

BANKRUPTCY LAW

Law of the Republic of Moldova No. 786-XIII of March 26, 1996
(Official Monitor of the Republic of Moldova, September 5, 1996,
No. 58, Part I, p. 583)

The Parliament passes this Law.

This Law governs the bankruptcy proceeding in satisfying the creditors' joint claims to the debtor by realizing its assets, distributing the proceeds, and liquidating the debtor or protecting it from the bankruptcy. One creditor's claims shall be satisfied in the framework of the general civil proceeding.

Chapter I

GENERAL PROVISIONS

Article 1. Major Notions

This Law shall use the following terms:

Insolvency is financial and economic standing of the debtor characterized by decrease in its assets relative to its statutory capital in the event that the latter has been declared, or the debtor's debt excess over its assets in other cases and by the debtor's inability to cover its debts within the set deadline and in the set volume regardless of the reasons, time and place of their origin (according to the language of Law No.1254-XIII of July 16, 1997);

Debtor means an enterprise, consumer cooperative, or charitable foundation that fails to fulfil and in the nearest future will not be able to fulfil its liabilities to the creditors;

Debtor's Owner is the debtor's management body authorized to pass a resolution on the debtor's liquidation pursuant to its statutory documents;

Debtor's Manager is the senior officer, manager, or other officer or management body of the debtor vested with the powers related to the debtor's asset management, representing the debtor's interests in court (without a power of attorney) and in its relations with the individuals and legal entities, and conducting transactions on the debtor's behalf;

Bankruptcy Proceeding means a law proceeding initiated for the purpose of settling all the disputes over fulfilment of the creditors' claims by the insolvent debtor;

Bankruptcy Lot means the debtor's property and property rights (hereinafter referred to as "property") subject to distribution among the creditors and on which a penalty may be imposed in the process of the bankruptcy proceeding as set forth in law. The creditors' declared mortgage rights and property illegally possessed by the debtor shall not be referred to as the bankruptcy lot.

Bankruptcy Creditor means an individual or legal entity that makes property claims to the debtor against which a bankruptcy proceeding has been initiated and which does not bear any mortgage rights;

(paragraphs nine through twelve were excluded by Law No. 1254-XIII of July 16, 1997)

Bankruptcy is proprietary standing of the debtor in which the debtor is unable to fulfil the creditors' claims and court orders to distribute the bankruptcy lot among the creditors, pay the unfulfilled creditors' claims, and terminate the debtor;

Wilful Bankruptcy means wilful creation or augmentation of the debtor's insolvency by its manager or owner, their causing damage to the debtor in their personal interests or in the interests of other persons, and running the business in a wilfully incompetent fashion;

Fraudulent Bankruptcy is an intentionally false debtor's declaration of its insolvency for the purpose of misleading its creditors in order to obtain deferral and/or the right to pay in instalments the payments due to the creditors, or discount on debts.

International Bankruptcy means the bankruptcy procedure with regard to a person initiated in two or more countries;

Major Bankruptcy is the bankruptcy procedure initiated against a person in the country that is the center of its major interests. With respect to partnerships and legal entities, the location of their management bodies shall be considered the center of their major interests, as long as the reverse has not been proven;

Secondary Bankruptcy is the bankruptcy procedure initiated in the country other than the country where the major bankruptcy proceeding was initiated (amended by Law No.1254-XIII of July 16, 1997);

Article 2. Legal Regulation

Bankruptcy proceedings shall be governed by this Law, the Civil Code of Procedures, and other normative acts to the extent of their compliance with this Law or in the events not covered by this Law.

Article 3. Terms of Reference

This Law shall apply to the enterprises, enterprise associations (amalgamations), consumer cooperatives, and charitable foundations registered in the Republic of Moldova and found in a state of insolvency, excluding commercial banks (language of Law No. 1254-XIII of July 16, 1997).

Article 4. Types of Procedures Applied to Debtor

The following procedures shall be applied to the debtor:

- a) reorganization;
- b) liquidation;

c) (removed by Law No.1254-XIII of July 16, 1997).

Article 5. Bankruptcy Lot

(1) The debtor shall be held liable to the creditors with all its property estimated by its evaluation and evaluation of all the creditors' claims. The property stocktaking shall be carried out with participation of the debtor and the experts.

(2) The debtor's property (assets) shall be composed of fixed and current assets, financial and intangible assets, and the assets generated once the bankruptcy proceeding has been declared until its completion. This property shall include:

a) fixed assets: buildings, premises, transmission devices, plant and equipment, computer hardware and software, measuring and adjustment devices, transport vehicles, instruments, production and household appliances, labor and production live-stock, perennial plantings, and other assets;

b) current assets: production stock (inputs, raw materials, fuel, low-value and non-durable items, spare parts, packaging, etc.), production in process, finished articles, goods, including those in the process of delivery, and other;

c) financial assets: petty cash and cash in the fiscal institutions' accounts, securities (shares, bonds, certificates, promissory notes, etc.), deposits, and other short- and long-term financial investments, accounts receivable;

d) intangible assets: right to use land, water and other natural resources, buildings, premises, and equipment, and rights to the products of intellectual property (patents, licenses, etc.).

(3) Assets returned as a result of rescinding the transaction or its invalidation shall also be the debtor's property.

(4) The individual debtor's property shall include the property of the limited partnership members within the limits of their stake, personal property of the individual enterprise founders', unlimited partnership participants, full stakeholders in the limited partnership, and their families' property, if it was acquired from unlawful transactions and other illegitimate actions, excluding the property on which no penalty may be imposed pursuant to this Law and other normative acts.

(5) The bankruptcy lot shall not include the pledged property and property rights, the property owned by the debtor unlawfully or by mistake, in which a third party has proven its real rights, as well as pensions, social benefits and amounts paid as compensation for moral damage caused to the individual enterprise founder, unlimited partnership member, or full stakeholder in the limited partnership (language of Law No.1254-XIII of July 16, 1997).

(6) To the bankruptcy lot, the stakeholders' property with subsidiary liability on the debtor's obligations, and the underwriter and guarantor's property in the volume of the obligations incurred thereby shall be incremented (amended by Law No.1254-XIII of July 16, 1997).

Article 6. Jurisdiction

(1) All the disputes over the bankruptcy of individuals and legal entities shall be reviewed by court pursuant to the jurisdiction set forth by law.

(2) The court of referees may not hear a bankruptcy case.

Chapter II

REVIEW OF BANKRUPTCY CLAIM

Article 7. Grounds and Procedure for Petition Filing

(1) The debtor's insolvency shall serve as the ground for filing a petition of bankruptcy.

(2) The petition of bankruptcy shall be filed only upon application of the bankruptcy creditor, debtor, prosecutor, major bankruptcy liquidator, or other person or authorized body in the event of petition of secondary bankruptcy in connection with hearing a case on international bankruptcy.

(3) Any bankruptcy creditor may file a bankruptcy petition to court in the event that the debtor fails to fulfil its debt liabilities within one month.

(4) The bankruptcy creditor is authorized to make several claims on various liabilities amounting to not less than 2,000 Lei in one petition. The bankruptcy creditors are authorized to consolidate their claims to the debtor and to file to a court one petition.

(5) The bankruptcy creditors' petition shall contain the obligation to cover all possible expenses related to the bankruptcy procedure in the event that the debtor is unable to cover necessary expenses in due time (language of Law No.1254-XIII of July 16, 1997).

(6) The debtor's petition of bankruptcy shall be filed on the basis of the debtor's owner's decision and shall be signed by the debtor's manager or other authorized person. The petition may contain a solicitation for reorganization procedure (language of Law No.1254-XIII of July 16, 1997).

(7) In the manner set forth in paragraphs (3) and (4), the prosecutor is entitled to file to court a petition of bankruptcy:

- (a) in the event that the signs of wilful bankruptcy have been found;
- (b) if the debtor is involved in debt on the binding payments to the national public budget;
- (c) in the interests of the creditor - the Republic of Moldova, or its administrative and territorial unit;
- (d) in the interests of individual depositors; and
- (e) in other cases envisioned in law.

(8) The major bankruptcy liquidator or other person or authorized body in the event of the petition of secondary bankruptcy shall present a ruling of court or other authorized body of the country in which the major bankruptcy proceeding has been declared (language of Law No.1254-XIII of July 16, 1997).

(9) The petition may be recalled by the applicant before the court adjudges the debtor to be bankrupt. Therewith, other bankruptcy creditors are authorized to request in writing that the bankruptcy procedure be continued (language of Law No.1254-XIII of July 16, 1997).

Article 8. Documents Attached to Petition

(1) If the creditor files a petition of bankruptcy, it shall present to court the evidence of validity of its claims: information on the amount of claims, mortgage (if any), and the debtor's inability to fulfil its due obligations.

(2) If the petition of bankruptcy is filed by the debtor, it shall present to court the evidence of its insolvency: information on the amount of debt liabilities and mortgage (if any), claims thereby accepted for proceeding by court, and claims made for indisputable (non-acceptance) collection, and the list of all its creditors and debtors, breakdown of its accounts receivable and accounts payable, and other information on its financial and proprietary standing (language of Law No.1254-XIII of July 16, 1997).

(3) The petition of the debtor that is an individual enterprise, unlimited or limited partnership, shall also specify its founders' (stakeholders) obligations unrelated to their entrepreneurial activities.

(4) The following documents shall be attached to the debtor's petition:

- a) resolution of the debtor's owner that serves as the ground for address to court by the debtor or the person that carries out the liquidation of the debtor;
- b) extract from the debtor's charter (by-laws) with paragraphs regarding the stakeholders' liability on the debtor's obligations (amended by Law No.1254-XIII of July 16, 1997);
- c) report and copies of the current accounting records;
- d) list of the entire debtor's property, including information on cash in banks, account numbers, and banks addresses, and information from the real estate registry with regard to the real estate;
- e) list of creditors and their addresses regardless of the type of their claims: unconditional or with conditionalities, liquid or non-liquid, paid or not paid, called or not called for, with amounts, reasons and preemptive rights specified;
- f) debtors' list and their addresses;
- g) findings of the auditing organization on examination of the debtor's financial and economic activities to be compiled within a month following the petition filing to court;
- h) list of the limited partnership members (limited liability stakeholders), if the limited partnership is the debtor;
- i) copy of the announcement on filing a petition of bankruptcy published in the Official Monitor of the Republic of Moldova (language of Law No.1254-XIII of July 16, 1997);
- j) solicitation for the debtor's reorganization that shall also contain the organization outline (language of Law No.1254-XIII of July 16, 1997); and
- k) other documents in conformity with law.

Article 9. Application Filing. Opinion on Petition

(1) Petition of bankruptcy shall be filed to court pursuant to the general requirements set forth in law.

(2) On the day of the petition filing by the debtor, the consequences in law envisioned in paragraphs (1)(b)-(1)(d) and paragraph (2) of Article 17 shall take effect.

(3) Within five days following the receipt of the creditor's petition, the prosecutor shall send to the plaintiff and court his opinion on the petition that shall on a mandatory basis contain:

- a) court name;
- b) opinion signing date and number, plaintiff's name;
- c) substance of the answer on the proposal to settle the dispute. If the plaintiff's petition specifies that no response to the opinion has been received, a copy of the response to the proposal to settle the dispute and the evidence that the response was sent to the plaintiff shall be attached;
- d) size and calculation of the acknowledged debts, and in the event that the appropriate amounts have been credited to the creditors (obligations fulfilled) - date and number of the payment order, or other document;
- e) confirmation or appeal against the fact of its insolvency;
- f) list of documents and other evidence attached to the opinion; and
- g) indemnification requirement envisioned in Article 10(1).

(4) Filing a petition without an opinion thereon shall not preclude a court from hearing the case. However, in the event that the court declines the creditor's or prosecutor's petition without the debtor's opinion the debtor shall incur all the expenses related to the case hearing (language of Law No.1254-XIII of July 16, 1997).

Article 10. Debtor's Property Guarantees

(1) Upon the debtor's solicitation, court may force the creditors that filed a petition on adjudging the debtor to be bankrupt to provide a guarantee of the commercial bank in the amount of not less than 30% of the declared claim. The guarantee shall be returned to the creditors in the event of the petition decline. If the claim is declined, the guarantee may be used for covering the damage caused to the debtor. If no guarantee has been provided within the set deadline, the petition shall be returned without examination (language of Law No.1254-XIII of July 16, 1997).

(2) All the persons (suppliers) that provide to the debtor services related to electricity, natural gas, water supply, telephone connection, and other services required for uninterrupted production during the period prior to initiation of the petition of bankruptcy shall be prohibited from changing, declining, or temporarily suspending any such services on the ground of acceptance by court of petition of the debtor's bankruptcy for review. Upon the supplier's application, the court may request that the debtor credit to the deposit account the amount not exceeding 30 percent of the cost of the unpaid services provided to the debtor as a guarantee for its obligations to the supplier.

Article 11. Creditors' Property Guarantees

(1) Any debtor's guarantees, excluding those envisioned in this Law, upon filing by it of the petition of bankruptcy or upon expiry of the deadline for giving an opinion on the creditors' petition shall be deemed invalid (language of Law No. 1254-XIII of July 16, 1997).

(2) Following the registration of the petition of bankruptcy for the purpose of protecting the creditor's property interests, the court may take the following measures:

- a) arrest the debtor's property, accounts and documents;
- b) require a mortgage or guarantee equal to the cost of claim filed by the creditors or the prosecutor for the purpose of resolving the issue of preserving the debtor's right to manage its property; and
- c) other measures as set forth in law (language of Law No. 1254-XIII of July 16, 1997).

Article 12. Proceeding Initiation and Order Issuance

(1) Following the filing and registration of the petition, within 15 days but not earlier than the deadline set for submitting an opinion on the petition, the judge shall pass a resolution on initiating the proceeding and inform the parties and other persons of the date, time and place of the case hearing. The petition may be returned without examination pursuant to provisions of Article 10(1).

(2) The debtor, debtor's owner, tax authority at the location of the debtor's registration, banks that provide settlement and lending services to the debtor, creditors known to the court, and a representative of the debtor's employees shall be invited to the court session. The session shall consider the candidature of the bankruptcy proceeding manager proposed by the creditors in case a decision is issued to initiate a bankruptcy proceeding.

(3) Upon petition examination, court shall issue one of the following decisions:

- a) on adjudging the debtor to be insolvent and bankruptcy proceeding initiation;
- b) on petition decline in the event that it was found out that the debtor is solvent as of the decision date, including the event that the debtor restored its solvency after the petition filing, and its current debt liabilities can be fulfilled.

(4) In the event of review of the petition filed by the debtor or liquidator of the major bankruptcy (other person or authorized body) (Article 7(8)), the court along with initiating a proceeding may adjudge the debtor to be insolvent and initiating a bankruptcy proceeding without oral hearing of the case.

(5) Adjudicating the debtor to be insolvent and issuance of decision on initiating a bankruptcy proceeding, or if the petition of the debtor's bankruptcy is declined, shall be effected by court within 30 days following the petition filing (language of Law No. 1254-XIII of July 16, 1997).

Chapter III REORGANIZATION PROCEDURES

Article 13. Principals and Major Conditions of Reorganization Procedure

- (1) Creditors' relief pursuant to the agreed upon terms and preserving the debtor's being a legal subject is the aim of the reorganization procedure.
- (2) Realistic possibility of restoring the debtor's solvency and its further operation by means of organizational and economic activities shall serve as the ground for the reorganization procedure.
- (3) The reorganization procedure shall be carried out exclusively with respect to the debtor that is a joint-stock company, limited liability company, manufacturing cooperative, or association (amalgamation) of enterprises.
- (4) The reorganization procedure may not be applied to the debtor to which it has already been applied over the last three years.
- (5) The reorganization procedure shall not last for more than 12 months with respect to the debtors with up to 50 employees and 24 months with respect to other debtors.
- (6) During the reorganization procedure, the bankruptcy proceeding shall be suspended and the accounts shall be deblocked. Therewith, the reorganization procedure administrator (Article 14(4)(d)) is authorized to take measures envisioned in Article 20.
- (7) Beginning from the effectiveness day of the decision on selection of one of the approved reorganization plans, the debtor shall use the words "under reorganization procedure" in its name (language of Law No. 1254-XIII of July 16, 1997).

Article 16. Reorganization Plan Proposal and Adoption

- (1) The debtor reorganization procedure shall be initiated by filing an application to court with the reorganization plan attached.
- (2) The reorganization plan may be proposed by the debtor; the creditors whose claims amount to not less than one third of the total amount of claims secured with a mortgage, excluding the mortgagee creditors that defined their claims pursuant to Article 17(2), creditors with unsecured claims that make up not less than one third of the total debtor's claim. If the debtor is the joint-stock company, limited liability partnership, or manufacturing cooperative, the reorganization plan may be proposed by one third of the total number of the shareholders (stakeholders) authorized to vote at the general shareholders' (stakeholders') meeting; if the debtor is the association (amalgamation) of enterprises - by each association (amalgamation) member authorized to propose the plan.
- (3) The plan shall be proposed within 10 days following the first creditors' meeting (Article 18(4)). If persons stipulated in paragraph (2), apply for extending the deadline for proposing the plan, the court may extend the deadline which, however, shall not exceed 90 days following the filing day of the petition of bankruptcy.
- (4) The plan shall specify:

- a) timeframe, procedure and amount of payments or compensation on the claims for each category of creditors by converting their claims into the debtor's shares (stakes, interest), and issuing new debt liabilities to the latter, or otherwise;
- b) possibility of, and extent of debt exemption of the debtor and the enterprise association (amalgamation) members;
- c) possibility of satisfying the claims of each category of creditors relative to the distribution of cash that they would receive in the event of the debtor liquidation;
- d) measures (organizational, administrative, legal, financial, technical, labor employment) that will be taken for restoring the creditor's solvency, on which the plan feasibility rests. The administrative measures include resolving the issue of dissolving the debtor's management from its management functions and delegating them to the reorganization procedure administrator appointed pursuant to Article 22, or the issue of further discharge by the debtor's management of its functions under supervision of the reorganization procedure administrator.

(5) Costs related to the plan proposal, including those on its submittal for approval shall be incurred by the party that proposes the plan; costs related to the debtor-proposed plan shall be covered from its assets.

(6) The court shall approve the plan proposed by the eligible parties if the plan contains all the required information. Prior to approving the plan, the court may request an opinion of an outside expert as to its feasibility. Prior to declining the plan, court shall hear the opinion of the proposing party, manager, debtor, and the creditors' meeting.

(7) The adopted plan shall:

- a) be transferred for safekeeping to the court secretary and be available to the interested parties that may request its copy;
- b) at the judge's instruction, be sent out to the known creditors, manager, debtor, and the stakeholders and shareholders.

(8) The judge shall issue instructions on the publication in two high-circulation newspapers (local and republican) of the plan approval notice that shall specify the proposing party, date of voting on the plan and the option of voting by a registered letter with a notarized signature of the voter. Beginning from the notice publication all the interested parties shall be deemed notified of the plan approval.

(9) Not later than three weeks following the sending out of the plan, the court shall convene the creditors' meeting. A written invitation for participation in the meeting shall be sent to the debtor. The debtor's stakeholders (shareholders) may sit in the meeting, however, they may participate in voting only in the event that the conditions less preferable than those for the debtor liquidation are created for them under the plan, or in the event of the debtor's statutory capital increase or reduction. The stakeholders (shareholders) shall vote pursuant to the debtor's charter.

(10) In the event that several plans are adopted, voting on them shall be carried out at one meeting.

(11) Only the creditors whose claims are properly represented and are not disputed may participate in the voting on the plan, excluding cases when court had previously decided to allow other creditors to vote.

(12) Contrary to provisions of Article 25, the following categories of persons shall participate in voting on the plan and shall vote separately:

- a) mortgagee creditors, excluding those who defined their claims to the debtor pursuant to Article 17(2);
- b) creditors according to the sequence (categories) set forth in Article 28(2); and
- c) debtor's shareholders (stakeholders) entitled to a vote pursuant to paragraph 9.

(13) At the beginning of the voting, the court shall inform those present of the creditors' votes received in writing pursuant to the set procedure.

(14) The plan shall be deemed to be adopted by the set category of the voters if holders of the major amount of the debt liabilities or other rights set for this category vote therefor. It shall also be deemed adopted by each category whose interests are not limited by the plan. The category's interests shall be deemed limited if its members are not compensated for the amount equivalent to their claims or rights in the event that the plan is adopted (language of Law No. 1254-XIII of July 16, 1997).

Article 16. Plan Approval. Its Implementation (Failure to Implement)

(1) The plan shall be approved by court if:

- a) it is adopted by at least two categories of creditors out of those stipulated in Article 14(12)(a) and Article 28(2)(a)-(d) and by at least one of the categories with limited interests stipulated in Article 28(2)(e)-(f);
- b) persons who did not adopt the plan (categories of creditors with limited interests, each member of any category, or debtor) shall be granted under the plan fair and equal terms, which implies the following:
 - none of the categories of creditors whose opinions on the plan vary or the debtor shall receive the amount less than in the event of the debtor liquidation;
 - none of the categories of creditors or any member of any category of creditors shall receive more than the declared amount of their claims or rights; and
 - all the creditors of one category shall enjoy equal rights, excluding cases when each member of the creditors' category in question agrees in writing upon unequal standing of any member of the given category;
- c) the administrator's fee and other administrative costs are fully paid-up, if the plan does not provide for such payments.

(2) If several plans are approved the court shall choose the plan of the debtor.

(3) Once the decision on the plan approval or selection of one of the several approved plans has taken effect, the debtor's funds shall be reorganized in the appropriate fashion, and the claims and rights of the creditors and other interested parties shall change pursuant to the plan. The creditors may request that the court ruling be executed on the basis of the approved plan that shall be binding upon the debtor. The reorganization procedure administrator or the debtor shall carry out the structural adjustments envisioned in the plan without delay.

(4) If the plan has not been approved, the court shall rescind its decision on the bankruptcy procedure suspension and shall order that the bankruptcy proceeding administrator without delay take measures aimed at the bankruptcy lot liquidation.

(5) In the process of reorganization, the plan may be changed in conformity with the procedures envisioned in this Chapter.

(6) The debtor reorganization procedure shall terminate in connection with:

- a) plan completion;
- b) failure to comply with the plan;
- c) expiry of the deadline set for the reorganization procedure.

(7) If the plan has been implemented, the court shall declare the bankruptcy procedure termination.

(8) If the debtor failed to comply with the plan, the creditors whose claims have not been satisfied in the volume of at least 80 percent or have been changed under the plan, or the reorganization procedure administrator may petition for the debtor liquidation without producing the evidence of its insolvency. Therewith, the changed claims and rights of interested parties shall be final and binding even if court orders that the debtor be liquidated (language of Law No. 1254 of July 16, 1997).

Chapter IV

BANKRUPTCY PROCEEDING. DEBTOR LIQUIDATION

Article 16. Decision on Bankruptcy Proceeding Initiation

(1) The bankruptcy proceeding shall be initiated along with passing an appropriate resolution (Article 12(3)(a)) that shall include:

- a) ban on asset management by the debtor;
- b) instruction as to the debtor's asset management and appointment of the bankruptcy proceeding administrator (hereinafter referred to as "administrator") nominated by the bankruptcy creditors (hereinafter referred to as "creditors" or appointed by court when the proposal was not made or the administrator does not meet the requirements of Article 22(3);
- c) notification of all the debtor's creditors of their right to address court within the set deadline with its financial claims and rationale for them with a stipulation that otherwise their claims will not be taken into account when the amount generated from the bankruptcy proceeding is distributed;
- d) appeal to all the persons who have ownership right, the right to pledge and other legal rights in the debtor's property with a proposal to declare this right to the administrator within the set deadline;
- e) account to which cash as payment for the debtor's payables shall be credited; and
- f) other substantial information (language of Law No. 1254-XIII of July 16, 1997).

Article 17. Consequences in Law of Decision on Bankruptcy Proceeding Initiation

(1) Beginning from the effectiveness day of the decision on the bankruptcy proceeding initiation:

- a) the debtor shall forfeit the right to use, dispose, and manage the property, and its rights shall pass on to the administrator;
- b) the timeframes for fulfilment of all the debt and other liabilities of the debtor shall be deemed to have taken effect provided the actions taken by the administrator under Article 19 do not entail otherwise;
- c) payments to the debtor shall be only made through one debtor's account set up by the administrator;
- d) any guarantee for fulfilment of liabilities not envisioned in this law or issued without a court authorization shall be deemed invalid; and
- e) in its name the debtor shall use the words "in the process of bankruptcy proceeding".

(2) Once the bankruptcy proceeding has been initiated, proceedings in other cases with regard to the debtor's property shall be suspended, including the suspension of implementation of previously issued court orders. All claims to property from this moment on may be made to the debtor only in the framework of the bankruptcy proceeding, excluding the mortgagee creditors' claims and claims to withdraw the property from unlawful possession by the debtor or possession thereof through a mistake, in which the third parties have proven their real right and to execute the court orders under the claims.

(3) The creditors' claims based on the implementation of transactions effected after the bankruptcy proceeding initiation shall have a preemptive power relative the bankruptcy creditors' claims by means of securing them with a pledge or issuing other kinds of guarantees for their priority relief (language of Law No. 1254-XIII of July 16, 1997).

Article 18. Activities Following the Decision on Bankruptcy Proceeding Initiation

(1) Having assumed his/her office, the administrator shall:

- a) accept the debtor's property and documentation pursuant to the legislation;
- b) carry out the debtor's property stocktaking and take measures aimed at its safety;
- c) if necessary, seal up the debtor's property, documents, and registries; and
- d) take other actions pursuant to Article 22(7) and restrictions set forth in Article 17.

(2) The creditors shall state their rights to court within a month following the publication of the appropriate announcement, furnish explanations regarding its debt liabilities, mortgage (if any), property possessed by the debtor which they claim as owners or otherwise. Debt liabilities to the national public budget shall be temporarily recorded in the amount declared by the debtor. Creditors, except for the debtor's employees which did not declare their rights in due time, shall be adjudged to have declined them.

(3) Not later than five days following the deadline for claim declaration, court shall send notices to the parties involved in the case of the first creditors' meeting, including its date, place and time.

(4) Not later than ten days following the deadline for claim declaration, the first court session and the first creditors' meeting shall be held, during which all the claims to the debtor and consistency of each claim to its sequence and amount for each creditor shall be specified; the

administrator's report shall be heard on the debtor's property management beginning from the day of assuming office, including on the guarantees issued to the creditors thereby on the claims made after the bankruptcy proceeding initiation; the resolution on proposals with regard to the reorganization procedure initiation shall be passed; the administrator shall be reconfirmed in office, or another person shall be appointed, the debtor shall speak on all the claims made thereto, and the administrator shall express his/her opinion on the issues in question (language of Law No. 1254-XIII of July 16, 1997).

Article 19. Agreement Cancellation

(1) For the purpose of maximizing the debtor's property value, the administrator may reconfirm or rescind any agreement in which the debtor is one of the parties, including the credit and lease agreements the duration of which has not expired, or other, if the agreements have not been fully executed by the participating parties. At the counterparties' request, the administrator shall within reasonable deadline, but not later than three weeks following his/her appointment in office, notify them of the agreement confirmation or cancellation; should the administrator fail to do so, the agreement shall be deemed cancelled, and the manager may not thereafter require that it be executed.

(2) If the property seller retained the ownership right therein before the sale price has been fully paid up, provisions of paragraph (1) shall not be applied to such transaction.

(3) Real estate lease or employment agreement may be cancelled only in compliance with the notice deadlines set forth in law. The agreement notice deadlines exceeding those set forth in law shall not be complied with.

(4) The creditor is authorized to request that the debtor compensate its losses caused by the agreement cancellation in the form of actual damage.

(5) Disputes on cases envisioned in this Article shall be reviewed in the process of the bankruptcy proceeding within two weeks (language of Law No. 1254-XIII of July 16, 1997).

Article 20. Invalid Debtor's Transactions

(1) The manager may file a suit for adjudging the transactions to be invalid and levying property from the third parties in the event of:

- a) non-refundable transfers for the benefit of the owner, debtor's manager, owner's spouse or relations (parents, children, siblings, grandparents, grandchildren) and the debtor's manager effected within three years prior to filing a petition of bankruptcy;
- b) non-refundable transfers to the third parties effected within three years prior to filing a petition of bankruptcy;
- c) conducting transactions under which the debtor paid a fee considerable exceeding the fee received thereby, and which have been effected not later than three years prior to filing a petition of bankruptcy;
- d) not later than three years prior to filing a petition of bankruptcy, taking actions aimed at concealing by the participating parties the assets from the creditors or otherwise encroach upon their rights;
- e) transfer of the debtor's property in the interest of one of the creditors as payment for future debt effected not later than 120 days prior to filing a petition of bankruptcy for

the purpose of increasing the amount the creditor would receive as a result of the debtor liquidation; and

f) mortgage or other right to pledge or increasing the guarantee on the unsecured claim liabilities recorded 180 days or one year, in the event of additional claim or the claim of the debtor's shareholder or stakeholder, prior to filing a petition of bankruptcy.

(2) Transactions effected with participation of third parties that are the debtor's stakeholders (shareholders) within one year prior to filing a petition of bankruptcy may also be cancelled or reimbursed if they damage the creditors' interests and if the following are the parties to the transaction:

a) stakeholder (shareholder) holding at least 20 percent of stakes (shares) of the partnership, company (association);

b) manager or other member of the management body or other agency that supervises the debtor;

c) any other individual or legal entity supervising the debtor or its commercial activity.

(3) The manager may file a suit for adjudging the transactions to be invalid as set forth in paragraphs (1) and (2) within one year following the filing of the petition of bankruptcy. Should the manager refuse to take such actions, they may be taken by the creditors' meeting.

(4) Contrary to paragraphs (1)-(3), neither the manager nor the creditors' meeting are authorized to deem the debtor's transactions invalid if they had been effected in the ordinary course of commercial or financial business or reciprocal exchange of equivalent valuables, or if under the terms and conditions of the transactions the beneficiary extended a new unsecured credit to the debtor that has not repaid it by the moment of filing a petition of bankruptcy.

(5) The beneficiary under the transaction adjudged to be invalid (paragraphs (1)-(3)) shall return the property transferred thereto or, if the property no longer exists, reimburse its cost as of the moment of property transfer by the debtor.

(6) The beneficiary that returned the property or the cost of the property transferred by the debtor shall be deemed to have a claim for this amount if its participation in the transaction was not secretly intended to obstruct, inhibit, or mislead the debtor's creditors. Gifting or other transactions carried out by the founders of the individual enterprise or the stakeholders of unlimited partnership, or a full stakeholder of a limited partnership in the framework of regular civil relations in law not aimed at concealing the debtor's property or causing damage to the creditors' interests also may not be adjudged to be invalid.

(7) The manager or the creditors' meeting may charge property or the value of the property transferred by the debtor to the original beneficiary and again transferred by the latter to the second beneficiary, if the second beneficiary did not pay a fair price for the property and was aware that the original transfer may be deemed invalid pursuant to this Law (language of Law No. 1254-XIII of July 16, 1997).

Article 21. Owner and Debtor's Manager's Duties

When issuing an order on the bankruptcy proceeding initiation, the owner and the debtor's manager shall:

- a) assist the bankruptcy proceeding administrator in discharge of his/her duties;
- b) within 10 days transfer to the bankruptcy proceeding administrator the debtor's property and all necessary information, including the documents regarding the debtor's property;
- c) sit in the creditors' meeting, court session, and respond to all the questions with regard to the bankruptcy proceeding; and
- d) execute all the court rulings related to the bankruptcy proceeding, including those aimed at restricting their rights.

Article 22. Bankruptcy Proceeding Administrator

(1) The bankruptcy proceeding administrator shall be appointed by court and nominated by the creditors' meeting (language of Law No. 1254-XIII of July 16, 1997).

- (2) Court may nominate the administrator itself in the event that:
- a) the creditors' meeting within 10 days following the receipt of the appropriate request from court, did not nominate the administrator; and
 - b) the nominations do not meet the requirements of paragraphs (3) and (4).

(3) Only one person with higher education in economics or law, not less than three years of experience in administration at an enterprise or law during the last ten years, without criminal convictions in crimes against ownership, economic activities and position-related crimes. The administrator shall discharge his/her duties through an enterprise which it organized and the manager of which he/she must be.

(4) The enterprise whose manager is the administrator shall have a state license for management of insolvent enterprises issued on the condition that the enterprise is solvent, its assets meet the statutory capital requirements and the enterprise has not been deemed insolvent over the last five years.

(5) The manner of issuing, suspending and cancelling the license shall be set forth by the Government.

(6) The administrator shall discharge his/her functions pursuant to the agreement entered into with the creditors' meeting (authorized representative of the creditors' meeting) and approved by the judge and sealed with the court stamp (language of Law No. 1254-XIII of July 16, 1997).

(7) The manager shall:

- a) dispose of the debtor's property pursuant to this Law;
- b) manage the debtor's activities;
- c) be entitled to appeal in court the debtor's transactions effected by the debtor during the last 12 months preceding the bankruptcy proceeding initiation;
- d) hire and discharge the employees in conformity with labor legislation;
- e) analyze the debtor's financial standing, examine the rationale for the creditors' claims, accept or decline them;
- f) form the bankruptcy lot, including charging the receivables;
- g) compile and introduce changes to the bankruptcy creditors' claims registry;

- h) provide to court and the creditors required information on the debtor's financial standing and its property as of the bankruptcy proceeding initiation moment;
- i) convene the creditors' meeting (committee);
- j) decide on the composition of the liquidation commission and run its activities;
- k) prepare and submit for the court's approval the debtor's liquidation balance sheet.

(8) All activities of the administrator related to the bankruptcy lot management and sale shall be aimed at a more complete creditors' relief.

(9) The administrator shall be entitled to appeal in court the decisions of the creditors' meeting restricting its powers or issued in violation of the meeting jurisdiction.

Article 23. Administrator's Fee

(1) The administrator's fee shall be set by the creditors' meeting and approved by court.

(2) The manager shall be paid a fee in the manner set forth in Article 28(1).

(3) The court shall pay the fee (including advanced payment) to the administrator from the funds that had been previously credited to the deposit account of court within the limits of the amounts credited to the account with subsequent reimbursement out of the bankruptcy lot.

Article 24. Administrator's Accountability and Responsibility

(1) The administrator shall be held accountable to the court orders and the resolutions of the creditors' meeting passed within the limits of their terms of reference.

(2) The court is authorized to dismiss the administrator from his/her functions provided there are valid reasons therefor and appoint another administrator.

(3) The administrator shall be responsible for discharge of his/her functions to all the bankruptcy proceeding participants and materially liable for the losses caused as a result of his/her unlawful actions. The terms of the administrator's material liability and the guarantees issued thereby are stipulated in the agreement (language of Law No. 1254-XIII of July 16, 1997).

Article 25. Creditors' Meeting

(1) The creditors whose rights were acknowledged by court shall participate in the creditors' meeting and shall have the voting right, excluding those whose rights are secured with a mortgage and who did not decline their right to have their claims satisfied at the expense of the mortgage.

(2) At the creditors' meeting, the bankruptcy creditor shall exercise his/her voting right in proportion to the amount of his/her claims entered as of the meeting day in the bankruptcy creditors' claims registry.

(3) As payments to the bankruptcy creditors are effected, the administrator shall introduce changes to the bankruptcy creditors' claims registry. Information on changes in the aforementioned registry shall be announced by the administrator at the beginning of the regular creditors' meeting.

(4) Any disagreements arising among the bankruptcy creditors and the administrator as to the claims amount included in the bankruptcy creditors' claims registry shall be examined by court upon an application of the corresponding bankruptcy creditor. In this event, the bankruptcy creditor's claims amount shall be determined by court and entered by the administrator to the bankruptcy creditors' claims registry.

(5) The creditors' meeting shall:

- a) set up the creditors' committee and determine its functions;
- b) nominate the administrator;
- c) authorize the administrator to engage in some transactions related to the debtor's property alienation;
- d) decide on the timeframes and form of sale of the debtor's property and its starting price;
- e) set the administrator's fee; and
- f) supervise the administrator's activities (language of Law No. 1254-XIII of July 16, 1997).

(6) The creditors' meeting shall be convened at the request of the administrator or the bankruptcy creditors whose claims amount to more than one fourth of the claims entered in the bankruptcy creditors' claims registry or one third of the bankruptcy creditors within the deadline set by court.

(7) The creditors' meeting shall be competent if the bankruptcy creditors whose claims amount to more than 50 percent of the total creditors' claims are represented therein.

(8) The creditors' meeting shall pass resolutions by a majority of the bankruptcy creditors' votes whose claims amount to more than 50 percent of the total creditors' claims.

(9) The creditors' meeting decision on setting a new deadline for fulfilment of liabilities shall be issued by the bankruptcy creditors whose claims amount to more than two thirds of the total creditors' claims.

(10) The court that hears the bankruptcy case, all known creditors, the debtor, and other interested parties shall be notified of any decision of the creditors' meeting.

(11) The creditors' meeting decisions shall be mandatory for all the creditors.

(12) The creditors' committee shall be created so that all the creditors (creditors' groups) are represented proportionally and be approved by court.

(13) The creditors' committee is authorized to require that the administrator provides relevant information and explanations.

(14) The creditors' committee shall furnish advice to the administrator on the issues of the bankruptcy proceeding and provide recommendations as to how to discharge his/her functions.

Article 26. Rights of the Debtor's Employees Representative

The debtor's employees representative authorized by the employees' meeting (conference) is entitled to participate in hearing the debtor's bankruptcy case, examine together with the creditors the claims amounts to the extent that they are related to the debtor's liabilities to its employees, and to examine the documents produced as a rationale of its insolvency.

Article 27. Debtor's Property Realization out of Bankruptcy Lot

(1) The debtor's property realization out of the bankruptcy lot shall be carried out by means of the public tender in the manner set forth in the Civil Code of Procedures, provided the agreement between the debtor and the creditors does not say otherwise.

(2) The property, including the debtor's property complexes, which pursuant to the legislation may not be privately owned or possessed, shall be alienated to the state-owned enterprises (organizations) in the established manner.

(3) Land plots owned by the debtor as of right of ownership or economic possession, shall be alienated as set forth in law.

(4) Not less than 20 days in advance, the administrator shall by mail or other acceptable means notify all the creditors whose claims exceed 5 percent of the total creditors' claims of its intent to sell any assets the value of which exceeds 10 percent of the total creditors' claims. The notice shall specify the form of sale - closed or through an auction, the price, terms of payment and the buyers' identity, if known.

(5) Not less than 30 days in advance the administrator shall notify court, all the creditors and the debtor's owner of his/her intent to sell immovable property at an auction. The notice shall describe the immovable property in detail pursuant to the real estate registry data and the starting price. If at least one creditor or the debtor's owner has any comments on the auction terms and conditions, the court, having notified all the creditors and the debtor's owner at least 20 days in advance, review these comments at its session.

(6) The administrator shall announce any auction for immovable property sale at least twice in the local high-circulation newspapers and at the same time issue instructions that the auction announcements be posted up in court and at the immovable property offered for sale. The announcement copies shall be sent out to each immovable property mortgagee and the debtor. The sale shall be effected 20 days following the latest publication of the announcement (amended by Law No. 12543-XIII of July 16, 1997).

Article 28. Creditors' Relief in the Process of Bankruptcy Proceeding

- (1) The following is subject to satisfaction on a priority basis:
- a) mortgage-secured claims;
 - b) court costs and administrator's fee;

c) administrative costs, including:

- actual and required costs on the property preservations (conservation) and alienation;
- maintenance costs set by court order for the individual enterprise founder, participants in the unlimited partnership, full stakeholders in the limited partnership, and their family members.

(2) Once the claims set forth in paragraph (1) have been satisfied, the bankruptcy creditors' claims shall be relieved in the following sequence:

- a) claims of citizens to which the debtor is liable of causing damage to their health and claims related to the citizens' death - by means of capitalization of appropriate periodical payments;
- b) claims to wages over a period not exceeding six months prior to the bankruptcy proceeding initiation;
- c) claims to repay debt to the national public budget over the year preceding the bankruptcy proceeding initiation;
- d) citizens' deposits to financial institutions in the amount not exceeding 1000 Lei;
- e) claims of other categories of creditors, excluding those stipulated in paragraphs a)-d) and f);
- f) claims of the creditors with past due claims (Article 18(2)), and taxes, duties, and sanctions imposed on the debtor pursuant to the legislation of other countries (language of Law No. 1254-XIII of July 16, 1997).

(3) Claims of next priority shall be satisfied once the claims of the previous priority have been fully relieved.

(4) In the event that the charged amount is inadequate for relieving all the bankruptcy creditors of one priority, their claims shall be satisfied in proportion to the amount due to each creditor.

(5) Based on the effected payments, the administrator shall furnish information to court on a monthly basis. In order to effect the last payment in the amount of not less than two percent of the bankruptcy lot, the administrator shall obtain a permit from court.

(6) The bankruptcy creditors' claims not satisfied due to the bankruptcy lot inadequacy shall be deemed paid. The claims not satisfied based on the court ruling and the creditors' claims not acknowledged by the administrator shall also be deemed paid, if the creditors do not contend his/her actions in court.

(7) Cash remaining after the bankruptcy creditors relief shall be credited by the administrator to the deposit account of the court that initiated the bankruptcy proceeding. The cash shall be passed on to the debtor's owner or the debtor in conformity with law, other normative acts, or the debtor's foundation documents.

(8) The claims of the citizens to whom the debtor operating as an individual enterprise is liable for causing damage to their health, claims made in connection with the citizen's death, and other personal claims not paid as an execution of court ruling, shall continue in force and may be put forward to the debtor's founder (stakeholder) in the manner set forth in law. The size of such claims shall decrease in proportion to the degree of their satisfaction in the debtor's bankruptcy process.

Article 29. Review of Administrator's Statements and Bankruptcy Creditors' Complaints

The administrator's statements, including those on the disagreements between the administrator and the bankruptcy creditors, and the creditor's and the debtor's complaints filed in the process of the bankruptcy proceeding or reorganization procedure shall be reviewed by court not later than within two weeks following the statement and complaints filing.

Article 30. Bankruptcy Adjudication and Debtor Liquidation

(1) Following the relief of all the bankruptcy creditors as set forth in Article 28, the administrator shall file to court for its approval the report with the liquidation balance sheet, the bankruptcy creditors' claims registry with the satisfied claims amounts, and the documents on use of funds remaining after the creditors' relief attached, and solicit of behalf of the creditors' meeting for adjudging the debtor to be a bankrupt.

(2) After hearing the debtor, the court shall issue a bankruptcy ruling that shall specify:

- a) bankruptcy date and time;
- b) announcement on relief of all the bankruptcy creditors' claims and the liquidation balance sheet approval;
- c) administrator's statement.

(3) Copy of the court ruling shall be sent to the State Registration Chamber within the Ministry of Justice.

(4) The debtor shall be deemed liquidated from the moment of its exclusion from the state commercial registry on the basis of the court adjudication of the debtor's bankruptcy.

Article 31. Publication of Bankruptcy Adjudication and Concordat

Decisions passed pursuant to Articles 30 and 34 are subject to publication in the manner set forth in article 17(1).

Chapter IV

UNLAWFUL ACTIONS OF THE DEBTOR, DEBTOR'S OWNER, CREDITOR AND OTHER PERSONS

(language of Law No. 1254-XIII of July 16, 1997)

Article 32. Unlawful Actions of the Debtor or the Debtor's Owner Prior to the Bankruptcy Proceeding Initiation

(1) Actions that fall under the definitions of wilful or fraudulent bankruptcy shall be referred to the unlawful actions of the debtor or the debtor's owner prior to the bankruptcy proceeding initiation.

(2) Unlawful actions of the creditor or the creditor's owner shall also include the actions taken in view of the pending debtor's insolvency and causing damage to the interests of all or some of the creditors, including:

- a) concealing a portion of the debtor's property or its liabilities;
- b) concealing, destroying or faking any record related to the debtor's operation;
- c) failure to make a required entry in the accounting records; and
- d) destruction, sale or pledging a portion of the debtor's property obtained as a credit that has not been repaid.

Article 33. Unlawful Actions of the Debtor or the Debtor's Owner Following the Bankruptcy Proceeding Initiation

Unlawful actions of the debtor or the debtor's owner following the bankruptcy proceeding initiation shall include:

- a) actions envisioned in Article 32(2);
- b) concealing from the administrator to whom, when, and in what form a portion of the debtor's property was transferred;
- c) failure to produce at the administrator's request the property used or kept with the debtor;
- d) failure to produce the accounting records by the debtor to the administrator; and
- e) concealing from the administrator by the debtor of the information on the actions taken thereby, as set forth in Article 20.

Article 34. Unlawful Actions of Creditors and Other Persons

(1) The creditor shall be deemed to have taken an unlawful action, if it knew of a priority satisfaction of its claims to the detriment of other creditors and agreed on such a satisfaction.

(2) Any persons shall be deemed to have taken an unlawful action if it knew of the current or pending debtor's insolvency and wilfully encourages the concealment or all or a portion of its property.

Article 35. Consequences of Unlawful Actions

Persons engaged in unlawful actions stipulated in Article 32-34 shall be held liable in conformity with legislation.

Chapter VI

FINAL PROVISIONS

(language of Law No. 1254-XIII of July 16, 1997)

Article 36

This Law shall take effect on the publication day.

Article 37

Bankruptcy Law No. 851-XII of January 3, 1992 shall be deemed invalid beginning from the effective day of this Law.

Petru Luchinsky
CHAIRMAN OF THE PARLIAMENT