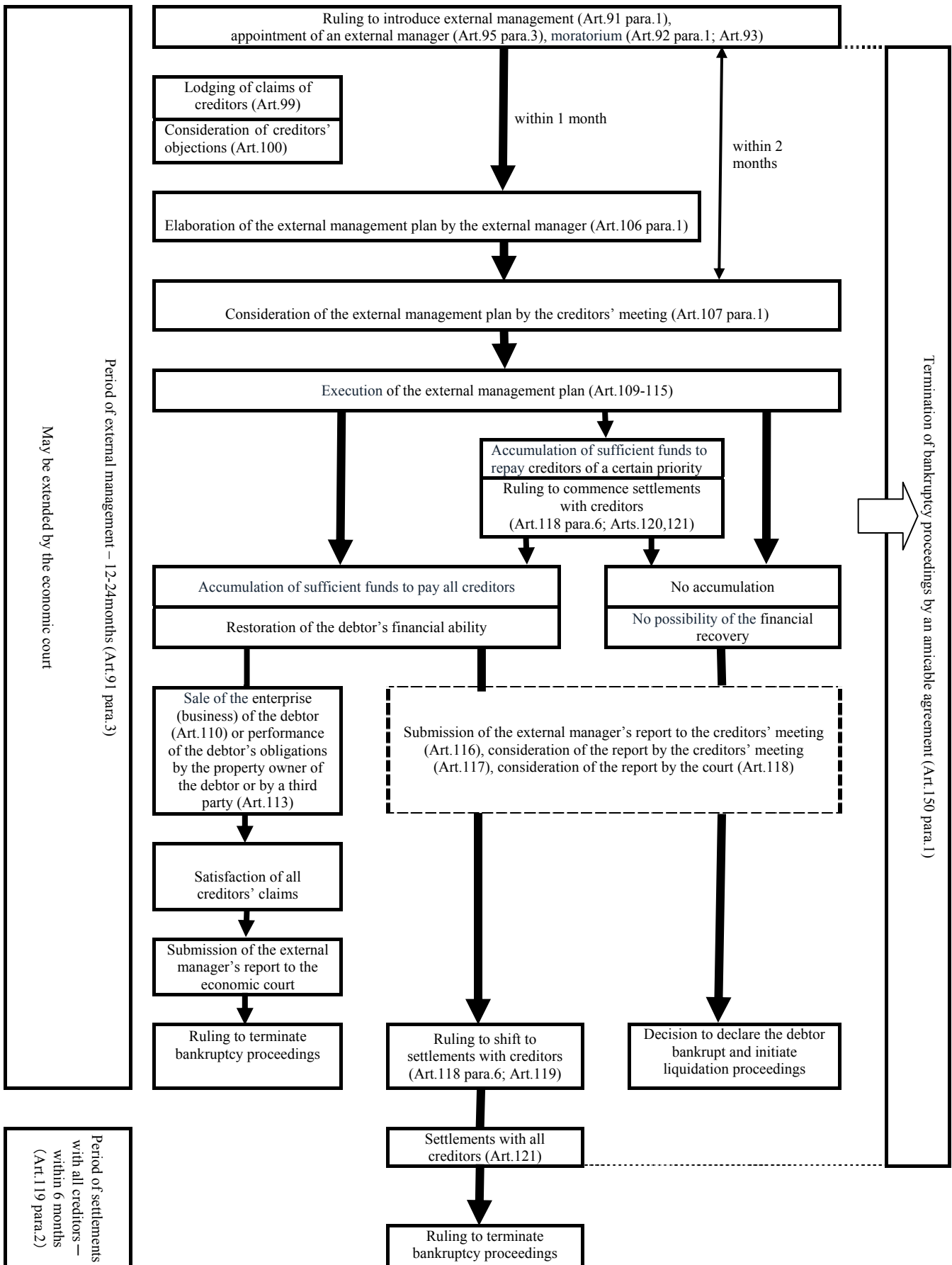


SUPERVISION (CHAPTER IV)

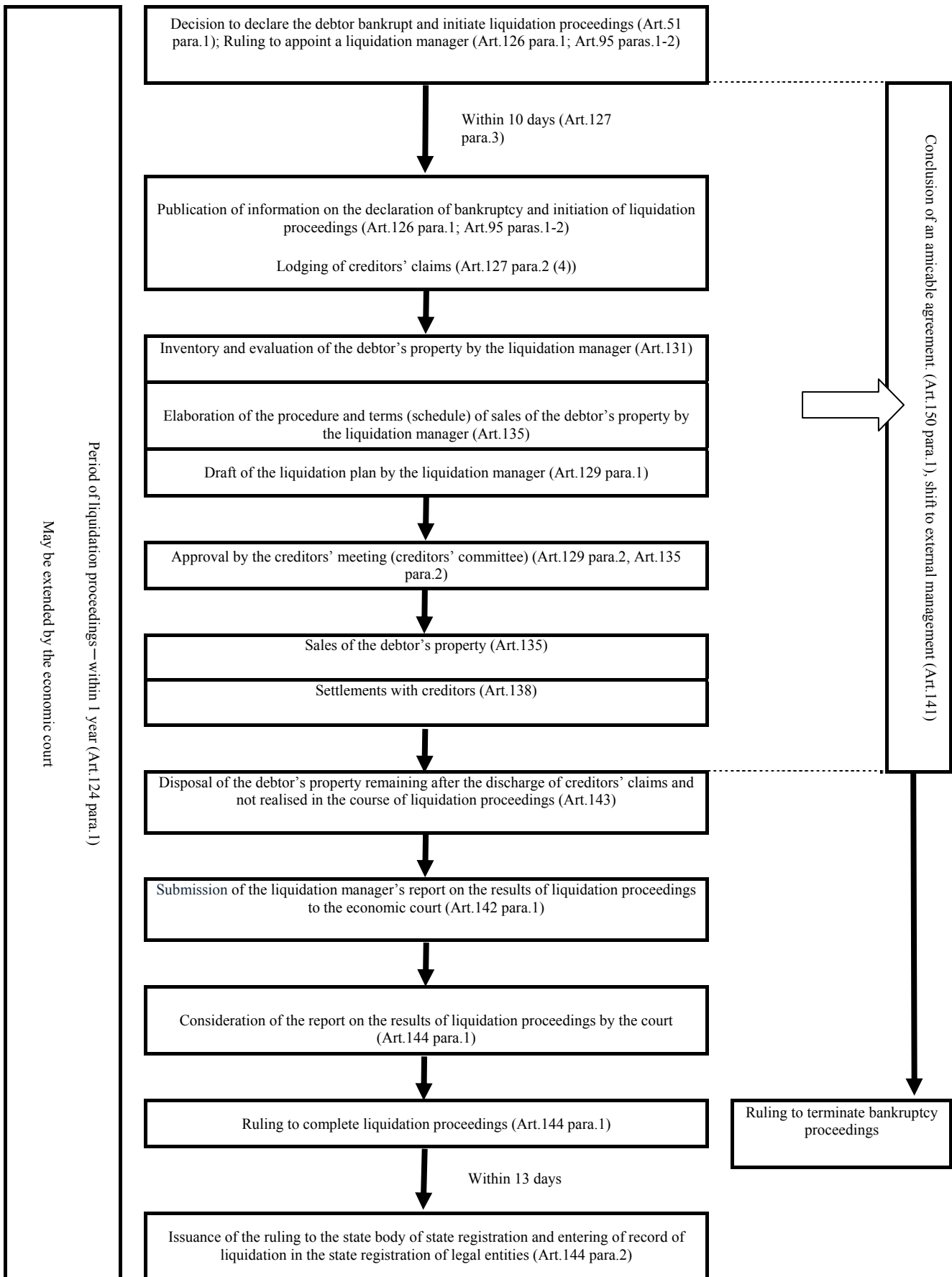


JUDICIAL REHABILITATION (CHAPTER V)

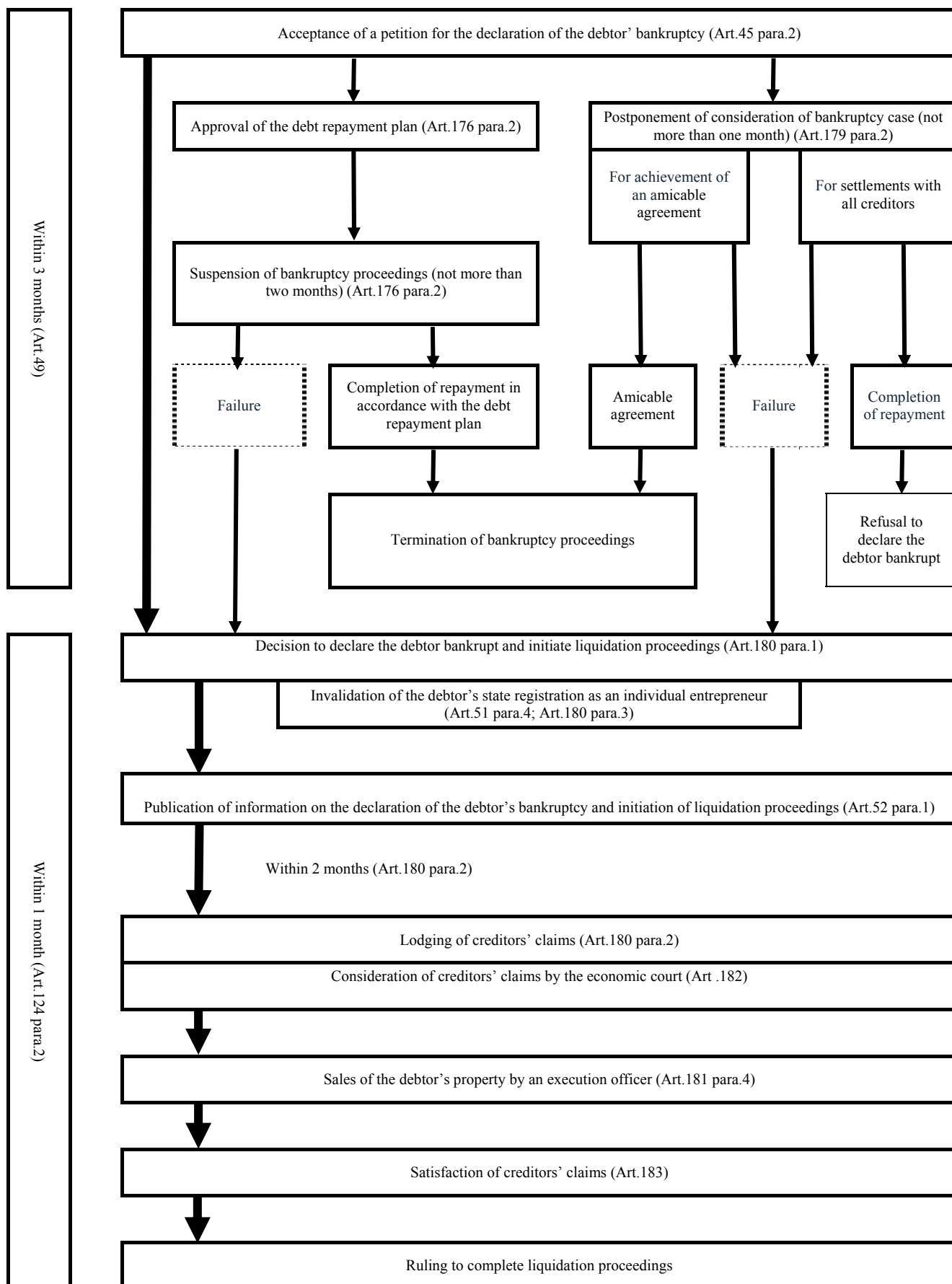




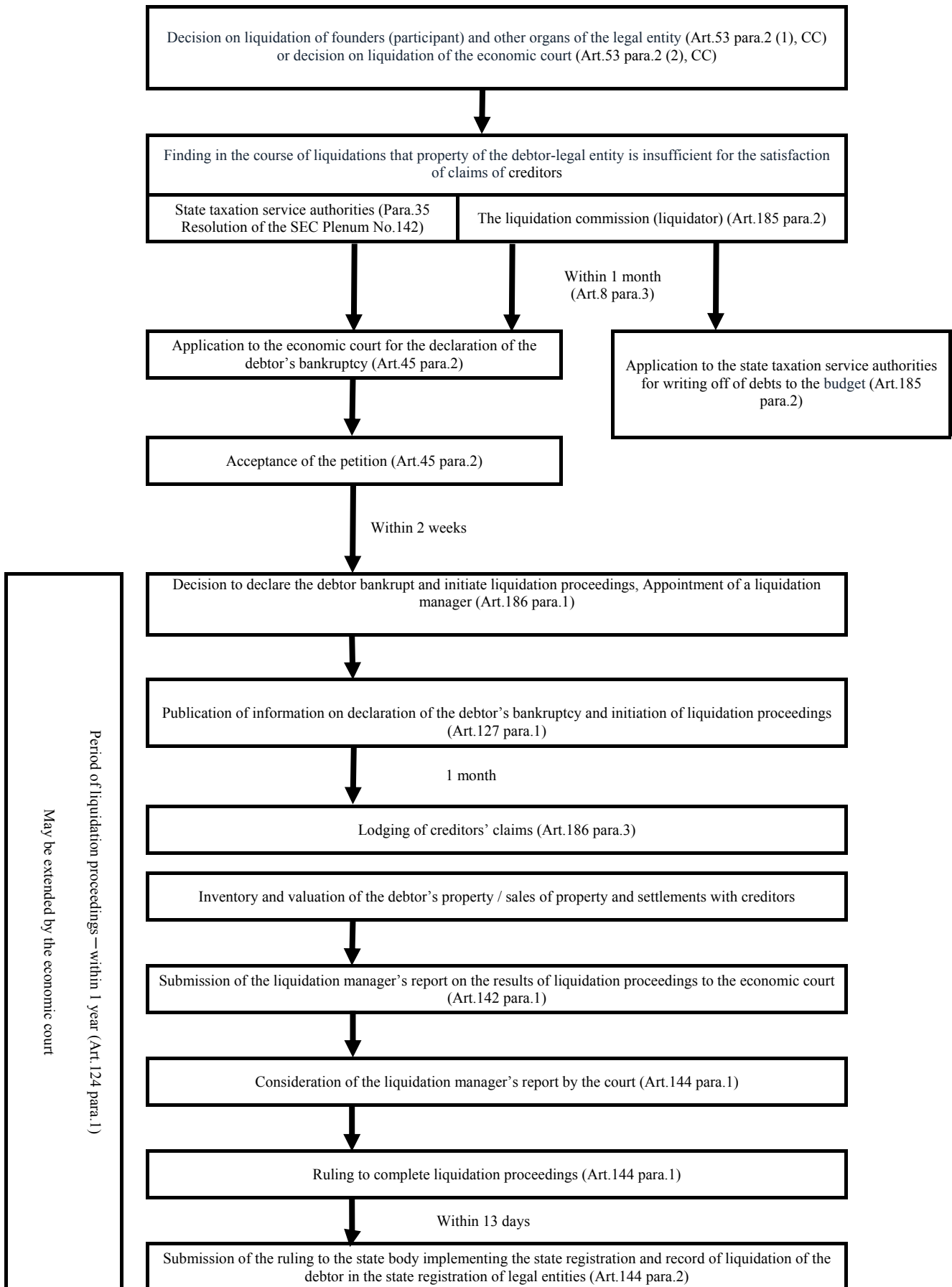
LIQUIDATION PROCEEDINGS (CHAPTER VII)



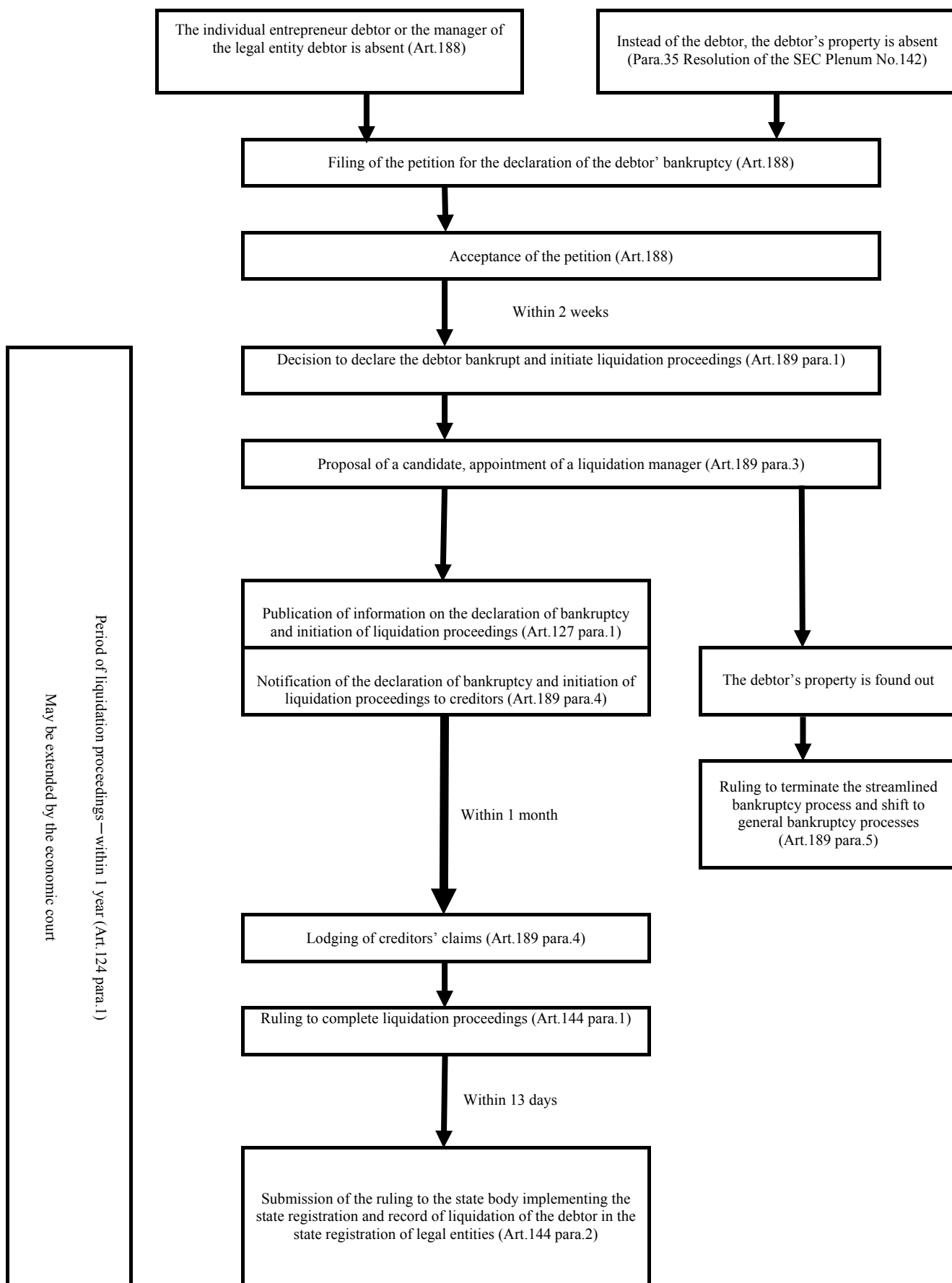
BANKRUPTCY OF INDIVIDUAL ENTREPRENEUR (CHAPTER X)



STREAMLINED BANKRUPTCY PROCESS (Legal Entity Debtor in Liquidation) (CHAPTER XI)



STREAMLINED BANKRUPTCY PROCESS (Absent Debtor)(CHAPTER XI)



**Resolution of the Cabinet of Ministers
of the Republic of Uzbekistan
November 8, 1996, No. 387**

**On approval of the Regulation on the procedure for collection of arrears
of taxes and mandatory payments to the budget
from assets of enterprises and organizations**

In accordance with the Decree by the President of the Republic of Uzbekistan "On measures for increasing of liability of economic subjects for payment with budget" dated August 9, 1996, the Cabinet of Ministers resolves:

1. To approve the enclosed Regulation on the procedure for collection of arrears of taxes and mandatory payments to the budget from assets of enterprises and organisations.
2. To recommend to the Supreme economic court to simplify the procedure of suits consideration of taking claim to assets of the enterprise-debtors on tax payment, meaning resolving within three days.

**Chairman of the Cabinet of Ministers
I. Karimov**

**Approved by the Resolution of the Cabinet
of Ministers dated November 8, 1996, No. 387**

**REGULATION
on the procedure for collection of arrears
of taxes and mandatory payments to the budget
from assets of enterprises and organizations**

*The present document was amended in accordance with
Enclosure to the Resolution, registered by the Ministry of Justice of the RUz No. 133 dtd 12.03.2003,
Point 12 of Enclosure No.1 to the Resolution of the Cabinet of Ministers of the RUz No. 235 dtd
10.11.2006*

1. The present Regulation has been worked out on the basis of the Decree of the President of the Republic of Uzbekistan "On measures on increasing of liability of economic subjects for budget settlements " dated August 9, 1996 No. UP-1504; and determines the procedure for collecting arrears of tax and other payments to the budget from the property of enterprises, corporations and organizations (hereinafter referred to "the enterprise-debtor").

Collection of arrears of taxes and mandatory payments to the budget from the enterprise-debtor (hereinafter referred to as "arrears") and fines for their delay in payment, is carried out by the state tax authorities through issuing the payment demand in the out of court manner.

2. Within three days of the receipt of the payment demand, the bank, which serves the settlement (current) account of the enterprise-debtor shall collect or make note about complete or partial non-fulfilment due to the lack of monetary funds on the settlement (current) account of the enterprise-debtor and sends the copy of payment demand with bank's mark to the tax authority and to the enterprise-debtor.

Not performance of the requirement set by the present Provision may be the ground to take measures in respect of the Bank in accordance with the legislation of the Republic of Uzbekistan.

In case of no balance in the bank accounts of the enterprise-debtor, levying execution shall be applied upon its property in the order established by the legislation.

3. The tax authority within one day after receipt of the payment demand with the bank's mark of its complete or partial non fulfilment sends a written demand on discharging of arrears and fines charged for delay of payment of taxes and duties to the enterprise-debtor by hand or registered post with notification of receipt.

The written demand of tax authority shall contain notification of forthcoming levying execution upon the property of enterprise-debtor in case of non fulfilment of the present demand within one month from the date of receiving notification.

Failing to satisfy or to reply to the written demand of the tax body on discharging of arrears and fine charged for delay of payment of taxes and duties within ten days after its receipt (delivery) shall be the ground for applying to the economic court with application about levying execution upon the property of enterprise-debtor.

4. The application about levying execution upon the property of enterprise-debtor shall be signed either by the Chief or by the Deputy Chief of the state tax inspection at the area of the tax payer's registration. The following documents shall be enclosed:
 - extract from, existing bank accounts of the tax payer about existence of debts on tax and other payments to the budget;
 - the bank's certificate on absence of monetary funds on the settlement, current, foreign currency, special loan or other accounts of the tax payer;
 - the certificate on the results of reconciliation of accounts on the acts of checking the observance of the tax legislation by the tax payers (if such checking are made);
 - the copy of the enterprise balance for the last accounting period.

5. The economic court after satisfaction of the application presented by the tax authority, shall issue act on levying execution upon the property of enterprise-debtor.

The levying execution upon the property of enterprise-debtor on the ground of the act of the economic court shall be carried out by the court officer, in the order established by the legislation.

On the procedure for liquidation of enterprises which do not carry out financial and economic activity, and those which have failed to form their charter capital within the term fixed in the law

*The present Resolution was amended in accordance with Point 5 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 92 dtd 22.05.2006,
Point 23 of Enclosure No. 1 to the Resolution of CM of the RUz No. 235 dtd 10.11.2006,
Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007*

To execute the June 28, 1999 Presidential Decree, "On measures to simplify the procedure for liquidation of enterprises which do not carry out financial and economic activity, and those which have failed to form their charter capital within the term fixed in the law" No.UP-2331, the Cabinet of Ministers decides:

1. To approve Regulations on the procedure for liquidation of enterprises which do not carry out financial and economic activity, and those which have failed to form their charter capital within the term fixed in the law in accordance with the Enclosure below.
2. To lay down that in cases where such enterprises in liquidation do not have sufficient funds and property to cover all liquidation related expenditure, arrears of mandatory payments to the budget and off-budget funds are written off following an appropriate decision taken by the Governmental Commission on improving mechanism of settlements and strengthening discipline of payments to the budget on the basis of a corresponding representation made by the State Tax Committee of the Republic of Uzbekistan.

The State Tax Committee of the Republic of Uzbekistan and off-budget funds should maintain separate accounts of sums of payment arrears they write off.

In certain cases stipulated in the law, materials on officials of enterprises in liquidation who have tolerated arrears of taxes and other mandatory payments, are forwarded in the established procedure, by the State Tax Service bodies and off-budget funds to the enforcement authority, for the latter to make them answerable as required in the law, with the state being indemnified for the material loss inflicted.

3. To take into consideration the fact that enterprises which have failed to form their charter capital within the term specified in their constitutive documents, may either reduce its amount to that already formed (the reduced amount, however, should not be less than the minimum one specified in the law) or transform themselves into other organizational and legal forms in keeping with the established procedure.

If enterprises fail to meet these requirements, they are wound up according to the established procedure.

4. The Ministry of Macroeconomics and Statistics of the Republic of Uzbekistan should introduce, beginning from the second half of 1999, a procedure for special registration of enterprises which do not carry out financial and economic activity and (or) have failed to form their charter capital within the term specified in the law.
5. Paragraph 7 of Regulations on the Governmental Commission for improvement of calculation mechanism and strengthening of budgetary payments discipline, approved by the Cabinet of Ministers of the Republic of Uzbekistan on 10th June 1999 (Resolution No. 298) should be supplemented with the fourth paragraph, which reads as follows:

"following representations made by the State Tax Committee of the Republic of Uzbekistan, to take decisions to write off arrears to the budget and off-budget funds of enterprises in liquidation which do not carry out financial and economic activity and/or have failed to form their charter capital within the term specified in the law."

6. Control over the implementation of the present Resolution is placed in the hands of B. Khamidov, deputy Prime Minister of the Republic of Uzbekistan.

**Chairman of the Cabinet of Ministers
I. Karimov**

**Attachment to Resolution of the Cabinet of Ministers
dated 3rd July 1999, No.327**

**REGULATION
on the procedure for liquidation of enterprises which do not carry out
financial and economic activity, and those which have failed to form
their charter capital within the term fixed in the law**

*The present Regulations was amended in accordance with Point 5
Of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 92 dtd 22.05.2006,
Point 23 of Enclosure No. 1 to the Resolution of CM of the RUz No. 235 dtd 10.11.2006,
Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007*

1. General
2. Procedure for the exposure and registration of enterprises subject to liquidation
3. Procedure for enterprise liquidation
4. Peculiarities of liquidation of enterprise which have not carried out financial and economic activity since their official registration
5. Peculiarities of liquidation of enterprises whose founders are absent

1. General

- 1.1. The present Regulations specify a procedure for liquidating enterprises, whose financial and economic inactivity goes on for 6 months (or 3 months - as far as commercial and intermediary enterprises are concerned), and those, which failed to form their charter capital within the term fixed in the law.

Point 1.2 is stated in edition of sub-point a) of Point 23 of Enclosure No. 1 to the Resolution of CM of the RUz No. 235 dtd 10.11.2006.

- 1.2. In the present Regulations the term "financial and economic activity" is defined as activity of enterprises associated with production of output, implementation of work, rendering of services and keeping of accounting and fiscal, commodity accompanying documentation and calculations related to them.

- 1.3. An enterprise may be liquidated on the basis of:

Paragraph 2 is stated in edition of sub-point a) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

either (i) an appropriate decision taken by founders (participants) of the enterprise (voluntary liquidation);

or (ii) an economic court's decision.

Paragraph is supplemented in accordance with sub-point a) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

Voluntary liquidation of the enterprise is carried out in accordance with the legislation.

- 1.4. The following authorities may (i) decide on the expediency of a further performance of enterprises, which do not carry out financial and economic activity and (or) failed to form their charter capital within the term specified in the law, and (ii) conduct, following an appropriate court decision, the liquidation proceedings of an enterprise (in cases where their ~~neither~~ the

~~latter's~~ founders (participants) do not ~~nor an authorized body specified in its~~ constitutive documents consent to liquidation and in cases where it is next to impossible to locate the above-mentioned entities ~~and authorities~~ in an attempt to involve them in the liquidation process):

(in edition of sub-point b) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)

- special commissions operating at the Council of Ministers of the Republic of Karakalpakstan, khokimiyats of the regions and the city of Tashkent - as far as enterprises officially registered with the justice authority are concerned;
 - special commissions operating at the town and district khokimiyats - as far as enterprises officially registered with the inspections for registration of the subjects of entrepreneurship operating at aforesaid khokimiyats are concerned. *(In edition of sub-point b) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*
- 1.5. The provisions specified in Section 3 of the present Regulations apply to enterprises, which have not carried out financial and economic activity from the date of their official registration, and to those, whose founders (participants) or special bodies authorized by these enterprises cannot be located, provided the peculiarities referred to in Sections 4 and 5 are taken into consideration.

2. Procedure for the exposure and registration of enterprises subject to liquidation

Point 2.1 is stated in edition of sub-point b) of Point 23 of Enclosure No. 1 to the Resolution of CM of the RUz No. 235 dtd 10.11.2006.

2.1. In case where commercial and intermediary enterprises have not carried out financial and economic activity within three months (other business subjects (legal entities) within six months) with no money operations being transacted on their bank accounts, commercial banks should present information to the agencies of state tax service having jurisdiction over the place of registration which should include the following:

- the date the bank account has been opened or the last operation transacted;
- the availability on bank accounts of money funds;
- debtor's and creditor's arrears available, and the availability of the card index No. 2, with creditors being decoded;
- the enterprise's officials.

On presentation of relevant decision of court on suspension of money operations being transacted on bank accounts, the banks close accounts of business subjects not later than the next working day.

At the same time, the balance of a business subject's account subject to closure is deposited by commercial banks into a special inaccessible account. As for the given business subject's creditor's arrears presented to the bank for payment, they are transferred to unforeseen circumstances account.

Money funds transferred to this business subject after its bank account is closed, are deposited into special inaccessible accounts.

Money funds accumulated on such accounts are primarily used by commercial banks to pay off business subject's arrears to the budget and off-budget funds. The remainder, if any, is used to clear their creditor's liabilities according to payments' calendar sequence.

2.2. The tax authority, within two weeks from the date the information indicated in Paragraph 2.1 of the present Regulations has been received from the bank, exposes enterprises, which do not carry out financial and economic activity in the course of the last 6 months (commercial and intermediary enterprises, with no bank operations being conducted, - within 3 months), including those, which:

- failed to commence their financial and economic activity from the date of official registration;
- do not possess any property and (or) those, whose property cannot be ascertained (such enterprises will be referred to below as "the enterprises, whose property is not available");
- those, whose founders (participants) cannot be located, which makes it impossible to ensure their involvement in the liquidation process (such enterprises will be referred to below as "the enterprises, whose founders are absent").

- 2.3. Enterprises, which failed to form their charter capital within the date specified in the law, are exposed by the registration authority.
- 2.4. Enterprises, which do not carry out financial and economic activity within the established term, having been exposed, the customs authority directs to the registration authority appropriate representations on liquidation of enterprises, whose property and (or) founders are not available. As far as other categories of enterprises are concerned, inquiries on the expediency of their further performance are sent to the corresponding territorial special liquidation commissions.
- 2.5. Inquiries on the expediency of a further activity of enterprises, which failed to form their charter capital within the term specified in the law, are directed by the registration authority to a special commission.
- 2.6. Such a special commission, in the course of one week, must forward its resolution (decision) on whether or not an enterprise's further activity is expedient to the following authorities:
- to the tax authority - as far as enterprises, which have not carried out financial and economic activity within the established term, are concerned;
 - to the registration authority - as far as enterprises, which failed to form their charter capital within the established term, are concerned.
- As for enterprises, which have been set up following special resolutions of the Cabinet of Ministers of the Republic of Uzbekistan, a special commission's resolution (decision) made in their respect should be coordinated with the Cabinet of Ministers.
- 2.7. In cases where a special commission decides that an enterprise's further activity is expedient, the following should be accomplished:
- the term is specified for the resumption, under an appropriate control, of an enterprise's financial and economic activity ~~and an appropriate letter is sent to the bank requesting to restore its closed accounts~~ - as far as enterprises, which have not carried out financial and economic activity, are concerned; *(In edition of sub-point c) of Point 23 of Enclosure No. 1 to the Resolution of CM of the RUz No. 235 dtd 10.11.2006.)*
 - the term is specified for the formation, under an appropriate control, of an enterprise's charter capital - as far as enterprises, which failed to form their charter capital within the established term, are concerned.
- 2.8. A decision on the expediency of an enterprise's further activity made by a special commission having been received, the tax authority, within 3 days, should forward it, together with a representation on liquidation of the given enterprise, to the registration authority.
- 2.9. The registration authority keeps registries of enterprises subject to liquidation, including those, which do not carry out financial and economic activity (inoperative enterprises), and those, which failed to form their charter capital within the established term.
- 2.10. Information on enterprises entered on the registries of both inactive enterprises and those, which failed to form their charter capital within the established term, are presented, on a monthly basis, by the registration authority to the corresponding statistics authority, which keeps separate records of such enterprises.

3. Procedure for enterprise liquidation

- 3.1. The registration authority, within one week from the date of receipt of an appropriate representation from the tax authority or a resolution from a special commission on the expediency of a further activity of an enterprise under liquidation, which does not carry out financial and economic activity and/or failed to form their charter capital within the established term, suggests, in written form, with all the grounds indicated, that the given enterprise's founders (participants) ~~or an authorized body specified in its constitutive documents~~ should voluntarily wind it up. *(In edition of sub-point c) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

Paragraph 2 is stated in edition of sub-point c) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

If an enterprise fails to start, on a voluntary basis, its liquidation proceedings, within two weeks joint-stock companies -within a month) or founders (participants) of the enterprise refuse to do this

RELATED LEGISLATIONS

voluntary, and if it is not possible to define aforesaid persons, the registration authority, within one week, files a statement of claim to the economic court requesting the given enterprise's liquidation according to the established procedure.

After a decision on an enterprise's liquidation is taken by the economic court, the latter ommissions a special commission with conducting the liquidation proceedings. *(In edition of sub-point c) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

Point 3.2 is stated in edition of sub-point d) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

- 3.2. The economic court which has jurisdiction on liquidation of the enterprise, should inform the registration authority with which the given enterprise has been registered, and a special commission in writing. On this ground the registration authority enters information that the enterprise is now under the process of liquidation into the state registry of legal entities, while a special commission starts to carry out liquidation of the enterprise.

Point 3.5 is stated in edition of sub-point f) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

- 3.5. A special commission is conferred full powers to administer the enterprise from the date of coming a decision taken by the Economic court into force.

- 3.6. The special commission accumulates all the enterprise's money funds on both a single national currency and a single foreign exchange accounts held with one and the same bank (the so-called liquidation account). *(In edition of sub-point g) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

The special commission, within 3 days, publishes advertisements in one or several periodicals, with the following details being indicated there: information on the legal entity's official registration, and the term specified for the receipt of claims from creditors, which should not be less than two months from the date of publication. *(In edition of sub-point g) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

The special commission must accomplish the following: *(in edition of sub-point g) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

- take measures designed to ascertain creditors and inform them in writing of the legal entity's liquidation;
- to recover debtor's arrears;
- to make an inventory of property available at the enterprise under liquidation.

After the term specified for making claims by creditors expires, the special commission makes out a draft interim liquidation balance, which should include the following particulars: information on the structure of property owned by the enterprise under liquidation, the list of claims made by creditors and the results of their consideration. This document should then be sent to the registration authority together with the following ones: *(in edition of sub-point g) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

- copies of an appropriate document published in the press on the commencement of the enterprise's liquidation proceedings;
- appropriate statements from the bank servicing the given enterprise, which certify that a certain amount of money funds is available on its liquidation account, and information on its creditor's liabilities;
- copies of documents certifying that creditors have been notified in writing.

The registration authority, within 3 days from the date of receipt of the above-mentioned documents, should inform the liquidation commission in writing on whether the draft interim liquidation balance presented is approved or rejected (in the latter case the concrete reasons behind such a rejection should be indicated). *(In edition of sub-point g) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

Paragraph 12 is stated in edition of sub-point g) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

Interim liquidation balance, after its coordination with the registration authority, is approved by a special commission.

- 3.7. Payment of sums due to creditors of the enterprise under liquidation is effected by the special commission on the basis of their order of priority as required in Article 56 of the Civil Code of the Republic of Uzbekistan, in accordance with the interim liquidation balance, beginning from the date of its confirmation. *(In edition of sub-point h) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

If the money funds available on the enterprise's account are not sufficient to meet its creditors' claims, the special commission may sell the enterprise's property in keeping with the established procedure.

(In edition of sub-point h) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)

In cases where money funds and property owned by enterprises under liquidation, which do not carry out financial and economic activity and (or) failed to form their charter capital within the fixed term, their outstanding arrears of payment to the budget and off-budget funds are written off following an appropriate decision taken by the Governmental Commission for Improvement of calculation mechanism and strengthening of budgetary payments discipline on the basis of a corresponding representation made by the State Tax Committee of the Republic of Uzbekistan.

The State Tax Committee of the Republic of Uzbekistan and off-budget funds keep separate records of such write-offs.

In certain cases stipulated in the law materials concerning officials of enterprises under liquidation, who have tolerated the formation of arrears on taxes and other mandatory payments, are handed over by the State Tax Service bodies and off-budget funds to the enforcement authority for the latter to make them answerable to the law, with the material damage caused to the state being indemnified.

Point 3.8 is stated in edition of sub-point i) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

- 3.8. After the liquidation commission has settled accounts with creditors, it draws up draft liquidation balance, with copies of banking payment documents, certifying the fact, enclosed which is then submitted to the registration authority's approval.

The latter, within 3 days from the date of receipt of above-mentioned documents, must notify the liquidation commission in writing of the liquidation balance's approval or rejection, with the concrete reasons for such a rejection being indicated.

Liquidation balance is approved by a territorial special commission.

- 3.9. The legal entity's property, remaining after all the creditors' claims have been satisfied and the liquidation balance confirmed, are transferred to its founders (participants) enjoying either the property rights in respect of the given property or the promissory rights in respect of the given legal entity, unless otherwise is stipulated in the law.

- 3.10. The special commission closes liquidation account and hands over a seal and all kinds of stamps, including an angle one, to the interior authority for destruction in exchange for the corresponding statements issued. *(In edition of sub-point j) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

If an enterprise under liquidation enjoys a trade mark, the special commission sends a letter to the corresponding authority requesting the cancellation of the former's certificate of the trade mark registration in connection with its liquidation. *(In edition of sub-point j) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.)*

Paragraph 3 is stated in edition of sub-point j) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

To consummate the liquidation proceedings, the special commission takes an appropriate decision (taking into consideration division of remaining property).

Paragraph 1 is stated in edition of sub-point k) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

3.11. The full package of documents required for liquidation has been completed, a special commission applies to the registration authority requesting withdrawal from state register of legal entities of the given enterprise under liquidation:

- ~~originals of registered constitutive documents~~ and the certificate of official registration; (*in edition of sub-point k) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.*)
- an appropriate certificate from the banking institution, which gives proof of the fact that the enterprise's liquidation account has been closed;
- a certificate issued by the interior authority to certify that the enterprise under liquidation has handed over its seal and stamps for them to be destroyed;
- a decision to approve the liquidation balance taken by a territorial special commission, with the liquidation balance itself legalized by the tax authority being enclosed; (*in edition of sub-point k) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.*)
- an appropriate certificate from the tax authority, which certifies the fact that the enterprise under liquidation either has no arrears to the budget or off-budget funds or they have already been written off;
- an appropriate certificate giving proof that all the necessary documents have been passed to the state archives.

3.12. The registration authority, on the basis of the documents cited above, should, within 3 days, adjudicate on the withdrawal from the official registry of legal entities of the enterprise under liquidation, with the fact being reflected in the official registry of legal entities. In addition, institutions such as the Pension and the Employment Assistance Funds, and the statistics and tax authorities should be notified of the fact, which, in turn, must, within 3 days, strike the given enterprise off the registry.

The liquidation proceedings are considered to be finalized, with the enterprise's activity being terminated, only after an appropriate entry is introduced into the state registry of legal entities.

4. Peculiarities of liquidation of enterprises, which have not carried out financial and economic activity since their official registration

4.1. When adjudicating on liquidation of an enterprise, which has not carried out financial and economic activity since the date of its official registration, ~~its founders (participants) or an authorized body specified in its constitutive documents~~ or a territorial special commission accomplish the following: (*in edition of sub-point l) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.*)

- to publish an appropriate liquidation advertisement in the mass media;
- to close the enterprise's both special account (without the right to use it) and unforeseen circumstances account held with banks;
- to hand over seals and stamps to the interior authority for the latter to destroy them;
- to file an application to the registration authority for the withdrawal from the official Legal Entities Registry of the enterprise under liquidation.

4.2. The registration authority may strike such an enterprise off the state registry in no earlier than a month after the publication of an appropriate liquidation advertisement, provided the following documents are submitted:

- an application for striking the enterprise off the state registry of legal entities in connection with its liquidation;
- a decision on the enterprise's liquidation taken ~~either by its founders (participants) or an authorized body specified in its constitutive documents~~ or by the economic court; (*in edition of sub-point m) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.*)
- ~~an original~~ of the certificate of its official registration; (*in edition of sub-point m) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.*)

Paragraph 5 is excluded in accordance with sub-point m) of Point 2 of Enclosure to the Resolution of CM of the RUz No. 109 dtd 06.06.2007.

~~originals of its registered constitutive documents;~~

- an appropriate document from the bank, which certifies that both the enterprise's special account (without the right to use it) and unforeseen circumstances account have been closed;
- a document issued by the interior authority, which gives proof of the fact that the enterprise under liquidation has handed over its seals and stamps for them to be destroyed;
- a certificate from the tax authority, which certifies that the enterprise has not carried out financial and economic activity since the date of its official registration;
- a document certifying the publication in the mass media of an appropriate liquidation advertisement;
- the enterprise's liquidation balance legalized by the tax authority;
- a certificate, which gives proof of the fact that the required documents have been handed over to the state archives.

The liquidation proceedings are then carried out in accordance with Paragraph 3.12 of the present Regulations.

5. Peculiarities of liquidation of enterprises, whose founders are absent

- 5.1. The registration authority publishes notifications in the mass media of the initiation of the liquidation proceedings in respect of enterprises, whose founders are absent, with an appropriate information being simultaneously forwarded to:
 - the interior authority, which has to take measures to search for their founders and officials;
 - banking institutions, which are servicing these enterprises, to close their bank accounts in keeping with the established procedure.
- 5.2. If their founders (participants) do not appear or are not found in the course of 3 months, the registration authority, within one week, lodges a statement of claim to the economic court requesting their liquidation.
- 5.3. When the economic court issues a decision to liquidate an enterprise, the liquidation proceedings, on its instructions, are conducted by a territorial special commission. In this case the enterprise is wound up as stipulated in Paragraphs 3.5 through 3.12 or 4.1-4.2 of the present Regulations.
- 5.4. The property remaining after the completion of the enterprise's liquidation proceedings is registered by the corresponding body as property in abeyance. If money funds remain after the liquidation proceedings are finalized, the special commission involved uses them to pay a stowage charged for the property's storage. The term of storage, however, should not exceed three years from the date the liquidation proceedings have been completed. In cases where money funds are not available or they have been paid for the property's storage within 3 years, the property is withdrawn from the warehouse and sold. Money funds derived from its sale, with the exception of operating expenditure, are transferred to the bank to be deposited into a newly-opened special account. These money funds belong to the enterprise's absent founders (participants) and should be transferred to the local budget in no earlier than three years from the date of the given enterprise's liquidation.

**Resolution of the Cabinet of Ministers
of the Republic of Uzbekistan
July 26, 1999, No. 362**

On additional measures to enforce the enterprise bankruptcy laws

The present document was amended in accordance with
Point 1 of Enclosure No. 2 to the Resolution of the Cabinet of Ministers of the RUz No. 188 dtd 18.04.2003,
Point 2 of Enclosure No. 2 to the Resolution of the Cabinet of Ministers of the RUz No. 294 dtd 30.06.2003,
Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.2004,
Point 2 of Enclosure No. 5 to the Resolution of the Cabinet of Ministers of the RUz No. 77 dtd 18.02.2004,
Point 10 of Enclosure No. 2 to the Resolution of the Cabinet of Ministers of the RUz No. 196 dtd 12.08.2005,
Point 1 of Enclosure No. 2 to the Resolution of the Cabinet of Ministers of the RUz No. 185 dtd 04.08.2005,
Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

In order to implement Decree of the President of the Republic of Uzbekistan dated July 23, 1999 No.UP-2342 "On the improvement of the mechanism of bankruptcy and rehabilitation of the enterprises" and Clause 2 Resolution of the Oliy Madjlis of the Republic of Uzbekistan dated August 28, 1998, "On the enactment of Law "On Bankruptcy" No 669-1, and activization of the processes of liquidation of enterprises declared bankrupt, the Cabinet of Ministers resolves as follows:

1. To point out unsatisfactory organization of the work by the Committee on the affairs of the Economic Insolvency of the Enterprises and Supreme Economic Court in implementing the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated November 2, 1998 No 460, performing the liquidation proceedings and rehabilitation of economically insolvent enterprises and selling the property of the bankrupt enterprises.
2. To the he Government Commission on the issues of the Bankruptcy and Rehabilitation of Enterprises, with participation of the Committee on the affairs of the Economic Insolvency of the Enterprises, and ministries, agencies, corporations, associations, companies, on the results of the first half of the year to carry out thorough analysis of the financial and economic conditions of loss-making enterprises, to determine the list of the hopeless enterprises subject to liquidation, to review previously approved programs of liquidation, rehabilitation and conversion of production at the enterprises, charter capital of which partially or wholly belongs to the state and on the results of these works to report to the Cabinet of Ministers the sum up of the first 9 months of the current year.

(Point 3 is excluded in accordance to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 04.01.2006)

4. To the State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship should accomplish the following:
 - to establish daily control over the course of liquidation proceedings of bankrupt enterprises; charter capital of which partially or wholly belongs to the state; in case of unsatisfactory performance of liquidation manager, to apply to the economic court with a request to dismiss the liquidation manager from his/her duties;
 - jointly with the Republic's Realty Stock Exchange and the domestic agroindustrial and Commodities and Raw Materials Exchanges, to expand the network and to ensure holding regular auctions for selling property of enterprises being liquidated;

- to ensure the efficient utilization of the funds borrowed on returnable basis, from Foundation of support of entrepreneurship and restructuring of enterprises aimed on support of enterprises having prospects for financial rehabilitation.
5. To recommend the High Economic Court of the Republic of Uzbekistan to accomplish the following:
- to brisk up the consideration by district economic courts of bankruptcy cases;
 - to eliminate formalism and red tape when handling bankruptcy proceedings, appointing liquidation managers; to proceed against those officials found involved in the above-mentioned misdeeds; (*In edition of sub-point c) of Point 1_of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.2004*)
 - to analyse and generalise legal bankruptcy practice; to opportunely table proposals on the improvement of bankruptcy laws.
- (Point 6 is excluded)
- (Point 7 is omitted)
8. The Government Commission for Bankruptcy and Rehabilitation of Enterprises has to accomplish the following within a month:
- to work out and submit for approval to the Cabinet of Ministers of the Republic of Uzbekistan draft Regulations on liquidation commissions to specialise in liquidation of enterprises with a share of state ownership declared bankrupt;
 - to approve revised model Regulations on territorial administrations of the Committee on Economic Insolvency of Enterprises.
9. The Ministry of Macroeconomics and Statistics of the Republic of Uzbekistan should accomplish the following:
- to revise, in the course of 10 days, the structure of both the central body and territorial administrations of the Committee on Economic Insolvency of Enterprises within the established numerical strength limits;
 - to qualify, within two months, staff of both the central body and territorial administrations of the Committee on Economic Insolvency of Enterprises.
- (Point 10 is omitted)
11. A range of issues associated with the implementation of the enterprise bankruptcy laws should be considered, on a quarterly basis, at the meetings held by the Cabinet of Ministers to sum up the results of the nation's socio-economic development and to assess the course of the ongoing economic reform.
12. Deputy Prime Minister of the Republic of Uzbekistan B. Khamidov is commissioned to oversee the implementation of the present Resolution.

Chairman of the Cabinet of Ministers
I. Karimov

**Attachment No. 2 to Resolution of the Cabinet of Ministers
dated 26 July 1999, No. 362**

**REGULATION
on the procedure for prejudicial rehabilitation**

*(In edition of sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers
of the RUz No. 31 dtd 19.01.2004)*

*The present document was amended in accordance with
sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd
19.01.2004,*

*Sub-point d) of Point 10 of Enclosure No. 2 to the Resolution of the Cabinet of Ministers of the RUz No.
196 dtd 12.08.2005,*

Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

I. General

II. Entities subject to rehabilitation and objects of rehabilitation

III. Forms and methods of rehabilitation

IV. Sources of money funds needed to carry out rehabilitation proceedings

V. Organization and control over rehabilitation of enterprises with a share of state ownership
carried out with the use of state money funds

IV. Termination of rehabilitation proceedings

I. General

*Point 1 is stated in edition of sub-point a) of Point 2 of Enclosure to the Resolution of the Cabinet of
Ministers of the RUz No. 2 dtd 04.01.2006*

1. Worked out in accordance with the Law of the Republic of Uzbekistan "On bankruptcy" and the
July 23, 1999 No. UP-2342 Decree by the President of the Republic of Uzbekistan "On improvement
of the mechanism for bankruptcy and rehabilitation of enterprises", the present Regulations governs
issues associated with prejudicial rehabilitation of enterprises with evident signs of bankruptcy
aimed at rehabilitating and restoring their paying capacity.

2. Prejudicial rehabilitation (the "rehabilitation") is considered to be a package of measures designed
to restore the debtor's solvency by common efforts of the latter's founders (participants), creditors
and other entities, including the state, all undertaken to prevent its bankruptcy.

Carried out prior to bringing a bankruptcy action against the debtor to the court, prejudicial
rehabilitation aims to both restore the given debtor's financial and economic solvency and create
necessary conditions contributory to its further sustainable performance.

*Point 3 is stated in accordance with sub-point f) of Point 1 of Enclosure to the Resolution of the
Cabinet of Ministers of the RUz No. 31 dtd 19.01.2004*

3. Rehabilitation with provision of state support of the debtor is introduced for a period from twelve
to twenty four months.

4. The present Regulations do not apply to prejudicial rehabilitation of agricultural enterprises, which
is governed by Law of the Republic of Uzbekistan, "On rehabilitation of agricultural enterprises".

II. Entities subject to rehabilitation and objects of rehabilitation

5. Entities such as founders (participants) of the indebted legal entity, owners of the debtor's property, state bodies and others may be subject to rehabilitation.
6. The debtor is considered to be the object of rehabilitation.
7. The following enterprises are subject to immediate rehabilitation:
 - those producing vital foodstuffs, consumer goods and medicines;
 - those contributing to the Republic's defence potential and security;
 - enterprises operating in the basic industries, including mining, power engineering, metallurgy and chemicals etc., which are playing a crucial role in the development of the nation's economy;
 - those manufacturing competitive export-oriented and import-substituting commodities;
 - those producing modern equipment and ensuring the introduction 'of advanced resource-efficient technologies;

This Paragraph was supplemented in accordance with sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.04

 - township-forming enterprises and enterprises equelled there to;

This Paragraph was supplemented in accordance with sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.04

 - enterprises regarding which the State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship approved complex measures designed for restructuring and financial rehabilitation. *(In edition of sub-point b) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006.)*
8. The major criterion an economically insolvent enterprise should meet to be numbered among enterprises subject to rehabilitation is its financial and economic performance testifying to the fact that real opportunities are available to restore the debtor's solvency required for its further sustainable activity.

III. Forms and methods of rehabilitation

9. Rehabilitation proceedings may be carried out with or without state money means appropriated either on a repayable or gratuitous basis. In addition, rehabilitation may be accomplished on a competition basis through the following:
 - mutual arrears write-offs;
 - full or partial redemption of outstanding debts;
 - re-orientation towards production of competitive goods;
 - attraction of high calibre specialists;
 - training and further training of staff;
 - provision of financial backing to legal and natural entities interested in the restoration of the debtor's solvency and continuation of its activity;
 - agreement reached between the debtor and his creditor(s) to defer the defrayal of payments due to creditors, to pay debts in instalments or to give a reduction of the sum of debts for the debtor to continue its activity;

Paragraph 9 of Point 9 is stated in accordance with sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.04

 - granting of deferment of mandatory payments or (and) their discharge by instalments and repayment of credits, writing off fines and penalties for a period of prejudicial rehabilitation;
 - re-organization of the indebted legal entity;
 - implementation of other measures conducive to the debtor's financial rehabilitation.
10. Rehabilitation carried out with the use of state money funds may take the following forms:

Paragraph 2 is stated in accordance with sub-point c) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

 - appropriation of funds, according to the resolution of the college of the State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship,

from the Fund of support of entrepreneurship and restructuring of enterprises to work out and fulfil programs of restructuring, within the established limits and estimates;

Paragraph 3 of Point 10 is stated in accordance with sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.2004

- attraction of state funds in form of granting of deferment of mandatory payments or (and) their discharge by instalments, repayment of state credits extended earlier, and writing off fines and penalties for a period of prejudicial rehabilitation following the decision of the Republic commission for decrease of outstanding credit and debit indebtedness and strengthening of payments to the budget. *(In edition of sub-point c) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006.)*

Rehabilitation carried out with the use of state money funds may also include other measures following an appropriate decision taken by the Government.

This Paragraph was supplemented in accordance with sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.04

Upon rehabilitation with granting of state support, rehabilitation account in soum or in foreign currency is open with a servicing bank for the debtor, provided suspension of accounts valid earlier.

Paragraph 6 is stated in edition of sub-point c) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

The State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship and the Central Bank of the Republic of Uzbekistan specify a procedure for operation of rehabilitation account.

IV. Sources of money funds needed to carry out rehabilitation proceedings

11. Sources of money funds needed to carry out rehabilitation proceedings are as follows:
- financial backing provided by owners of enterprises, creditors, amalgamations (economic associations), and by other legal and natural entities;
 - money means from the Fund of support of entrepreneurship and restructuring of enterprises operating at the State Committee of the Republic of Uzbekistan for Demonopolisation and support of competition and entrepreneurship. *(In edition of sub-point d) of Point 10 of Enclosure No. 2 to the Resolution of the Cabinet of Ministers of the RUz No. 196 dtd 12.08.2005)*

V. Organization and control over rehabilitation of enterprises with a share of state ownership carried out with the use of state money funds

Point 12 is stated in edition of sub-point d) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

12. The college of the State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship takes a decision on rehabilitation of objects the charter capital of which partially or wholly belongs to the state.

Paragraph 1 is stated in edition of sub-point e) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

13. An application for rehabilitation of business subjects the charter capital of which partially or wholly belongs to the state or for appropriation of state money funds is submitted to the State Committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship.

Paragraph 2 is stated in edition of sub-point e) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

Upon filing an application for rehabilitation, the indebted business subject should present the following documents to the State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship:

- accounting balances for both the current period of the year under account and previous year;
- copies of constitutive documents;
- a financial rehabilitation plan approved by the owner, which contains a detailed analysis of possibilities to use the applicant's inner reserves, including the availability of solvent demand for its produce confirmed by corresponding agreements signed;
- a statement of the applicant's debts verification with the local tax authority;

This Paragraph was supplemented in accordance with sub-point f) of Point 1 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 31 dtd 19.01.04

- a reference issued by the servicing bank on state of accounts.

Point 14 is stated in edition of sub-point f) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006

14. Based on both analysis and appraisal of financial and economic activity of the enterprise and business-plan of the enterprise's financial and economic rehabilitation co-ordinated with the Ministry of Finance and the State Tax Committee of the Republic of Uzbekistan, the college of the State Committee for Demonopolisation, support of competition and entrepreneurship adjudicates upon rehabilitation.

If it is necessary to render state support to the enterprise for a period of prejudicial rehabilitation in form of granting deferment of mandatory payments or (and) their discharge by instalments, repayment of state credits extended earlier, and writing off fines and penalties, the resolution of the State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship on rehabilitation is forwarded to the Republic Commission for decrease of outstanding credit and debit indebtedness and strengthening of payments to the budget for adjudication.

15. The State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and entrepreneurship is entrusted with arranging and monitoring rehabilitation proceedings of enterprises under all types of ownership carried out with the use of state money funds. *(In edition of sub-point g) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz N. 2 dtd 04.01.2006.)*

V. Termination of rehabilitation proceedings

16. Rehabilitation proceedings are terminated in the following cases:

- the term specified for their implementation is expired;
- the fact of their inefficiency is established;
- the present Regulations are not adhered to;
- other reasons stipulated in the current law.

The decision to terminate rehabilitation proceedings carried out with the use of state money funds is taken by the college of the State Committee of the Republic of Uzbekistan for Demonopolisation and support of competition and entrepreneurship. *(In edition of sub-point d) of Point 10 of Enclosure No.2 to the Resolution of the Cabinet of Ministers of the RUz No. 196 dtd 12.08.2005, sub-point h) of Point 2 of Enclosure to the Resolution of the Cabinet of Ministers of the RUz No. 2 dtd 04.01.2006.)*

**On Measures of increasing efficiency
of restructuring and financial rehabilitation
of economically insolvent enterprises**

With amendments and supplements made by the Decrees of the Cabinet of Ministers of the Republic of Uzbekistan dated 16.09.2003 No 401, dated 19.01.2004 No 31, dated 18.02.2004, #77, dated 04.08.2005 No 185, dated 12.08.2005 No 196; dated 19.08.2005 no 204; dated 04.01.2006 No 2

In order to increase efficiency of restructuring and bankruptcy processes of economically insolvent, unprofitable and low cost-effective enterprises the Cabinet of Ministers decrees:

1. To establish that by virtue of presentation of the State Committee of the Republic of Uzbekistan on Demonopolisation, support of competition and entrepreneurship economically insolvent, unprofitable and low cost-effective enterprises subject to restructuring, and also enterprises in respect of which bankruptcy procedures have been applied, transfer in the established order by current status available on their balance-sheets: (The para as in force in the Decree of CM RUz dated 04.01.2006, No 2)

- dwelling houses, hostels, kindergartens and other facilities of social infrastructure – to balance of city and district hokimiyats by their location.;
- objects of utility infrastructure of common use (objects of power supply, water supply, transport communications and so on) – to the balance-sheet of enterprises of corresponding economic unions by their functional belonging.

To determine that the cost of the objects of social and utility infrastructure being transferred according to the current Decree, from one balance-sheet to another balance-sheet are not subject to taxation when charging value added tax for the transferring and income tax for the receiving side.

2. State Committee on Property, Ministry of Economy and Ministry of Finance of the Republic of Uzbekistan jointly with city and district hokimiyats, interested economic unions, to balance-sheet of which objects of social and utility infrastructure belonging to economic insolvent, unprofitable and low cost-effective enterprises and also enterprises against which bankruptcy procedures have been applied are transferred to make thorough inventory of the objects being transferred and to make suggestions in the established order on their further privatization, about sources and expediency of their funding.
3. A decision to conserve uncompleted constructions and capital items of economically insolvent, unprofitable and low cost-effective enterprises subject to restructuring, and also enterprises against which bankruptcy procedures have been applied, for the period of restructuring or carrying out bankruptcy procedures is taken by the Cabinet of Ministers of the Republic of Uzbekistan.

Conservation of uncompleted construction and capital items of the above enterprises is implemented according to the Regulation, approved by the Decree of the Cabinet of Ministers dated 16 September 2003 No 401. (the Para as in force in the Decree of the CM of the RUz dated 04.01.2006 No 2).

To concede a right to the State Committee on Property of the Republic of Uzbekistan on Demonopolisation, support of competition and entrepreneurship, taking into consideration conclusions of the territorial bodies of the Ministry of Finance and the Ministry of Economy of the Republic of Uzbekistan, to make to the Cabinet of Ministers proposals on conservation of objects of uncompleted construction and capital items of economically insolvent, unprofitable and low cost-effective enterprises subject to restructuring and also enterprises in respect of which bankruptcy procedures have been applied (the Para is as in force in the Decree of the CM of the RUz dated 04.01.2006 No2).

To establish time limit for consideration of proposals by the Cabinet of Ministers made by the State Committee of the Republic Uzbekistan on Demonopolisation, support of competition and entrepreneurship on conservation of objects of uncompleted construction and capital items for not longer than two weeks. (the Para is as in force in the Decree of the CM of the RUz dated 04.01.2006 No 2)

4. To establish that evaluation of the property (including evaluation of property complex and business) of economically insolvent, unprofitable and low cost-effective enterprises subject to restructuring by decision of the Cabinet of Ministers of the Republic of Uzbekistan or the Council of the State Committee of the Republic of Uzbekistan on Demonopolisation, support of competition and entrepreneurship and also enterprises in respect of which bankruptcy procedures have been applied by the ruling of the economic court carried out by independent appraisers according to international practices, which take into account real market, investment and liquidation cost of this property, may be applied in the established order as starting (initial) at auctions, exchange trades and while sale of the property by virtue of public offer. (the Para is as in force in the Decree of the CM of the RUz dated 04.01.2006 No2)

To ratify the Decree on the order of evaluation and sale of the property of the enterprises being restructured and also enterprises in respect of which bankruptcy procedures have been applied, according to Attachment 1.

When declaring a debtor enterprise bankrupt and initiating liquidation proceedings in case when creditor of the debtor is a commercial bank, having claims on creditor's debt in the amount of 70 and more percents of the total amount of the debtor's creditors' debt included in the creditors' claim register, this creditor has the right to apply to the court with an application on transferring the enterprise (property) of the debtor to its ownership, excluding the property which is subject of security. (the Para was included according to the Decree of the CM of the RUz dated 19.08.2005 No 204)

Herewith, if the bank's claims on creditor's debt are more or equal to the valued cost of the enterprise, determined according to Article 131 of the Law of the Republic of Uzbekistan "On Bankruptcy" transfer of the enterprise to ownership of the bank is carried out in condition of transferring by bank to the Single account of the debtor funds for covering unscheduled expenses in the order stated in Part One of Article 134 of the Law of the Republic of Uzbekistan "On Bankruptcy" and paying debt on salaries of the enterprise employees. (the Para was included according to the Decree of the CM of the RUz dated 19.08.2005 No 2004)

In case when the amount of the bank's creditors' debt and also salaries for enterprise employees and preferential expenses defined in Part One of Article 134 of the Law of the Republic of Uzbekistan "On Bankruptcy", is less than the value of the enterprise, the transfer of the enterprise to the bank is carried out in condition that the bank transfers to the debtor's Single account the determined difference and funds for covering preferential expenses and salaries for employees of the enterprise, which are directed by the liquidation manager, firstly – for preferential payments and salaries for enterprise employees and second priority – in the order stated in Article 134 of the Law of the Republic of Uzbekistan "On Bankruptcy". (the Para was included according to the Decree of the CM of the RUz dated 19.08.2005 No 204)

The debtor's property shall be transferred to ownership of the commercial bank based on a judicial act by the court receiver when the bank fulfils conditions stated in Paras Four and Five of this Point. (the Para was included according to the Decree of the CM of the RUz dated 19.08.2005 No 204)

The order stated in the Paras Three-Six of this Point has been enacted during 2005-2007. (the Para was included in accordance with the Decree of the CM of the RUz dated 19.08.2005 No 204)
(Point 5 became inoperative due to the Decree of the CM of the RUz dated 12.08.2005 No 196)

6. Ministry of Economy, Ministry of Finance, Committee on cases of economic insolvency of enterprises under the Ministry of Economy of the Republic of Uzbekistan during 2003 to work out issue of attraction of loan from Asian Development Bank for purposes of improving corporate management and implementing restructuring of financially unsustainable enterprises.

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7. To amend and supplement in some decisions of the Government of the Republic of Uzbekistan according to Attachment No 2.
8. Control of implementation of this Decree be laid on Deputy Prime Minister of the Republic of Uzbekistan, Azimov R.C.

**Chairman of the Cabinet of Ministers
I. Karimov**

**Attachment No.1 to Resolution of the Cabinet of Ministers
dated 18 April 2003, No.188**

REGULATION on the procedure for evaluation and realisation of property of enterprises under restructuring and bankruptcy processes

I. GENERAL PROVISIONS

1. This Regulation regulates the order of evaluation, determination of a starting (initial) cost and sale of property of unprofitable, low cost-effective and economically insolvent enterprises, carrying out restructuring by the decision of the Cabinet of Ministers of the Republic of Uzbekistan or the Council of the State Committee of the Republic of Uzbekistan on Demonopolisation, support of competition and entrepreneurship, and also enterprises in respect of which by the ruling of the economic court bankruptcy procedures have been applied. (the Para is as in force in the Decree of the CM of the RUz dated 04.01.2006 No 2)

This Regulation is not applied when making transactions with objects of ownership of the Republic of Uzbekistan, located beyond the boundaries of Uzbekistan.
2. According to this Regulation that property shall be subject to evaluation which will be realized further in accordance with plans of restructuring and implementation of bankruptcy procedures.

II. DETERMINATION OF VALUATION COST OF ENTERPRISE PROPERTY

3. The basis for evaluation is an agreement between an appraiser and a consumer of his services (customer), made in accordance with the legislation.
4. Customer for rendering evaluation services, in accordance with this Regulation is the enterprise being restructured or the enterprise in respect of which bankruptcy procedures has been applied.

In case of absence of monetary funds of the customer, a part of the monetary funds for paying for evaluation services (including advance payments) may be provided to the customer out of funds of the Fund for support of entrepreneurship and restructuring of enterprises in the established order with the subsequent return from the funds received from realization of property of the enterprise being restructured or the enterprise in respect of which bankruptcy procedure has been applied. (the Para as in force in the Decree of the CM the RUz dated 12.08.2005 No 196)

Payment of the rest part of the services cost for evaluation will be carried out ahead of priority after realization of the valued object and receipt of monetary funds on the enterprise bank account.
5. The list of valued property by results of enterprise inventory consists of:
 - capital items itemized in the balance sheet of the enterprise, including transferred for (rent) using by other enterprises regardless of their technical condition, as acting (including objects temporarily under complete repair and upgrading), and those under conservation;
 - intangible assets;

- uncompleted construction;
- equipment to be installed;
- other long-term assets;
- current assets.

When taking inventory the property of an enterprise is valued by balance-sheet (residual) cost. Evaluation of the balance-sheet (residual) cost of the property is carried out in accordance with national standards of accounting.

6. In order to evaluate the realized property of enterprises being restructured – by the resolution of the authorized body, in respect of which bankruptcy procedures have been applied, - by the resolution of the creditors' meeting (creditors' committee) an appraiser having license for carrying out evaluation is invited. For enterprises with State share of property attraction of an appraiser is mandatory.
7. When carrying out evaluation, usage of terms, concepts and evaluation practices, and also preparation of appraisal report the appraiser must follow legislation requirements and confine current evaluation standards.
8. When valuating property of enterprises being restructured and enterprises in respect of which bankruptcy procedures have been applied, the appraiser defines the following types of cost:
 - market cost;
 - liquidation cost;
 - utility cost.
 - investment cost
9. Evaluation of market cost of an enterprise is carried out taking into account balance-sheet-value (depreciated cost) of the enterprise (property), real demand for certain property to the date of evaluation, its location, presence of specific property, property with limited market of buying interest, and also physically and/or morally obsolete property.

Valuation of market cost of property of the enterprise against which bankruptcy procedures have been applied, - by resolution of the creditors' meeting, and an enterprise being restructured, by resolution of the authorized body may be carried out with determination of initial (starting) selling price for tender.

10. Liquidation value of the property of the enterprise is evaluated based on its market cost, taking into consideration discounting of the latter in case of need to realize the property within tight schedule due to compelling circumstances, and additional expenses for maintenance and security of the stated property.

Valuation of liquidation cost of the property of the enterprise in respect of which bankruptcy procedures have been applied, could be carried out while determining the initial (starting) selling price for tender by the resolution of the creditors' meeting (creditors' committee).

11. Valuation of the utility cost of the property is applied to the objects, which due to their moral (functional) depreciation or technical state as of the evaluation date may not be used by their direct purpose and are only of interest as aggregate of contained materials for sale.
12. Valuation of investment cost is based on the evaluation of market cost of the property and is divided into two parts – repurchase payment and investment commitments, necessary for arranging business using the property being bought.

Valuation of the investment cost of the property of the enterprise in respect of which bankruptcy procedures have been applied, - by the resolution of the creditors' meeting (creditors' committee), and in respect of the enterprise being restructured - by the resolution of the authorized body during realization at tender of the enterprise (or its part) as a property complex or as a business.

Mandatory conditions of tender when realizing property by investment cost include:

- Amount and terms of payment of the repurchase payment (as a rule, simultaneously after concluding an agreement);
- Amount and terms of satisfaction of investment commitments, including creditors' debt repayment of the debtor enterprise (as a rule, within one year after concluding an agreement).

Co-relation of rates of repurchase payments and investment commitments is fixed in tender conditions and approved by the creditors' meeting (creditors' committee), and for enterprises with

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state share of ownership – also by conformity with State Committee on Property of the Republic of Uzbekistan and is approved by the resolution of the authorized body.

III. REALIZATION OF ENTERPRISE PROPERTY

13. Realization of property of the enterprise being restructured and enterprise in respect of which bankruptcy procedures have been applied, may be carried out in the following way:
 - auction tender;
 - stock tender;
 - competitive tender;
 - direct tenders in condition of public offer.
14. Form of holding tender with the property of enterprises, partially or completely belonging to the State, shall be agreed with the State Property Committee and the State Committee of the Republic of Uzbekistan on demonopolizaion, support to competition and entrepreneurship. (the Point is as in force in the Decree of the Cabinet of Ministers of RUz dated 12.08.2005 No 196)
15. In case of selling property of an enterprise in respect of which bankruptcy procedures have been applied (excluding liquidation proceedings), tender holder (specialized organization) shall be provided with the following documents:
 - minutes of the resolution of the authorized body of shareholders (participants) or the owner in the established order; minutes of creditors' meeting; inventory list of the property being put up for tender;
 - document on determining the initial selling price of the property evaluated by the appraiser.
16. When selling the enterprise property during performing liquidation proceedings, the court receiver files in an application in the established form to the tender organizer along with a package of the following documents: (the Para is as in force in the Decree of the CM of the RUz dated 19.08.2005 No 204)
 - a copy of the court decision to declare the enterprise to be a bankrupt;
 - documents, certifying right of ownership for the property being realized, including cadastral documentation for the objects of real estate;
 - inventory list of the property put up for tender with indication of the initial price of each object, valuated by the appraiser;
 - other materials in accordance with the established order.
17. Order of publishing information in mass media on a tender and introduction of interested persons with the tender objects and tender conditions is established in accordance with the legislation.
18. Property which has not been sold in the first tender is put up for the second tender or may be realized by virtue of sales contract in the order established by the legislation.
19. In the second tender price of the property of the enterprise in respect of which bankruptcy procedures have been applied, which has not been sold in the first tender may be reduced by the resolution of the creditors' meeting (creditors' committee), and the property of the enterprises being restructured, which has not been realized in the previous tender, - by the resolution of the authorized body.

In case if the enterprise property is not realized in the second tender within one month, the documents shall be returned to the seller for realization by virtue of the sales contract in the established order.
20. Given the agreement of the creditors' meeting (creditors' committee), the court receiver may realize the enterprise as a property complex without holding the second tender by virtue of the direct agreement subject to conditions of public offer. (the Point as in force in the Decree of the CM of the RUz dated 19.08.2005 No 204)
21. In case if in the course of the liquidation proceedings the property of the enterprise is not realized by virtue of the sales contract within three months after holding the last public tender, the court receiver offers the property to the creditors in discharge of debts. In case if the creditors refuse (the refusal is drawn up in written form) the property, it shall be transferred to the debtor within one

month. In case if location of the owner has not been identified, the property is transferred to the local authorities in the established order. (the Point is as in force in the Decree of the CM of the RUz dated 19.08.2005 No 204)

IV. REALIZATION OF THE PROPERTY OF ENTERPRISES BEING LIQUIDATED BY INSTALMENT

22. Property of enterprises which are undergoing liquidation proceedings may be realized by instalment.
23. Sale of the property by instalment is performed by the court receiver as agreed by the creditors' meeting (creditors' committee) and with provision by the buyer of an appropriate guarantee of the servicing commercial bank. The economic court shall be informed about selling the property by instalment. (the Point is as in force in the Decree of the CM of the RUz dated 19.08.2005 No 204)
24. Sale of the enterprise by instalment is documented by the sales contract envisaging payment of the first contribution within ten days from the moment of conclusion of the agreement. Herewith the rate of the first contribution must be not less than 15% of the property cost.
25. Total period of selling property by instalment should not exceed one year. Depending on the cost of property the following periods of its realization by instalment are established:
- with property cost equal to hundredfold rate of the minimum wage – up to three months;
 - with property cost equal to the amount from hundredfold rate to four hundredfold rate of the minimum wage – from three to six months;
 - with property cost equal to the amount from four hundredfold rate of the minimum wage to thousandfold rate of the minimum wage – from six to nine months;
 - with property cost equal to the amount from thousandfold rate of the minimum wage and higher – from nine months to one year.
- Payment by instalment is performed according to the schedule attached to the sales contract. The buyer has the right to pay the amount fixed in the agreement ahead of schedule, in full volume.
26. If the period of buyout the property of the debtor enterprise by the buyer exceeds the period of the liquidation proceedings, the court receiver performs conclusion of the liquidation proceedings and withdrawal of the debtor enterprise from the register after mandatory repayment of the debt, related to organization and carrying out the liquidation proceedings, and liabilities of the enterprise being a bankrupt as first priority, established in Article 134 of the Law of the Republic of Uzbekistan “On Bankruptcy”. (the Point is as in force in the Decree of the CM of the RUz dated 19.08.2005 No 204)
27. In case of insufficiency of the selling amount for full satisfaction of creditors' claims of all priorities the schedule of debt repayment of the second and consequent priorities is compiled in accordance with Part Nine of Article 83 of the Law of the Republic of Uzbekistan “On Bankruptcy”
28. Satisfaction of creditors' claims of the debtor enterprise of the second and consequent priorities is fulfilled by the buyer directly onto their deposit account on demand according to the Article 322 of the Civil Code of the Republic of Uzbekistan.
29. After depositing the first contribution, property is transferred to the buyer. Transfer of property by the liquidation manager and acceptance by the buyer is documented by the delivery-acceptance certificate, signed by the sides. (the Point is as in force in the Decree of CM of RUz dated 19.01.2004 No 31)
30. Ownership right of the buyer comes into force after full payment of the property cost according to the concluded agreement, registered if needed, in accordance with the current legislation.
31. From the moment of signing the sales contract of the property by instalment relations between the liquidation manager and the creditors in cases envisaged by the Point 26 of this Regulation are documented by a separate agreement with indication of the amount of forthcoming expenditures (including remuneration of the authorized representative), order and period of their repayment, with further approval by the economic court. (the Point is as in force in the Decree of the CM of the RUz dated 19.01.2004 No 31)

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32. When receipt of funds on the liquidation account form sale of the property by instalment the liquidation manager fulfils satisfaction of the creditors' claims by the priority fixed by the legislation on bankruptcy. (the Point as in force in the Decree of CM of RUz dated 19.01.2004 No 31)
33. When denouncement of the property sales contract by instalment by the initiative of the buyer the property is to be returned in the established order. Herewith the buyer is obliged to cover the loss suffered due to denouncement of this agreement according to the legislation.
The returned property is put up for tender by the liquidation manager again in the order and periods established by the legislation. (the Para is as in force in the Decree of the CM the RUz dated 19.01.2004 No 31)

V. DOCUMENTATION OF TRANSACTIONS ON PROPERTY SALE

34. The transactions concluded at tenders are documented in accordance with the legislation.
35. Conditions of registration of the participants and rules of holding tender, amounts of advance payments and contributions by the concluded transactions, order of registration of the concluded agreements (contracts), and also the conditions of tender participants' responsibilities and amounts of forfeit payments (penalties, fines) for breaking by the participants the established rules and responsibilities are fixed by the tender organizers in accordance with the current legislation and are stipulated in the agreement.

**Resolution of the Cabinet of Ministers
of the Republic of Uzbekistan
March 23, 2004, No. 138**

**On Measures for organization
of activities of court receivers
of economically insolvent enterprises**

*Amendments were introduced to the present Resolution according
to the Resolution of the CM of the RUz dtd. 12.08.2005 No 196*

In accordance with the Law of the Republic of Uzbekistan “On bankruptcy” in new version and with a view to ensure necessary normative legal basis of the activity of court receivers in carrying out bankruptcy proceedings, The Cabinet of Ministers has resolved as follows:

1. To approve:
 - the Regulations on court receivers according to Enclosure No 1;
 - the Regulations on certification of court receivers according to Enclosure No 2.
2. The State committee of the Republic of Uzbekistan for Demonopolisation, support of competition and enterprises shall: (in edition of the Resolution of the CM of the RUz No 196 dtd 12.08.2005)
 - in a course of one month organize carrying out in all regions of the republic training courses for preparation of court receivers and their certification in accordance with this Resolution;
 - ensure regular monitoring and control over the activity of court receivers.
3. R.Asimov, deputy Prime Minister of the Republic of Uzbekistan shall supervise the implementation of the present Resolution.

**Chairman of the Cabinet of Ministers
I. Karimov**

**Attachment No. 1 to Resolution of the Cabinet of Ministers
dated 23.03.2004. No. 138**

**Regulation
on court receivers**

The present Regulation amended in accordance to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 196 dated 12.08.2005

I. General provisions

1. The present Regulation is drafted in accordance to the Law of the Republic of Uzbekistan “On Bankruptcy” and determines the order of activities of court receivers during the bankruptcy procedures.
2. Economic court on the each case assigns following types of the court receivers:
 - Interim receiver – during implementing supervision;
 - Rehabilitation manager - during implementing judicial rehabilitation;
 - External manager - during implementing external management;
 - The liquidation manager – in initiating liquidation proceedings.

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3. Court receiver is assigned from the candidates, nominated by:
 - Creditor(s) – during the implementing the supervision. In case if the interim receiver is not nominated by the creditor(s), interim receiver shall be assigned from the persons nominated by the State Committee of the Republic of Uzbekistan on Demonopolisation, Support to Competition and entrepreneurship (hereafter - Committee) or its territorial departments;
 - Creditors' meeting or by the persons, who granted security for performance by the debtor of obligations - during implementing judicial rehabilitation;
 - Creditors' meeting or Committee or its territorial department - during implementing external management and liquidation proceedings.
- During implementation of the judicial rehabilitation or external management or liquidation proceedings person, who is being performing the authorities of the interim receiver can be considered as a candidate for the court receiver.
4. The persons who have limitation for performing activity as court receivers established by the Article 18 of the Law of the Republic of Uzbekistan "On bankruptcy" may not be appointed as court receivers.
5. The activity of the court receivers are terminated in the cases, foreseen by the Law of the Republic of Uzbekistan "On bankruptcy".

II. Organizing the activity of the court receivers during implementation of the bankruptcy procedures

2.1. Order of the activity of the interim receiver

6. Interim receiver from its appointment by the economic court shall be obliged:
 - to draft the model calendar plan of actions;
 - within three days from the date of his/her appointment, to forward a notice, for publication in the official edition, on introduction of supervision in respect of the debtor;
 - not later than ten days from the date of publication of the notice on introduction of supervision, to notify all revealed creditors of the debtor, except for the creditors in respect of payment of debts on wages payable, introduction of supervision in respect of the debtor. All costs related to the publication and notification of the creditor's are covered at the expense of the debtor;
 - in written form to notify management bodies of the debtor on introduction of supervision and assignment of the interim receiver, and also to notify against acknowledgement the officials of the management body of the debtor about their list of the obligations during supervision;
 - to ensure control over the activity of the head of the debtor on the notifying the debtor's employees, founders (participants) or owner of debtor's property about introduction of supervision in respect of the debtor;
 - to arrange preserving debtor's property. In case of necessity shall apply to the economic court with the petition to take additional measures to preserve debtor's property;
 - to agree on transactions and resolutions of the debtor. Within three days after application of the debtor in accordance to the Article 64 of the Law On Bankruptcy shall issue in written form consent (refusal) for making transactions or adopting decisions by the debtor.
7. Interim receiver on the basis of the debtor's accounting and financial documents (balance sheet, agreements, report and etc), shall carry out analysis of the financial condition of the debtor. In such case interim receiver may attract other persons for carrying out these works at the expenses of the debtor.
8. Interim receiver shall conduct analysis of the debtor's property and reveal monetary funds (debtor's liquid assets), and determines the list of the other property of the debtor, specifying both balance cost and estimated earning from its sale, which may be used for covering the court expenses, costs for payment of the remuneration of the court receivers and satisfaction of creditors' claims. In case of necessity the interim receiver shall arrange inventory of debtor's property.

9. Interim receiver shall determine and compile necessary and sufficient information base for the purpose of conducting analysis of the debtor's financial condition.

In case of non-availability of the information necessary for conducting financial analysis or if such information is not provided by the debtor, the interim receiver shall apply with the requests to the corresponding territorial bodies of the tax service, off-budget funds, bodies carrying out registration of the transactions on immovables, which may have necessary information about the debtor and its property.

10. On the basis of the received information interim receiver carries out analysis of the debtor's financial condition to identify sufficiency (insufficiency) of the debtor's property for covering court expenses, costs for paying remuneration to the court receivers and satisfaction of creditors' claims.

During the examination of the financial condition of the debtor interim receiver shall determine the amount due to pay to the citizen, to which the debtor is liable for causing of harm to life or health, and also on payroll liabilities.

11. Interim receiver on the basis of the comparison of the volume of probable earnings from the sale of the liquid property and the amount of the creditor's claim, claims subject to satisfaction, shall make conclusion about sufficiency (or insufficiency) of the liquid property of the debtor for satisfaction of the claims of the creditors. In case if the liquid property of the debtor is not sufficient for satisfaction of the claims of the creditors, interim receiver shall on the basis of the analysis of the financial condition of the debtor and results of debtor's economic activity make economic justification of the selection of the next bankruptcy procedures in respect of the debtor: judicial rehabilitation, external management, amicable agreement or liquidation proceedings.

12. From the analysis of the financial condition of the debtor and the reasons of the debtor's insolvency the interim receiver makes conclusion about availability of the internal resources of the debtor for financial recovery in the frame of the external management or for securing the fulfilment of the conditions of the amicable agreement or makes conclusion about non-availability of such sources.

In case of non-availability of the internal sources for implementation of the external management or the amicable agreement interim receiver shall consider and analyze external sources for implementing these procedures (possibility of attracting third persons to fulfil obligations of the debtor).

13. Interim receiver based on the analysis of the reasons of the debtor's insolvency, may develop and propose set of the measures, aimed on financial recovery of the debtor, including also measures on restructuring the obligations of the debtor within the amicable agreement.

As a restructuring of the debtor's obligation may be postponement or extension of the period of fulfilment of the obligations of the debtor, assignment of debtor's rights of claim, performance of debtor's obligations by third party, allowance, exchange of the obligations to the shares, satisfaction of the claims of the creditors by other means, not contradicting to the legislation of the Republic of Uzbekistan.

14. After completion of the financial analysis interim receiver shall prepare proposals about possibility or impossibility of debtor's financial recovery, justification of expediency of next bankruptcy procedures.

15. In order to provide opportunity to the creditors to familiarize with the results of the carried out analysis and for the purpose of submitting to the economic court the results of the analysis, carried out by the interim receiver are made in the form of the conclusion about the financial condition of the debtor.

16. Interim receiver shall work to determine volume and priority order of the satisfaction of the claims of the creditors on the basis of the received from the creditors claims, in case of necessity shall forward to the economic court objections over the claims of the creditors.

17. Interim receiver shall maintain creditors' register and provide opportunity to the creditors to familiarize with the register.

18. Interim receiver shall arrange and hold first creditors' meeting in the order, established by the Article 71 of the Law of the Republic of Uzbekistan "On Bankruptcy".

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19. Interim receiver shall prepare and submit to the economic court within the period, established by the Law of the Republic of Uzbekistan “On Bankruptcy” the report about own activity, information about financial conditions of the debtor and proposals about possibility or impossibility of the financial recovery of the debtor, minutes of the creditors’ meeting with attachment of the necessary documents.

2.2. Order of the activity of the rehabilitation manager

20. Rehabilitation manager from its appointment by the economic court shall be obliged:
 - to draft the model calendar plan of actions;
 - in written form to notify management bodies of the debtor on introduction of the judicial rehabilitation and appointment of the rehabilitation manager, and also to notify against acknowledgement the officials of the management body of the debtor about their list of the obligations during the judicial rehabilitation;
 - arranges convocation of creditors’ meeting in the order, established by the legislation.
21. Rehabilitation manager maintains the creditor’s register and provides opportunity to the creditors to get familiarized with the register.
22. Rehabilitation manager not less than once a month shall submit to the convocation of the (committee) creditors report about own activity and information about financial condition of the debtor. For that purpose rehabilitation manager organizes and ensures permanent control over the implementation of the judicial rehabilitation plan and debt repayment schedule, shall request on-time submission by the head of the debtor the report on implementation of the judicial rehabilitation plan and debt repayment schedule and analysis of the financial-economic activity of the debtor.

On the basis of the received information rehabilitation manager presents corresponding conclusion to the creditors’ meeting. In order to ensure above-mentioned measures rehabilitation manager shall examine money flow movement, analysis reasons of the occurrence of the current (including overdue) receivables and payables, shall track the collection of the monetary funds at the debtor’s account for satisfaction of the creditor’s claims.
23. In case if the rehabilitation manager reveals the facts of failure to implement or improper implementation of the judicial rehabilitation plan by the debtor’s manager or on performance by him/her of actions (omission), violating the rights and legal interests of the debtor, creditors, persons, who granted security for performance of obligations, the rehabilitation manager forwards to the economic court petition to dismiss debtor’s manager from his/her duties. In case of dismissal of the debtor’s manager by the economic court, the manager’s duties may be assigned to the rehabilitation manager.
24. If there are any circumstances for the pre-term termination of the judicial rehabilitation the rehabilitation manager within the two weeks after the occurrence of the grounds for the early termination shall be obliged to convene creditor’s meeting to consider the issue of application to the economic court with the petition on early termination of the judicial rehabilitation. At the considering this issue rehabilitation manager shall provide to the creditor’s meeting his/her own conclusion on the report of the debtor’s manager.
25. After completion or early termination of the judicial rehabilitation the rehabilitation manager shall notify all the creditors about the date, time and the place of the court session on considering the report of the debtor’s manager about the results of implementing judicial rehabilitation.
26. Rehabilitation manager shall prepare and submit within the established period the report about his/her activity and about the results of the fulfilment of the obligations by the persons, who granted security for performance by the debtor of obligations.

2.3. Order of the activity of the external manager

27. External Manager from its appointment by the economic court shall be obliged:
 - to draft the model calendar plan of actions;

- in written form to notify management bodies of the debtor on introduction of the external management and appointment of the external manager.
28. With the introduction of the external management the powers of the managing bodies of the debtor shall be terminated. The powers of the debtor's manager and other managing bodies of the debtor shall be transferred to the external manager, except the powers transferred to the meeting of the (committee) creditors.
 29. External manager within the three days period shall ensure dismissal of the debtor's manager from his/her duties and shall issue order on termination of the labour contract the debtor's manager. In this case with the consent of the manager of the debtor, he/she may be appointed as deputy of the debtor's manager or any other job at this enterprise.
 30. Management bodies of the debtor within three working days from the appointment of the external manager shall ensure transfer of the accounting and other documentation of the legal entity, seals and stamps, material and other valuables to the external manager.
 31. External manager shall open special account for implementing external management and carrying out settlements with the creditors.
 32. External manager shall within the one month from his/her appointment draft of the external management plan, which he/she shall submit for approval to the creditors' meeting.

The plan of the external manager shall foresee measures on financial recovery of the debtor, conditions and order of implementing the mentioned measures, expenses on their implementation and other costs of the debtor, and the period of financial recovery of the debtor.

For the financial recovery of the debtor following measures may be applied:

- conversion of production;
- closure of uneconomic (unprofitable and lossmaking) productions;
- recovery of accounts receivable;
- sale of a part of debtor's property, not causing impossibility of the debtor's operation;
- assignment of debtor's claims;
- performance of debtor's obligations by the third parties;
- placement of additional shares of the debtor;
- refusal to fulfil certain agreements, not profitable for the debtor;
- sale of enterprise (business) of the debtor;
- substitution of debtor's assets;
- other ways of the financial recovery of the debtor.

Besides the measures envisaged by the present clause, on the petition of the Committee, the economic court might render a ruling on conservation of inactive facilities of the enterprise, the charter capital of which partially or wholly belongs to the state.

The external management plan shall be considered by the creditor's meeting, which is convened by the external manager in the established order, not later than two months from the introduction of the external management.

33. Within his/her activity external managers shall:
 - maintain creditor's register and ensure familiarization of the creditors with this register;
 - forward notice to the all creditors about introducing the Moratorium on satisfaction of creditors' claims from the introduction of the external management;
 - organize inventory, and in case of necessity assessment of the debtor's property;
 - take measures on revealing and returning the debtor's property held by the third parties;
 - organize work on implementing external management plan with the purpose of financial recovery of the debtor and adequate satisfaction of creditors' claims;
 - ensure keep accounting, statistical recording and reporting of the debtor-enterprise;
 - organize convocation of the (committee) creditor's meeting, with submitting the reports on the progress and results of implementation of the external management plan.
34. External manager shall consider submitted claims of the creditors and on the results of the consideration shall make corresponding record to the creditor's register not later than two weeks after receiving the corresponding claim. External manager shall inform the results of the

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consideration the corresponding creditor, within the period not exceeding one month after receiving the creditor's claim.

Objections in respect of the results of consideration of creditors' claims by the external manager may be filed by the creditor with the economic court considering bankruptcy case within one month from the date of receipt of notice.

35. On the results of the external management external manager shall prepare and submit report for the review of creditors' meeting in connection with the expiry of the external management periods or when there are grounds for its early termination.

External manager shall be obliged to submit to the creditor's meeting the report within the period, established by the Law of the Republic of Uzbekistan "On Bankruptcy".

36. External Manager forwards the report and minutes of the creditor's meeting, reviewed by the creditor's meeting to the economic court not later than after 5 days of the date of holding creditor's meeting. Report of the external manager shall be approved by the economic court.

37. In case if the creditor's meeting pass a resolution terminating external management in connection with the financial recovery of the debtor, external manager has the right to carry out settlement with the creditors from the date of the approval of the external manager's report by the economic court.

External manager shall carry out settlement with the creditors in accordance with the creditor's register.

38. Termination of the external management shall result in termination of the powers of the external manager with restoring the powers of other managing bodies of the debtor and the owner of the property of the debtor.

If external management is terminated by conclusion of amicable agreement or the discharge of creditors' claims, the external manager shall continue to perform the duties of debtor's manager up to the date of election (appointment) of a new manager.

39. If the economic court has rendered a decision to declare the debtor bankrupt and initiation of liquidation proceedings, and other person has been appointed as the liquidation manager, the external manager shall continue to perform his/her duties up to the date of the transfer of affaires to the liquidation manager. The external manager shall be obliged to transfer affairs to the liquidation manager not later than three days from the date of appointment of the liquidation manager.

2.4. Order of the activity of the liquidation manager

40. The liquidation manager from its appointment by the economic court shall be obliged:
- to draft the model calendar plan of actions;
 - in written form to notify management bodies of the debtor and debtor's employees of the initiation of the liquidation proceedings and appointment of the liquidation manager.
41. The liquidation manager shall ensure Publishing of Information on Adjudication of Debtor to be a Bankrupt and Initiation of Liquidation Proceedings in the official edition in accordance to the Article 127 of the Law of the Republic of Uzbekistan "On Bankruptcy"
42. The liquidation manager shall ensure dismissal of the manager of the debtor from his/her duties within three days.
43. The liquidation manager within three days from the date of his/her appointment shall receive debtor's accounting and other information, seals and stamps, material and other valuables. Manager of the debtor being legal entity on the request of the liquidation manager shall be obliged to provide him/her with complete list of the debtor's creditors and debtors, specifying the amount of the debt, expanded balance sheet of asserts and liabilities, report on the financial condition, necessary information, contained in the books, on accounts and other documents on financial and economic activity.
44. In the course of liquidation of the bankrupt in the form of the joint-stock company, liquidation manager within two days from the date of his/her appointment shall be obliged to forward information about termination of the powers of the managing bodies of the joint-stock company and suspension of the production activity of the issuer to the Center on coordination and control over the

functioning of the securities market under the State Committee on State Property. In case if the issuer's action are quoted at the stock exchange, liquidation manager shall be also obliged to submit information to the stock exchange within two days from the date of his/her appointment.

45. In the course of liquidation proceedings single Soum and single currency account of the debtor in the same bank shall be used. In order to perform monetary-counter operations for the period of liquidation proceedings liquidation manager reregisters the signature at the account card for his name and the person in charge of accounting.
46. The liquidation manager shall close all other accounts of the debtor with the bank, which are known at the date of initiation of liquidation proceedings, and those revealed in the process of liquidation proceedings. In case of revealing other accounts the demand balances of the debtor must be transferred from them to debtor's main account.
47. The liquidation manager shall be obliged from the date of his/her assignment to inform the employers of the debtor being legal entity about forthcoming dismissal. Dismissal of the employers of the debtor being legal entity is carried out in accordance to the Labour Code of the Republic of Uzbekistan. The liquidation manager shall inform the local bodies on employment about forthcoming dismissal of the employers of the debtor being a legal entity in the process of liquidation.
48. The liquidation manager elaborates and agrees with the creditor's meeting the plan of liquidation of the bankrupt being legal entity.

In accordance to the liquidation plan, liquidation manager shall form liquidation Estate, ensuring the sale of the debtor's property, recovery of receivables, accumulation of the monetary funds at the single bank account for the purpose of adequate satisfaction of creditors' claims, and organizes taking measures intended to reveal and return debtor's property held by the third parties.

49. In the course of liquidation, liquidation manager shall maintain creditors' register.
Creditors' register shall specify information on each creditor, on the amount of creditor's claims for monetary obligations and (or) on mandatory payments, on priority of satisfaction of each claim.
Disagreements, which arise between creditors and the liquidation manager, on the composition, amount and priority of satisfaction shall be considered by the economic court.

Creditors shall be provided with the opportunity to get familiarized with the creditors' register.

50. In the course of liquidation, the liquidation manager shall carry out inventory and determine the value of the debtor's property. For that purposes, the liquidation manager has the right to attract auditors, appraisers and other specialists with the payment of their services liquidation costs, unless otherwise envisaged by the resolution of the creditors' meeting.

If on the balance-sheet of the debtor there are objects of social and utility infrastructure, which may not be used for other purposes, including commercial purposes, the liquidation manager shall transfer these objects to local bodies of state power by act. Local bodies of state power shall accept them at the residual value.

51. On the results of inventory and making evaluation of debtor's property the liquidation manager shall proceed to the sale of this property on the open tender, unless otherwise envisaged by the creditors' meeting.

In case if property has not been sold at the first tender, the liquidation manager with the consent of the creditor's meeting has the right to sell debtor's property by virtue of sales contract, including by instalments, provided that the buyer provides the guarantees of the servicing bank.

In order to collect money for payment of the liquidation costs, the liquidation manager with the consent of creditors' meeting, shall be entitled to sell low-value and rapidly wearing property and the rest of raw materials and finished goods of debtor without the holding of tender by virtue of sales contracts.

52. The liquidation manager may act as an organizer of tender or to contract a specialized organization, which in accordance to the terms of the contract is instructed to organize and hold tender.
53. The liquidation manager with the consent of the creditor's meeting shall be entitled to put up the rights of claims (receivables) of the debtor for the open tender. The sale of the rights of claims of the

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debtor shall be used only in exceptional cases, when there is no real possibility to perform these rights through lodging them to the persons, representing debtors in corresponding obligations.

54. The liquidation manager after sale of the debtor's property shall proceed to the settlements on the claims of the debtor in the accordance to the Law of the Republic of Uzbekistan "On Bankruptcy".

55. After finishing settlements with creditors the liquidation manager shall be obliged to draft final report on the results of liquidation proceedings and to submit it to the creditor's meeting for consideration.

The liquidation manager shall submit report on the results of liquidation proceedings to the economic court.

The liquidation manager shall attach following to the report on the results of liquidation proceedings:

- documents confirming the sale of debtor's property;
- creditors' register with specification of the amount of the each creditors' claims and priority of satisfaction;
- documents confirming the discharge of the creditor's claims (specifying the reason in case if not discharged);
- data on debtor's property remained after the discharge of creditors' claims, and also on debtor's property, which was proposed for sale, but was not realized in the course of liquidation proceedings, when the creditors refused to accept the specified property in discharge of their claims and when founders (participants) or the owner of debtor's property did not submit an application on the rights to property remained after the discharge of creditors' claims.
- other documents, related to the liquidation proceedings, on the request of the economic court.

56. In case if after the discharge of the creditor's claim, still unrealized property remains, then the liquidation manager shall within five days notify the founders (participants) of the debtor or the owner of property of the debtor about necessity to accept on the balance the said property.

If within two weeks period from the date of the liquidation manager's notification the founders (participants) of the debtor or the owner of property of the debtor did not submit an application on the rights to property remained, the liquidation manager notifies local bodies of state power about the need to accept the said property on the balance. Local bodies of state power shall within one month from the receiving of such notification accept them on the balance and shall cover costs on its maintenance.

57. The ruling of the economic court on completion of the liquidation proceedings shall be the ground for making record about liquidation of the debtor to the state register. From the date of entering to the uniform state register of legal entities of the record on liquidation of the debtor in the form of the joint stock company, the liquidation manager shall within two days publish announcement about termination of the activity of the issuer.

58. From the date of entering to the uniform state register of legal entities of the record on liquidation of the debtor the powers of the liquidation manager shall be terminated and liquidation proceedings shall be deemed to be completed and the debtor – liquidated, and free from the debts.

III. REMUNERATION OF COURT RECEIVER

59. Court receiver shall be entitled to receive remuneration. Amount of the monthly remuneration of the court receiver for exercising of his/her functions:

- as interim receiver – shall be established by the economic court and might be changed on the petition of the creditors' meeting later;
- as rehabilitation manager, external manager, liquidation manager – shall be established by the creditors' meeting and shall be approved by the economic court.

60. By the resolution of the creditor's meeting additional remuneration might be established to the court receiver, payable on the results of his/her activity.

IV. CONTROL OVER THE ACTIVITY OF COURT RECEIVERS

61. Control over the activity of court receivers is carried out by the Committee and its territorial branches.
62. Committee and its territorial branches within its jurisdiction shall be entitled:
 - to carry out Checking of the activity of the court receiver in accordance to the law;
 - to request court receivers to provide necessary explanations and materials on the matters, which arise during carrying out the checking;
 - to draft on the basis of the checking results acts, specifying the certain violations;
 - to issue decisions, obliging the court receivers to remove revealed violations and specifying the deadline for their removal;
 - to issue warnings to the court receiver;
 - to suspend the validity of the certification of the court receiver;
 - to perform other powers on the control over the proper implementation by the court receiver tasks assigned on him/her.
63. Court receiver shall ensure conditions for Committee and its territorial branches to carry out checking, including the providing o necessary information and documents.

V. RESPONSIBILITY OF COURT RECEIVER

64. The debtor, creditors shall be entitled to request from the court receiver to compensate for losses caused by his/her wrongful actions (omission) in the order established by the law.
65. Court receiver, who is guilty in violation of bankruptcy legislation, shall bear responsibility in the established manner.

**Attachment No. 2 to Resolution of the
Cabinet of Ministers
dated 23 March 2004 No. 138**

REGULATION on certification of court receivers

This Regulation was amended in accordance with Sub-point 6) of Point 39 of Annex No.2 to the Resolution of the Cabinet of Ministers No.196 dated 12 December 2005

I. General Provisions

1. This Regulation has been adopted in pursuance of the Law of the Republic of Uzbekistan “On Bankruptcy” and defines the qualification and professional requirements to be applied to persons, who carry out activity as court receivers, and also defines the procedure of their certification, granting, suspending, resuming and terminating of validity of the certificate, and the procedure of maintaining a single register of court receivers.
2. The State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship (hereinafter referred to as “the Committee”) shall carry out certification of court receivers and maintain a single register of court receivers. (the text as amended by Sub-point 6) of Point 39 of Annex No.2 to the Resolution of CM RUz No.196 dated 12 December 2005)
The purpose of the certification shall be recognized to be determination of compliance of individuals to qualifications and professional requirements set for court receivers.
3. To carry out the activity as court receiver the Committee shall grant the certificates of four categories:
 - certificate of the fourth category – for carrying out streamlined bankruptcy procedures of legal entities;

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- certificate of the third category – for carrying out supervision procedure and liquidation proceedings;
 - certificate of the second of category – for carrying out the procedures of supervision, judicial rehabilitation and liquidation proceedings;
 - certificate of the first category – for carrying out the procedures of supervision, judicial rehabilitation, external management and liquidation proceedings.
4. A simplified procedure of certification, as established by the Committee, shall be applied with respect to persons who apply for the certificate of fourth category.
5. The term of validity of all certificates is 5 years.

II. Professional and Qualification Requirements to Court Receivers

6. The court receiver shall meet with the following professional requirements:
- to have skills of making an analysis of financial condition of enterprise;
 - to have basic skills in the area of accounting, evaluation of property and management;
 - to know the basics of laws of the Republic of Uzbekistan.
- The court receiver must:
- find out the way of financial recovery of the debtor's enterprise and of proportional satisfaction of creditors' claims;
 - have professional skills in field of antirecessionary management of an enterprise, to upgrade these skills on a regular basis;
 - have high moral characteristics – to be conscientious to the assigned work, be responsible, enterprising, disciplined, restrained and emotionally and psychologically steady;
 - meet the qualification requirements set for court receivers as provided in this Regulation.
7. Persons, who meet the following qualification requirements, may be appointed as court receivers:
- higher education;
 - length of service (seniority) under the specialty of at least two years;
 - certified by the Committee.
8. Apart from the basic requirements listed in Point 7 of this Regulation, the following additional qualification requirements shall be applied to court receivers:
- a) those who carry out the procedures of supervision and liquidation proceedings, must have at least two years of length of service as a medium unit manager (shop superintendent, head of section, head of division, etc.);
 - b) those who carry out the procedure of judicial rehabilitation, must have at least two years of length of service as a top manager (general manager, vice-manager, chief accountant, etc.) or at least twelve months of length of service as a court receiver of the third category;
 - c) those who carry out the procedure of external management, must have at least five years of length of service as a medium unit manager and top manager, of which at least three years of work experience as a top manager, or must have a length of service as a court receiver who served at least two procedures of judicial rehabilitation and (or) liquidation proceedings with a certificate of the second category;
 - d) those who carry out streamlined bankruptcy procedures: those are the officers of tax inspections r staff-members of the Committee, who hold the certificate of an appropriate category.

III. Procedure of Consideration of Applications of Persons Who Apply for Certification

9. A person who applies for certification (hereinafter referred to as “the applicant”) under the third category, shall submit to the Committee the following documents:
- a) application to issue certificate with indication of its category;
 - b) the questionnaire (as per the form provided in Annex No.1);
 - c) the copy of a diploma of higher education;
 - d) the copy of a work-book;
 - e) the copy of a certificate on completion of courses with the program for court receivers of an appropriate category (not required for recertification in case of expiry validity of a certificate);f) a document that certify payment of an application fee.

10. If the applicant does not have at least two years length of service as a top manager in order to get the certificate of the second category, the copies of the following rulings of Economic Court shall be submitted to the Committee along with the documents mentioned in Point 9 of this Regulation:
 - regarding the appointment of the applicant as a court receiver;
 - regarding the approval of court receiver's report on the bankruptcy procedures, which confirm that he/she discharged the duties of court receiver being a holder of a certificate of third category, which in total comprise not less than twelve months.
11. If the applicant does not have at least five years length of service as a medium unit manager or as top manager, of which at least three years as a top manager, in order to get the certificate of the first category, the copies of the following rulings of Economic Court shall be submitted to the Committee along with the documents mentioned in Point 9 of this Regulation:
 - regarding previous appointments of the applicant as court receiver;
 - regarding the approval of court receiver's report on at least two completed procedures of judicial rehabilitation and (or) liquidation proceedings during the applicant's employment with the certificate of the second category.
12. A fee to cover operational expenses in two-fold amount of the monthly minimum wage shall be paid for consideration of the application. The application fee shall be enrolled into the out-of-budget Development Fund of the Committee.
13. All documents submitted for certification shall be accepted by the Court Receivers Certification Commission (hereinafter referred to as "Certification Commission") according to a list. A copy of the list of submitted documents shall be given to the applicant. The documents submitted together with the application shall not be returned. The copies of the documents, except for the rulings of economic courts, must be notarized or submitted together with their originals.
14. The documents shall be considered within the term not exceeding three working days as of the date they have been submitted to the Certification Commission.

The Certification Commission shall be entitled to refuse from granting the applicant an access to certification and shall send its written reasoned decision with reasons within three working days from the date the application was submitted.

The following shall be grounds for refusal:

 - submitted documentation is improper or incomplete;
 - the documents submitted by the applicant contain false or distorted information;
 - the applicant does not meet the qualification and professional requirements.

It shall not be permitted to refuse on other grounds.

In case of refusal the application fee shall not be refundable.

IV. Procedure of Certification (Recertification) and Granting Certificate

15. The applicant shall be allowed to o through the certification provided there is no remarks regarding the documentation submitted.
16. To get the certificate all applicants shall pass a test according to the program and within the terms established by the Certification Commission.
17. Certification (Recertification) shall be performed by way of testing examination. The testing shall take place within thirty days from the date of submission of documents. The procedure of carrying out the tests shall be defined by the Committee.

The testing examination shall be by way of answering questions on computer based program.
18. A positive result of the test shall be recognized to be at least 60 % of correct answers for the third category, 70 % - for the certificate of the second category, 75 % - for the certificate of the first category.
19. Upon the results of the test the applicant shall be announced to be certified (in case of positive result) or non-certified (in case of negative result).

During the test the applicants are not allowed to use a reference, professional or any other books. In case of breach of these requirements the applicants shall be dismissed from the certification.

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20. The results of the certification shall be recorded in the minutes of the Certification Commission, which shall be approved by a chairman of the Certification Commission. The results of the certification in the form of extracts from the minutes of the Certification Commission with data about the test results shall be brought to the notice of the applicants not later than in five working days from the date of the certification.
21. A person, who was recognized to be not certified, shall have a right to pass the test again, but not earlier than after one month from the date of the last certification.

The Certification Commission shall appoint a day for carrying out repeated testing for a person recognized to be not certified. If the person, who has earlier been recognized to be not certified, upon the results of the repeated testing is recognized to be certified, he/she shall be granted a certificated according to the general provisions.

The applicant shall pay a fee for repeated testing in the amount one minimum monthly wage.
22. In case of negative results upon the repeated testing, the applicant shall be allowed to the next test only after passing again a course of program for the court receivers of an appropriate category.
23. The applicants shall have a right to appeal the results of the certification to the Certification Commission within one month from the date of last certification.

The rounds for appeal shall be:

 - applicant's disagreement with the results of the test;
 - violation of the procedure of carrying out the tests.
24. The appeal with reasoned description of main claims shall be submitted by the applicant to the chairman of the Certification Commission. The appeal claim shall be considered within the period not exceeding three days from the date it was submitted. A protocol shall be rendered upon the result of consideration of the appeal claim.

It shall not be allowed to appeal twice.
25. In case the applicant does not agree with a decision of the Certification Commission he/she may appeal decision of the Certification Commission with the court.
26. The certificates shall be according to Annex No.2. The certificates shall be issued within ten days from the date of certification.
27. Forms of certificates are considered to be strictly recorded documents, they have a protection level, record series and number. The Committee shall obtain, record and store the forms.

V. Procedure of Maintaining Single Register of Court Receivers

28. The Committee shall maintain a Single Register of Court Receivers (hereinafter referred to as "Register").

The Register shall be maintained in following forms:

 - paper bearers (in the form of stitched journals sealed by the Committee with indication of the number of stitched pages);
 - electronic bearers in the form of entries into data base.

In case of discrepancy between the paper and electronic bearers, the paper bearer shall have a priority.
29. The journal of the "Single Register of Court Receiver" is considered to be strictly recorded document and shall be kept by the Committee.

The following information about court receivers shall be entered into the journal and data-base:

 - a) Second name, first name, patronymic;
 - b) place of residence and passport particulars;
 - c) place, number, date of issue and of expiry of the certificate;
 - d) registration number of form of certificate;
 - e) date of acceptance of the certificate and signature of a person, to whom it was handled (in the journal of registration of certified persons);
 - f) about training under the court receivers single study program;

- g) on appointments as court receiver and on results of activity;
 - h) on suspension, resumption, extension of term of validity or termination of certificate and about issuance of a duplicate;
 - i) on exclusion of the court receiver from the Register and on grounds for exclusion;
 - j) date of exclusion of the court receiver from the Register;
 - k) notes, which shall indicate any additional information which the certifying authority will find necessary to be included into the computer-based software.
30. The entry of the information into the Register shall be performed by making an appropriate record.
31. The information in the Register is considered to be open, except for the passport data and home address of the court receivers. Legal entities and individuals are entitled in the established manner to have access to Register for a payment. The Committee shall charge for this an amount of half a monthly minimum wage established in the Republic of Uzbekistan.
The passport data and home addresses may be provided only upon official request of the state authorities within their range of competence.
32. The Committee shall provide the information from the Register within five days from the date of request.
33. A court receiver shall be excluded from the Register upon decision of the Committee on termination of validity of certificate for a certain type of activity, on grounds stipulate in this Regulation.
34. A relevant record shall be made in the Register within three days from the date the Committee has issued a decision on exclusion of a court receiver from the Register.
The documents of the court receiver excluded from the Register shall be kept at least five years from the date of exclusion.

VI. Procedure of Work of Certification Commission

35. Certification Commission is a collegial body, which deals with certification (recertification) of individuals for purpose of granting a court receiver's certificate. A regulation about Certification Commission and its composition shall be approved by the Committee.
36. Sessions of the Certification Commission shall take place whenever it is necessary. A secretary of Certification Commission shall be responsible for organization and moderation of a session of Certification Commission.
37. Session of Certification Commission shall take place upon presence of at least two thirds of its members.
Decisions of the Certification Commission shall be rendered by a single majority from the votes of members of the Certification Commission, who participate the session. In case of equality of votes a vote of the chairman of the Certification Commission shall have a decisive power. Decision of the Certification Commission shall be executed in the form of the minutes.
38. The members of the Certification Commission shall be notified by a secretary about its sessions (the date, time and place of session).

VII. Procedure of Re-Legalization and Issuance of Duplicates of Certificates

39. A re-legalization of the certificates shall be performed on ground of application of a court receiver in case of changing his/her second name, first name or patronymic.
A fee of half of a monthly minimum wage established in the Republic of Uzbekistan shall be charged for re-legalization of a certificate.
Within the period of re-legalization of a certificate the holder of the certificate may continue his/her activity in accordance with the originally issued certificate.

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40. For purpose of re-legalization of the certificate due to change of data specified in the originally issued certificate, the court receiver shall submit the following documents to the Committee:
 - a) application to the Committee about re-legalization;
 - b) the original of qualification certificate;
 - c) copy of the document certifying changes and corrections (made in the birthday record act in case of changing the second name, first name or patronymic, issued by the Civilian Register's Office);
 - d) document certifying payment of fee for re-legalization of the certificate.
41. Upon re-legalization of the certificate a new form of certificate shall be issued with specification of the appropriate category and established term of validity. The form of the previously issued certificate shall be subject to destruction.
42. If case of loss of the certificate, the holder of the certificate shall submit to the Committee the following documents:
 - a) application on issuing duplicate of the certificate, which shall specify the reasons and circumstances that caused loss of the originally issued certificate;
 - b) copy of announcement made in mass media about invalidity of the lost certificate (to be paid by the applicant);
 - c) a document certifying payment of a fee for issuing a duplicate of the certificate.
43. In case the form of the certificate comes to a wear out condition, the holder of the certificate shall submit to the Committee the following documents:
 - a) application on issuing duplicate of the certificate, which shall specify the reasons and circumstances that caused a wear out condition of the certificate;
 - b) a document certifying payment of a fee for issuing a duplicate of the certificate.
 - c) form of the originally issued certificate which came to a wear out condition.
44. When the duplicate of the certificate is issued the Committee issues to a court receiver new form of the certificate with endorsement "DUPLICATE" with the original period of validity. A fee of one-fold monthly minimum wage shall be charged for issuing a duplicate of the certificate. In case of loss of the certificate or wear out of its form its holder may continue his/her activity on ground of a temporary permit to be issued by the Certification Commission.
45. Re-legalization of the certificate or issuance of its duplicate shall be performed by the Committee within five days from the date of acceptance of the application.
46. A form of the certificate that came to a wear out condition shall be subject to destruction after issuing its duplicate.
47. In case that after receiving the duplicate of the certificate, the original lost certificate is find, the court receiver who received the duplicate of the certificate shall within five days after this event return to the Committee the original certificate for purpose of its destruction.
48. Certification shall not be required for purpose of re-legalization of the certificate or for receiving its duplicate.

In case the documents submitted to receive a duplicate of the certificate are not in order, the applicant shall be notified thereof with specification of reasons within three days from the date the application was submitted.

VIII. Suspension and Termination of Validity of Certificates

49. The Committee shall be entitled to suspend or to terminate the validity of the certificate.
50. The Committee shall have a right to suspend the validity of the certificate on following grounds:
 - a) in case when facts of falsification of the information in the documents submitted for certificate are revealed after issuing the certificate;
 - b) failure to perform duties by a court receiver, who participate in bankruptcy procedures;
 - c) failure by the court receiver to perform injunctions or orders of the Committee regarding elimination of revealed violations;

- d) in cases when facts of violation of laws related to court receivers are revealed;
 - e) upon court decision.
51. The Committee within three days shall send to the court receiver a written notice on suspension of validity of the certificate with specification of grounds for suspension and measures that must be performed within the terms established by the Committee.
 52. The holder of the certificate must perform the measures specified in the notice within the terms established by the Committee, and inform thereof the Committee in writing with attachment of confirming documents.
 53. In case the measures specified in the notice on suspension of the certificate have been performed within the terms established by the Committee, the Committee shall resume the validity of this certificate within three days.
 54. The Committee shall have a right to terminate the validity of the certificate on following grounds:
 - a) reveal of facts of repeated (more than one time) violations of laws;
 - b) failure to perform or improper performance of injunctions or orders of the Committee;
 - c) failure to perform or improper performance of duties vested on court receiver in accordance with bankruptcy laws, and in cases when actions of the court receiver have caused losses for the debtor or for creditors;
 - d) upon application of the court receiver;
 - e) upon court decision.
 55. The Committee within three days from the date of rendering a decision on termination of validity of the certificate shall notify thereof in written form the court receiver and the economic court with indication of reasons.
 56. The information about certificates, which validity was suspended and terminate, shall be entered by the Committee into the Register.
 57. The Committee's decisions may be appealed as per the procedure established by the law.

Questionnaire of applicant for a certificate of a court receiver

1. Second name, first name, patronymic _____
2. Date, month, year of birth _____
3. Passport data (series, number, date of issue, issuing authority)

4. Place of residence
 region _____ city _____
 street _____ apartment, home number _____
 telephone _____ fax _____
5. Educational background _____
 (specify education facility)

 specialty _____ year of graduation _____

6. Work experience:

Month & year of		Position with indication of establishment, organization, company	Place of location of establishment, organization, company
Start	Leave		

7. Work experience as court receiver

Month & year of		Position with indication of establishment, organization, company	Place of location of establishment, organization, company
Appointment	Dismissal		

Date of signature _____

Signature _____

The Annex was amended according to Sub-Point r) of Point 39 of Annex No.2 to Resolution of CM RUz No.196 dated 12.08.2005

STATE COMMITTEE OF THE REPUBLIC OF UZBEKISTAN
ON DEMONOPOLISATION, SUPPORT OF COMPETITION
AND ENTREPRENEURSHIP

COURT RECEIVER'S CERTIFICATE

_____ category

By a decision of the Certification Commission of Court Receivers
of the State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition
and Entrepreneurship

(Second name, first name, Patronymic)

_____ upon the results of test examinations dated
" ____ " _____ 20 __ , hereby granted the qualification of:

"COURT RECEIVER"

This court receiver's certificate shall serve to be ground
for its holder's appointment as:

Certificate is valid until " ____ " _____ 20 __

PLACE OF STAMP Certificate is issued on " ____ " _____ 20 __

Chairman of
Certification Commission _____

Registered by Ministry of Justice of the Republic of Uzbekistan
December 6,2006, No.1581

RESOLUTION
of the state committee of the republic of Uzbekistan
on Demonopolisation, support to competition and entrepreneurship
May 15, 2006

on approval of the Rule on Certification Commission of Court Receivers
Comes into effect starting from June 22, 2006

Upon the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 23 March 2004 No.138 “On measures on organization court receivers’ activity of economically insolvent enterprises” the State Committee of the Republic of Uzbekistan on Demonopolisation, support to competition and entrepreneurship **DECREES:**

1. to approve the attached Provision on certification commission of court receivers.
2. this Resolution comes into force upon the expiry of 10 days from the date of its state registration with Ministry of Justice of the Republic of Uzbekistan.

Chairman of State Committee on demonopoliation
and support to competition and entrepreneurship
G. Saidova

Approved by Resolution of State Committee on Demonopolisation
dated May 15,2006, No.1,
registered by MJ
December 6,2006, No.1581

RULE
on certification commission of court receivers

This provision regulates issues related to functioning work of certification commission of court receivers (further commission) of the State Committee of the Republic of Uzbekistan on Demonopolisation, support to competition and entrepreneurship (further – Committee) according to the Law of the Republic of Uzbekistan “On Bankruptcy” and Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 23 March 2004 No. 138 “On measures on organization court receivers’ activity of economically insolvent enterprises”.

I. BODY AND PROCEDURE OF HOLDING COMMISSION SESSIONS

1. The commission consists of chairman, deputy chairman, four members and secretary of the commission. Personal body of the commission is approved by the order of the commission’s chairman. The commission’s chairman is deputy chairman of the Committee – head of the chief administration of analysis of financial-economic status and restructuring of monopolist enterprises and economically insolvent enterprises (by position).
2. Decisions and orders of the commission rendered within its competence, according to this Provision, are mandatory for the court receivers.

3. The chairman of the commission holds the commission sessions, approves minutes and other documents of the commission. In absence of the chairman of the commission his authorities are fulfilled by the deputy chairman of the commission.
4. Responsible for preparation of materials for commission session is the working body of the commission.
5. Commission's sessions are held as required and are considered legally qualified provided they are attended by not less than two thirds of its members.
6. Decisions of the commission are rendered by ordinary majority of votes of commission members, present at the session. In case of equality of votes the vote of the commission's chairman is decisive. Commission's decision is drawn in minutes. Commission member who does not agree with a rendered decision may reduce to writing his special opinion and file it to the minutes of the commission's session.
7. Minutes of the commission on certification or non-certification of applicants of court receivers' certificate may be made by questionnaire upon conclusion of the working body pursuant to documents of the applicant being certificated established by the qualification requirements and testing results.
8. Upon suggestion of the working body and/or members of the certification commission an interview may be held with an application in order to identify his/her professional qualities, suitability of the candidate to the requirements of the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 23 March 2004 No. 138 "On measures on organization activity of court receivers of economically insolvent enterprises"

II. FUNCTIONS AND AUTHORITIES OF THE COMMISSION

9. The commission fulfils the following functions:
 - arranges certification of applicants to court receivers;
 - considers facts of violating the legislation by court receivers and renders decisions on such.
10. For the purpose of fulfilling its functions the commission is entitled to:
 - confirm procedure of holding tests;
 - require provision of documents certifying applicant's suitability to qualification requirements to court receivers, envisaged by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 23 March 2004 No.138;
 - refuse applicant of certificate in access to go through evaluation upon grounds envisaged in Point 14 of the Resolution of the Republic of Uzbekistan dated 23 March 2004 No.138, with sending a written reasoned refusal not later than three working days from the date of application;
 - upon results of examination take a decision on certification or non-certification of an applicant of court receivers' certificate;
 - consider in the established manner appeals of applicants of court receiver's certificate;
 - introduce to consideration of the Committee's Chairman a proposal on issuing an order on eliminating identified violations, on suspension or termination of court receiver's certificate with appropriate application to the economic court with a petition on release of the court receiver from his duties.

III. COMMISSION'S WORKING BODY

11. Working body of the commission is administration for liquidation proceedings of bankrupt-enterprises and control over activity of committee's court receivers.
12. Commission's working body:
 - carries out administrative support of activities on receiving documents of applicants of court receivers' certificate, conducting certification examination, preparation for holding a session of certification commission and issuing court receivers certificates;

RELATED LEGISLATIONS

- prepares materials for the commission sessions on issues of legislation violation by court receivers.
- secures issue of decisions (orders) of the Committee to interested persons upon results of case consideration.

IV. HOLDING EVALUATION

13. Evaluation consists of two stages:
 - First – study documents of applicants with a view to their suitability to qualification requirements;
 - Second – testing examination.Taking certification testing examination is carried out in the way of answers to questions of tests using special computer programs.
14. Upon presentation of the working body the Chairman admits applicants to take test examination.
15. Test examination consists of fifty questions, to answer which applicant is given one hour.
16. During examination no less than two commission members are present as observers. Applicant while passing test examination has no right to use means of mobile communication, and neither any reference, special or any other literature. In case if these requirements are violated the applicant will be withdrawn from the examination and is considered uncertified.
17. Upon completion of certification test examination applicant after getting acquainted with results, signs special blank of results table together with observers.
18. In case if applicant does not agree with results of his answers or did not sign table of results, the table of results is signed by the present commission members. Table of results signed by present commission members is the ground for recording test examination results.

V. CONSIDERATION OF LEGISLATION VIOLATION BY COURT RECEIVER

19. Ground for considering case on violating the legislation by court receiver is:
 - immediate reveal during implementation of controlling functions of the Committee and its territorial bodies in activity of court receiver sufficient data, indicating presence of legislation violation signs;
 - information received from the state bodies, local bodies of state power and other authorities, including applications from physical and legal entities, statements in mass media, containing information indicating to the presence of signs of legislation violation.
20. Responsible for preparing case materials for consideration by the commission is the working body of the commission. The court receiver in respect of which case is being considered, claim applicant, representative of corresponding territorial administration and other interested persons participate in the commission session.
21. Session participants are informed about the date, time and place of the session not later than three days prior to the beginning of the session. Absence of any indicated persons at the commission session does not interfere with consideration of the case on merits, provided these persons were notified accordingly.
22. Participants of the commission session are entitled to:
 - get acquainted with case materials and make notes from them;
 - give verbal and written explanations;
 - present evidences and participate in their investigation;
 - give questions to other participants of the case;
 - apply with petitions;
 - entertain other rights envisaged by this Provision.
23. Consideration of case on the session of the commission is implemented by the Chairman so that to ensure more complete and comprehensive analysis and evaluation of circumstances of committed violation.

24. Upon results of case consideration when establishing fact of violating the legislation the commission introduces a proposal to the Committee's chairman consideration on issuing an order on eliminating revealed violations or termination of court receiver's certificate with a corresponding application to the economic court with a petition on release of the court receiver from his duties.
25. Proposal of the commission developed upon consideration of violating the legislation by court receiver containing appropriate ground on the considered issue, documented as minutes of commission's session, signed by the Chairman and Secretary of the Commission.
26. Upon suggestions of the commission, the Committee may render a decision on suspension or termination of certificate, issue an order to the court receiver, and also to apply to the economic court on release of the court receiver from his duties.
Decision (order) of the Committee must be forwarded to the persons participating in the case within three days from the date of rendering decision (order) on the case.

VI. ISSUE OF ORDER

27. Order is subject to implementation within period established in it. Postal or other documents, evidencing about forwarding the order are filed in with case materials.
Report and evidences of eliminating violations revealed by the commission must be presented by the court receiver to the Committee (territorial body of the Committee) not later than five days from the date of expiry of the period of implementation of this order.
28. Failure to implement the order may be the ground for re-considering by the commission the case on violating the legislation by the court receiver.
29. Record and control over implementation of rendered decisions (orders) is carried out by the working body of the commission.

VII. SUSPENSION AND TERMINATION OF COURT RECEIVER'S CERTIFICATE

30. Committee is entitled to suspend certificate on the following grounds:
 - a) reveal, after receiving certificate, facts of garbling in documents earlier provided for certification;
 - b) failure to perform duties of court receiver participating in bankruptcy procedures;
 - c) failure to implement by court receiver orders or instructions of the Committee on eliminating revealed violations;
 - d) in case if facts of violating the legislation regulating court receivers' activity are revealed;
 - e) upon decision of the court.
31. Implementation of the requirements indicated in the decision (order) of the Committee on suspension of certificate within established period is the ground for renewal of court receiver's certificate by the Committee.
32. Committee takes decision on termination of court receivers certificate on the following grounds:
 - a) reveal, after receiving certificate, facts of garbling in documents earlier provided for certification;
 - b) revelation of facts of repeated (more than one) violation of the legislation;
 - c) failure to implement by the court receiver orders of the Committee on eliminating revealed violations;
 - d) non-performance of duties, assigned to court receiver according to the legislation on bankruptcy, and also if actions of the court receiver entailed losses of debtor or creditors;
 - e) upon application of court receiver;
 - f) upon decision of the court.
33. The Committee within three days period informs the court receiver in writing with reasoned ground about suspension or termination of court receiver's certificate, and in cases if the court receiver is performing a bankruptcy procedure, the economic court is also informed.

RELATED LEGISLATIONS

When court receiver's certificate is renewed the Committee also informs the economic court about that if the court receiver is performing a bankruptcy procedure.

34. Information about suspended and terminated certificates is recorded by the Committee in the Unified Register of court receivers.

VIII. PETITION TO THE ECONOMIC COURT ON DISMISSAL OF THE COURT RECEIVER FROM HIS DUTIES

35. The Committee files in an application to the economic court for the dismissal of the court receiver from his duties upon decision of the certification commission in the following cases :
- repeated violations or a single gross violation of legislation requirements on implementation of bankruptcy procedures;
 - if during the period established for eliminating revealed violations, commission's decision (order) has not been implemented;
 - when suspending certificate or termination of the certificate;
 - failure to perform or improper performance of duties assigned to court receiver according to the legislation of the Republic of Uzbekistan on bankruptcy, which entailed losses of the debtor or his creditors;
 - in case if circumstances are revealed which pursuant to Article 18 of the Law of the Republic of Uzbekistan "On Bankruptcy", prevent appointment of the person as court receiver;
 - in other cases, established by the legislation of the Republic of Uzbekistan.

IX. PROCEDURE OF APPEAL DECISIONS (ORDERS) OF CERTIFICATION COMMISSION

36. Court receiver who does not agree with decision (order) of the certification commission is entitled to apply to the court on adjudication of the decision (order) invalid in full or partially.

RESOLUTION
State Tax Committee of the Republic of Uzbekistan
State Committee on Demonopolisation, Support to Competition and
Entrepreneurship

In accordance with the Laws of the Republic of Uzbekistan “On Bankruptcy”, “On State Tax Service”, with the purpose to regulate the manner of voting at the creditor’s meetings of the representatives of state tax bodies, participating in bankruptcy cases, and ensuring the interests of the state as a creditor, The State Tax Committee of the Republic of Uzbekistan and State Committee of the Republic of Uzbekistan on Demonopolisation and Support of Competition and Entrepreneurship resolve:

1. To approve the attached Rule on the procedure of voting of the representatives of state tax bodies at the creditor’s meeting in bankruptcy processes.
2. To forward the present Resolution to the territorial administrations of the State Tax Committee and bodies of the State Demonopolisation Committee.

Chairman, State Tax Committee

B. Parpiev

Tashkent city

11 June, 2007 No. 2007-43

Acting Chairman, State Demonopolisation Committee

B. Ulashev

Tashkent city

11 June, 2007 No. 5

Annex to the Resolution of
the State Tax Committee and
State Committee of the Republic of Uzbekistan
on demonopolisation and support of competition and entrepreneurship
Dated 11 June 2007 No. 2007-43 and No. 5

RULE
On the procedure of voting of the state tax committee representatives at
the creditor’s meeting in bankruptcy processes

1. The present Rule is developed in accordance with the Laws of the Republic of Uzbekistan “On Bankruptcy”, “On State Tax Services” and determines the procedure of voting at the creditor’s meeting of the representatives of state tax bodies, participating in bankruptcy processes.
2. Bodies of the state tax service in accordance with the tasks assigned on them through their representatives shall participate at the creditor’s meeting in bankruptcy processes in mandatory manner.
3. A letter of attorney for participation at the creditor’s meeting in the name of the state tax service (hereafter – letter of attorney) shall be issued to their personnel giving the right to participate and vote on behalf of the state tax service at the creditor’s meeting.

RELATED LEGISLATIONS

A letter of Attorney shall be filled in the manner established by the legislation and shall contain:

- the name of the body of the state tax service;
- the date of issuing the letter of insurance;
- the surname, name and patronymic name of the representative and his/her position;
- the powers of the representative
- the validity period of the letter of attorney.

4. A letter of Attorney as a rule, issued in the name of the corresponding territorial body of state tax service.

5. A letter of Attorney grants to the representative the right on behalf of the state tax service to perform all actions, foreseen by the legislation on the bankruptcy, except the participation in the solving of the issues, connected with:

- the introduction of judicial rehabilitation or external management in respect of the debtor and extending their periods;
- the conclusion of an amicable agreement;
- sales of the property of the debtor by instalments;
- the determination of the sale price of the enterprise (property of the enterprise) placed on the tender or through the public offer;
- the determination of the price and terms of the rights of claims
- the issuance of additional shares of the debtor;
- the substitution of the debtor's assets;
- conclusion of the agreement on compensation.

Power of the representative on performing the each of the mentioned in the present clause actions shall be foreseen in the special letter of attorney, issued by the State Tax Committee of the Republic of Uzbekistan.

6. The State Tax Committee of the Republic of Uzbekistan issues a special letter of attorney to vote for the introduction of bankruptcy processes in the following cases:

- a) for the introduction of judicial rehabilitation or extension of judicial rehabilitation, subject to the existence of all following conditions:
 - the debtor's performance of obligations is ensured in accordance with the debt repayment schedule, and, the requirements of the legislation of the Republic of Uzbekistan are met;
 - the debt repayment schedule foresees discharging of the claims of the Republic of Uzbekistan in full not later than six months from the date of the introduction of judicial rehabilitation;
- b) for the introduction of external management or extension of the external management, subject to the existence of one of the following conditions:
 - the debtor in accordance with the Law is a township-forming enterprise or an enterprise equalled thereto;
 - the consent of the state body for bankruptcy proceedings is given to the introduction of external management or extension of the period of external management.
- c) for the conclusion of an amicable agreements, subject to the existence of the one of following conditions:
 - a draft of an amicable agreement foresees the debt repayment on the claims of the Republic of Uzbekistan for mandatory payments not later than 90 days from the date of coming into force of the amicable agreement;
 - payments of debts are postponed (divided, debts are restructured) in accordance with the legislation of the Republic of Uzbekistan.
- d) for the introduction of liquidation proceedings in case there is no ground for voting for the introduction of external management or judicial rehabilitation, in accordance with the present Rule.

RESOLUTION
of the Plenum of the Supreme Economic Court
of the Republic of Uzbekistan
27 January 2006 No. 142

On Certain Issues of Implementation
by Economic Courts of the Law of
the Republic of Uzbekistan
“On Bankruptcy”

In view of the issues arising in the judicial practice and in order to ensure a uniform approach towards the implementation of the Law of the Republic of Uzbekistan “On Bankruptcy” (hereinafter – the Law “On Bankruptcy”, the Law), the Plenum of the Supreme Economic Court of the Republic of Uzbekistan on the ground of Article 47 of the Law of the Republic of Uzbekistan “On Courts” decrees to give the following interpretations.

1. The Law “On Bankruptcy” shall be applied in respect of all legal entities (except for state-financed organisations) and individual entrepreneurs.

2. Applications and petitions filed within a bankruptcy case by the State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship, and also of its territorial bodies (hereinafter – the state body for bankruptcy proceedings) shall be considered within the shortest terms provided by the Law.

A petition of the state body for bankruptcy proceedings and of the state tax service and the prosecutor for the declaration of the debtor’s bankruptcy shall be accepted by the economic court without payment of state duty. If the petition is satisfied by the economic court, the cost of state duty shall be collected from the debtor.

If there are no documents confirming the payment of postal fees in the established manner and amount, the petition and documents attached thereto shall be subject to return on the ground of Item 5 of Paragraph 1 of Article 118 of the Code of Economic Procedure of the Republic of Uzbekistan (hereinafter – the Code of Economic Procedure).

3. The debtor shall be entitled to petition the economic court for the declaration of its bankruptcy, regardless of the maturity date of its monetary obligations and (or) mandatory payments, provided that there are circumstances evidencing that the debtor will be incapable to satisfy its monetary obligations and (or) to perform duties on mandatory payments within the period established by Article 4 of the Law.

4. The state tax service authority and another authorised body (authorised bodies which are responsible for collecting taxes, duties and other mandatory payments to the state budget of the Republic of Uzbekistan and to state special purpose funds⁶²) shall attach evidences of taking measures in accordance with the legislation to collect mandatory payments to its petition for the declaration of the debtor’s bankruptcy. The following (if any) shall be attached to the petition: a court decision (judgment) to recover indebtedness, execution document (writ of execution, payment demands accepted by the debtor, notarised document of execution and the like) or evidences confirming that the debtor has acknowledged creditor’s claims.

Orders which have been issued to collect payments from the debtor’s bank account, but not been executed by the bank due to the lack of its bank balance may be attached to the petition as evidence that the state tax service authority or another authorised body has taken measures to recover indebtedness.

⁶² The terms “special purpose funds” and “off-budget funds” can be used interchangeably.

RELATED LEGISLATIONS

In case the debtor has a property, the state tax service authority shall attach to its petition a decision of the economic court to collect arrears from the debtor's property.

5. According to Article 9 of the Law, failure of the debtor's manager, members of the liquidation commission or liquidator to file the debtor's petition with the economic court shall result in them being subsidiarily liable for monetary obligations and (or) mandatory payments of the debtor to creditors, which arise after the expiry of the period envisaged by Paragraph 3 of Article 8 of the Law. The subsidiary liability of the mentioned persons shall be considered by a court of general jurisdiction.

6. According to Article 10 of the Law, from the date when the economic court accepts a petition for the declaration of the debtor's bankruptcy, no creditors shall be entitled to apply to the debtor to satisfy their claims in the individual manner.

In case a creditor of the debtor files a lawsuit after the commencement of a bankruptcy case, based on its claim incurred before the petition is filed in the economic court, the lawsuit shall be refused for acceptance in accordance with Item 1 of Paragraph 1 of Article 117 of the Code of Economic Procedure.

If the commencement of a bankruptcy case in respect to a defendant is recognised in the consideration of court proceedings, these proceedings under the economic dispute shall terminate, according to Item 1 of Article 86 of the Code of Economic Procedure.

7. Unless the Law provides otherwise, when accepting a petition for the declaration of the debtor's bankruptcy, a judge should check documents evidencing that the legal entity debtor owes debts in the amount of not less than a five hundred-fold minimum wage, or the individual entrepreneur debtor owes debts in the amount of not less than a thirty-fold minimum wage, and that these debts are three month overdue. In case none of such documents has been presented, the petition shall be subject to return in accordance with Item 1 of Paragraph 1 of Article 118 of the Code of Economic Procedure.

8. In course of the preparation of a bankruptcy case for its consideration in a court session, a judge shall simultaneously decide whether the process of supervision shall be introduced (Articles 48 and 62 of the Law). Its introduction shall be stipulated in the economic court ruling to accept the petition and commence a bankruptcy case.

When a petition for the declaration of the debtor's bankruptcy is filed in the economic court against the legal entity debtor which has property, the petition shall indicate a candidate for an interim receiver. If the petition does not indicate it, the economic court shall request the petitioner or the state body for bankruptcy proceedings to propose a candidate.

The supervision process is applied to the legal entity debtor from the moment of the acceptance of the petition until the subsequent process, in order to preserve the debtor's property and to analyse the financial condition of the debtor. These functions shall be vested with the interim receiver.

These rules do not apply to cases of bankruptcy of the individual entrepreneur debtor and of the debtor under a streamlined bankruptcy process.

9. According to Article 48 of the Law, when preparing a bankruptcy case for court proceedings in the manner established by the Code of Economic Procedure with the specifics established by the Law, a judge shall carry out the following actions:

- to take provisional measures to preserve creditors' claims upon an application of a person participating in a bankruptcy case (Article 46 of the Law);
- to decide whether to appoint an expert examination (Article 48 of the Law);
- to consider applications and complaints of persons participating in a bankruptcy case (Article 59 of the Law);

- if the debtor (the interim receiver) raises objections against creditors' claims, to hold a court session in order to examine the validity of the lodged claims against the debtor (Article 70 of the Law).

10. A bankruptcy case shall be considered at the session of the economic court within three months from the day when the court renders a ruling to accept a petition for the declaration of the debtor's bankruptcy.

In exceptional instances, the consideration of a bankruptcy case may be extended by a chairman of the economic court for a period not exceeding two months in line with Article 49 of the Law.

11. According to Article 18 of the Law, persons who have higher education, working experience of not less than two year and also have passed a formal examination and hold a certificate in the prescribed form of the state body for bankruptcy proceedings may be appointed as court receivers.

The state body for bankruptcy proceedings keeps a unified register of court receivers and presents its copy to the Supreme Economic Court of the Republic of Uzbekistan.

When considering a matter of appointing a court receiver, the economic court must demand a certificate in the prescribed form, and attach its copy to the materials of a case.

12. Interested parties in relation to the debtor or its creditors; persons having outstanding conviction or overturned conviction; individual entrepreneurs, in relation to whom a bankruptcy process has been introduced; persons who have earlier caused losses to the debtor or creditors while acting as court receiver and have not compensated for such losses; persons who are ineligible to manage affairs and (or) property of other persons (disqualified persons); may not be appointed as court receivers.

The economic court shall be entitled to refuse to appoint a proposed candidate as court receiver or to dismiss a court receiver from his/her duties, on the above specified grounds.

The economic court must refuse to appoint as court receiver a proposed candidate who is an official of the legal entity debtor as of the date of the commencement of a bankruptcy case, and also one who was dismissed from such position within one year preceding the commencement of a bankruptcy case. The following persons shall be considered as officials of the legal entity debtor: its manager; members of its supervisory board and of its collegial executive body; its chief accountant (accountant).

13. Repeated breaches or a single gross breach of the legislation, and other instances envisaged by the Law, shall constitute grounds for dismissing a court receiver from his/her duties.

The dismissal of a court receiver from his/her duties for his/her failure to perform duties or for his/her improper performance shall be considered at the court session. The court receiver and other persons participating in a bankruptcy case shall be notified of the time and place of the economic court session. This court session may consider an appointment of a new court receiver, and also the criminal prosecution, any administrative liability and (or) material liability of the former court receiver dismissed from his/her duties.

A court ruling to dismiss a court receiver and to appoint a new court receiver shall be subject to immediate execution. Its execution shall not be suspended by an appeal (a protest).

14. If unlawful conduct (omission) of a court receiver has caused damage to creditors or to the debtor's property, creditors and the debtor may file a lawsuit for damages with a court of general jurisdiction.

RELATED LEGISLATIONS

15. The amount of remuneration of and manner of its payment to a court receiver shall be established by the creditors' meeting and approved by a ruling or decision of the economic court.

In defining the amount of remuneration of a court receiver, the value of the debtor's property and the workload shall be taken into consideration. The amount of remuneration of a court receiver may not be less than that of the former manager of the debtor. Additional remuneration may be established for a court receiver by a resolution of the creditors' meeting, to be paid as per the results of his/her activity.

Remuneration and additional remuneration shall be paid out of the debtor's property, unless otherwise is provided by an agreement with creditors.

16. In accordance with Paragraph 1 of Article 19 of the Law and Paragraph 4 of Article 91 of the Code of Economic Procedure, lawsuits and applications filed by court receivers in course of bankruptcy processes shall be accepted without advance payment of state duty and postal expenses.

17. Under Items 5 and 6 of Paragraph 1 of Article 25 of the Law, the state body for bankruptcy proceedings shall supervise bankruptcy processes of enterprises the charter capitals of which partially or wholly belongs to the state and activities of court receivers, and apply to the economic court for the dismissal of court receivers from their duties when repeated breaches or a single gross breach of the legislation has been revealed in their activities.

According to Items 2, 3, 4 and 5 of Article 26 of the Law, territorial administrations of the state body for bankruptcy proceedings shall, upon an instruction of the state body for bankruptcy proceedings, apply to the economic court for the commencement of a bankruptcy case with respect to enterprises the charter capitals of which partially or wholly belongs to the state and (or) which are indebted to the Republic of Uzbekistan on monetary obligations; and also supervise bankruptcy processes of enterprises the charter capitals of which partially or wholly belongs to the state; monitor bankruptcy processes of enterprises; supervise activities of court receivers; suggest the state body for bankruptcy proceedings that a court receiver shall be dismissed from his/her duties in the established manner.

18. Until the Cabinet of Ministers of the Republic of Uzbekistan defines an official gazette, necessary information stipulated by Articles 52 and 53 of the Law shall be published through republic-wide and region-wide issues.

19. For the purpose of holding the first meeting of creditors, the amount of monetary obligations and mandatory payments in the creditors' register shall be determined as of the date when the court accepts a petition for the declaration of the debtor's bankruptcy. Creditors shall be included in the creditors' register, if the debtor's obligations to them arise before the economic court accepts the petition and mature before the relevant bankruptcy process is introduced.

Creditors with claims which arise after the economic court accepts the petition shall not be included in the creditors' register, and their claims shall be fulfilled preferentially, regardless of the order of priority of other claims. In this case, claims for obligations shall be considered to arise at the time of the entering into of a contract or the occurrence of an event which incurs a liability of the debtor to conduct certain actions (for example, to pass over an item, to pay money, etc.).

Claims recognised by the debtor and (or) by the court receiver, or confirmed by judicial acts in legal force (decision, resolution, judgment, ruling, order of court) and claims established by acts of state bodies shall be included in the creditors' register.

Apart from the principal debt, claims for penalties (fine, late payment interest) and other economic (financial) sanctions (interests) confirmed by the abovementioned acts shall be included in the creditors' register.

The amount of monetary obligations and mandatory payments which arise before a bankruptcy case is commenced, but mature after the economic court accepts the petition shall be determined as of the date of the introduction of the relevant bankruptcy process (judicial rehabilitation or external management).

In case the debtor is declared bankrupt and liquidation proceedings are initiated, the amount of creditors' claims for monetary obligations and (or) mandatory payments shall be determined as of the date of the initiation of liquidation proceedings in any case, regardless of their maturity date, except for claims mentioned in Paragraph 1 of Article 134 of the Law.

When the debtor has debts in foreign currency, unless a contract made between creditors and the debtor stipulates otherwise, the amount of creditors' claims for such debts to be included in the creditors' register shall be determined at the official currency rate as of the date when the economic court accepts the petition, for the purpose of holding the first meeting; and at the official currency rate as of the date when a bankruptcy process is introduced in course of subsequent processes.

Monetary obligations and mandatory payments which arise after the economic court accepts the petition and also those which mature after the relevant bankruptcy process is introduced shall be considered to be current payments.

20. Bankruptcy proceedings may be suspended, if there are grounds mentioned in Articles 82 and 83 of the Code of Economic Procedure.

During the suspension of bankruptcy proceedings, the economic court has no right to issue judicial acts stipulated in Article 50 of the Law. In this case, a bankruptcy process already introduced by the economic court shall continue. During this period, a court receiver shall retain his/her right for remuneration for his/her service.

21. Judicial acts issued within bankruptcy cases may be subject to revision in the manner established by the Code of Economic Procedure with the specifics envisaged by the Law.

Rulings which are rendered by the economic court within the framework of a bankruptcy case, but are not envisaged by the Code of Economic Procedure may be appealed (protested) only in the cases and manner envisaged by the Law, except for rulings mentioned in Article 50, Paragraph 2 of Article 91 and Paragraph 4 of Article 124 of the Law, which are subject to appeal (protest) in the manner established by the Code of Economic Procedure.

In particular, under Article 59 of the Law, rulings of the economic court rendered as a result of the consideration of applications, appeals (petitions) and controversies in a bankruptcy case may be appealed (protested) in the manner and the period established by the Law. Appeals against (protests to) the mentioned rulings of the economic court shall be filed within ten days from the date of their rendering. Upon considering appeals (protests), the court of appeal instance shall render a ruling, which may not be subject to revision in cassational and supervisory procedure (Article 60 of the Law).

A ruling of the economic court to recognise resolutions of the creditors' meetings to be invalid (Paragraph 5 of Article 13 of the Law) shall be appealable (subject to protest) in the same manner.

Rulings to appoint (dismiss, replace) court receivers shall be appealable (subject to protest) in the manner established by the Law. In a case where a rehabilitation manager or external manager is appointed concurrently with the introduction of judicial rehabilitation or external management, and a liquidation manager is appointed concurrently with the declaration of the debtor's bankruptcy and initiation of liquidation proceedings, and their appointment is mentioned in the ruling to introduce judicial rehabilitation or external management, or in the decision to declare the debtor bankrupt, the judicial act (ruling or decision) may be appealed by persons participating in a bankruptcy case, or protested by the prosecutor as concerns its part regarding the appointment of the court receiver

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22. According to Article 50 of the Law, decisions and rulings of the economic court rendered in a bankruptcy case shall be subject to immediate execution. However, this does not mean that judicial acts shall enter into legal force at the moment of their rendering. They may be appealed (protested) in the manner established by the Code of Economic Procedure.

23. According to Article 54 of the Law, a decision of the economic court to refuse to declare the debtor bankrupt shall be rendered in case of: failure to verify indications of bankruptcy, that is, when claims against the debtor do not sum to the amount required by the Law; satisfaction of lodged creditors' claims before the court renders a decision on a bankruptcy case; identification of false bankruptcy.

24. Under Article 56 of the Law, bankruptcy proceedings shall terminate by a ruling of the economic court in case of the restoration of the debtor's financial ability in the course of judicial rehabilitation or external management; the conclusion of an amicable agreement and its approval by the economic court; the withdrawal by all creditors participating in a bankruptcy case of their lodged claims; the satisfaction of all creditors' claims included in the creditors' register in the course of any bankruptcy process.

In case the state body for bankruptcy proceedings decides that it is reasonable to carry out prejudicial rehabilitation against an enterprise the charter capital of which partially or wholly belongs to the state, and creditors agree to prejudicial rehabilitation, the economic court, in line with Paragraph 3 of Article 61 of the Law, shall render a ruling to terminate bankruptcy proceedings.

Where the economic court renders a decision to declare the debtor bankrupt or the debtor is liquidated and excluded from the state register, bankruptcy proceedings shall terminate in line with Items 2 and 4 of Article 86 of the Code of Economic Procedure.

25. In case claims of all creditors included in the creditors' register are satisfied in the course of liquidation proceedings and it is possible for the debtor to proceed its economic activity, the economic court shall, upon considering a report presented by the liquidation manager, render a ruling to terminate bankruptcy proceedings, which shall state that the court decision to declare the debtor bankrupt shall not be subject to execution.

26. Claims of court receivers for the invalidation of a transaction made by the debtor and also for the application of consequences of its invalidity shall be considered in the general manner established by the Code of Economic Procedure or by the Code of Civil Procedure of the Republic of Uzbekistan, outside the framework of a bankruptcy case.

27. Under Article 59 of the Law, the economic court shall consider controversies between court receivers and the representative of the debtor's employees regarding the amount and composition of claims for wages and severance payments to individuals working under a labour contract (except in the instances of the termination of labour contracts).

28. According to Paragraph 1 of Article 91 of the Law, if the real possibility of restoring the debtor's financial ability is determined, external management shall be introduced by the economic court by virtue of an application of the creditors' meeting or an application of the state body for bankruptcy proceedings in case of enterprises the charter capital of which partially or wholly belongs to the state.

External management may be introduced for a period from twelve (at least) up to twenty-four months. The total period for judicial rehabilitation and external management shall not exceed thirty-six months. If judicial rehabilitation has not been applied with respect to the debtor, the total period of external management shall not be more than twenty-four months (with the exception of township-forming enterprises and enterprises equalled to them).

The period set to settle with creditors in line with Paragraph 2 of Article 119 of the Law shall not be included in the period of external management.

The period of external management may be reduced or extended within the terms stipulated by Paragraph 3 of Article 91 of the Law, by virtue of an application of the creditors' meeting or a decision of the state body for bankruptcy proceedings or an application of the external manager. The reduction or extension of the period of external management shall be considered by the economic court, which shall notify the time and place of the court session to persons participating in a case.

29. According to Article 93 of the Law, the moratorium shall be applied to claims for monetary obligations and (or) mandatory payments which mature before the introduction of external management.

The moratorium shall not be applied to claims for monetary obligations and (or) mandatory payments which mature after the introduction of external management. These claims shall be satisfied in the course of external management in the order established by Article 784 of the Civil Code of the Republic of Uzbekistan (Paragraph 5 of Article 93 of the Law).

30. According to Article 124 of the Law, the period of liquidation proceedings may not exceed one year. In line with this, a decision of the economic court to declare the debtor bankrupt and initiate liquidation proceedings shall stipulate the concrete period for the liquidation manager to present a report of the results of liquidation proceedings.

This period may be extended for a period not exceeding one year in exceptional cases, upon an application of a person participating in a bankruptcy case, the creditors' meeting, local bodies of state power or the state body for bankruptcy proceedings or upon the initiative of the economic court.

31. Conditions of an amicable agreement entered into according to the Law shall apply only to those claims included in the creditors' register as of the date of the creditors' meeting which passes a resolution entering into an amicable agreement.

Creditors whose claims are not included in the creditors' register shall be entitled to make their claims in the general manner after the approval of an amicable agreement and the termination of bankruptcy proceedings, notwithstanding conditions of an amicable agreement.

32. To approve an amicable agreement, the economic court shall render a ruling, where the termination of bankruptcy proceedings shall be indicated.

An amicable agreement shall be signed by the interim receiver on behalf of the debtor in the supervision process, in case the authorities of the management body of the legal entity debtor have been terminated by the economic court and entrusted to the interim receiver.

In case an amicable agreement is entered into in the course of liquidation proceedings, the economic court shall specify in its ruling that a decision to declare the debtor bankrupt and initiate liquidation proceedings shall not be subject to execution.

Overdue wages shall be a ground that the economic court refuses to approve an amicable agreement.

In case the debtor does not fulfil conditions of an amicable agreement, creditors shall be entitled to file a lawsuit in the court of general jurisdiction or in the economic court as per the jurisdiction. In this case, the amount of creditors' claims shall be based on an amicable agreement.

33. Providing financial support to the debtor by way of postponing the due date, making instalment payment and (or) reducing debts shall be considered as a subject of an amicable agreement,

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and shall not be considered as a measure to recover the debtor's financial situation in the course of other bankruptcy processes (except for financial support by way of reducing debts).

34. Until the Cabinet of Minister of the Republic of Uzbekistan determines the procedure to identify enterprises as township-forming enterprises or enterprises equalled thereto, the economic courts, when considering a petition for the declaration of the debtor's bankruptcy as per Section 1 of Chapter IX of the Law, need to check the availability of one of the following documents:

- a certificate submitted by the State Committee of the Republic of Uzbekistan for Statistics or by its territorial bodies, which confirms that the average annual number of employees of a enterprise is not less than three thousand;
- a certificate submitted by the State Committee of the Republic of Uzbekistan for Statistics or by its territorial bodies, which confirms that employees of a enterprise (inclusive of members of their families) comprise not less than a half of the population in the area;
- a conclusion of the Ministry of Defence of the Republic of Uzbekistan, which confirms that a enterprise is engaged in the state defence and security;
- a conclusion of the State Committee of the Republic of Uzbekistan on Demonopolisation, Support of Competition and Entrepreneurship or of its territorial bodies that a legal entity is in the state register of subjects in a natural monopoly industry of commodity markets, as per the main type of their activity.

35. In accepting a petition for the declaration of the debtor's bankruptcy under a streamlined bankruptcy process (with respect of the legal entity debtor in liquidation or the absent debtor), the amount of the debtor's debts (accounts payable) shall not be taken into consideration.

In case of the petition under Paragraph 2 of Article 185 of the Law, a resolution on liquidation of the debtor shall be attached to the petition.

In case of the petition against the absent debtor, evidences proving the absence of the individual entrepreneur debtor or the manager of the legal entity debtor, and the impossibility of ascertaining their whereabouts shall be presented to the economic court. The following may serve as evidences: a certificate issued by an address bureau that he/she has been moved from the address or left its region; an act made in the presence of representatives of citizen's self-government organisations, home management associations to show that he/she does not reside at the registered place; documents proving his/her death or imprisonment.

The absent debtor shall mean not only the fact of the absence of a manager, but also the absence of property of a business subject. This circumstance may be proved by an act about the place of location (postal address) of the debtor made in the presence of representatives of citizen's self-government organisations, home management associations of owners, an owner of residential or non-residential buildings and (or) court receivers, or by a resolution of an execution officer that execution documents are returned due to the absence of property of the debtor.

In case of the petition against the legal entity debtor in liquidation, a candidate for a liquidation manager shall be proposed by the petitioner.

36. According to Article 185 of the Law, if in respect of a legal entity, a decision on liquidation has been rendered as it is engaged in no financial and economic activities and (or) could not form its charter capital within the period established by the legislation, and the value of its property is insufficient to satisfy creditors' claims, the legal entity shall be liquidated in the manner envisaged by the Law. If the above circumstances are revealed, the liquidation commission (liquidator) shall be obliged to petition the economic court for the declaration of bankruptcy of the legal entity in liquidation or to the state taxation service authorities for appropriate measures envisaged by the legislation.

According to Paragraph 2 of the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On the procedure for liquidation of enterprises which do not carry out financial and

economic activity or have failed to form their charter capital within the term fixed in the law” dated 3 July 1999 No.327, in case of insufficiency of assets and property of enterprises, engaged in no financial or economic activity, or failing to form their charter capital within the period set by the legislation, and thus being in liquidation, their debts under mandatory payments to the budget and off-budget funds shall be written off as per the decision of the Governmental Commission on Improving Mechanism of Settlements and Strengthening Discipline of Payments to Budget by virtue of an application of the State Taxation Committee of the Republic of Uzbekistan.

In this connection, in case the state taxation service authority or the liquidation commission petitions for the declaration of bankruptcy of an enterprise which has already entered liquidation by virtue of a decision of the economic court as per the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 3 July 1999 No. 327, and it is revealed in the course of liquidation that the enterprise is indebted only to the budget and off-budget funds, this petition shall be subject to refusal of acceptance according to Item 1 of Paragraph 1 of Article 117 of the Code of Economic Procedure.

37. After the individual entrepreneur debtor has completed settlements with creditors and fully discharged all creditors’ claims, the economic court shall render a ruling to complete liquidation proceedings.

In case property of the individual entrepreneur debtor is insufficient to satisfy all creditors’ claims, an execution officer shall return an execution document over the debtor’s property in accordance with rules set by Articles 37 and 39 of the Law of the Republic of Uzbekistan "On Execution of the Judicial Acts and Acts of Other Authorities". After considering documents on the returned execution document, the economic court shall render a ruling to terminate liquidation proceedings.

Where a liquidation manager is appointed by the economic court in line with Paragraph 2 of Article 181 of the Law, the completion of liquidation proceedings shall follow the rules set by Articles 142 and 144 of the Law.

38. Where a commercial bank is a creditor with claims the amount of which is 70 percent or more of the total amount of claims included in the creditor’s register in case of the declaration of the debtor’s bankruptcy and initiation of liquidation proceedings, this bank-creditor shall be entitled to apply to the economic court for the transfer of title over the enterprise (property) of the debtor to itself, except for property subject to security, according to Paragraph 4 of the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On measures for increasing the efficiency of restructuring and financial rehabilitation of economically insolvent enterprises” dated 18 April 2003 No.188.

In this case, if the bank’s claims exceed or are equal to the value of the enterprise, evaluated as per Article 131 of the Law, the transfer of title over the enterprise to the bank shall be on condition that the bank shall transfer to the debtor’s single account the sufficient amount to cover expenses to be preferentially paid regardless of the order of priority of other claims as provided in Paragraph 1 of Article 134 of the Law, and pay wages of the debtor’s employees.

In case the sum of the bank’s claims, wages, and the abovementioned expenses, determined as per Paragraph 1 of Article 134 of the Law, is less than the evaluated value of the debtor enterprise, the transfer of title over the enterprise to the bank shall be on condition that the bank shall transfer to the debtor’s single account the above balance amount and the amount to cover the abovementioned expenses and wages. Payments shall be made by the liquidation manager: firstly, to preferential expenses mentioned above and wages; and secondly, to claims in the manner stipulated in Article 134 of the Law.

The debtor’s property shall be transferred on the basis of a ruling of the economic court by the court receiver to the commercial bank’s ownership upon the bank’s fulfilment of the abovementioned conditions.

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39. General provisions of the Law shall be applied in the course of the consideration of a bankruptcy case of certain categories of legal entities, individual entrepreneurs, legal entities in liquidation and absent debtors, unless otherwise provided by the legislation.

40. According to Article 125 of the Law, on the date when the economic court renders a decision to declare the debtor bankrupt and initiate liquidation proceedings, the execution of execution documents shall terminate, and execution documents shall be subject to transfer from execution officers to the liquidation manager in the manner established by the legislation. Execution documents to collect judicial expenses shall be sent by the economic court to the liquidation manager.

41. A report on the results of the conducted liquidation proceedings, provided by the liquidation manager according to Article 144 of the Law shall be considered by the economic court, if necessary at the court session complying with the requirements set in Paragraph 1 of Article 128 of the Code of Economic Procedure. If the liquidation manager's report is found grounded, the economic court shall render a ruling to complete liquidation proceedings; if the report is found ungrounded, it shall be subject to return.

42. In case a decision of the economic court to declare the legal entity debtor bankrupt is cancelled and the case is sent for a new consideration to the court of first instance, the authorities of the debtor's management body shall be restored. In this situation, the liquidation manager shall, within three days from the moment of the restoration of these authorities, ensure the transfer of accounting and other documentation, stamps and punches, material and other valuables.

43. The economic court shall be obliged, on individual circumstances, to consider bankruptcy cases in a session outside the court. In this case, it is necessary, in collaboration with the state body for bankruptcy proceedings, the state taxation service authorities, the prosecutor and other law enforcement bodies, to give special attention and make sure to identify reasons which have incurred large debts that have brought enterprises to economic insolvency and unprofitable activities, and to pursue responsibilities of guilty officials who have tolerated mismanagement, squander of money assets or their no-purpose use.

44. The following shall be found stale: Resolutions of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan "On the results of the analysis and summary of judicial practice on bankruptcy cases considered by the economic court of the republic" dated 1 March 1996 No. 55, "On certain issues concerning the application by the economic court of the Law of the Republic of Uzbekistan "On Bankruptcy" (restated version)" dated 16 July 1999 No. 78, "On certain matters connected with the entry into force of the Law of the Republic of Uzbekistan "On Bankruptcy" dated 20 February 2004 No. 112.

**Chairman, the Supreme Economic Court
A. Ishmetov**

**Plenum Secretary, the Supreme Economic Court, Judge
S. Shadieva**