

## **Chapter II The Moratorium on Debt Repayment**

### **Section 1. Granting of Deferment of Payment and its Consequences**

#### Article 212

Debtors who are unable, or expect that they will be unable, to continue paying those debts which have matured and must be paid, may request a moratorium on the repayment of their debts, with the general intention of presenting a reconciliation proposal that includes an offer to pay all or part of their debts to unsecured creditors.

#### Article 213

1. The petition for a moratorium on debt repayment referred to in Article 212 must be filed by the debtor to the Court as referred to in Article 2, signed by both the debtor and his legal advisor, and accompanied by the list referred to in Article 93, and any other appropriate documentary evidence.
2. The reconciliation proposal referred to in Article 212 may be attached to the aforementioned petition.
3. The provisions referred to in Article 4 paragraph (1), paragraph (2), paragraph (3) and paragraph (4) and also Article 6 paragraph (5) shall apply *mutatis mutandis* as the procedure(s) for filing a petition for a moratorium on debt repayment referred to in paragraph (1).

#### Article 214

1. The petition and its attachments must be made available at the Office of the Clerk of the Court, so that they may be perused free of charge by the public, in particular by the parties concerned.
2. The court must immediately grant temporary moratorium on debt repayment and must appoint a Supervising Judge from among the Court Judges, and appoint 1 (one) or more trustees who, together with the debtor, shall manage the debtor's assets.
3. Immediately after the decision on the temporary moratorium on debt repayment is stipulated, the Court, via the trustee, must summon the debtor and known creditors by official registered letter or courier, to appear at the session which shall be held no later than the 45th (forty fifth) day after the decision on the provisional moratorium on debt repayment was stipulated.

#### Article 215

1. The trustee must immediately announce the decision on the provisional moratorium on debt repayment in the Official Gazette and in 1 (one) or more daily newspapers designated by the Supervising Judge, and such announcement must also contain an invitation to attend the session which shall be in the form of a judges' deliberation meeting, together with the date, venue and time of the said session, the name of the Supervising Judge and the name and address of the trustee.
2. If the reconciliation proposal is attached to the petition, such matter must be mentioned in the said announcement, and the announcement must be made no less than 21 (twenty one) days before the proposed date of the session.

#### Article 216

The decision on the temporary moratorium on debt repayment shall be valid from the date such moratorium on debt repayments is pronounced and shall continue until the date the meeting intended in Article 215 is held.

#### Article 217

1. On the day of the session, the Court must hear the debtor, Supervising Judge, trustee and creditors who are present or their representatives appointed by Power of Attorney, and each and every creditor shall be entitled to be present at such session, notwithstanding that those concerned have not received a summons thereto.
2. If the reconciliation proposal is attached to the petition for temporary moratorium on debt repayment as intended in Article 213, or it has been submitted by the debtor prior to the session, the vote regarding the reconciliation proposal may take place if the provisions in Article 252 have been fulfilled.
3. In the event that the provisions referred to in paragraph (2) have not been fulfilled, or if the unsecured creditors have not yet voted on the reconciliation proposal, then at the request of the debtor the creditors must decide to grant or refuse a permanent moratorium on debt repayment, with the intention of allowing the debtor, trustee and creditors to consider and agree upon reconciliation in a meeting or session which shall be held subsequently.
4. If the permanent moratorium on debt repayment referred to in paragraph (3) is approved, such moratorium and the extension thereof may not exceed 270 (two hundred and seventy) days from when the decision on the temporary moratorium on debt repayment is stipulated.
5. The granting of a permanent moratorium on debt repayment and the extension thereof shall be determined by the Court on the basis of the approval of more than 1/2 (one half) of the unsecured creditors whose rights are admitted or provisionally admitted present who represent at least 2/3 (two thirds) of all claims admitted or provisionally admitted of the unsecured creditors or their proxies present at such session, and any dispute which arises between the trustee and the creditors concerning the voting rights of the creditors must be decided by the Supervising Judge.
6. If the petition for declaration of bankruptcy and the petition for moratorium on debt repayment are heard at the same time, then the petition for moratorium on debt repayment must be decided first.

#### Article 217A

1. If the temporary moratorium on debt repayment is terminated because the unsecured creditors do not agree to the granting of a permanent moratorium on debt repayment or an extension thereof has been granted but as of the end of the period referred to in Article 217 paragraph (4) an agreement has not been reached regarding the reconciliation proposal, then on the final day the trustee must inform the Court, which must declare the Debtor bankrupt no later than on the next day.
2. the trustee must announce matters referred to in paragraph (1) in the daily newspapers wherein the petition for moratorium on debt repayment was announced on the basis of

Article 215.

Article 217B

1. The Court must appoint a Creditors' Committee if: a. the petition for the moratorium on debt repayment includes debts of a substantial amount or of a complex nature; or b. such appointment is desired by unsecured creditors representing at least 1/2 (one half) of all admitted claims.

2. In the implementation of its functions, the trustee must accept and consider the recommendations of the Creditors' Committee.

Article 217C

1. The Clerk of the Court must make a general list which includes, for each moratorium on debt repayment:

a. the date when the temporary moratorium on debt repayment is granted, and the date when the permanent moratorium on debt repayment is granted, as well as any extensions thereof;

b. The citation of the Court decision stipulating the moratorium on debt repayment, whether temporary or permanent in nature, and extensions thereof;

c. the name of the Supervising Judge and the trustee appointed;

d. a summary of the content of the reconciliation and the ratification of such reconciliation by the Court;

e. the conclusion of the reconciliation.

2. Further provisions regarding the form and content of the said general list shall be stipulated by the Supreme Court.

3. The Clerk of the Court must make the general list available for perusal by any individual free of charge.

Article 217D

1. If requested by the Trustee, the Supervising Judge may hear witnesses or order the hearing of experts to explain the circumstances surrounding the moratorium on debt repayment, and such witnesses shall be summoned in accordance with the provisions of the law of civil procedure.

2. In the event that witnesses do not appear or refuse to take the oath or give testimony, then the provisions of the law of civil procedure shall apply in respect of such matter.

3. Husbands/wives or former husbands/wives, their children and descendants, and the parents and grandparents of the debtor may exercise their rights to be exempted from the obligation to bear witness.

Article 217E

1. A trustee shall be appointed in the decision concerning the temporary moratorium on debt repayment as intended in Article 214.

2. The trustee appointed as intended in paragraph (1) must be independent and have no conflict of interest with the debtor or the creditors.

3. Those who may become trustees as intended in paragraph (1), shall be:

a. individuals or civil partnerships domiciled in Indonesia, who possess special expertise needed in respect of managing the debtor's assets;

b. registered with the Ministry of Justice;

4. The trustee shall be held personally responsible if any fault or negligence in the implementation of his management duties causes loss to the debtor's assets.

5. The amount of the expenses for the management of the debtor's assets shall also be included in the decision on the original moratorium on debt repayment, including the fees for the services of the trustee based on guidelines stipulated by the Ministry of Justice.

#### Article 220

1. The decision on the permanent deferment of payment may be carried out although there is a filing for an appeal application against it. (F. 2172, 221)

2. The decision shall be advertised in the manner described in Article 215.

#### Article 222

1. If more than one trustee is appointed, then in order to execute actions which are legal and binding, the trustees require the agreement of more than 1/2 (one half) of the trustees.

2. If there are the same number in favor as against, the action as intended in paragraph (1) must obtain the approval of the Supervising Judge.

3. The trustees appointed as intended in Article 214 paragraph (2) may be replaced or supplemented by the Supervising Judge at the request of unsecured creditors, and such request may only be submitted if it is based on the agreement of such creditors in a creditors' meeting by majority vote.

#### Article 223

1. In the decision granting the moratorium on debt repayment the Court may include any provisions deemed necessary for the interests of the creditors.

2. The Supervising Judge may conduct the matter intended in paragraph (1) at any time during the moratorium on debt repayment, on the basis of:

a. the initiative of the Supervising Judge;

b. the request of the trustee; or

c. the request of one or more creditors.

#### Article 224

1. If the moratorium on debt repayment has been granted, the Supervising Judge may appoint one or more experts to conduct an investigation and compile a report concerning the condition of the assets of the debtor within a specified period and extension thereof which shall be stipulated by the Supervising Judge.

2. The experts' report as intended in paragraph (1) must include an opinion accompanied by the full reasons thereof concerning the condition of the assets of the debtor and the documents surrendered by the debtor as well as the willingness or ability of the debtor to fulfill his obligations to the creditors, and such report must, to the extent possible, indicate

the measures that must be taken in order to be able to meet the demands of the creditors.

3. The experts must make the report as intended in paragraph (2) available at the office of the Clerk of the Court so that it may be perused by the public free of charge, and no fee shall be charged for making such report available.

4. The provisions as intended in Article 222 shall also apply to the experts.

#### Article 225

1. The trustee must report on the condition of the debtor's assets every 3 (three) months, and such report must also be made available at the office of the Clerk of the Court as intended in Article 224 paragraph (3).

2. The reporting period as meant in paragraph (1) may be extended by the Supervising Judge.

#### Article 226

1. During the moratorium on debt repayment, the debtor may not, without the authority of the trustee, take any management actions or transfer the rights to any item that is part of his assets, and if the debtor violates this provision, the trustee shall be entitled to take any and all measures necessary to ensure that the debtor's assets are not depleted because of such actions of the debtor.

2. Those of the debtor's obligations undertaken without the authority of the trustee, and which arise after the commencement of the moratorium on debt repayment, may only be charged to the debtor's assets insofar as such matter benefits the debtor's assets.

3. Upon the authority of the trustee, the debtor may obtain loans from a third party only in respect of increasing the value of the debtor's assets.

4. If a collateral is required to obtain the loan as intended in paragraph (3), the debtor may encumber his assets by security right, pledge or collateral right on other property, provided such loan has the approval of the Supervising Judge.

5. The encumbrance of the bankrupt estate by security right, pledge or collateral right on other property as intended in paragraph (3) may only be executed on the part of the debtor's assets which have not yet been made a cash security.

#### Article 227

1. If the debtor is married and there is any community property, then the debtor's assets shall include any assets and encumbrances of such community property. (Bw. 119, etc. 155, etc., 164, etc.)

2. Articles 60 and 61 shall be applicable accordingly.

#### Article 228

1. During the moratorium on debt repayment, the debtor may not be forced to pay his debts as intended in Article 231, and any acts of execution that have been commenced in order to obtain the settlement of debts, must be postponed.

2. Unless an earlier date is stipulated by the Court at the request of the trustee, all confiscations of goods already applied shall terminate upon the determination of the permanent moratorium on debt repayment, or after the approval of the reconciliation has become final, and at the request of the trustee or the Supervising Judge, the Chairman of

the Court must, if necessary, stipulate the removal of the confiscation applied upon goods included in the debtor's assets.

3. The provisions as intended in paragraph (1) and paragraph (2) shall also apply in respect of execution and confiscation which have already commenced on goods which are not encumbered as collateral even though such execution and confiscation are related to the creditors' claims and are secured by security right, pledge or collateral right on other property or by rights which must be privileged in connection with certain assets based on the Law.

#### Article 229

1. The deferment of payment shall not cease a case which has been commenced for examination or hinder the filing of a new case.

2. However, the examining magistrate may postpone the decision of the matter on lawsuits that solely regard any claim for payment of a claim on debt which has been acknowledged by the debtor itself, but in which the creditor has no interest in obtaining a decision to carry out his rights against any third parties after the acknowledgment is recorded, until after the end of the deferment of payment.

3. The debtor may not become a plaintiff nor defendant in any case which deals with the rights and obligations on its assets, without the assistance of the trustees. (F. 226, 228, 230, etc.)

#### Article 230

1. With due attention to the provisions of Article 231A, a moratorium on debt repayments shall not apply in respect of:

a. claims guaranteed by pledge, security rights, collateral right on other property, or privileged claims in respect of certain goods belonging to the debtor;

b. claims for payment for maintenance, supervision or training that must be paid, and the Supervising Judge must determine the amount of such claims collected prior to the moratorium on debt repayment which do not constitute claims with the right to be prioritized.

2. In the event that assets which are made as collateral by pledge, security rights and collateral rights to other assets are insufficient to secure claims, then the creditors secured by such collateral shall acquire rights as unsecured creditors, including the right to vote while the moratorium on debt repayment is in effect.

#### Article 231

Payment of all other debts existing prior to the commencement of this deferment of payment may, for as long as this deferment, shall not be carried out other than be based on pro rata of the claims on debt of all creditors, without prejudice to Article 171 paragraph 3. (F. 216, 221, 228)

#### Article 231A

The provision intended in Article 56A shall apply *mutatis mutandis* in respect of the exercise of creditors' rights as intended in Article 56 paragraph (1) and privileged creditors, with the provision that the postponement shall apply while the moratorium on debt

repayment is in effect.

#### Article 232

1. Whoever has any debts or claims on debts against the debtor based on the assets of the debtor may have a calculation on his debt and claim on debt for its management if the debts or the claims on debt existed prior to the commencement of the deferment of payment. (F. 216, 233; Bw. 1425, etc.)
2. The claims against the debtor will, if necessary, be settled based on the provisions stipulated in Articles 258 and 259.

#### Article 233

1. Anyone who has taken over a debt or a claim on debt from the assets prior to the commencement of the deferment of payment cannot request such a calculation if he has not acted in good faith when he took over. (F. 53, 203, 232)
2. There will be no calculation on debts and claims on debt the take-over of which occurred after the deferment of the payment.
3. Articles 54 and 55 shall be applicable.

#### Article 234

1. In the event that when the decision to impose a moratorium on debt repayment is stipulated there is a mutual agreement which has yet to be, or has only partly been fulfilled, then the party with whom the debtor enters into the agreement may request the trustee to provide assurance of the continued implementation of the agreement concerned within a period of time agreed on by the trustee and such party.
2. If no agreement is reached concerning the period referred to in paragraph (1), the Supervising Judge shall stipulate such period.
3. If within the period referred to in paragraph (1) and paragraph (2) the trustee does not respond, or is not prepared to continue the implementation of such agreement, the agreement shall be terminated and the party referred to in paragraph (1) may claim for compensation as an unsecured creditor.
4. If the trustee declares his readiness, the trustee shall furnish a guarantee of his readiness to implement the said agreement.
5. The provisions referred to in paragraph (1), paragraph (2), and paragraph (3) shall not apply in respect of agreements requiring the debtor to execute the agreed actions independently.

#### Article 235

If, in the case as meant in the previous article, there is an agreement to deliver traded goods which are traded in the exchange market by stipulating a fixed period, and such delivery will be carried out prior to a certain time or within a determined period, while such period or such time expires after the deferment of payment, then the agreement should be canceled by the granting of the temporary deferment of payment and the opponent is entitled to file a claim for compensation pursuant to Article 231. If, pursuant to the cancellation of the agreement, the assets suffer losses, the opponent is required to compensate for that. (F. 37, 216; Bw. 1266, etc.)

#### Article 236

1. Immediately after the commencement of the deferment of payment, the debtor leasing certain goods in accordance with the provisions of Article 226 may terminate such lease for a temporary period provided the notice to cease the lease is carried out shortly prior to the expiration of the agreements by local custom. The time of the notice should also consider the period pursuant to the agreement or by the local custom, which means a grace period of three months will be sufficient. If the lease payment has been fully paid up then the lease cannot cease until the date for which the payment has been made.

2. From the commencement of the deferment of payment, the lease payment shall become a debt of the assets. (F. 38, 216, 234; Bw. 1266, etc., 1548, 1550, etc., 1571, 1585, etc., 1588; Levensv. 58; Ord. Levensv. 92)

#### Article 237

1. Immediately after the commencement of the moratorium on debt repayment, the debtor shall be entitled to dismiss his employees, paying heed to the provisions of Article 226 and the period which has been agreed or is required by the prevailing laws and regulations, with the understanding that such employment may nevertheless be terminated by notification of such termination of employment in accordance with the provisions of the prevailing labor laws and regulations.

2. When the moratorium on debt repayments comes into effect, any salaries and other expenses arising from such employment shall become debts of the debtor's assets.

#### Article 238

1. Any payment to the debtor which has been granted a temporary deferment of payment that has not been informed or announced to fulfill any contract entered prior to the deferment of payment to the debtor, will release the person who paid from the assets as long as he can prove he has no knowledge that there is a temporary deferment of payment.

2. Payment, as meant in the previous paragraph, that is carried out after the announcement regarding the temporary deferment of payment shall not release the assets, unless the person doing so can prove that the preliminary granting of the deferment of payment through legal notification could not yet have become known at his domicile; the matter should not hinder the right of the trustees to prove that the announcement can be known by him.

3. Any payment to the debtor for any reason shall release the person who did so against the assets, insofar as the payment will give a benefit to the assets. (F. 46, 2142, 215, 226, Bw. 1385, etc., 1387; Levensv. 58; Ord. Levensv. 92)

#### Article 239

Deferment of payment shall not be applicable for the benefit of co-debtors and guarantors. (F. 155, Bw. 1280, 1283, 1820, etc., 1831, 1833; Levensv. 564; Ord. Levensv. 814)

#### Article 240

1. After the moratorium on debt repayment has been granted, such moratorium may be terminated, whether at the request of the Supervising Judge, or at the request of the

trustee or one or more creditors, or upon the initiative of the Court itself, in the event that:

- a. during the period of the moratorium on debt repayment the debtor acts in bad faith in the management of his assets;
- b. the debtor attempts to harm the creditors;
- c. the debtor violates the provisions of Article 226 paragraph (1);
- d. the debtor fails to conduct those actions which are required of him by the Court when the moratorium on debt repayment is granted, or subsequently, or fails to conduct such actions required by the trustee in the interests of the debtor's assets;
- e. during the period of the moratorium on debt repayment, the condition of the debtor's assets makes the continuation of the moratorium on debt repayments unfeasible; or
- f. the debtor, due to the circumstances, cannot be expected to fulfill his obligations to creditors on time;

2. In the situation referred to in paragraph (1) letter a and letter e, the trustee must file a petition for the termination of the moratorium on debt repayment.

3. The petitioner, the Debtor and Trustee must be properly heard or summoned, and such summons shall be issued by the Clerk of the Court on the date stipulated by the Court.

4. The Court's decision must contain the reasons underlying the said decision.

5. If the moratorium on debt repayment is terminated on the basis of the provisions in this Article, the Debtor must be declared bankrupt in the same decision.

6. The hearing of a petition for the termination of the moratorium on debt repayment as referred to in paragraph (1) must be concluded within a period of 10 (ten) days from the filing of such petition and the Court's decision must be rendered within a period of 10 (ten) days from the conclusion of the hearing.

#### Article 241

The provisions referred to in Article 8, Article 9, Article 10 and Article 11 shall apply *mutatis mutandis* in respect of decisions for the conclusion of a moratorium on debt repayment.

#### Article 242

As soon as a decision on the revocation of the deferment of payment has legal enforcement, it will be advertised in the manner stipulated in Article 215.

#### Article 243

1. If the Court considers that the session for the petition for the termination of a moratorium on debt repayment cannot be concluded before the date on which the creditors are to be heard as stipulated in Article 214 paragraph (3), the Court must order that the creditors be notified in writing that they cannot be heard on such date.

2. If the Court considers that the session for the petition for the termination of a moratorium on debt repayment cannot be concluded before the date on which the creditors are to be heard as stipulated in Article 214 paragraph (3), the Court must order that the creditors be notified in writing that they cannot be heard on such date.

#### Article 244

1. The debtor at any time is entitled to request the District Court to revoke the deferment of payment on the grounds that the circumstances of the assets will enable him to make more payments. The information of the trustees and the creditors, in case of the granting of a permanent deferment of payment, shall be heard or properly summoned.

2. The summons shall be made through official registered letter by the court clerk shortly before the date determined by the district court. (F.240, 269, 279)

#### Article 245

1. During the deferment of payment it is prohibited to file a declaration of bankruptcy.

2. If, pursuant to one of the provisions of this title, a bankruptcy is declared, Article 13 will be applicable. If, pursuant to that provision, the bankruptcy is canceled, then Articles 12 and 14 will be applicable. (F.217(5), 2404, 274v).

#### Article 246

1. If bankruptcy is declared in accordance with the provisions of this chapter, or within 2 (two) months of the conclusion of a moratorium on debt repayment, the following provisions shall apply:

a. the period mentioned in Article 42 and Article 44 must be counted from the point when the moratorium on debt repayment comes into effect;

b. the liquidator shall have the authority given to the trustee in accordance with Article 226 paragraph (1);

c. legal actions conducted by debtors, after being granted the authority of the trustee to conduct the same, must be considered as legal actions conducted by the liquidator, and debts of the debtor's assets which are incurred while the moratorium on debt repayment is in effect shall constitute debts of the bankrupt estate;

d. Obligations of the Debtor which arise during the moratorium on debt repayment without the authority of the Trustee may not be charged to the debtor's assets, unless such matter benefits the debtor's assets.

2. If a petition for a moratorium on debt repayment is filed within a period of 2 (two) months of the conclusion of the previous moratorium on debt repayment, then the provisions in paragraph (1) shall also apply to the following moratorium.

#### Article 247

1. The provisions as meant in Article 69 shall apply *mutatis mutandis* in respect of the fee for the services of the trustee.

2. The fee for the services of the experts appointed on the basis of Article 224 shall be determined by the trustee. Article 248 The provisions of international law in the Articles 202 through 204 will be applicable to the deferment of payment.

### **Section 2. Reconciliation**

#### Article 249

The debtor at the time he files a petition for deferment of payment, or after that, is entitled to offer a reconciliation to those having claims on debts and to those whose payments

were deferred. (F.134v, 213, 230, 250v; S.37-545 art. 1v.13v)

#### Article 250

1. If the reconciliation proposal is not proposed to the Clerk of the Court as intended in Article 213, then such plan must be proposed prior to the date of the session referred to in Article 215 or a later date, with due attention the provisions intended in Article 217 paragraph (4).

2. The reconciliation proposal must be made available at the office of the clerk of the court to be examined by any individual free of charge, and submitted to the Supervising Judge, and trustee and any experts, as soon as possible after the such proposal is available.

#### Article 251

The draft reconciliation will be void by law, if, before the decision of the deferment of payment become legally enforceable, there is a decision containing the termination of the deferment of payments. (F.221, 240, 244)

#### Article 252

1. If the reconciliation proposal has been submitted to the Clerk of the Court, The Court must determine:

a. the last day on which the claims subject to the moratorium on debt repayment must be submitted to the trustee;

b. the date and the time the reconciliation proposal put forward shall be discussed and decided upon in a deliberation meeting of the judges.

2. There must be at least 14 (fourteen) days between the date mentioned in paragraph (1) letter a and letter b.

#### Article 253

1. The trustee must announce the determination of the period referred to in Article 252 paragraph (1) together with the inclusion of the reconciliation proposal, unless such matter has already been announced in accordance with Article 215.

2. The trustee must also inform all known creditors in writing by registered letter or via courier, and such announcement must mention the provisions in Article 254 paragraph (2).

3. Creditors may attend in person or be represented by a proxy based on a written Power of Attorney.

4. The trustee may require that the debtor provides him with a deposit in an amount stipulated by trustee to cover the costs of the such announcement and notification.

#### Article 254

1. Claims must be filed with the trustee by submitting a claim document or other written evidence that states the nature and amount of the claim accompanied by supporting evidence or copies of such evidence.

2. Claims not subject to a moratorium on debt repayment may not be filed with the trustee as referred to in paragraph (1), and if such claims have already been filed, then the moratorium shall also apply to such claims, and all privilege rights, retention rights, pledge, security rights or collateral right to other property shall be nullified.

3. The provision regarding the nullification of every special right, retention right, pledge, Security Right or collateral right to other property referred to in paragraph (2) shall not apply if such claim is withdrawn before voting begins.

4. In respect of claims submitted to the trustee as referred to in paragraph (1), creditors may request a receipt from the trustee.

#### Article 255

Any calculation which has been submitted should be compared by the trustees with the record and report provided by the debtor. If there is an objection against the admission of any claim on debt, there should be a discussion with the creditor, and the trustees are entitled to request from the concerned creditor any missing documents that have not been accepted and request to be shown any record and the original evidence. (F.107, 222)

#### Article 256

The trustees shall provide a list containing the claims on debt, mentioning the names and domiciles of the creditors, the amount and description of each claim on debt, including the explanation therefor, as well as the information on whether the claims on debt are acknowledged or contested. (F.108, 222, 254, 260, 263).

#### Article 257

1. A claim on debt bearing interest will be added to the list with the addition of interest up to the commencement of the deferment of payment. (F.216).

2. The Articles 125, 129 through 131 and 132 paragraphs 1 and 2, will be applicable.

#### Article 258

1. A claim with deferment conditions may be included in the list referred to in Article 256 for the prevailing value at the time the moratorium on debt repayments commences.

2. If the trustee and creditors do not reach agreement regarding the determination of the value of such claim, the claim must be accepted conditionally to be determined by the Supervising Judge.

#### Article 259

1. Collectible claims on debt which are uncertain or which give an allowance for periodic installments, shall be entered into the list for their value at the commencement of the deferment of payment.

2. All new claims on debt which will be collectible within one year after the commencement of the deferment of payment shall be treated as if they may be collectible at that date. All new claims on debt which will be collectible after one year as of the commencement of the deferment of payment should be entered onto the list with the time counted from that date.

3. At the calculation on the above matter, the sole considerations are the time and manner of installment, the chance of profit, if any, and in case the claim on debt is bearing interest, the rate of interest which has been agreed. (F.127; Bw.1268, 1271, 1765, 1772, 1774)

#### Article 260

1. The trustees have to deposit at the District Court clerk's office a copy of the list as meant in Article 256, to be available for free perusal by any one during the seven days prior to the meeting as meant in Article 252.

2. The deposit is free of charge.

#### Article 261

1. With due attention to the provisions regarding the period for the moratorium on debt repayment as referred to in Article 217 paragraph (4), at the request of the Trustee or by virtue of his office, the Supervising Judge may postpone the discussion and the vote concerning such reconciliation proposal.

2. In the event of a postponement of the discussion and vote as referred to in paragraph (1), the provisions of Article 253 shall apply.

#### Article 262

1. At the meeting, either the trustees or the experts, if any, have to provide a written report regarding the offered reconciliation. Article 140 will be applicable.

2. Claims on debt that are submitted to the trustee after the period mentioned in Article 252 (1), but at the latest two days before the date of the meeting, have to be entered onto the list upon a request therefor made at the meeting, if neither the trustees nor any of the creditors present objections thereto.

3. Claims on debt filed thereafter should not be entered onto the list.

4. The provisions in paragraph 2 above should not be applicable if the creditor was prevented from reporting earlier because of the remoteness of his domicile.

5. In case of an objection as stipulated in paragraph 2 above or if there is a dispute regarding the existence of the impediment as stipulated in paragraph 4, the District Court will decide the matter after having consulted with the meeting.

#### Article 263

1. At the meeting, the trustees are entitled to withdraw any acknowledgment or denial which they have made. (F.222, 256)

2. Either the bankruptcy debtor or any creditor present at the meeting is allowed to contest claims on debt that were acknowledged either wholly or partly by the trustees.

3. Objections or acknowledgments made during the meeting will be recorded on the above mentioned list. (F.115, 122)

#### Article 264

The Supervising Judge must determine whether and to what extent those creditors whose claims are contested may take part in the vote.

#### Article 265

1. The reconciliation proposal may be accepted if it is approved by more than 1/2 (one half) of the unsecured creditors whose rights have been admitted or provisionally admitted who are present at the judges' deliberation meeting referred to in Article 252 including the creditors referred to in Article 264, who together represent no less than 2/3 (two thirds) of all the admitted or provisionally admitted claims of the unsecured creditors or their proxies who are present at such meeting.

2. The provisions in Article 142 and Article 143 shall also apply in the vote on the acceptance of the reconciliation proposal referred to in paragraph (1).

#### Article 266

1. The minutes of the judges' deliberation meeting must state the contents of the reconciliation proposal, the names of creditors who are present and are entitled to vote, notes regarding the votes cast by creditors, and the result of the vote and notes concerning any other incidents at the meeting.
2. The list of Creditors made by the trustee which has been supplemented or amended in the meeting must be signed by the Supervising Judge and Clerk of the Court and must be attached to the minutes of the meeting concerned.
3. A copy of the minutes of the meeting referred to in paragraph (1), must be made available at the office of the clerk of the court for 8 (eight) working days in order to be examined free of charge by the public.

#### Article 267

1. Debtors and creditors who voted in support of the reconciliation proposal may, within 8 (eight) working days of the date of the vote at the meeting, request that the Court correct the minutes of the meeting if, on the basis of the documents available, it appears that the Supervising Judge has mistakenly considered the reconciliation to have been rejected.
2. The request referred to in paragraph (1) must be filed with the Court.
3. If the Court corrects the minutes, the Court must, within the same decision, stipulate the date for the ratification of the reconciliation, which must be executed between 8 (eight) and 14 (fourteen) working days after the decision of the Court correcting such minutes is rendered.
4. The trustee must inform the creditors in writing of the Court decision referred to in paragraph (3), and such decision shall render the declaration of bankruptcy based on Article 274 paragraph (1) null and void by law.

#### Article 268

1. If the reconciliation proposal is accepted, the Supervising Judge must submit a written report to the Court on the date stipulated for the purposes of the ratification of the reconciliation, and on such stipulated date the trustee and creditors may submit the reasons which caused them to accept or reject such reconciliation proposal.
2. The provision in Article 148 paragraph (2) shall apply in respect of the implementation of the provision in paragraph (1).
3. The Court shall stipulate the date of the session for the ratification of the reconciliation which must take place no later than 14 (fourteen) days after the reconciliation proposal is approved by the creditors.

#### Article 269

1. The Court must render a decision concerning the ratification of the reconciliation together with the reasons therefor at the session referred to in Article 268 paragraph (3).
2. The Court may only refuse to undertake the ratification of the reconciliation if:
  - a. the debtor's assets, including goods in respect of which there are retention rights, far exceed the amount agreed in the reconciliation;
  - b. the implementation of the reconciliation is not sufficiently guaranteed;

c. the reconciliation was reached as a result of fraud, or collusion with one or more creditors, or due to the use of other dishonest means, regardless of whether the Debtor or other parties cooperated to achieve such ends;

d. the fees for services and costs expended by the experts and the trustee have not yet been paid, or no guarantee of their payment has been given.

3. If the Court refuses to ratify the reconciliation, the Court must, in the same decision, declare the debtor bankrupt, and such decision must be announced as referred to in Article 215.

4. The provisions referred to in Article 8, Article 9, Article 10 and Article 11 shall apply *mutatis mutandis* in respect of a rejection of the ratification of the reconciliation as referred to in paragraph (3).

#### Article 270

The ratified reconciliation shall be applicable to all creditors to whom the deferment of payment applies. (F.152, 230, 254)

#### Article 271

A decision ratifying the reconciliation which has legal enforcement with regard to the minutes stipulated in Article 256 regarding the claims on debt that have not been contest by the bankrupt debtor becomes a legal basis which can be carried out against the bankrupt debtor and against parties binding themselves as guarantors in the reconciliation. (F.154; Rv.435v)

#### Article 273

The moratorium on debt repayments shall end immediately the decision on the ratification becomes final, and the trustee must announce such termination in a daily newspaper as referred to in Article 215.

#### Article 274

If the reconciliation proposal is rejected, the Supervising Judge must immediately notify the Court of such rejection by delivering to the Court a copy of the reconciliation proposal, together with the minutes of the meeting referred to in Article 266, and in such matters, the Court must declare the debtor bankrupt no later than 1 (one) day after the Court receives the notification of the rejection of the Supervising Judge.

#### Article 275

If the Court has declared the Debtor bankrupt, the provisions concerning bankruptcy as intended in CHAPTER ONE shall apply in respect of such determination of bankruptcy, with the exception of Article 8, Article 9, Article 10 and Article 11.

#### Article 276

1. With regard to the nullification of the reconciliation, Articles 160 and 161 will be applicable. (F.279)

2. When the District Court makes the decision deciding the nullification of the reconciliation, the debtor will be declared bankrupt. (Bw.1266v; F.269, 274, 277)

#### Article 277

A reconciliation cannot be offered in a bankruptcy decided by virtue of Articles 269, 274 of

276.

### **Section 3. Closing Provisions**

#### **Article 278**

Except as determined otherwise, and without prejudice to the application for a higher appeal, for the interest of law as a result of the provisions in this title, there is no appeal against the decisions of the judge. (F.124, 222, 223v, 225, 243, 247, 252, 261, 264)

#### **Article 279**

Petitions filed on the basis of Article 223, Article 240, Article 241, Article 244, Article 267, Article 269, Article 275 and Article 276 must be signed by a legal advisor licensed to practice who acts on the basis of a Power of Attorney, unless filed by the Trustee.